



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

July 5, 2019

OMB USCIS Desk Officer
USCIS, Office of Policy and Strategy,
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Submitted via e-mail: dhsdeskofficer@omb.eop.gov

RE: OMB Control Number 1615-0047
U.S. Citizenship and Immigration Services 30-Day Notice and Request for Comments:
Form I-9, Employment Eligibility Verification

Dear Madam or Sir:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced 30-day notice and request for comments published in the Federal Register on June 5, 2019.¹

AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, law permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We appreciate the opportunity to comment on Form I-9, Employment Eligibility Verification, and believe that our members' collective expertise and experience make us particularly well-qualified to offer views that will benefit the public and the government.

I. Introduction

The purpose of this comment is to flag persistent issues on the Form I-9, Employment Eligibility Verification (Form I-9) versions and instructions that USCIS seeks to extend without change. These issues cause persistent and unnecessary errors and liability for employers. We provide the following comments on this form in order to inform USCIS of the practical implications that specific instructions and form fields have on employers and their employees.

¹ 84 Fed Reg. 26140 (June 5, 2019).

II. Comments

Section 1 – Instructions Should Permit for Optional or Not Applicable (N/A) Fields to be Left Blank

The Form I-9 Instructions apply unreasonable and inconsistent requirements for employees in Section 1 in terms of requiring the employee to complete a field with “N/A” if the information does not apply or is not required and the employee chooses not to present the information.

AILA respectfully submits that the inconsistent guidance results in unnecessary confusion and form errors, which would be easily resolved were USCIS to remove the directives requiring completion with “N/A,” thus allowing fields to be left blank where the information is not applicable or the employee chooses not to provide optional information.

For context, the Form I-9 instructions on pages 2 to 3, under *Completing Section I: Employee Information and Attestation, Entering your Employee Information*, include the following directives:

Last Name (Family Name): Enter your full legal last name. Your last name is your family name or surname. If you have two last names or a hyphenated last name, include both names in the Last Name field. Examples of correctly entered last names include De La Cruz, O’Neill, Garcia Lopez, Smith-Johnson, Nguyen. If you only have one name, enter it in this field, then enter “Unknown” in the First Name field. You may not enter “Unknown” in both the Last Name field and the First Name field.

First Name (Given Name): Enter your full legal first name. Your first names is your given name. Some examples of correctly entered first names include Jessica, John-Paul, Tae Young, D’Shaun, Mai. If you have one name, enter it in the Last Name field, then enter “Unknown” in this field. You may not enter “Unknown” in both the First Name field and the Last Name field.

Middle Initial: Your middle initial is the first letter of your second given name, or the first letter of your middle name, if any. If you have more than one middle name, enter the first letter or your first middle name. If you do not have a middle name, enter N/A in this field.

Other Last Names Used: Provide all other last names used, if any (e.g. maiden name). For example, if you legally changed your last name from Smith to Jones, you should enter the name Smith in this field.

Address (Street Name and Number): Enter the street name and number of the current address of your residence. If you are a border commuter from Canada or Mexico, you may enter your Canada or Mexico address in this field. 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.”

Apartment: Enter the number(s) or letter(s) that identify(ies) your apartment. If you do not live in an apartment, enter N/A.

City or Town: Enter your city, town or village in this field. If your residence is not located in a city, town or village, enter your county, township, reservation, etc., in this field. If you are a border commuter from Canada, enter your city and province in this field. If you are a border commuter from Mexico, enter your city and state in this field.

State: Enter the abbreviation of your state or territory in this field. If you are a border commuter from Canada or Mexico, enter your county abbreviation in this field.

ZIP Code: Enter your 5-digit ZIP code. If you are a border commuter from Canada or Mexico, enter your 5- or 6-digit postal code on this field.

Date of Birth: Enter your date of birth as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). For example, enter January 8, 1980 as 01/08/1980.

U.S. Social Security Number: Providing your 9-digit Social Security number is voluntary on Form I-9 unless your employer participates in E-Verify. If your employer participates in E-Verify and:

1. You have been issued a Social Security number, you must provide it in this field; or
2. You have applied for, but have not yet received a Social Security number, leave this field blank until you receive a Social Security number.

Employee's E-mail Address (Optional): Providing your e-mail address is optional on Form I-9, but the field cannot be left blank. To enter your e-mail address, use this format: [name@site.domain](#). One reason Department of Homeland Security (DHS) may e-mail you is if your employer uses E-Verify and DHS learns of a potential mismatch between the information provided and the information in government records. This e-mail would contain information on how to begin to resolve the potential mismatch. You may use either your personal or work e-mail address in this field. Enter N/A if you do not enter your e-mail address.

Employee's Telephone Number (Optional): Providing your telephone number is optional on Form I-9, but the field cannot be left blank. If you enter your area code and telephone number, use this format: 000-000-0000. Enter N/A if you do not enter your telephone number.

The instructions are problematic in several instances because in filling out the Form I-9, the employee is required to provide information under the penalty of perjury, and the instructions above result in the employee providing factually incorrect information. When asked about a first or given name, responding "Unknown" in one field when the employee does in fact know that he or she only has one name is not a correct response. It would be factually accurate to leave a field blank where there is no related name. Likewise, the requirement to write "N/A" -- the acronym for "Not Applicable" -- is inaccurate where an employee has an e-mail address or telephone number and chooses not to provide it. Additionally, some employers might direct employees to input

“N/A” in the Social Security Number field if the employee opts not to provide an SSN (despite the fact that the field is, indeed, applicable).

The Form I-9 instructions require that the employee read, line by line, each field instruction on the Form I-9 to understand when “N/A” is required and when it is not. This presents a problem when presented with the reality that many new hires do not read all of the instructions when filling out the form. Additionally, when filling out the forms many new hires take the common approach of leaving a field blank if it does not apply to them. As only employees may complete or revise Section 1 of the form, the challenges presented by these requirements add an unnecessary and time-consuming burden on many employers to track down employees that incorrectly completed these fields in order to make corrections. AILA recommends that the Form I-9 be updated to (1) annotate the e-mail and telephone number fields as optional and (2) update the instructions to direct that inapplicable fields and optional fields in which the employee chooses not provide information should be left blank.

Completing the Preparer and/or Translator Certification Should be Required only if a Preparer and/or Translator is Used.

The Form I-9 instructions state on page 4 under *Completing the Preparer and/or Translator Certification*, “If you did not use a preparer or translator to assist you in completing Section 1, you, the employee, must check the box marked I did not use a Preparer or Translator. If you check this box, leave the rest of the fields in this area blank.”

This is an unnecessary attestation and often leads to confusion among stakeholders. A large percentage of new hires fail to check a box here, which is understandable due to the field’s placement (under the signature and date fields). This requirement often results in a very large number of form errors, which creates a significant burden on employers seeking to remediate errors.

We recommend that USCIS revise the Form I-9 to remove this statement and update the instructions to include a directive that this section be completed only if a preparer or translator is used in the process of completing Section 1. Alternatively, USCIS should consider moving the section entitled “Preparer and/or Translator Certification (check one)” above the signature line to ensure that it is not overlooked.

The “Additional Information” Section Instruction Must be Revised

On page 11, the instructions for the “Additional Information” field state, “Additional Information: Use this space to notate any additional information required for Form I-9 such as:...”. The verbiage insinuating that the information notated in this section is “required” is inconsistent and confusing.

We recommend that this sentence be updated to state the following or something similar, “Additional Information: Use this space to notate any additional information that may be needed to complete the Form I-9, such as:”.

Additional Deficiencies in the Current Form I-9 Instructions

EAD Auto-extensions:

The Form I-9 instructions include information about the use of EAD receipts for Section 2 purposes. We recommend that USCIS further update the instructions to reference and reflect the January 17, 2017 final rule, “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers,” which amended DHS regulations to provide for automatic extensions of the validity periods of certain Employment Authorization Documents (Form I-766) for up to 180 days.² This update will assist in providing valuable information to both employers and employees that may be unfamiliar with the final rule or its impact.

Electronic I-9s:

As employers are increasingly moving towards the utilization of electronic I-9s, there is a significant need for USCIS to provide additional instructions relating to expectations and requirements for the minimum performance standards in 8 CFR §274a.2 relating to the electronic I-9 regulatory requirements of a secure database; electronic signatures; indexing; and audit trails. AILA requests that USCIS provide additional information in the Form I-9 instructions concerning minimum performance requirements for an electronic I-9 system, as well as requirements for maintaining documents and information contained on electronic I-9s.

III. Conclusion

AILA appreciates the opportunity to comment on the Form I-9, Employment Eligibility Verification, and we look forward to a continuing dialogue with USCIS on the issues presented.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

² See USCIS Fact Sheet: 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, available at <https://www.uscis.gov/sites/default/files/USCIS/Verification/I-9%20Central/FactSheets/Fact-Sheet-AutoExtendEAD.pdf>