



American Payroll Association

Government Relations • Washington, DC

April 25, 2016

Ms. Laura Dawkins
Chief, Regulatory Coordination Division
Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
20 Massachusetts Avenue, NW
Washington, DC 20529-2140
Via email: oira_submission@omb.eop.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, Document Number 2016-06883

Dear Ms. Dawkins:

The American Payroll Association (APA) is pleased to provide the U.S. Citizenship and Immigration Services (USCIS) 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

Form I-9 Section 1

1. Change "START HERE: Read instructions..." to read "START HERE: Read the instructions..."
2. In the ANTI-DISCRIMINATION NOTICE change "...may present to establish employment authorization and identity." to "...may present to establish identity and employment authorization." This is consistent with the order used in other documentation.
3. While USCIS may want to continue to use "Employee's E-mail Address" and "Employee's Telephone Number", the use of the word "Employee's" is redundant and should be removed.
4. Bold the words "only one" and "OR" in the italicized statement below option 4 that begins with "Aliens authorized to work must provide..."

Form I-9 Section 2

1. Change "...from List B and one document from List C..." to "...from List B AND one document from List C..." to be consistent with the capitalized OR after List A.
2. The Additional Information box should be enlarged by moving the top of the box up 1 more line. There is no apparent reason to have it aligned with the QR Code box.

Form I-9 Section 3

1. Change "A. New Name (if applicable)" to "A. New Employee Name (if applicable)" for clarity about the name to be entered.

Form I-9 Supplement

1. Change "Middle Initial" to "M.I." to be consistent with the same information at the top of Section 2.
2. In the instructions at the top of the page change "Each preparer or translator must complete..." to "Each preparer and/or translator must complete..." to be consistent with the first two sentences in this paragraph.
3. Since the same individual may be both a preparer and translator, change the field heading from "Signature of Preparer or Translator" to "Signature of Preparer and/or Translator". This will avoid any confusion an individual may have that they must complete a signature as a preparer and a separate signature as a translator. This is also consistent with the instructions on this page.

Lists of Acceptable Documents

1. Change "Employees may present one selection from List A or a combination of one selection from List B and one selection from List C" to "Employees may present one selection from List A OR a combination of one selection from List B AND one selection from List C" to be consistent with Section 2 of Form I-9.

COMMENTS ABOUT THE FORM I-9 INSTRUCTIONS

1. Change the statement in the General Instructions that reads “You are not required to print, retain or store the page containing the List of Acceptable Documents.” to “Employers are not required to print, retain, or store the page containing the List of Acceptable Documents or the Instructions for Form I-9.”
2. Change the first sentence at the top of page 2 to read “When completing the form using a computer, certain fields will populate with N/A when certain user choices are made to ensure that the fields will not be completed.”
3. Remove the word “that” from the second sentence so it reads “The Print button located at the top of each page will print any number of pages the user selects.”
4. Change the last sentence under Last Name (Family Name) to “You may not enter “Unknown” in the Last Name field.” Only the First Name field may contain the “Unknown” text.
5. Change the last sentence under First Name (Given Name) to “You may not enter “Unknown” in the Last Name field.” Only the first name field may contain the “Unknown” text.
6. Clarify that only individuals who are part of a state address confidentiality, “Safe-at-Home”, or other similar program may enter a P.O Box in the Address field. Otherwise, any employee will be allowed to enter a P.O. Box in the Address field.
7. The text “2. You have applied for, but have not yet received a Social Security number...” should be changed to accommodate those individuals who have not yet applied for a Social Security number since the Social Security Administration instructs individuals to wait 10 days after arrival in the U.S. to apply to allow sufficient time for government databases to be updated.
8. At the top of page 3 the word “Employee’s” is not necessary before the E-mail Address and Telephone Number because these are fields in the employee information section of Form I-9. USCIS may elect to retain the word to clarify that this is for the employee’s information, but it is not needed or used for any other Section 1 field.
9. Under An Alien Authorized to Work, those employees whose employment authorization does not have an expiration date “must” enter N/A in the Expiration Date field. Change the term “should” to “must” in this sentence.
10. Change the last sentence under Alien Registration Number/USCIS Number to read “...or a Foreign Passport Number and Country of Issuance in the fields provided.”
11. Under Signature of Employee change “...preparer or translator...” in the last sentence to “...preparer and/or translator...” to be consistent with other usage.
12. Under Date change “...preparer or translator...” in the last sentence to “...preparer and/or translator...” to be consistent with other usage.
13. Under Completing the Preparer and/or Translator Certification change “...preparer or translator...” in the last sentence to “...preparer and/or translator...” to be consistent with other usage and to allow the same individual to be both a preparer and translator for the employee.
14. Add instructions to the preparer and/or translator block regarding what is to be entered if the preparer and/or translator has only one name. The instructions should be consistent with the instructions for the employee.

15. Under the preparer and/or translator Address indicate that if the residence is an apartment that the apartment number must also be entered in this field. The current language could be interpreted to mean that only the apartment number is to be entered and not the street name and number.
16. The language is unclear in the instructions under City or Town that the USCIS is asking for a location in the U.S., Canada, or Mexico.
17. The language is unclear in the instructions under State that the USCIS is looking for a location in the U.S., Canada, or Mexico.
18. What information should be entered if the preparer and/or translator is not physically present with the employee and is using technology to assist and/or complete Section 1?
19. Under Presenting Form I-9 Documents an employee presenting a List A document should not provide a List B and/or List C document.
20. If the employer uses E-Verify, a minor must provide a List B document with a List C document. This should be included in the instructions.
21. The instructions regarding receipts indicate that the employee must provide the actual document referred to in the receipt. May an employee present a different acceptable document instead of the actual document referred to in the receipt? This should be clarified in the instructions.
22. Under Completing Section 2, the last sentence in the first paragraph appears to be missing a comma after "..., as necessary..."
23. Under Entering Documents the Employee Presents change "...to present List B and List C documents..." in the fourth paragraph to "...to present List B and/or List C documents..."
24. If the employee may provide an acceptable document that does not relate to the receipt, then this should be included in the fifth paragraph under Entering Documents the Employee Presents.
25. In the seventh paragraph under Entering Document the Employee Presents, the text "I-9 Central" should be a link.
26. Under List B – Identity, the requirement to provide a List B document with a List C document when the employer uses E-Verify should be included.
27. Under List C – Employment Authorization, in the proposed Form I-9, the user is required to enter a List B document for an individual under age 18; however, a List C document can be entered instead. This does not work when the employer uses E-Verify. Therefore, the instructions should be clear that the employer must notify the employee that a List B document must be provided.
28. Under the Employee's First Day of Employment, include the example of how to properly enter the date (For example, enter January 8, 2014 as 01/08/2014.)
29. Under the Last Name of the Employer or Authorized Representative, include instructions for an individual with only one name.
30. Under the First Name of the Employer or Authorized Representative, include instructions for an individual with only one name.
31. Under Completing Section 3: Reverification and Rehires, the instruction to leave the Citizenship/Immigration Status field blank only applies if a new Form I-9 is being used to complete the reverification/rehire. This does not apply when using Section 3 of the original

Form I-9 because the information was already provided when the Form I-9 was completed. So, what is the intent of the first paragraph under this section of the instructions? Please clarify.

32. Under Block A – New Name, the field title should be changed to “A. Employee’s New Name” such that the employer understands what information should be entered in this field.
33. In Block C of Section 3 the Expiration Date should include the example of how to properly enter the date (For example, enter January 8, 2014 as 01/08/2014.)
34. Under the Name of Employer or Authorized Representative in Section 3, add instructions that the documentation must be reviewed in the physical presence of the employee.
35. Under the signature area of Section 3, the Date should include the example of how to properly enter the date (For example, enter January 8, 2014 as 01/08/2014.)

CONCLUSION

The APA supports the USCIS’s effort to reduce or prevent errors on Form I-9. While there are some issues that need to be addressed, the enhancements should create a Form I-9 process that benefits employers, employees, and the USCIS.

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

Sincerely,

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