



American Payroll Association

Government Relations • Washington, DC

January 11, 2016

Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Ms. Laura Dawkins
Chief, Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529-2140
Via Online: www.regulations.gov

Re: Department of Homeland Security, U.S. Citizenship and Immigration Services -- *Agency Information Collection Activities: Employment Eligibility Verification, Form I-9; Revision of a Currently Approved Collection*, 80 Fed. Reg. 73200 (November 24, 2015); OMB Control Number 1615-0047, Docket ID Number USCIS-2006-0068

Dear Ms. Dawkins:

The American Payroll Association (APA) is pleased to provide your agency with comments on the revised Form I-9 and instructions. We have a joint interest with the USCIS in ensuring that employers and employees properly complete information forms and appreciate the agency's efforts to create an understandable form to verify employment eligibility. We recognize that the USCIS has made significant strides to improve the Form I-9 and instructions, which is not an easy task. Most of our comments relate to wording changes that may help make the Form I-9 and instructions clearer. A few recommendations ask the USCIS to consider other issues.

ABOUT THE AMERICAN PAYROLL ASSOCIATION

Established in 1982, the APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals and their employers in the United States. The APA's primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. The APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to assist employers with understanding their legal obligations with significant emphasis on minimizing the administrative burden on government, employers, and individual workers. The GRTF ensures that

APA's members receive the latest information about federal employment verification law changes and that the DHS/USCIS receives meaningful feedback on its programs, regulations, guidance, and forms.

COMMENTS ABOUT THE FORM I-9

General Comments

The revised Form I-9 included in the notice is for the Smart PDF form available from the USCIS. However, there are a few different requirements for an employer using a paper Form I-9. For consistency, the APA recommends that with the exception of the QR Code that the revisions proposed for the Smart PDF form and instructions also apply to the paper and other electronic Forms I-9. For example, in Section 1, except for the other last name used, apartment number, employee's e-mail address, and employee's telephone number fields, the Smart PDF form automatically fills with N/A when a field is not used; N/A also should be used with paper forms. This is different than the current instructions, which say the employee may or must use N/A depending on the field. APA believes that the requirements for use of N/A should be consistent in all formats of Form I-9. We recognize that this will require additional training and may increase the time required to complete for form. However, the benefits of consistency are more important for all stakeholders. We also recommend that a missing N/A be considered a fixable error when identified during an audit.

The APA believes that the differences between the Smart PDF and paper formats are problematic in the instructions and that there should be a single set of instructions applicable to all formats with minimal differences.

When using the Smart PDF, the Quick Response (QR) Code appears to be generated based on Section 1 because it is displayed in both Sections 1 and 2 when only Section 1 is printed. However, the QR Codes in Sections 1 and 2 are different in size, alpha/numeric identifier, and the graphic – see below. APA recommends that the QR Codes be the same size. Standardizing on the smaller QR Code in Section 2 would provide space on the form for several more specific additional information fields.



To use the Smart PDF, Section 1 must be completed and then printed for the employee to sign and, if necessary, the preparer or translator to complete and sign the form. Then, the Smart PDF must be saved

on the employer's computer so it can be opened later to enter Section 2 information. Once Section 2 information is entered, the form must again be printed for signature. Then, the Smart PDF must be saved again if the form is to be used in the future such as for a rehire or reverification. This process creates a burden on the employer because the form must be retained in two locations and formats, hardcopy to retain the form with signatures and softcopy to retain the form electronically for future use. This dual retention requirement also increases the risk that the employee's personal information may be compromised. APA recommends that this process be simplified.

APA recommends that USCIS publish a how-to document on the proper use of the Smart PDF. For example, completing Sections 1 and 2 at different times to account for the 3-day rule and completing Section 3. Because there may be days between the completion of Sections 1 and 2, the employer will be required to save a partially completed Smart PDF until the employee presents documentation for Section 2. In addition, the employer must print the completed Section 2 page, sign it, and attach it to the previously completed Section 1 to make a complete form. A similar situation exists between the completion of Sections 2 and 3. When using the Smart PDF, the employer must be instructed to properly secure and protect the forms, name the forms for easy recall from storage, and structure the storage for timely recall. Backup procedures also should be encouraged.

Comments on Section 1

APA recommends the following changes to Section 1 of the Smart PDF Form I-9:

- Revise the START HERE section to add a semi-colon after the word HERE and change the second sentence from "The instructions must be available during completion of this form" to read, "The employer must ensure the instructions are available to the employee when completing this form." This change is important because employers are liable for errors in completed forms and for consistency with the instructions.
- Under ANTI-DISCRIMINATION NOTICE in the second sentence, change "Employers" to "The employer" and "they will accept from an employee" to "the employee may present" such that the sentence will read, "The employer CANNOT specify which document(s) the employee may present." Please add the words "or continue to hire" after "The refusal to hire" in the third sentence. These changes are important to make the instructions make sense to an employer, ensure that employers and employees know that the employee has options as to which documents they may present, and to allow a hire to occur and for the employee to perform work duties before the employee presents documentation for Section 2.
- A note or the word "optional" is needed to indicate that the employee's e-mail address and telephone number are optional. APA suggests that to make room on the form the boxes for state and ZIP code be dropped to the next line (before the date of birth and Social Security Number boxes) to provide more room for the address, apartment number, and city or town

boxes, and then dropping the boxes for e-mail and telephone number to a new row. In addition, equally splitting the sentence below 4. *An alien authorized to work*, standardizing on the smaller QR Code box as shown above, and moving the QR Code box up on the page should provide the space necessary for this change.

- The spacing between the field description and the data entry fields in the citizenship/immigration status block should be consistent to improve the look of the form. There appear to be extra spaces in the “A lawful permanent resident” and “An alien authorized to work” lines as well as the lines for 1, 2, and 3 under the “Aliens authorized to work . . .” sentence.
- In the sentence “Aliens authorized to work . . .,” consider making the “OR”s bold to match the lines to complete below.
- Change the “Click to Finish” button to read, “Click to Print and Sign Section 1”. This will make the purpose of the button more understandable.
- A field highlighting issue seems to occur when you click the “Click to Finish” button with a blank Section 1 or incomplete Section 1. For example, the fields for foreign passport number, number of preparers and/or translators, and preparer state, should not be highlighted, nor should other optional lines such as the employee’s e-mail address and telephone number. This action of the Smart PDF should be modified so only the appropriate fields are highlighted.

Comments on the Preparer and/or Translator Certification

APA recommends the following changes to the Preparer and/or Translator Certification block:

- Revise the parenthetical sentence to read, “(To be completed and signed if a person other than the employee prepares or assists the employee in completing Section 1.)”
- Add the check boxes for “No Preparer or Translator,” “One Preparer or Translator,” and “Multiple Preparers or Translators” found in the Smart PDF to the paper version. Instructions in the form (Smart PDF and paper) should specify whether one of the boxes must be checked. The parenthetical indicates that this block only applies when a preparer or translator is used; yet, the “No Preparer or Translator” option indicates that at least that box must be checked. APA suggests that the “No Preparer or Translator” option not be required if a preparer or translator is not used.
- Add the text “Section 1” after the word “completion” and before “of this form” in the attestation such that the sentence reads, “I attest, under penalty of perjury, that I have assisted

in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.”

- If either the “One Preparer or Translator” or “Multiple Preparers or Translators” boxes are checked, it is not possible to electronically enter the information in the Preparer and/or Translator Certification section, e.g., last name, first name, address. This information must be entered manually after the form is printed. APA suggests that the Smart PDF allow this information to be entered using a computer and that the preparer or translator sign the printed form, consistent with Section 1. APA requests that USCIS provide guidance on how to properly complete Section 1 when the preparer or translator is not physically present with the employee, when the preparer or translator is on the phone or using screen-sharing software.
- The checkboxes for the number of preparers or translators behave as radio buttons rather than checkboxes. If checkboxes are used, then clicking a checked box should uncheck it. If the current behavior is to be retained, then the checkboxes should be changed to radio buttons and the No Preparer or Translator button checked by default.

Comments on Section 2

APA recommends the following changes to Section 2:

- Revise the parenthetical under the header to read, “(You, the employer, or your authorized representative must complete and sign Section 2 within 3 business days of the employee’s first day of employment. In the physical presence of the employee, you must examine one document from List A **OR** a combination of one document from List B **AND** one document from List C. The acceptable documents are listed on the “Lists of Acceptable Documents” found with this form.)”
- In the last box of the Employee Info from Section 1 block, change “Employee Citizenship Status” to “Citizenship/Immigration Status.” This box should be added to the paper version for consistency. Please ensure that the instructions for the paper version do not state to leave this field blank.
- Align the text “Additional Information” onto one line at the top of the box.
- Remove the following text from the Certification attestation: “(State workforce agencies may omit the date the employee began employment.)”. This parenthetical is not an attestation statement, but may be viewed that way by employers. In addition, the provided information is covered in the instructions.
- If USCIS does not have another use for the white space under the List B and C blocks, APA recommends that the space be used for the specific fields of the E-Verify case number, TPS

extension, SC-21, 240-day extension, 180-day extension, 120-day extension, SEVIS number on Form I-20, DS-2019, and other information. This approach simplifies the completion of the form for employers, directs employers where to enter such information, simplifies training, and standardizes the form for government auditors.

Comments on Section 3

Please add the word “the” before “employer” and “the employer’s” before “authorized representative” in the parenthetical after the heading such that the sentence reads, “(To be completed by the employer or the employer’s authorized representative.)”.

COMMENTS ON THE INSTRUCTIONS FOR FORM I-9

General Comments

For consistency, the APA recommends that all of the revisions adopted into the Smart PDF instructions also be made for the paper and electronic Form I-9 instructions.

In some places the instructions use “nonimmigrant,” in other places “non-immigrant.” Please use “nonimmigrant” consistently throughout the instructions.

In some places, after the first use of United States (U.S.), the instructions use “U.S.” and in others use “United States.” Please select either and use it consistently throughout the instructions. If space allows, APA recommends that you use “United States.” Examples include:

- “United States” under *What is the Purpose of this Form?*
- “U.S.” is used in the first paragraph under *General Instructions*.
- “U.S.” is used before “Social Security Number in the *Entering Your Employee Information* section.
- Under *Attesting to Your Citizenship or Immigration Status* in the first four numbered items “United States” is used five times and “U.S.” is used once.

Comments on the Anti-Discrimination Notice

APA recommends the following changes to the *Anti-Discrimination Notice* in the instructions:

- Revise the second sentence to read, “Employers **CANNOT** specify which document(s) the employee may present to establish employment authorization.”

- Revise the third sentence to use “the” instead of “an” before “employer” and “employee” and place a parentheses around the “s” in “documents” such that the sentence will read, “The employer must allow the employee to choose the document(s) to be presented”
- In the fourth sentence, add the text “or continue to employ” after the word “hire” such that the sentence reads, “The refusal to hire or continue to employ an individual because”

Comments on the General Instructions

APA recommends the following changes to the *General Instructions* section:

- In the second paragraph, second sentence, change “Employers” to “The employer” and “employees have” to “the employee has” and add at the end of the sentence, “during the completion of the form.” The sentence in full: “The employer must ensure that the employee has access to every page of these instructions during the completion of the form.”
- In the second paragraph, third sentence, add before the word “form” the words “USCIS PDF.” APA appreciates USCIS including a drop-down list of abbreviations, but the abbreviations are not universal. Employers use a variety of abbreviations on their own as do immigration attorneys and Immigration and Customs Enforcement auditors. APA asks whether USCIS intends that the drop-down list be the only ones allowed on all Forms I-9 – Smart PDF, paper version, or other electronically available forms – and, if so, the revised instructions should make this clear. Employers need to know whether they will be penalized for using terms such as abbreviations other than the USCIS listed ones.
- In the third paragraph, first sentence, add before the words “Form I-9” the words “USCIS PDF.”

Obtaining and Using Forms I-9

APA recommends the following changes to the *Obtaining and Using Forms I-9* section in the instructions:

- In the heading, change the word “Forms” to “Form”.
- This is another place where there is a difference regarding the use of N/A with different Form I-9 formats. Please use consistent requirements.
- APA requests that USCIS clarify if there is or is not a maximum number of three preparers and/or translators that can assist the employee in the completion of Section 1.

Completing Section 1: Employee Information and Attestation

Comments on Entering Your Employee Information

APA recommends the following changes to *Entering Your Employee Information* in the instructions:

- Add a period to the error message in the Smart PDF if “Unknown” is entered in both the first name and last name fields following “Last Name Fields.”
- Under “Address (Street Name and Number),” add “in the United States” at the end of the first sentence.
- In the City or Town instructions, make the sentence “If your residence does not have a physical address, enter a description of the location of your residence, such as “3 miles southwest of Anytown post office near water tower” the last sentence. This is consistent with the Address (Street Name and Number instructions) that applies to the United States, Canada, and Mexico.
- Under U.S. Social Security Number, USCIS makes reference to “E-Verify” for the first time. There should be a registered trade mark (®) added.
- Under “U.S. Social Security Number,” APA recommends a clarification to the instructions. In the Social Security Administration’s publication, *Social Security Numbers for Noncitizens*, the agency states, “We recommend you wait 10 days after arriving in the United States to apply for a Social Security number to make it easier for us to verify your DHS documents online, which will speed processing of your Social Security number application.” Therefore, it is possible that an alien may be hired by an employer in the United States before the alien has applied for a Social Security number. APA recommends that the second option be changed to add, “or will after the SSA’s recommended 10 day waiting period to apply for” after “You have applied for” and then following the rest of the instructions for using “Applied for – In Process.” USCIS also could add a third option, “You are waiting on the SSA to apply for a Social Security number in accordance with SSA instructions, leave this field blank. Once you print the form, write “Waiting on SSA” in this space, then sign and date Section 1.”

Comments on Attesting to Your Citizenship or Immigration Status

APA recommends the following changes to *Attesting to Your Citizenship or Immigration Status* in the instructions:

- The numbered lists under “Alien Registration Number/USCIS Number”, Form I-94 Admission Number, and Foreign Passport Number are redundant. APA recommends that this section be reformatted to place the numbered list above Alien Registration Number/USCIS Number and note that the list applies to all three numbers to avoid confusion and simplify the instructions.

- The minor and special placement exceptions do not apply if the employer participates in E-Verify. An employee who would normally qualify for these exceptions must present a List A or List B document along with a List C document to complete Form I-9 when the employer participates in E-Verify. APA recommends that the instructions note that these exceptions do not apply when the employer participates in E-Verify.

Comments on Completing the Preparer and/or Translator Certification

APA recommends the following changes to *Completing the Preparer and/or Translator Certification* in the instructions:

- In option (3), the second sentence, add “USCIS PDF” before the word “form.”
- In option (3), the fourth sentence, specify that “separate Form I-9” at the end of the sentence applies to the paper form and add, “a separate page that will automatically be created by the USCIS PDF of Form I-9.”
- In the paragraph title, Signature of Preparer or Translator, USCIS states that a preparer or translator who fails to sign his/her name may be subject to criminal prosecution. APA assumes the intent is to know who was involved in completing the form and to prevent falsifying documents. However, fraud can occur against a preparer or translator if someone else enters his/her information in the name/address block and then the signature is left out. The language in the instructions implies that this preparer/translator has committed a crime even though he/she was not involved with the form.

Comments on Presenting Form I-9 Documents

APA recommends the following changes to *Presenting Form I-9 Documents* in the instructions:

- In the second paragraph, fourth sentence, replace the word “show” with “establish” and in the example replace “the” before “foreign” with “a”. In that same example, replace “incident to such” at the end of the sentence to “because of the alien’s”. The segment should read, – “for example, a foreign passport together with a Form I-94 containing an endorsement of the nonimmigrant status and employment authorization with a specific employer because of the alien’s status.”
- In the second paragraph, fifth sentence, replace the word “show” with “establish”. This occurs twice in this sentence.
- In the second paragraph, change the third and second-to-last sentences to the following, “If you present a List A document, you should not be asked to also present a List B and/or a List C

document. If you present both a List B and a List C document, you should not also be asked to present a List A document.”

- In the fifth paragraph above **Receipts**, add “Unless the employer participates in E-Verify,” at the beginning of the sentence before “Minors (individuals under age 18) and certain”

Completing Section 2: Employer or Authorized Representative Review and Verification

APA recommends the following change. In the first paragraph, last sentence, after “as necessary”, replace the rest of the sentence with an added comma and then the text, “by drawing a line through the incorrect information, entering the correct information, and then initialing and dating any corrections made.” Then add another sentence to the end of the sentence, “Do not use correction fluid to conceal any incorrect information or changes made to the form.”

Comments on Entering Employee Information from Section 1

APA recommends the following changes to *Entering Employee Information from Section 1* in the instructions:

- In the first paragraph, first sentence, remove the word “and” after “name”, add a comma and then the word, “and citizenship or immigration status.”
- In the first paragraph, last sentence, after “name”, add the words, “and citizenship or immigration status.”
- In the second paragraph, different instructions are provided for the paper version of the form. APA recommends that this be changed to allow the same instructions to be used for both the Smart and paper forms. This will allow employers that use multiple formats for completing Forms I-9 to have consistent training programs regardless of the format used.

Comments on Entering Documents the Employee Presents

APA recommends the following changes to *Entering Documents the Employee Presents* in the instructions:

- In the first paragraph first sentence, revise the text to read, “You, the employer, or your authorized representative” Also make lower case the word “Document” in the second sentence.
- In the third paragraph regarding List A documents, please change the word “show” to “establish.”

- In the fourth paragraph, first sentence regarding List B and List C documents, please change the word “show” to “establish.” In the second sentence add the word “a” before “List B”, after “List B” add “document and/or a”, and add the word “document” after “List C”.
- In the fifth paragraph, first sentence, replace the words “cross out” with “draw a line through.” In this way, corrections will be more visible.
- In the sixth paragraph, APA recommends that USCIS remove the parenthetical, add a comma and the words, “which is” after the word “individual”.
- In the ninth paragraph, at the end of the first sentence, add a comma after “List C” and then add, “unless you participate in E-Verify. If you participate in E-Verify, the employee also must present a List B document with a photograph when presenting a List C document.”

Comments on the Document Title Tables

APA recommends the following changes to the tables for Lists A, B, and C in the instructions:

- Clarify whether USCIS is requiring the use of the abbreviations in the “What to Enter on Form” column or that these are suggestions that fit into the space provided on Form I-9. As noted earlier in these comments, there is no consistency in abbreviations; there also is no consistency in short forms of titles in documents. On one hand, consistency can be helpful in ensuring that anyone viewing these forms understands the information presented. On the other hand, requiring employees, employers, employer representatives, preparers, and translators to use the same terms can be problematic, particularly when different formats – Smart PDF, paper, and electronic versions – are in use and the documents being presented were created by different agencies or organizations (military, foreign governments) that often have their own system of terminology. Regardless, USCIS should be clear on what is required and acceptable on Form I-9.
- On page 6 of the publication, *Handbook for Employers* (M-274) Rev. 04/30/2013 N, USCIS states, “You may use common abbreviations to document the document title or issuing authority, e.g. DL for driver’s license and SSA for Social Security Administration.” USCIS is unclear on whether these instructions replace some aspects of the handbook even though referenced under “List B – Identity,” whether USCIS plans to update the handbook, and whether terms and abbreviations used previously will still be acceptable.
- Some inconsistencies and redundancies exist in the title tables. For example, the word “Receipt” is sometimes followed by a colon, but not always. USCIS should use the colon each time. In addition, if the word “receipt” will be crossed out on the form, the term “Receipt: Replacement” is unnecessary.

Comments on List B – Identity

In the second-to-last sentence, add a comma after “field” followed by the words, “unless the employer uses E-Verify. If the employer uses E-Verify, the employee must present a List B document with a photograph when presenting a List C document.”

Entering Information in the Employer Certification

APA recommends that USCIS revise the text to read, “If your company has multiple locations, use the most appropriate address that identifies the location hiring the employee.”

Comments on Last Name information

In the last sentence of the Last Name (Family Name) paragraph, APA recommends replacing “last name field” with “this field.” to be consistent with other instructions.

Completing Section 3: Reverification and Rehires

Comments for Rehires

Replace the first sentence with, “If you rehire an employee within three years from the date that a previous Form I-9 was completed, you may either rely on the employee’s previously completed Form I-9 or complete a new Form I-9. Employers must use E-Verify for rehired employees. However, E-Verify has special rules for rehired employees. Refer to the *E-Verify User Manual (M-775)* for more information regarding rehires and E-Verify.”

USCIS Forms and Information

Please capitalize the first letter of the word “internet” in the first sentence of the fourth paragraph.

Paperwork Reduction Act

The estimated time to complete Form I-9 expiring 3/31/2016 is 35 minutes. The estimated time to manually complete the proposed Form I-9 is 35 minutes and 26 minutes when using a computer. All times include reviewing instructions and completing and retaining the form. There are 6 pages of instructions for Form I-9 expiring 3/31/2016 and 15 pages of proposed instructions. APA believes that USCIS has miscalculated the time it will take for an individual to manually complete the proposed Form I-9 in the same amount of time as the current form when the instructions for the proposed form are more than twice as long. This comment is included here to ensure that USCIS is accurate in its compliance with the Paperwork Reduction Act.

Thank you again for the opportunity to comment on the proposed Smart PDF Form I-9 and instructions. If you have any questions, please contact Alice Jacobsohn at 202-248-3901 or ajacobsohn@americanpayroll.org.

Sincerely,

David C. Fowler
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