



# Fact Sheet

Jan. 30, 2017

## **Automatic Extensions of EADs Provided by the “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers” Final Rule**

### **Background**

On Jan. 17, 2017, a final rule, “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,” amending DHS regulations went into effect. The new amendments provide for automatic extensions of the validity periods of certain Employment Authorization Documents (Form I-766) for up to 180 days for individuals who:

- Timely filed to renew an Employment Authorization Document (EAD);
- Are applying to renew an EAD in the same category as the previous EAD (A12 and C19 are considered the same category for this extension); and
- Are in a category that is eligible for the extension.

### **Automatic Extensions Based on a Timely Filed EAD Renewal Application**

Foreign nationals filing EAD renewal applications under some employment eligibility categories may receive automatic extensions of their expiring EAD for up to 180 days. The extension begins on the date the EAD expires and continues for 180 days unless the application is denied. Employees with a timely filed EAD application that is still pending may qualify for the 180-day automatic extension, even if that application was filed prior to the effective date of this rule (Jan. 17, 2017). Eligibility for the automatic extension depends on these requirements:

1. The employee must have timely filed an application to renew his or her EAD, meaning that the application was received by USCIS before the EAD expired (except certain employees granted Temporary Protected Status (TPS) who must follow the applicable TPS Federal Register notice), and the application remains pending;
2. The eligibility category on the face of the EAD is the same eligibility category code on the Form I-797C, Notice of Action, that the employee received from USCIS indicating USCIS’s receipt of the EAD renewal application (except employees with TPS who may have either A12 or C19 as the category code); and
3. The renewal application was filed on the basis of a qualifying eligibility category code. As of the date of publication, eligibility category codes for a 180-day automatic extension are A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31, and A12 or C19. Note: Some category codes on the EAD may include the letter ‘P’ such as C09P. Employers should disregard the letter ‘P’ when comparing the category code on the EAD with the category code on the receipt notice.

The employee's expired EAD in combination with Form I-797C showing that the EAD was timely filed and showing the same qualifying eligibility category as that on the expired EAD, is an acceptable document for Form I-9, Employment Eligibility Verification. Such document combination is considered an unexpired EAD under List A. See Appendix A for an example of an EAD and Form I-797C.

If you determine an EAD has been auto-extended, please follow the guidance below when completing Form I-9. Employees who present an EAD with a category code of A12 or C19 are TPS beneficiaries. TPS beneficiaries may receive an automatic extension of their EAD on an alternate basis. Employers can learn more about TPS beneficiaries later in this Fact Sheet.

### **Instructions for an Employee Completing Section 1 of Form I-9**

#### **If you are a new employee:**

When completing Section 1, new employees should:

- Select the option "An alien authorized to work until"; and
- Enter the date that is 180 days from the "card expires" date of their EAD as the "employment authorized until mm/dd/yyyy" date.

#### **If you are a current employee:**

Current employees whose employment authorization was automatically extended should:

- Cross out the "employment authorized until" date in Section 1;
- Write the date that is 180 days from the date their current EAD expires; and
- Initial and date the change.

### **Instructions for Employers Completing Section 2 of Form I-9**

#### **If your employee is new and presents an automatically extended EAD that is still within the 180-day extension period:**

When completing Section 2, the employer should:

- Enter into the "Expiration Date" field the date upon which the automatic extension period expires, not the expiration date on the face of the expired EAD. The automatic extension expiration date is the date 180 days from the "card expires" date on the EAD; and
- Enter the receipt number in the "Document Number" field. Note that this expiration date may be cut short if the employee's renewal application is denied before the 180-day period expires.

To determine if an EAD is auto-extended for 180 days, you need to:

- Check the category code on the EAD and make sure it is in one of these categories: A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31, and A12 or C19.
- Check the "received date" on Form I-797C and make sure it is on or before the "card expires" date on the EAD.
- Make sure the category code on the EAD is the same category code on Form I-797C. Employers should consider category codes A12 and C19 to be the same category code.

Note: Some category codes on the EAD may include the letter 'P' such as C09P. Employers should disregard the letter 'P' when comparing the category code on the EAD with the category code on the receipt notice.

**If your employee is currently working for you:**

For a current employee, update Section 2 of Form I-9 with the new expiration date as follows:

- Draw a line through the old expiration date and write-in the new expiration date;
- Write EAD EXT in the “Additional Information” field of Section 2; and
- Initial and date the update.

The new expiration date the employer should enter is the date 180 days from the “card expires” date, which is the date on the face of the EAD.

To determine if an EAD is auto-extended for 180 days, the employer should:

- Check the category code on the EAD and make sure it is in one of these categories: A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31, and A12 or C19.
- Check the “received date” on Form I-797C and make sure it is on or before the “card expires” date on the EAD.
- Make sure the category code on the EAD is the same category code on Form I-797C. Employers should consider category codes A12 and C19 to be the same code.

Some category codes on the EAD may include the letter ‘P’ such as C09P. Employers should disregard the letter ‘P’ when comparing the category code on the EAD with the category code on the receipt notice.

**Note:** This is not considered a reverification; do not complete Section 3 until either the 180-day extension has ended or the employee presents a new document to show continued employment authorization, whichever is sooner. At the end of the 180-day extension, the employer must reverify the employee’s employment authorization in Section 3 of Form I-9.

**Instructions for Employers Completing Section 3 of Form I-9**

When the automatic extension of an EAD expires, an employer must reverify the employee’s employment authorization in Section 3. At that time, the employee must present any document from List A or any document from List C, or an acceptable List A or List C receipt described in the Form I-9 Instructions to reverify employment authorization. Note that employers may not specify which List A or List C document employees must present.

**For E-Verify Employers**

An employer may create a case in E-Verify for a new employee using the information provided on Form I-9 from Form I-797C. The receipt number entered as the document number on Form I-9 should be entered into the document number field in E-Verify.

**Temporary Protected Status (TPS) Specific Information**

TPS beneficiaries may be eligible for an automatic extension of their EAD if there is an announcement in the Federal Register that provides for such an automatic extension, or by satisfying the requirements of this new rule. TPS beneficiaries who fall within the automatic extension described in the applicable Federal Register notice and wish to comply with Form I-9 requirements pursuant to the notice should follow the instructions in the Federal Register notice for updating Form I-9 and other USCIS guidance. This information includes guidance for employers as well.

If the Department of Homeland Security (DHS) has automatically extended the validity date of the employee’s EAD, the employee does not need to also present Form I-797C. The employee’s work

authorization is extended to the date stated in the Federal Register notice. **Note:** A TPS beneficiary employee who is eligible for an automatic extension of his or her EAD as announced in a Federal Register notice is not required to present the Federal Register notice.

With respect to employees relying on the automatic extension under the new rule, employers should note that an employee who is a TPS beneficiary may have an EAD with a category code of A12 or C19. The category code on Form I-797C can also be either A12 or C19. These two codes are the **ONLY** codes that are interchangeable and should be considered identical by employers.

**Additional Information**

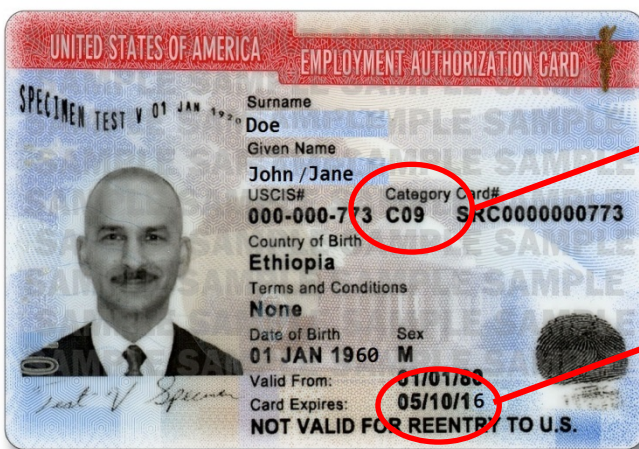
For additional information, please see the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#) or visit [I-9 Central](#).

– USCIS –

# Appendix A

## Automatic Extensions of EADs Provided by the “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers” Final Rule

### Employment Authorization Document (Form I-766) Sample



The category notation appears on the face of the Employment Authorization Document (Form I-766) under “Category.”

The expiration date appears on the face of the Employment Authorization Document (I-766) to the right of “Card Expires.”

# Appendix A

## Automatic Extensions of EADs Provided by the “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers” Final Rule

### I-797C Notice of Action Samples

#### Sample 1

RECEIPT NUMBER EAC-		CASE TYPE I765 APPLICATION FOR EMPLOYMENT AUTHORIZATION	
RECEIVED DATE July 15, 2015	PRIORITY DATE	APPLICANT A	
NOTICE DATE July 31, 2015	PAGE 1 of 1		
		Notice Type: Receipt Notice Amount received: \$300.00 U.S. Class requested: A12	

The receipt number appears on the face of the I-797C Notice of Action in the “Receipt Number” field.

The filing date is the date USCIS received the application and appears in the “Received Date” field. This date should be **on or before** the expiration date on the face of the Employment Authorization Document. (Form I-766).

The category code may appear on the face of the I-797C Notice of Action in the “Class Requested” field. If you do not see this field, see Sample 2 below.

#### Sample 2

NOTICE TYPE Receipt		NOTICE DATE November 25, 2016	
CASE TYPE I-765, Application for Employment Authorization		USCIS ALIEN NUMBER A	
RECEIPT NUMBER	RECEIVED DATE November 25, 2016	PAGE 1 of 1	DATE OF BIRTH
		PAYMENT INFORMATION: Application/Petition Fee: \$410.00 Biometrics Fee: \$0.00 Total Amount Received: \$410.00 Total Balance Due: \$0.00	
NAME AND MAILING ADDRESS			
Eligibility Category: C35			

The receipt number appears on the face of the I-797C Notice of Action in the “Receipt Number” field.

The filing date is the date USCIS received the application and appears in the “Received Date” field. This date should be **on or before** the expiration date on the face of the Employment Authorization Document. (Form I-766).

The category code may appear on the face of the I-797C Notice of Action in the “Eligible Category” field. If you do not see this field, see Sample 1 above.