

Via Email
uscisfrcomments@dhs.gov

Hon. Alejandro Mayorkas
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue
Washington, D.C. 20529

Attn: Sunday Aigbe, Acting Chief, Regulatory Coordination

Comments to Proposed Revisions to Form I-9: OMB Control Number 1615-0047

Dear Director Mayorkas:

On behalf of [COMPANY], we write to provide our comments in connection with the proposed changes to Form I-9, Employment Eligibility Verification. [PROVIDE A FEW SENTENCES ABOUT THE COMPANY AND THE IMPORTANCE OF THE I-9 PROCESS.]

As a threshold matter, we commend the USCIS for its effort to update the Form I-9. It is clear from our review of the proposed revision that considerable effort went into the new design to make the instructions clearer and the form more user-friendly. Some proposed changes, however, require clearer explanation to further assist employers and employees in their compliance efforts. Similarly, other proposals would create practical difficulties for our company, and companies like ours. These should be reconsidered.

We respectfully submit the following comments to illustrate these concerns:

[THE COMPANY SHOULD SELECT 2 OR 3 OF THE ITEMS THEY FEEL ARE MOST IMPORTANT]

1. Optional Email Address and Telephone Number

Section 1 of the revised Form I-9 adds two new fields for the employee to provide his or her e-mail address and telephone number. The instructions provide that these fields are optional. This is the first time that this information is being sought on the form. It is not clear how providing this information will yield any benefit to the government and in what way it will improve the form's ability to perform its function of verifying the employment eligibility and identity of newly-hired employees. While the information being sought in these fields is optional, it will surely add, to some degree, to the burden on both employers and employees in the completion of the form, as well as raising questions whether these fields need to be updated as phone numbers and email addresses change. The fields are confusing because while the instructions indicate that they are optional, the I-9 form does not make that clear. Moreover, employers will also have the concern of having to safeguard additional personal information for their employees.

2. “USCIS Number”

It is not clear what information is sought. For example, in Section 1, the employee is expected to provide a “USCIS number.” The only other references to that term can be found in the E-Verify user manual and the E-Verify section of the USCIS website, which suggests that it is synonymous with the Alien Registration Number (A Number). It will be very helpful if the form, or the corresponding instructions, could include a clear explanation of what is meant by a USCIS number, and if and how it could differ from the A Number.

3. M-274 as Authoritative Source

We understand that USCIS considers the M-274 its most authoritative I-9 guidance. The proposed I-9 and instructions should clarify this point so that employers and employees can easily identify which source to follow in the event of conflicting or unclear information. In addition, where the proposed instructions make reference to the M-274, I-9 Central, and E-Verify, we ask USCIS to identify the specific page or URL that contains the answer or clarification, or, at a minimum, name the section where the answer is found.

4. Clarification for Social Security Number

We suggest that proposed I-9 be amended to include the following language in Section 1 by the Social Security number field: “*Required for E-Verify employers, otherwise optional.*” Although the instructions state that providing a Social Security number is voluntary except for those who work for E-Verify employers, we recommend that the instructions also clarify that an employee may start work without a Social Security number and provide guidance to employers regarding proper completion of the I-9 when the employee does not have the number available until after the date of hire.

5. Clarify the Instructions for the Preparer/Translator Block

The proposed instructions for the Preparer/Translator section are ambiguous. They seem to suggest, for example, that if an employer merely provides a standard Spanish language translation of the instructions to its employees, who then complete the I-9 themselves, the Preparer/Translator section must be completed by the employer. An employer should not be required to complete the Preparer/Translator section merely by providing the Spanish version of the Form I-9 or instructions to the employee for reference. USCIS should amend the instructions to clarify this issue. It would also be helpful if USCIS could confirm the situations where completion of the Preparer/Translator section is appropriate, as the current guidance is vague. For example, if an employer uses an electronic system for completing an I-9, is it appropriate for the employer to sign off as the Preparer if the employee uses the employer’s computer and keyboard, and the employee types in the I-9 information and digitally signs the I-9?

6. More Guidance for Special Situations

The instructions do not provide guidance for employers completing I-9s for employees who are work authorized, but present documentation that is not explicitly included in the List of Acceptable Documents. For example, employers are often confused about the proper way to record I-9 documentation presented by employees who are work authorized under H-1B portability, F-1 student cap-gap, and F-1 STEM extension provisions. The instructions and the List of Acceptable Documents should be modified to include guidance on proper documentation for these special situations.

7. Transition Period for Electronic I-9 Users

When the new form becomes effective, electronic I-9 systems will have to be updated to conform to the new form’s substantive and stylistic changes. It is imperative that USCIS allows a sufficient transition period for I-9 system providers to learn of any changes to the proposed revisions to the form and then understand, develop and program the changes that such a substantial revision to the I-9 form will require. If the process does not allow enough time for the electronic I-9 service providers to modify the programs to meet the new requirements, hundreds of thousands of U.S. employers would be unable to continue

electronic completion and storage and employer would need to develop alternate solutions, including switching back to paper, at great expense. Employers that need to switch back to paper would once again need to convert paper documents back to electronic format once the upgrade is complete. In addition, employers who use paper I-9s will need to train their employees on the new I-9, which has more changes than at any time since the I-9 was initially required.

8. Revised I-9 Should Not Be Released Before Electronic I-94 Process is Finalized

We have concerns that the revised I-9 is being released before the imminent transition to a paperless I-94 card is completed. We understand that U.S. Customs and Border Protection (CBP) will launch a paperless and electronic I-94 process in the very near future. However, we still do not understand how that process will work and how it will affect our obligations with respect to employees who no longer have paper I-94 cards to present during the I-9 verification. We are concerned that not having a document that is clearly required on the I-9 form and instructions would subject employers to liability. We are also concerned that the paperless I-94 process will require the I-9 form to be changed to correctly reflect the new requirements under the electronic I-94 process, and that it will be confusing and inefficient for the government to issue a substantially revised I-9, which will need to be followed by another revision soon after. Employers should not be burdened with training staff and changes processes to integrate a revised I-9 that we know will be outdated soon after it is issued. Therefore we request that USCIS delay issuance of the revised I-9 until the USCBP electronic I-94 process is finalized.

In conclusion, we again wish to express our appreciation for your efforts to make the Form I-9 a more user friendly document. We respectfully that USCIS consider our comments which we believe will enhance employers' ability to verify the employment eligibility of their workforce.

Please me if you have any questions.

Name

Title

Company

Contact Information