



December 6, 2010

Executive Summary

USCIS Form I-9 Stakeholder Engagement

Overview

On November 2, 2010, the USCIS Verification Division and Office of Public Engagement (OPE) hosted a stakeholder engagement regarding the Form I-9 (Employment Eligibility Verification). USCIS indicated at the opening of the session that the agency is in the early stages of drafting a Notice of Proposed Rulemaking (NPRM) for the Form I-9 and wanted to host an engagement in order to give individual stakeholders an opportunity to comment on the Form I-9 process. USCIS was particularly interested in hearing from stakeholders on the different sections of the form, the list of acceptable documents, the Form I-9 verification process, and potential educational resources. The session was for USCIS to listen to the views and information of individual stakeholders. The session was not used for the purpose of obtaining group or consensus advice.

Principal Themes

Sections 1, 2 and 3 of the Form I-9

Individual stakeholders provided a variety of comments regarding the Form I-9 format, layout, language, and accompanying guidance, including simplifying the form altogether, reducing the instructions to two pages, creating the form in additional languages, and including a place for employers to specify a termination date. There were also comments concerning the retention requirements, and a comment that USCIS should be clear that the form must be retained for all active employees. Several stakeholders expressed that a two-page form would be acceptable and that an electronic version of the Form I-9 is a good option to have available. Comments from individual stakeholders specific to each section of the form are summarized below.

Section 1: Employee Information and Verification

- Provide clarification in the M-274 (Handbook for Employers: Instructions for Completing Form I-9) on what is meant by “last name,” for example by referencing “family name” or “surname,” and give examples of hyphenated names.
- State in the form instructions that the “maiden name” box does not need to be completed if it does not apply and that it is acceptable to include the notation “N/A.”

- Require employees who indicate that they are “an alien authorized to work” to specifically identify their status and classification on the form. Some employees may be confused about their exact status, however.
- Delete reference to “admission number” where employees indicate that they are “an alien authorized to work” since the Form I-94 (Arrival-Departure Record) contains a “departure number.”
- Provide a space for lawful permanent residents to include the expiration date of their permanent resident cards.
- Emphasize where employees are to sign by enlarging or shading the signature box.
- Divide “Preparer and/or Translator Certification” into separate parts.
- Add a checkbox where employees indicate that they have received a copy of the form instructions.
- Tell employers that they must review the information provided in Section 1 and ensure it is complete.
- Clarify which expiration dates need to be notated so employers know when and what to track.
- Make it clearer that providing the social security number is optional.

Section 2: Employer Review and Verification

- Strengthen the language in the instructions and add language to the certification section so that employers know that a representative of the company must be physically present when the employee presents the documents and signs the Form I-9 so the employer’s representative can attest to that fact.
- Add a line for a third “Document #” and “Expiration Date” to accommodate instances where a third document may need to be presented. Several stakeholders requested a space for the SEVIS number.
- Issue guidance on which expiration dates should be tracked by the employer and which ones can be ignored since, for example, someone could present a List A document initially or at reverification that does not require further tracking of the expiration date.
- Clarify what is meant to be provided when specifying the “Document #” for a permanent resident card.
- Emphasize to employers that if an employee presents a satisfactory List A document, employers are not to request any additional documentation and are not to complete any portion of the List B or List C parts in this section.
- Include a warning for employers that over-documentation may expose them to penalties.
- Bring visibility to the “month/day/year” line in the Certification part.
- Increase the size of the certification language.
- Provide a separate place for agents or notaries to sign, perhaps including room for a notary seal.
- Provide more instructions on how to fill out Form I-9 in the event of a merger or acquisition and a better designed form to handle this.

Section 3: Updating and Reverification

- Divide updating and reverification into two sections.
- Issue instructions on what to do in the case of a name change.
- Provide additional guidance on what constitutes a rehire such that an employer must complete part B of this section.
- Provide additional guidance on when an employer needs to reverify and complete part C of this section.
- Put more information on the web that tells employers that the employee has the right to choose what document to present at reverification.

- Specify whether it is the date listed by the employee at Section 1 or the date listed by the employer at Section 2 that controls the expiration date for reverification.
- Require employees to sign an attestation here too, in addition to the employer.
- Revise this section so that the review of document(s) in Section 3 mirrors Section 2 and includes a place for “Issuing authority.”
- Add a line for employees’ current status.

List of Acceptable Documents

Some stakeholders commented that employers struggle with the large number of documents that can be presented. They stated that employers find it difficult to know what documents are valid, which is complicated by the fact that they do not have access to samples of every possible document that can be presented, such as school ID cards. Some stakeholders stated that it would be helpful if USCIS provided expanded pictures of valid documents and also examples of classifications that can use each document. At least one stakeholder suggested that there should be one list that specifies all acceptable documents, including receipts and document combinations for special categories.

At least one stakeholder stated that there is confusion among employers regarding when an employee is authorized to work, in particular for cases when the employee may have an automatic extension of employment authorization, but neither the List of Acceptable Documents nor the guidance indicates this. Some examples include individuals who are authorized to work based upon:

- a timely filed Form I-751 (Petition to Remove the Conditions of Residence);
- H-1B portability provisions;
- H-1B cap gap extensions;
- the 240 day rule for certain nonimmigrants authorized to continue working for the same employer;
- the “receipt rule” for individuals authorized to work, but not in possession of their document; and
- an extension of Temporary Protected Status (TPS).

One suggestion was given to provide examples for these situations on the Lists of Acceptable Documents.

Several stakeholders raised questions regarding refugees and asylees seeking clarification, in particular, on the acceptance of the Form I-94. Form I-94 with the unexpired refugee admission stamp is considered a receipt under the regulations. This allows refugees to establish both identity and work authorization for 90 days while they wait to get other documents. One stakeholder suggested making this receipt acceptable for longer than 90 days. Currently, Form I-94 with an asylee stamp is considered a List C document.

Additional comments given by some stakeholders on how to improve the Form I-9 process related to the List of Acceptable Documents. Commenters stated that Form I-9 rules or guidance should:

- State that Social Security cards must be original and not laminated.
- Put the naturalization certificate back on List A, in particular with the introduction of the new certificate.
- Allow an expired Employment Authorization Document (EAD) to be accepted when presented with a Form I-797 Receipt Notice for renewal of employment authorization and make this receipt valid for a sufficient amount of time to account for delays in processing.
- Make the Native American tribal document a List A document since it is on List B (number 8) and List C (number 5).

Form I-9 Verification Process

Several stakeholders gave their views on Form I-9 completion for “remote hires” and the meaning of the phrase “the date employment begins.” Some stakeholders stated that it is difficult for employers to complete the Form I-9 process within three days of hire when the employer and employee are in separate locations. They emphasized that additional guidance is needed on how to complete the form within this timeframe and requested that employers be granted a greater amount of time in these situations. One recommendation to address remote hires was for USCIS to allow the United States Postal Service (USPS) to certify the Form I-9 and another suggestion was to use unemployment offices or other state agencies for this.

Stakeholders expressed differing views on how to define the date that employment begins. Currently, employers are to record the date the employee begins work (i.e. the start date) in Section 2 under the Certification part. Most stakeholders suggested this is the best date to use as they are better able to track when an employee physically begins work. However, some stakeholders noted that employers would prefer to use the date of offer and acceptance in this part, especially in the case of remote hires. One stakeholder stated that the offer and acceptance date is too ambiguous and one said that they liked the flexibility of using either date.

Several additional comments were made, including that:

- There should be guidance for employers on how to correct a form and specify who has the authority to correct what.
- Employers should not be required to make a copy of both sides of the form for their records.
- There should be guidance for employers to clarify that employers are not required to retain the instructions.
- USCIS should work more closely with U.S. Immigration and Customs Enforcement (ICE) to accommodate for rapid changes to the process that are not able to be captured by the form.

Educational Resources

Throughout the session, USCIS received views from individual stakeholders highlighting a number of areas with respect to which they would like to see new and/or additional guidance and educational resources, including:

- abbreviated or mini M-274 or a “cheat sheet” in the M-274 (to help shift managers and small businesses);
- list of common issues;
- basic document for employees explaining the process;
- examples of what costs money when an employer makes a mistake on a form;
- guidance on what a proper legal name is; and
- tips for spotting fraudulent documents.

At least one stakeholder suggested an online toolbox that includes resources related to Form I-9 and the current version of all documents (e.g. Form I-9, M-274, etc.), archived documents, links to sample documents, Frequently Asked Questions (FAQs), a link to the Office of Special Counsel (OSC), links to ICE guidance, and links to TPS guidance. One stakeholder commented that archived documents should clearly indicate that they are outdated and that employers should be provided with a link to the most current versions.

The U.S. Customs and Border Protection (CBP) website was referenced and a suggestion was made for USCIS to model the “Find an Answer, Ask a Question” section. In this section, the public would be able to research answers to common questions and also post questions that are not already addressed.

Some stakeholders commented that employers do not have time to read about new resources when they are published and suggested that a link to all current resources be included in the form instructions and also sent out to trade associations.