

On March 27, 2012, USCIS published a 60-day information collection notice in the Federal Register at 77 FR 18256. USCIS received comments from over 6,200 commenters on the 60-day notice. Commenters included stakeholders such as: The Center for Immigration Studies, the Chamber of Commerce, staffing agencies, universities, attorneys and attorney organizations, large companies, farms and farm bureaus, private industry associations, and municipalities as well as the general public. The following is a discussion of the comments and DHS' responses:

Introduction

1. **Five thousand eight hundred and thirty three (5,833)** commenters recommended that the Anti-Discrimination Notice be changed to address employees (instead of employers) to indicate that the purpose of Form I-9 is to keep illegal immigrants out of the labor market; while **another commenter** recommended underlining the text to emphasize the importance of the section.

Response: DHS is not able to adopt this recommendation. The Immigration Reform and Control Act of 1986 (IRCA) that established the employment eligibility verification process was directed at employers with penalties for employer non-compliance. To change the opening message to one directed at employees as opposed to employers would change the emphasis that Congress has placed on the duties of employers to verify the employment eligibility of their employees. Additionally, DHS will not underline the text in the Anti-Discrimination Notice because DHS does not use underlines on the form except for the case of URLs and will continue to keep in line with the current formatting style.

2. **One (1)** commenter suggested grammatical changes to the “*What is the Purpose of this Form?*” section of Form I-9 instructions. The commenter suggested changing the phrase “that they have been verified” to “verification of both” in the first and second sentences.

Response: DHS agrees that the language may be unclear and agrees to revise both sentences.

General Instructions Section 1. Employee Information and Attestation

3. **One (1)** commenter believed the phrase “employers must retain completed Form I-9” required further explanation of the details for the time period employers are required to retain the form. The commenter thought while this is explained in more detail on page 6, it is unrealistic to expect that all employers will read through all six pages of instructions; while **another commenter** felt DHS should stress that “original handwritten signatures” copies of Form I-9 must be retained.

Response: The instructions are provided to help reduce errors. Most employers will read the instructions and become familiar with them. The employer won't necessarily read the instructions every time the employer hires a new employee. DHS believes the retention instructions are in a logical place and also follow a pattern similar to the *Handbook for Employers (M-274)*. Since not all employers retain handwritten signatures but do retain electronic signatures in compliance with DHS regulations, DHS will not adopt the suggestion to instruct employers to retain original handwritten signatures. DHS will leave the proposed instructions as they are currently.

4. **Twelve (12)** commenters provided suggestions for all sections of Form I-9 instructions.

4a. **Five (5)** commenters requested that DHS clearly identify what sections of the Form I-9 the employee and employer must complete.

Response: DHS agrees that a separator clause will further clarify the employee's and employer's responsibilities. Therefore, the notation in the gray box at the bottom of the page that reads "Go to Next Page" will be revised to read, "STOP: Employer Completes Next Page."

4b. **One (1)** commenter suggested that page numbers or URLs be included when resources for additional information are mentioned.

Response: DHS does not agree with adding page numbers or specific URLs, as these change far more frequently than Form I-9, which may not be updated for years at a time.

4c. **One (1)** commenter asked if DHS could provide instructions on handling remote hires.

Response: In order to minimize confusion, DHS has determined the best place to provide details about remote hires is the *Handbook for Employers (M-274)* and I-9 Central.

4d. **One (1)** commenter suggested making separate instructions for the employer and employee.

Response: DHS has determined that it will not make separate instructions as it feels that it would be more confusing to the public to split up the instructions.

4e. **One (1)** commenter suggested underlining certain sentences in the instructions. The commenter suggested underlining "However, if your employer participates in E-Verify, you must provide your Social Security number" in Section 1 of the instructions that explain the U.S. Social Security Number field. The commenter suggested underlining the sentences "If photocopies are made, they should be made for all new hires" and "Making photocopies of an employee's document(s) cannot take the place of completing Form I-9" in Section 2 of the instructions (pg. 3). The commenter also suggested underlining the words "except employers should not reverify" and "reverification does not apply to List B documents" in the Section 3 of the instructions.

Response: DHS does not use underlines on the form except for the case of URLs and will continue the current formatting style. DHS has determined that it will not underline the sentences referenced by the commenter. DHS will continue to work on this policy and add any additional guidance to our resource materials. However, DHS will adopt the suggestion to bold the word "all" in the sentence stating that should employers choose to make photocopies, they should do so for all new hires.

4f. **Two (2)** commenters requested DHS include information that if an employer participates in E-Verify, photocopying is mandatory if the employer is presented a U.S. Passport, Permanent Resident Card, U.S. Passport Card or Employment Authorization Document.

Response: DHS will not include these instructions on Form I-9 because these instructions are already included in the E-Verify MOU and guidance material; DHS has determined that inclusion of this information in Form I-9 instructions may result in document abuse by employers who are not enrolled in E-Verify.

4g. **One (1)** commenter requested DHS include information about Social Security No Match letters.

Response: DHS has determined that information about Social Security No Match letters is better addressed in guidance materials or directly by the Social Security Administration rather than in the Form I-9 instructions.

5. **Ten (10)** commenters had questions about Section 1 of Form I-9 Instructions.

5a. **One (1)** commenter requested that DHS add information on the use of international addresses.

Response: DHS will add a sentence stating that only border commuters from Canada and Mexico may use an international home address in this field.

5b. **Two (2)** commenters requested that DHS address the instructions more toward the employer and less toward the employee.

Response: DHS cannot remove these sections from the employee instructions, as they are required sections that must be included on all forms.

5c. **One (1)** commenter asked why Section 1 of Form I-9 instructions was now called *Employee Information and Attestation*, which is not plain language friendly.

Response: A major part of Section 1 is the employee attesting to his or her citizenship or work-authorized immigration status. DHS has used the word “attest” on Form I-9 for many years. DHS uses the word attest because it accurately describes the action the employee is requested to take: to affirm that the information provided on the form is true and correct. There may be adverse ramifications to falsifying this information.

5d. **One (1)** commenter suggested adding an additional sentence to address those employees arriving to work in the US from overseas.

Response: DHS has determined that it will not include a separate section about those employees arriving from overseas in the form instructions; however, DHS will include guidance for employees arriving from overseas on I-9 Central.

5e. **One (1)** commenter suggested DHS provide guidance reminding employers that any photocopied documents be maintained with Form I-9.

Response: DHS added guidance reminding employers that any photocopied documents be maintained with Form I-9.

5f. **One (1)** commenter suggested deleting the additional instruction on date formatting.

Response: DHS does not agree with deleting the instructions on how to write the dates. DHS believes the example is useful and will help to reduce errors on Form I-9.

5g. **One (1)** commenter stated that the *Minors and Certain Employees with Disabilities (Special Placement)* instructions were unclear as to when the section was to be completed.

Response: The section *Minors and Certain Employees with Disabilities (Special Placement)* clearly states the procedure is to be used only in the instances where the employee cannot present an identity document for Form I-9.

5h. **One (1)** commenter requested that DHS include instructions as to when an employee should use their full legal name.

Response: DHS has revised the instructions to remind employees that they should use their full legal name.

5i. **One (1)** commenter requested DHS move subsection 'a' under Alien Authorized to Work from Section 1 of the instructions to Section 2 of the instructions. .

Response: DHS will not adopt this suggestion. Instructions in subsection 'a' relate to the employee's attestation and therefore must remain in Section 1.

6. **Five (5)** commenters suggested bolding the phrase "no later than the first day of work for pay" in the first paragraph of *Section 1. Employee information and Attestation* of Form I-9 instructions.

Response: DHS wants to limit the amount of information bolded for aesthetic reasons; however, DHS does agree that this information is important and will adopt this suggestion.

General Instructions: Section 2. Employer Review and Verification

7. **One (1)** commenter suggested adding information to the instructions that specify that the employer must be in the physical presence of the employee when examining documents.

Response: DHS agrees and will add a sentence regarding this fact to Form I-9 instructions.

8. **Twelve (12)** commenters had suggestions about the instructions on *Section 2. Employer Review and Verification*.

8a. **One (1)** commenter suggested clarifying in the instructions that the Issuing Authority must always be recorded.

Response: DHS already instructs the employer to record the document title and issuing authority, along with other information, in Section 2 of the instructions.

8b. **Two (2)** commenters suggested providing a warning on the instructions stating that while an employer is not expected to be a document expert, the employer may not accept a document if he or she has actual or constructive knowledge that the document is fraudulent or that the employee is not authorized to work.

Response: DHS already tells the employer to examine documentation to determine if the document reasonably appears genuine and to relate to the individual presenting it. I-9 Central and the *Handbook for Employers (M-274)* discuss in greater detail when documentation should not be accepted and DHS believes this additional guidance is better served by the two additional reference materials available to the public.

8c. **One (1)** commenter asked if P.O. Boxes could be used in the employer address field.

Response: DHS will not allow P.O. Boxes to be used on Form I-9. A physical address is required for both employers and employees. Form I-9 instructs employers to refer to the *Handbook for Employers (M-274)* along with I-9 Central for additional information.

8d. **One (1)** commenter suggested adding guidance to the first paragraph of the *Photocopying and Retaining Form I-9* instructions notating where the retention calculator can be found in the *Handbook for Employers (M-274)*.

Response: DHS will not add information about the specific location of Form I-9 retention calculator as the location (page number) may change.

8e. **One (1)** commenter suggested adding language in Section 2 instructions clarifying that Form I-9 copy rules are separate from other state laws/rules.

Response: In order to avoid confusion, DHS does not believe that the instructions should include a reference to other laws/rules.

8f. **One (1)** commenter suggested adding information that an employee may be required to present additional or different documentation than those listed on the List of Acceptable Documents.

Response: The number of cases that will not fit into what has already been established in the Lists of Acceptable Documents is not significant enough to warrant these additional sentences. DHS has mentioned numerous times on the instructions the different resources employers and employees may visit for more information.

8g. **One (1)** commenter requested DHS include information about electronic signatures and storage of Form I-9.

Response: DHS does not believe additional information about electronic signatures and storage of Form I-9 should be added in this location. DHS believes this information is more appropriate in its current location on the form.

8h. **Two (2)** commenters suggested adding the instructions for how to fill out Form I-9 for minors. **One (1)** commenter requested adding the guidance for parents or legal guardians of minors who cannot product a List B document to simply write 'minor under age 18' in the signature block, while **another commenter** stated that DHS clarify that a minor can complete the Form I-9 and does not need to write 'minor under age 18' in the signature block or on List B.

Response: DHS appreciates this suggestion and has included guidance for minors in the expanded Form I-9 instructions.

8i. **One (1)** commenter suggested removing the word 'employment authorization' date as the J-1 exchange visitor program is not employment.

Response: DHS has revised the terminology to more accurately reflect the J-1 exchange visitor program. The instructions now state "The program end date ..." rather than "employment authorization date ..."

8j. **One (1)** commenter suggested the instructions include a reminder that employers check for receipts and additional temporary documents evidencing current work authorization that don't appear on the Lists of Acceptable Documents.

Response: DHS agrees and has included a sentence at the end of the receipt section that tells employers to view the *Handbook for Employers (M-274)* for more information. This information is too lengthy to include in Form I-9 instructions.

9. **One (1)** commenter suggested adding the words “shown on the Lists of Acceptable Documents” after “Record the document title” in #2 of Section 2 instructions.

Response: DHS will make this change.

10. **Four (4)** commenters suggested DHS add a sentence explaining the List B photograph requirement for E-Verify in paragraph 2 of Section 2. Employer Review and Verification in the instructions.

Response: DHS agrees that this addition would be helpful for employers who use E-Verify and will make this addition.

General Instructions: Section 3. Reverification and Rehires

11. **Four (4)** commenters had suggestions for Section 3 “Reverification and Rehires” instructions.

11a. **One (1)** commenter suggested that the instructions be revised to include more information about its use.

Response: DHS believes that with the new revisions to the instructions, information about Section 3 and its use have been provided. Additional information about Section 3 can be found in the *Handbook for Employers (M-274)* and I-9 Central.

11b. **Two (2)** commenters felt that paragraph 4 in *Section 3. Reverification and Rehires* was confusing and **another** commenter suggested removing the word “except” from the sentence in the fourth paragraph.

Response: DHS believes that the word “except” in the fourth paragraph is used correctly; however, we believe that the sentence may be confusing as written. DHS will revise this sentence for clarity.

12. **One (1)** commenter suggested that DHS state whether or not Form I-9 and supporting documentation may be made available to military bases in the *USCIS Privacy Act Statement* portion of the instructions

Response: DHS has determined that it is not appropriate to include a sentence in the Privacy Act statement regarding use by military bases. Whether a particular government entity may use the Form I-9 depends on the applicable circumstances and therefore must be considered on a case by case basis. Therefore, DHS cannot write a blanket statement concerning this issue on Form I-9 instructions.

Form I-9 General

13. **One (1)** commenter suggested that the instruction areas be tinted so that areas that must be completed stand out.

Response: DHS is not adopting the suggestion to tint areas that need to be completed because which areas need to be completed may vary depending on the situation. The instructions to the form explain how it must be completed. The form and instructions explain that E-Verify employers must collect the social security number; other employers are not required to collect this number. Employees who have used a different legal name should complete the other names used field; other employees may not have another legal name. The form does include

“optional” when fields are optional. The instructions indicate the fields that are voluntary or may not apply depending on the employee’s and employer’s circumstances. DHS has carefully thought out the design of the proposed form so that areas that must be completed are already well-marked.

14. **One (1)** commenter recommended revising the text in the shaded area demarcating Section 1 to include the retention policy, “Once the individual’s employment ends, the employer must retain this form for either three years after the date of hire or one year after the date employment ended, whichever is later. “

Response: DHS is not adopting this suggestion. Because this information does not directly relate to proper form completion, DHS feels that it is better left in the instructions.

15. **One (1)** commenter suggested incorporating separate fields for first name, last name and middle initial consistently throughout the form.

Response: DHS agrees that these formatting changes will further clarify the form and is adopting this recommendation.

16. **Five (5)** commenters had questions about the mm/dd/yyyy format.

16a. **One (1)** commenter suggested adding guidance allowing the DOB field in Section 1 to be spelled out rather than in the mm/dd/yyyy format.

Response: For formatting purposes, DHS will keep the DOB field in Section 1 in the mm/dd/yyyy format for consistency purposes; this is a suggested format.

16b. **Three (3)** commenters felt giving those specific guidelines were too rigid and did not allow for flexibility in completion of Form I-9 and one of those commenters believes this information should be removed.

Response: DHS forms consistently provide for this format. DHS has provided an example in the instructions to help employees properly fill out this field. DHS will not remove the date fields, because the date fields are important for establishing whether the form was completed in a timely manner.

16c. **One (1)** commenter also asked for guidance from Immigration and Customs Enforcement on whether or not there will be fines for spelling out the month and date instead.

Response: Spelling out the month and day instead of using the mm/dd/yyyy format does not rise to the level of a violation.

17. **Seventeen (17)** commenters recommended that DHS revise the Address fields on Form I-9.

17a. **Nine (9)** commenters suggested DHS provide more space in the Address fields in Section 1.

Response: DHS agrees that more space is necessary to enter street addresses in the Address fields in both Sections 1 and 2 and will revise these fields accordingly.

17b. **Four (4)** commenters suggested DHS revise the “City or Town”, “State” and “Zip Code” boxes.

Response: The use of the terms “City or Town”, “State” and “Zip Code” corresponds to standard agency formatting for forms and will not be changed.

17c. **Two (2)** commenters requested that DHS state in the instructions and on Form I-9 that a P.O. Box may not be used on the Form.

Response: DHS has provided additional information in the instructions informing employee’s and employer’s P.O. Boxes are not acceptable.

17d. **Two (2)** commenters suggested adding guidance on how to write down unconventional addresses such as those with no street address and campus dorms.

Response: In order to control the length of the form, DHS cannot provide in the instructions the many variations of how to write different addresses. DHS will consider providing more examples on how to complete Section 1 using campus addresses, international addresses, rural addresses, etc. on I-9 Central and other guidance materials.

Form I-9 Section 1. Employee Information and Attestation

18. **One (1)** commenter suggested that the area in Section 1 for biographical information be formatted to be fully boxed while another commenter requested this space be increased.

Response: DHS will adopt the commenter’s recommendations.

19. **One thousand two hundred forty-four (1,244)** commenters suggested revisions to the Maiden Name field in Section 1. **One thousand two hundred twenty-nine (1,229)** commenters asked that DHS revise the term to a non-gender specific word. **Twelve (12)** commenters asked that DHS clarify the instructions on Maiden Name while **three (3)** commenters requested employees not be required to write “N/A” if they did not complete the field.

Response: To address the concerns raised by the commenters, DHS has determined that a more self-explanatory term should be used. Therefore, DHS replaced the term “Maiden Name” with “Other names used, if any (such as Maiden Name).” DHS anticipates that these changes will help clarify this field. Employees are required to complete all fields on Form I-9 that are mandatory and writing “N/A” completes this field.

20. **Twenty (20)** commenters suggested changes to the Social Security number field or instructions.

20a. **Nine (9)** commenters requested DHS add language stating the Social Security Number field is optional unless the employer participates in E-Verify while **another commenter** requested adding “If you do not yet have a Social Security Number, leave blank”.

Response: DHS will not adopt these recommendations; it has determined that the word “optional” confuses employees whose employers use E-Verify and must collect the employee’s Social Security number. The form instructions, as well as the *Handbook for Employers (M-274)*, clearly state the situations the Social Security number is voluntary.

20b. **Two (2)** commenters were concerned that leaving the fields blank might result in fines.

Response: This field does not have to be completed and can remain blank unless the employer participates in E-Verify.

20c. **One (1)** commenter requested the field be moved to Section 2.

Response: The Social Security number must remain in Section 1 of the form as the employee is attesting that the social security number he or she provided is his or her number.

20d. **Two (2)** commenters proposed including guidance to reflect that the inclusion of the Social Security number in Section 1 is optional unless the employer participates in the E-Verify program, while another commenter requested instructions to detail how to handle an E-Verify case if an employee does not yet have a Social Security Number.

Response: DHS has included guidance in Section 1 of the instructions stating that providing a Social Security number is voluntary unless the employer participates in E-Verify. DHS will not provide instructions for E-Verify in the Form I-9 instructions; the E-Verify MOU and guidance materials are the more appropriate place for this information.

20e. **Two (2)** commenters requested that the boxes in which employees provide Social Security numbers are formatted to include the hyphens employees would naturally include when entering these types of numbers.

Response: DHS will include hyphens in the Social Security Number field.

20f. **Two (2)** commenters requested that the Social Security Number field be mandatory.

Response: DHS will not adopt this suggestion. DHS is not authorized to include the Social Security Number on the Form I-9 as a mandatory field except in the case of E-Verify employers.

20g. **One (1)** commenter requested DHS include instructions on how to complete this field if the employee doesn't have one or refuses to provide it.

Response: DHS will not include instructions on how to complete this field if the employee doesn't have a social security number because this field is voluntary.

21. **Fourteen (14)** commenters requested changes be made to Section 1 'Print Name' fields. **Twelve (12)** commenters suggested that the term "Last Name" and "First Name" or "Full Legal Name" be used instead of "Family Name" and "Given Name." **Another** commenter suggested that DHS provide more space for writing these names, **while a different commenter** asked that the spaces be more clearly separated by boxes.

Response: DHS agrees that it will change the name to "Last Name" and "First Name" as suggested with "Family" and "Given" names in parenthesis. DHS cannot separate the names with boxes in order to add more space because this would take away from space needed elsewhere on the form.

22. **Seventeen (17)** commenters asked that the signature and date fields in Section 1 be revised so that employees sign and date in the correct place. **Three (3)** commenters suggested shading the area to bring attention to exactly where the employee should sign and date. **Twelve (12)** commenters suggested that the Employee signature and date area be given more prominence and increased space so employees do not miss it. **One (1)** commenter suggested that the term "date" should be changed to "date signed." **One (1)** commenter requested DHS notate that Form I-9 cannot be backdated.

Response: DHS agrees with the commenters concerns and has increased the size of the signature box and made it more prominent on the form instead of shading the signature area. The form now has an obvious signature block and separate date block. However, DHS will not change “Date” to “Date Signed,” in order to be consistent with all DHS forms. DHS has provided in the instructions that employees and employers must record the date the form is completed and signed and will not adopt the suggestion to notate that Form I-9 cannot be backdated. This type of information is better placed in guidance materials.

23. **One (1)** commenter suggested that DHS ensure that the line to enter the expiration date of the employment authorization of an alien authorized to work is distinct from the divider line of the signature box in Section 1.

Response: DHS has completely revised the area to be completed by aliens authorized to work in Section 1 so that there is a distinct line where an alien authorized to work enters his or her employment authorization expiration date. In addition, the expiration date field is separated from the signature line by other data fields.

24. **One thousand two hundred sixty-six (1,266)** commenters had suggestions about the telephone number and e-mail fields.

24a. **One thousand two hundred twenty-seven (1,227)** commenters applauded DHS for collecting the employee’s telephone number. **One (1)** commenter liked the addition of both the e-mail and telephone number fields.

Response: DHS appreciates the public support for collection of this information.

24b. **Thirty-two (32)** commenters requested that DHS not collect the employee’s telephone number and e-mail address and questioned why DHS would need this information. **Two (2) of those commenters** recommended that DHS clarify which telephone and e-mail address is needed (e.g. home/work).

Response: DHS does not agree that the e-mail and phone number fields should be removed and is not adopting this suggestion. Having these two fields on Form I-9 will be helpful in various ways; for example, if an employer using E-Verify does not issue notice of a Tentative Nonconfirmation to an employee, then E-Verify would still be able to reach the employee so the case can be resolved properly. DHS is further modifying the fields on the form by removing the “optional” parenthetical from the form but keeping “optional” in the instructions, clarifying that the e-mail and phone numbers can be for either home or work, and providing clearer guidance in the instructions. The instructions now explain that the fields can be completed if the information is available but if an employee chooses not to provide this information, “N/A” should be entered.

24c. **Three (3)** commenters requested the addition of a space for the telephone number of each person who completes any area of the Form I-9.

Response: DHS is not adopting the suggestion to add the e-mail and phone number fields to each name field. The purpose of the e-mail and phone number fields is tied to the employee and not the other parties to the form.

24d. **Three (3)** commenters suggested removing the guidance for e-mail and telephone number from the instructions.

Response: Because the e-mail and phone number fields are on Form I-9, DHS feels that they should be explained in the instructions, especially since these fields are new to the form. Therefore, DHS is not adopting the suggestion to the guidance from the instructions.

25. **Five (5)** commenters had concerns with the “USCIS number.” **Three (3)** commenters stated that DHS refers to the “USCIS number” and does not explain what that number means. **Two (2)** commenters asked that the “Alien number” field be changed to “USCIS number.”

Response: Historically, assigned alien registration numbers, commonly known as “A” numbers, are included on documents DHS issues to aliens. More recently, however, documents issued by USCIS are calling this number the USCIS number. DHS is adding “USCIS number” to the Form I-9. Because older and current Permanent Resident Cards (Form I-551) or Employment Authorization Documents (Form I-766) may refer to the alien registration number as either USCIS number or A number, DHS has determined that Form I-9 must include both of these terms. DHS will clarify in the instructions that the USCIS number is the same as the alien number.

26. **Nine hundred sixty-one (961)** commenters suggested changes to the attestation box in Section 1. **Nine hundred fifty-eight (958)** commenters asked that DHS reorder the attestation choices to place Noncitizen national last. **One (1)** commenter wanted a definition of non-citizen national included in the attestation box, while **another commenter** wanted the boxes to be more prominently displayed. **One (1)** commenter requested the attestation box be moved closer to the signature while including language about the consequences of providing false information.

Response: DHS has considered the comments, but has decided to retain the current order of the attestation choices and will not adopt the commenter's suggestion. The layout of the attestation section on the proposed form clearly explains each attestation choice and the information each choice requires. The order of the terms parallels the order established by statute. DHS believes that the boxes are prominently displayed in the middle of the page. The form itself does not provide sufficient space to include definitions such as the definition of non-citizen national. The definition of this term is included in the form instructions. DHS will not adopt the suggestion to move the signature box closer to the attestation because the signature box already immediately follows the attestation. Additionally, DHS cautions employers and employees about falsifying information on Form I-9.

27. **Two (2)** commenters suggested revisions in Section 1: Under Permanent Resident attestation, indicate first line for Alien Number and second line for document number (required in E-Verify). Under Alien Authorized to Work, indicate the first line for the Country Passport number and the second line for its expiration date; the third line for the I-94 number or Alien Registration number and the fourth line for its expiration date.

Response: DHS feels that collection of the additional information of the document number following Alien Number in Section 1 is unnecessary as the information may be collected in Section 2 of Form I-9. Additionally, “document number” is too vague a term since the alien registration number is included on any correspondence DHS has with the lawful permanent resident, which may or may not have a document number. DHS is not changing the order or description of the data fields on the form. The revised data fields DHS has included in Section 1 accurately reflect the information needed to verify the veracity of the attestation of the employee.

28. **Thirty-nine (39)** commenters asked for clarification related to the Alien Authorized to Work Attestation.

28a-28c. **Nineteen (19)** commenters asked that the information collection and related text underneath the attestation in Section 1 be revised to more clearly indicate that only one piece of information is required- employees need to only provide the Alien Registration Number/USCIS-Number **OR** Form I-94 Admission Number. **Four (4)** commenters also requested that DHS remove the additional instructions on the form for individuals that only enter an I-94 number and questioned why DHS requires employees to include their Foreign Passport Number as well. One of these commenters suggested making this field optional for only E-Verify participants. **One (1)** commenter asked for additional instructions on how to complete Form I-9 when an employee selects “Alien Authorized to Work” and provides an I-94 number.

Response (28a-28c): DHS agrees with commenters and will edit the form and explain that an employee is required to provide either his or her Alien Registration Number/USCIS-Number or Form I-94 Admission Number. Due to DHS’s I-94 automation initiative, the additional instructions on the form to collect the Foreign Passport information is necessary to ensure confirmation of the individual’s employment eligibility for E-Verify employers and will not be removed. DHS will not make this field required only for E-Verify participants because Form I-9 revised instructions provide information to Aliens Authorized to Work on how to complete this section and DHS will be updating I-9 Central with additional information for Aliens Authorized to Work.

28d. **Seven (7)** commenters expressed concern with DHS’s I-94 automation initiative. **One (1)** commenter asked DHS to collect the passport expiration date in Section 1.

Response: DHS is currently automating the I-94 process and will provide the public with information. The automated I-94 will not require further revisions to Form I-9. DHS will not collect the passport expiration date in Section 1, because the expiration date is not necessary to verify the employee’s status.

28e. **One (1)** commenter asked for clarification when “N/A” is acceptable in the Foreign Passport and Country of Issuance fields and add: “Applies to refugees, asylees, citizens of the Federated States of Micronesia, the Republic of the Marshall Islands or Palau.”

Response: DHS has provided revised instructions for Form I-9 to help the employer know when “N/A” is acceptable in the Foreign Passport and Country of Issuance fields. DHS will not add the requested language due to privacy concerns regarding some of the immigrant and nonimmigrant categories who possess employment authorization that does not expire. Anything other than a complete list of these exceptions will cause employer and employee confusion and so will not be incorporated at this time.

28f. **One (1)** commenter asked that DHS remove the statement “Some aliens may write “N/A” on the foreign passport number and country of issuance lines.

Response: DHS will not remove the additional statement that refers employers to the instructions should they have questions of when to use “N/A” in the Foreign Passport and Country of Issuance fields.

28g. **One (1)** commenter noted that Kosovo and South Sudan where not included in the drop-down list for the country of issuance.

Response: DHS agrees that Kosovo and South Sudan should be included in the drop-down list for countries of issuance and will ensure these countries are included.

28h. **Two (2)** commenters recommended that the list of possible attestations be expanded to include the Refugee/Asylee category and a Citizen of the Federated States of Micronesia, the Republic of the Marshall Islands or Palau category.

Response: DHS cannot add additional categories to the attestation as these categories are based on the statutory requirements.

28i. **One (1)** commenter requested DHS note who must complete the attestation in Section 1.

Response: DHS has instructed the employee to complete Section 1 and provided instructions on completing the attestation.

29. **One (1)** commenter requested that DHS's decision to revise the current language (the employee began employment on...) on Form I-9 to the "employee's first day of work for pay" will adversely affect staffing agencies and changes DHS' current policies that allow staffing agencies to complete Form I-9 even if there is no particular assignment for an individual. **Another** commenter stated the revised language implies the form may only be completed when the employee begins to physically work for pay.

Response: DHS revised the language because employers, including staffing agencies, have always been allowed to enter the actual date an employee began work for pay or an anticipated date an employee may begin work for pay. Use of the word "began" implied that an anticipated date cannot be entered, only the actual date. DHS will revise the language on the form to remove the reference to "work for pay" and instead say "*The employee's first day of employment (mm/dd/yyyy).*" DHS has revised the instructions to provide additional guidance, particularly with respect to staffing agencies.

30. **Fourteen (14)** commenters have recommendations about the Preparer/Translator Certification.

30a. **One (1)** commenter asked that the instructions indicate the Preparer/Translator Certification can only be completed if an individual is unable to complete Form I-9 or needs it translated.

Response: DHS has provided guidance to the public on when a preparer/translator is allowed to complete this section of the form.

30b. **Two (2)** commenters asked for a clear definition of the terms "Preparer" and "Translator."

Response: DHS agrees that the public needs more information on how to complete the Preparer/Translator' section and will expand guidance on I-9 Central.

30c. **Two (2)** commenters asked for additional space in instances where both a prepared and translator assist with completing Form I-9.

Response: DHS will not add information fields to the Preparer/Translator section in order to keep the form to two pages.

30d. **Four (4)** commenters asked DHS to clearly distinguish between the employee information and the Preparer/Translator sections.

Response: DHS will add a bold line between the employee information and preparer/translator information.

30e. **One (1)** commenter asked if they have to sign in the Preparer/Translator Certification if they translate the form to an employee.

Response: DHS included in the form's instructions that the Preparer/Translator Certification must be completed if the employee requires assistance completing Section 1, including translation of instructions or responses.

30f. **Two (2)** commenters recommended a checkbox be added to indicate which action was taken in the Preparer/Translator Certification, preparing or translating.

Response: Check boxes to indicate which action was taken – preparing or translating – will not be added to Form I-9 because DHS is not requiring individuals to identify themselves as either a preparer or translator.

30g. **One (1)** commenter recommended the Preparer's Family Name field be revised to include the word Translator.

Response: DHS has accepted this suggestion and revised this field.

30h. **One (1)** commenter requested this section be decreased in size to that of the previous Form I-9, while **another commenter** requested this section be increased.

Response: DHS has revised this field to accommodate all of the requested information and will not increase or decrease the size of this field.

31. **Six (6)** commenters had questions about the 3-D barcode at the bottom of Form I-9. **Four (4)** commenters questioned the use of the barcode, while **one (1)** commenter suggested DHS add "Do not write in this space" below the barcode.

Response: DHS added a 3-D barcode in order to promote the modernization of USCIS forms. DHS will add a sentence advising employers and employees not to write in this space.

Form I-9 Section 2. Employer Review and Verification

32. **Eleven (11)** commenters had suggestions about the Employee Family Name field. **Five (5)** commenters requested further clarification on who was required to complete the Employee Family Name field at the top of the second page and if any fines were associated with the completion of this field. **Two (2)** of these commenters suggested that the field be moved below the Section 2 header, while **another commenter** recommended moving it to the bottom of the page. **Two (2)** commenters suggested this field be more prominent and that the description of the field be revised to define CAPS. **One (1)** commenter felt that the field was unnecessary, especially if the form were shortened to one page.

Response: DHS has determined that it is necessary to keep this field. Because the Form I-9 will be two pages, a data field on the second page for the name of the employee to whom the form relates is important in case the two pages become separated. Also, it will assist employers in record-keeping tasks. However, DHS agrees that it must clarify who is responsible for completing this field and has added guidance in the instructions advising employers that the

employer must complete this field. The revision to the notation at the bottom of page 1 telling employees that employers complete the next page will alleviate this confusion. DHS will revise the description of the field to: "Employee Last Name (Family Name), First Name (Given Name) and Middle Initial." DHS will also adopt the recommendation to relocate this field under the header Section 2 to further clarify who would complete this field.

33. **Eighteen (18)** commenters were concerned about Section 2, List A.

33a. **Seven (7)** commenters recommended that DHS indicate that the purpose of the area to enter a third document in Section 2 List A is to properly record document details for employees with F-1, M-1 or J-1 student nonimmigrant status, which include DS-2019 and I-20.

Response: Additional lines were provided for employers whose employees may present a third document. In the form instructions, DHS includes information on when the employer might complete the additional fields in Section 2, List A.

33b. **Two (2)** commenters recommended labeling the area for the second document in List A of Section 2 "Form I-94 or Temporary I-551" or specifying what document number is required.

Response: DHS will not label the areas for specific documents nor specify document numbers as this may erroneously lead employers to believe that specific documentation must be presented. Employees have the option of presenting any document from the List of Acceptable documents.

33c. **One (1)** commenter suggested that three fields for entering documents in Section 2 under List A was excessive and that this area should only include two fields, while **another commenter** stated that three fields for entering documents was too limited.

Response: DHS will not reduce the number of fields for entering documents in List A of Section 2, because the third space accounts for certain nonimmigrant categories. DHS will not increase the number of fields since this will increase the length of the form and generally, employers will not need more than two fields to record information from the employee's documentation.

33d. **Two (2)** commenters suggested adding "Document Title" and "Issuing Authority" for the second and third documents in Section 2, List A.

Response: DHS will add "Document Title" and "Issuing Authority" for the second and third documents in Section 2, List A.

33e. **One (1)** commenter also suggested that DHS ensure that the document number text matches the text on the Employment Authorization Document and Permanent Resident Card rather than the generic term "document number."

Response: DHS will continue to use the generic term "document number" as there are various documents in List A and correspondingly multiple terms that describe these documents.

33f. **One (1)** commenter requested each list heading in Section 2 be followed by the term "Identity and Employment Authorization."

Response: DHS will adopt the change and include the terms "Identity and Employment Authorization" in Section 2, List A.

33g. **One (1)** commenter requested a space for the document number of the Permanent Resident Card (Resident Alien Card).

Response: Section 2, List A previously and currently contains a location where the document number of any document presented is to be recorded, including the document number for a Permanent Resident and Resident Alien; therefore, DHS finds that it is not necessary to make the suggested change.

33h. **One (1)** commenter suggested that, in Section 2, the area to enter List A documents be completely separated from the List B and C area to avoid over documentation from confusion that all the blanks must be completed.

Response: DHS agrees that the recommended formatting change will further clarify the form and is adopting this recommendation.

33i. **One (1)** commenter requested that DHS include a field for the 13-digit card number.

Response: DHS has already included a field for the card number. The field is called the document number and is contained in Section 2, List A.

34. **Five (5)** commenters had suggested changes on Section 2, List B.

34a. **One (1)** commenter requested that “Document title” and “Issuing authority” be edited to “Document Title” and “Issuing Authority”.

Response: DHS will accept the recommendation to capitalize the words “Title” and “Authority” and will revise the form.

34b. **Two (2)** commenters requested that DHS include additional Document Number and Expiration Date fields under List B in Section 2.

Response: DHS will not add extra Document Number and Expiration Date fields under List B in Section 2 because only one document is required for List B and additional fields would cause confusion.

34c. **One (1)** commenter suggested enlarging the field for the driver’s license number.

Response: DHS will increase the number of characters that can be typed in the document number field.

34d. **One (1)** commenter requested each list heading in Section 2 be followed by the term “Identity.”

Response: DHS will adopt the change and include the term “Identity” in Section 2, List B.

35. **Three (3)** commenters had suggested changes on Section 2, List C.

35a. **One (1)** commenter requested each list heading in Section 2 be followed by the term “Employment Authorization.”

Response: DHS will adopt the change and include the term “Employment Authorization” in Section 2, List C.

35b. **Two (2)** commenters stated that List C documents do not usually have expiration dates, so the expiration date field in Section 2 List C is confusing.

Response: Because acceptable employment authorization documents issued by DHS may contain expiration dates, DHS must retain this field in Section 2, List C and cannot adopt the suggestion to remove it.

36. **Seventeen (17)** commenters had suggestions about the Certification field. **Ten (10)** commenters recommended that DHS make the hire date more pronounced, create a separate section to record the employee's hire date, or box the date. **One (1)** commenter recommended DHS not bold the hire date, **while two (2) other** commenters requested removing the hire date. **Three (3)** commenters requested that DHS rewrite this part of the certification to allow changes to the date. **One (1)** commenter requested DHS delete the reformatting of this section and go back to the previous version.

Response: Form I-9 does not use the term "hire date," and DHS assumes the commenters were referring to the "began employment date" in the certification field on Form I-9. DHS has moved the term from within the middle of the certification field to make it more pronounced. DHS has bolded the following notations on a separate line of Form I-9 "The employee's first day of employment (mm/dd/yyyy)" and provided a box for employers to record the employee's first day of employment. The date the employer provides as the employee's first day of employment is a part of the employer's attestation and will not be moved to a separate section. DHS will not remove this date, because this date is important for establishing whether the form was completed in a timely manner. Employers must record the employee's actual first day of employment and may make corrections to the employee's first day of employment if the date changes. DHS will not reformat the employee's first day of employment field because the public has asked that this field be more pronounced.

37. **Two (2)** commenters had recommendations to the formatting in Section 2 Certification.

37a. **One (1)** commenter recommended rearranging the order of the fields in the Section 2 Certification area so that the certifying representative enters their name, title, address, then signature and date, which would mirror the fields in Section 1 and is a more common format for forms.

Response: DHS will not adopt this recommendation at this time. It is important that the employer's signature follow the employer's attestation in Section 2 just as the employee's signature follows the employee's attestation in Section 1.

37b. **One (1)** commenter requested the additional space for these fields, while another commenter requested DHS change Family name to "Employer Representatives family name."

Response: DHS will not adopt this recommendation to add additional space on the form for the employer's representative's name but has expanded the instructions to clarify that the person signing Section 2 should provide his or her name and title.

Form I-9 Section 3. Reverification and Rehires

38. **Fourteen (14)** commenters suggested changes to Section 3 of Form I-9.

38a. **Four (4)** commenters requested clarity on instructing employers that completing Section 3 for rehires and name changes are not mandatory.

Response: DHS has included information in the *Handbook for Employers (M-274)* that details how an employer may complete a new Form I-9 in the case of a rehire. However DHS will add additional information to I-9 Central on this issue.

38b. **One (1)** commenter recommended separating Section 3 into two sections – a reverification section and a rehire section.

Response: DHS will not separate Section 3 into two sections, as this will make the form longer and numerous commenters have asked that the form be shortened.

38c. **One (1)** commenter recommended revising the title of Section 3 to “Reverification, Rehires and Name Changes.”

Response: DHS will not revise the title of Section 3 because employers are not required to update the form when there is a name change.

38d. **One (1)** commenter suggested DHS format the rehire date similar to other dates on the form.

Response: DHS will format the rehire date so that it matches other dates on the form.

38e. **One (1)** commenter suggested inserting “List A or List C” in Section 3 instructions.

Response: DHS will add information for the documents in Section 3 instructions and on the form.

38f. **One (1)** commenter asked for more information on completing Section 3 or that instructions for completing Section 3 be on page 8 of the form.

Response: DHS will not provide additional instructions for completing Section 3 on the form as detailed instructions are available in the instructions section of the form, the *Handbook for Employers (M-274)*, and I-9 Central. Adding instructions on the form will increase the length of the form, which numerous commenters opposed.

38g. **One (1)** commenter suggested adding the phrase “and reverifications ” to the end of the sentence “If photocopies are made, they should be made for all new hires ” in Section 2 instructions.

Response: DHS has clarified the instructions on photocopying documents to include reverification.

38h. **One (1)** commenter recommended that, in Section 3, the signature field be separated into three fields to enter signature, printed name and job title.

Response: DHS will not include an additional field in Section 3 to collect the employer’s job title. DHS believes the individual’s signature, date, and printed name is sufficient for Section 3 given the limited space constraints.

38i. **One (1)** commenter recommended inserting an additional line in Section 3 that would include fields for Document Title, Document Number and Expiration Date to better document reverification of nonimmigrant student categories.

Response: DHS agrees that this formatting change will further clarify the form and is adopting this recommendation.

38j. **One (1)** commenter requested that Section 3 be entirely removed because it served no purpose as a new Form I-9 can be completed instead.

Response: DHS will not adopt this suggestion because Section 3 helps to reduce the burden on the employer by eliminating the need to recollect employee's data entered in Section 1.

List of Acceptable Documents

39. **Nine hundred eighty-one (981)** commenters recommended changes on the List of Acceptable Documents page.

39a-39d. **Five (5)** commenters requested that DHS require employees present original unexpired documentation while **another** commenter requested that DHS note that all documentation must be physically examined. **One (1)** commenter requested that DHS note that in some instances not all documentation must be unexpired. **Two (2)** commenters recommended that DHS specify that List B documents must be unexpired. **Three (3)** commenters requested that we clarify the requirement to present one document from List A or one from List B and one from List C on the List of Acceptable Documents.

Response (39a-39d): DHS will reformat "All documents must be unexpired" so that it is more prominent on the page to highlight that all documents must be unexpired, including List B documents. DHS has provided in the instructions that the employer must physically examine each original document and will not adopt the suggestion to add this language to the form. DHS provides instructions on I-9 Central when documents that appear to be expired on their face have been extended. In those instances, the document is unexpired and DHS will not adopt the suggestion that DHS note that in some instances not all documentation must be unexpired. In the *Handbook for Employers (M-274)* and on I-9 Central, DHS has clarified that employees may present one document from List A or a combination of documents from List B and List C on the form.

39e. **One (1)** commenter inquired as to why the Certificate of Naturalization is no longer an acceptable List A document.

Response: The Certificate of Naturalization was removed from the regulations as a List A document in a 1997 interim rule (see 62 Fed. Reg. 51001) and from the Form I-9 when it was revised on June 5, 2007. It was removed from List A by regulation in 1997 because it was determined to lack security features necessary to remain on List A under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) passed in 1996. Currently, the Certificate of Naturalization (Form N-550 or N-570) is acceptable as a List C, # 8 document (employment authorization document issued by the Department of Homeland Security). DHS cannot add or remove documents from the List of Acceptable Documents.

39f-39i. **Nine hundred fifty-six (956)** commenters wanted documents added to the List of Acceptable Documents and **five** commenters wanted documents removed from the List. **One (1)** commenter requested that DHS not require the Driver's License or Passports be unexpired. **Nine hundred forty-seven (947)** commenters requested that the Passport from the Republic of Palau be added. **One (1)** commenter suggested moving the Birth Certificate higher on List C. **Two (2)** commenters requested that Native American Tribal Document be added to List A and removed from List B and List C.

Response(39f-39i): DHS regulations state which documents are acceptable for Form I-9 purposes. See 8 C.F.R. 274a.2(b)(1)(v). These documents also are provided on the Lists of Acceptable Documents published with Form I-9. Documents can only be added to or removed from the Lists of Acceptable Documents through a change to the regulations. Due to the fact the requirement that all documentation be unexpired is regulatory, DHS cannot make any changes to this requirement through form revisions currently being proposed. DHS will not add the Passport for Palauan's to the List of Acceptable Documents. Under the terms of the current Compact of Free Association between Palau and the United States, citizens of Palau cannot present an unexpired Palauan passport with a Form I-94 for Form I-9 purposes DHS has decided not to reorder the documents on the List C because the current order is well-established and familiar to the public; additionally, E-Verify lists these documents in the order provided currently on List C. Changes to E-Verify cannot be made at this time due to budgetary and time constraints. The List of Acceptable documents is currently part of Form I-9; however, due to space restraints, it is not possible to list all of the acceptable documents on Form I-9 with check boxes.

39j. **Two (2)** commenters stated that the text on the List of Acceptable Documents describing an unacceptable Social Security Card is too wordy and unclear, while **another commenter** stated that a restricted Social Security Card is acceptable when provided with additional INS/DHS documents.

Response: DHS added text on the Social Security Card to make the information more helpful for the public. The added language is the exact language on the cards and cannot be changed. DHS will not instruct employers that a restricted Social Security Card is acceptable when provided with additional INS/DHS documents. A restricted Social Security Card does not authorize employment in the United States and must not be accepted by employers as a List C document. Employees should present other documentation from the List of Acceptable Documents, either from List A or List C, to show that they are eligible to work.

39k. **Two (2)** commenters requested that the List of Acceptable Documents be revised to include the agencies that issue each document.

Response: DHS will not adopt the request to add the issuing agency to each document, because many documents on the List of Acceptable Documents are issued by multiple agencies and would cause confusion when reviewing the list. Expanded information on the issuing authority of many of the acceptable documents can be found on I-9 Central.

39l. **One (1)** commenter recommended providing a check box next to each list heading to allow an employer to indicate that a receipt was reviewed in lieu of an original document.

Response: Since the List of Acceptable Documents is not required to be retained, DHS will not place a checkbox next to each list indicating whether a receipt was accepted.

39m. **One (1)** commenter recommended that DHS require that all ID cards contain a photograph and information which includes name, date of birth, gender, height, eye color and address.

Response: DHS will not adopt this suggestion, because this would be contrary to the applicable law. The regulations do not require that all ID cards contain photograph and information which includes name, date of birth, gender, height, eye color and address.

39n. **One (1)** commenter requested DHS rename documents in order to provide clarity.

Response: DHS cannot rename any documents through revisions to the Form I-9 and form instructions. To revised DHS documents, separate procedures must be undertaken.

39o. **One (1)** commenter requested DHS reconsider the bullet points for List A #5 as name variations do exist and the second bullet is ambiguous.

Response: DHS will not edit the bullet points for List A #5 because the regulations require that the I-94 bear the same name as the passport. DHS will not edit the second bullet (b.2) since this bullet is a subsection of 5b which discusses Form I-94 and the term “form” in b.2 applies to the Form I-94.

39p. **One (1)** commenter requested DHS note that an acceptable Birth Certificate cannot be issued by a civilian institution.

Response: DHS cannot comment on state law and the authority a civilian institution may have to issue birth certificates. In order to be acceptable for Form I-9 purposes, the document in question must be an original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States, bearing an official seal.

39q. **One (1)** commenter requested DHS identify which documents can be acceptable as a List C #8 document.

Response: DHS has provided examples of documents that may be considered acceptable as List C #8 documents on our website, I-9 Central. DHS will not provide a list in the instructions or on the form because this will lengthen the form and the list may change if DHS issues other types of evidence of employment authorization.

39r. **Three (3)** commenters recommended DHS add information or guidance that other documentation other than that listed on the List of Acceptable documents may be acceptable and the employer should refer to the *Handbook for Employers (M-274)*.

Response: DHS will not adopt this suggestion. The List of Acceptable Documents does include all acceptable documents. Employers who have a specific question about documentation should refer to the *Handbook for Employers (M-274)* or I-9 Central. Additionally, employers may request information on Form I-9 by calling USCIS at 888-464-4218 (Monday through Friday, 8 a.m. to 5 p.m., local time) or emailing USCIS at I-9Central@dhs.gov.

Additional Information Requests

40. **Seven (7)** commenters requested DHS add clarification to when the Form I-9 must be completed. **Three (3)** commenters suggested clarifying in the proposed instructions that employers must complete Section 2 within three business days. **Two (2)** commenters requested information be added for

employees hired for less than three days. **Two (2)** commenters requested that DHS add guidance on completing the form once an offer of a job has been made and accepted.

Response: DHS has included additional language to inform employers that Section 2 must be completed within three (3) business days or when to complete the form for an employee hired for less than three days. DHS has already provided the following instructions on Form I-9: “For example, if an employee starts work for pay on Monday, the employer must complete Section 2 by Thursday of that week. However, if an employer hires an individual for less than 3 business days, Section 2 must be completed no later than the first day of work for pay.” DHS agrees to provide additional instructions about completion of the form once an offer of a job has been made and accepted.

41. **Twelve (12)** commenters had remarks about receipts.

41a. **Two (2)** commenters suggested DHS treat receipts as a reverification.

Response: DHS cannot treat receipts the same as reverification. The current practice with receipts is already established with both employers and the enforcement agencies.

41b. **One (1)** commenter stated that the receipt rule described in the *Handbook for Employers (M-274)* is inconsistent to what is described on the updated Form I-9 instructions.

Response: DHS will review the handbook for inconsistencies and edit as appropriate.

41c. **Four (4)** commenters requested that specific receipt information be added to the instructions and list of acceptable receipts on Form I-9.

Response: DHS will not add additional information about specific receipts to the instructions of the list of acceptable receipts. We believe that this type of information is more appropriately placed in guidance documents. In addition, such guidance can be complex and would lengthen the instructions considerably.

41d. **One (1)** commenter requested DHS notate that the 90-day clock for receipts starts no later than the first day of work for pay.

Response: DHS revised the instructions to clarify that the receipt is valid for 90 days from the date of hire.

41e. **One (1)** commenter requested DHS revise the instructions on which types of receipts are acceptable, **while another** remarked that the first sentence of the *Receipts* instructions could use stronger language indicating when a receipt is allowable. The commenter suggested changing the wording to “the employee can present an acceptable receipt in limited circumstances in lieu of a document” because it will supply a clear reminder that only lost, stolen, or mutilated documents may be represented by a receipt.

Response: DHS will not revise the instructions on which types of receipts are acceptable. On page 4 of the instructions, DHS lists all types of receipts that are acceptable. DHS does not agree it is necessary to add the words “in limited circumstances.” DHS explains further in this section the three types of receipts acceptable, which include those receipts to replace a document that was lost, stolen, or damaged.

41f. **One (1)** commenter suggested that in the *Receipts* section of the instructions we use the actual name of the Employment Authorization Document (Form I-766) when we state that “receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable.”

Response: DHS will not make the suggested change; the current language accurately reflects the language on the receipt notices for applications for employment authorization. Those receipts are not identified as receipts for the Employment Authorization Document (Form I-766).

41g. **One (1)** commenter requested DHS include language that an E-Verify case may not be created until the replacement has been presented and Form I-9 updated.

Response: DHS will not include E-Verify instructions on Form I-9. DHS considers the E-Verify MOU and handbooks as the appropriate place for E-Verify instructions.

42. **One (1)** commenter suggested clearer instructions for when employers need to update Form I-9.

Response: DHS does not believe Form I-9 instructions are the best place for this type of guidance information or where examples and scenarios should be presented. DHS will consider expanding guidance to the public on when to update information on Form I-9 when revising the *Handbook for Employers (M-274)* and on I-9 Central.

43. **Fifteen (15)** commenters suggested adding fields to collect additional information.

43a-43b. **Three (3)** commenters suggested including a space for an employee's termination date. **Two (2)** commenters requested an area to include fields for the Hire Date, Termination Date, and Purge Eligible Date.

Response: DHS has determined it will not include space for a termination or purge eligible date since these dates are not used in determining employment eligibility and there is no penalty for retaining Form I-9 beyond the required retention period.

43c. **Seven (7)** commenters requested a field to enter an employee's E-Verify Case Verification number.

Response: DHS had determined it is not appropriate to provide employers a space to enter the E-Verify Case Verification number, since employers may have more than one E-Verify Case Verification number for the same employee and limiting where the employer can enter the E-Verify Case Verification number is too restrictive. Employer's currently have multiple options for recording the E-Verify Case Verification number as discussed in the *E-Verify Users Manual*.

43d. **One (1)** commenter requested that DHS add additional fields or instructions on the form for recording annotations, such as AC-21, STEM extension, TPS extension, etc.

Response: DHS has determined that it would not be appropriate to add additional fields or instructions to the form. AC-21, STEM extension and TPS extensions are very complex immigration statuses and cannot easily be explained on a short form. Information about these immigration statuses can be found in the *Handbook for Employers (M-274)* and I-9 Central.

43e. **One (1)** commenter requested DHS add a box to require anyone recording updates, corrections or otherwise remediating the Form I-9 attest to the accuracy of the corrections/updates.

Response: DHS has determined that it cannot add an attestation box for updates or corrections made to the Form I-9, because the person making changes is required to initial and date each change.

43f. **One (1)** commenter suggested adding another page with further directions, and a few examples of how to correctly fill out Section 2.

Response: DHS will not add another page of instructions for completing Section 2. The instructions have already been expanded and another page would make the instructions far too lengthy. For additional information, employers and employees should consult the *Handbook for Employers (M-274)* or the I-9 Central.

44. **Ten (10)** commenters had suggestions and inquiries about various nonimmigrant categories such as H-1B employees, E-3 employees, F-1 students and J-1 sponsoring institutions. **Four (4)** commenters asked for additional guidance in the instructions to complete Form I-9 for H-1B employees: **one (1)** commenter asked DHS to add receipts for porting H-1Bs (nonimmigrants in H-1B status who change employers) to the list of acceptable documents, **one (1)** commenter asked for more instructions on how to complete Form I-9 for porting H-1Bs, **one (1)** asked for more instructions on calculating and recording the grace period for H-1Bs on the form and **one (1)** asked DHS to restrict the documents H-1Bs may present when completing the form to the foreign passport and I-94. **Four (4)** commenters made additional suggestions for students and exchange visitors: **one (1)** asked DHS to revise instructions to omit the Document Number for students and exchange visitors during reverifications, **one (1)** asked DHS to restrict the documents exchange visitors may present when completing the form to the foreign passport and I-94, **one (1)** asked that exchange visitors be required to include DS-2019 information on the form, while another stated it wasn't clear if students not in CPT should include the I-20 information on the form. **One (1)** commenter was concerned about whether or not to record the LCA when employing E-3s and **one (1)** commenter asked for clarification of the "D/S" annotation of the I-94.

Response: DHS appreciates the suggestions to revise the form to accommodate verification issues stemming from the employment of particular employment-authorized nonimmigrant categories. DHS has determined that it will not make the suggested revisions for the upcoming version of Form I-9. The revisions that would be necessary to implement the suggestions would significantly increase the complexity of the form and potential confusion for employers, most of which do not regularly encounter these issues. For answers to questions on Form I-9 completion and work-authorized nonimmigrants, employers should visit the USCIS website to learn more about these nonimmigrant categories, see the *Handbook for Employers (M-274)*, *Instructions for the Completing Form I-9*, or go online and visit I-9 Central. DHS will take the suggestions under consideration in future revisions to these guidance materials.

45. **Three (3)** commenters had recommendations for notaries public and authorized representatives. **One (1)** commenter suggested that DHS provide a separate space on the form for a notary seal or stamp. **One (1)** commenter requested to know how an employer's representative, such as a Notary Public, certifies the employee's date of hire, **while another** commenter suggested adding language to the instructions that notary publics or authorized representatives can carry out the duties of the employer.

Response: DHS will not add a separate space for a notary seal or stamp, because notaries public are not required to add their stamp or seal when completing and signing Section 2 of Form I-9 as an authorized representative of an employer. Notaries should complete the form in the same

manner as authorized representatives of the employer; no special rules apply. DHS has provided instructions in the *Handbook for Employers (M-274)* on the responsibilities of notaries and authorized representatives and has revised the instructions and form to include “authorized representative” in all headings that employers or authorized representatives complete.

46. **Four (4)** commenters suggested that DHS include more instructions on how to correct Form I-9. **Three (3)** commenters asked that correction instructions be included on the form and **one (1)** commenter asked that additional instructions on correcting the form be included in the *Handbook for Employers (M-274)*.

Response: DHS has decided not to include information on the form or additional information in the *Handbook for Employers (M-274)*. DHS believes that the instructions should be limited to information regarding proper completion. DHS will consider providing more guidance to the public on how to correct Form I-9 on the USCIS website, I-9 Central and in a future revision of the *Handbook for Employers (M-274)*.

Formatting

47. **Nine (9)** commenters had suggestions on the formatting of Form I-9.

47a. **One (1)** commenter suggested that the fields in which to enter information throughout the form should be reformatted to be smaller, or use Form I-9 Rev. 08/07/09, which was formatted sufficiently.

Response: DHS has received numerous requests to increase the size of fields. DHS will reformat Form I-9 to allow more room and will not decrease the size of any fields.

47b. **Four (4)** commenters recommended multiple formatting changes to ensure Form I-9 is visually consistent, including italics, colons, capitalization, and the date fields.

Response: DHS agrees with the commenters’ recommendations to ensure Form I-9 is visually consistent, including italics, colons, capitalization, and the date fields and will make the necessary formatting changes to ensure the look of the Form I-9 is consistent throughout the form.

47c. **One (1)** commenter stated that the form was not laid out for easy viewing.

Response: DHS has carefully considered the layout of the form with the goal of providing a form that is clearer and easier to use, while at the same time incorporating more information in response to users’ needs.

47d. **One (1)** commenter requested that DHS put bold lines between each section.

Response: DHS has formatted the form so that the sections are separated by a gray bar. Additionally, the information required from the employee is on the first page and the information completed by the employer is on the second page.

47e. **One (1)** commenter recommend Section 2 be reformatted to resemble the 05/07/87 Form I-9 “checkbox” version.

Response: DHS will not adopt this suggestion. The 05/07/87 Form I-9 allowed for recording 11 documents; currently over 26 documents are acceptable for Form I-9 purposes. Adding

checkboxes for each of the 26 documents would increase the length of the form and DHS kept the form to two pages, which if printed double-sided would result in a one-page form.

47f. **One (1)** commenter requested DHS underline and emphasize numerous sections over the entire Form I-9 to emphasize importance.

Response: DHS will not adopt this suggestion. DHS does not use underlines on the form except for the case of URLs and will continue the current formatting style.

48. **Three (3)** commenters recommended changing the way the form is numbered. The instructions and the List of Acceptable Documents would be pages 1-7. The form itself would be pages 1-2. This commenter also suggested that the top of each page of the renumbered form would include a statement that this is X of 2 pages required to be retained by the employer. **Two (2) other commenters** also recommend numbering the form pages 1 and 2.

Response: DHS will not adopt this suggestion at this time but will consider it in other revisions of the form. Separating the instructions and the List of Acceptable Documents from the form itself may result in increased errors or document abuse by employers.

49. **Twelve (12)** commenters stated that the instructions of Form I-9 were far too long and **101** commenters requested additional language be added to the instructions.

Response: DHS understands that the instructions may seem lengthy, but we have made certain changes to Form I-9 that need to be explained in the instructions. In addition, we have received feedback from the public requesting more detailed information on the actual Form I-9 instructions, rather than only in guidance materials, including the *Handbook for Employers (M-274)* or on the I-9 Central website. With the additional information added to Form I-9 instructions, DHS is striving to strike a balance between providing the necessary information to reduce errors on Form I-9 and keeping the form at an acceptable length.

50. **Forty-four (44)** commenters stated that Form I-9 was too long and **25** commenters liked the two-page form. **One (1)** commenter was concerned that that the form is too long and will require additional training for users when an enhanced or electronic I-9 is developed. **One (1)** commenter asked when the new Form I-9 will be available for use.

Response: DHS redesigned the Form I-9 with the goals of making it easier to use and help reduce user errors on the form. While DHS appreciates the benefits of a one page form, we found that more space is needed in order to make the data fields clearer, and, therefore, the form is now two pages. Four additional fields were added to the form, but two are optional and two only apply to a limited group of employees who received Form I-94 when travelling to the United States. The added information in the instructions includes requirements that all employers have to follow to comply with the regulations and should already be implementing. DHS will provide information on the USCIS I-9 Central website concerning the four new fields and how to complete each field when the revised I-9 is approved by OMB. There are several steps that must be taken before the newly revised Form I-9 will be available for use, including a 30-day notice published in the Federal Register and OMB approval. DHS cannot estimate when the revised form will be available for use.

Storage

51. **Twenty-nine (29)** commenters had comments about the storage of Form I-9. **Four (4)** commenters requested that DHS allow employers to store pages 7 and 8 of Form I-9 on the same sheet of paper and if the List of Acceptable documents must be stored. **Twenty-five (25)** commenters noted the additional page to Form I-9 will increase the storage burden.

Response: DHS encourages storing pages 7 and 8 of the proposed Form I-9 back to back on a single sheet of paper. There is no requirement to store a copy of the list of acceptable documents or any of the instruction pages; in fact, the *Handbook for Employers (M-274)* states that “only the pages of the Form I-9 on which you or the employee enter data must be retained.” The storage burden should not double if employers print and store Form I-9 on one double-sided page. While DHS appreciates that some employers may experience an increase in storage burden, DHS believes the changes to the form were necessary to accommodate users’ needs.

Form I-9 Functions

52. **Four (4)** commenters on Form I-9 pre-populating. **One (1)** commenter requested that employers be allowed to save text in the Employer’s Business or Organization Name field and pre-populate the employer’s business information. **One (1)** commenter asked if Section 1 could be “auto-filled” by a company’s human resources system and **another** commenter requested that DHS provide instructions for the employer certification when the data is prepopulated from data the employee provided via an electronic Form I-9. **One (1)** commenter requested that the field on page 8 called “Employee Family Name” be automatically filled in when the employee provides his or her family name in Section 1 of page 7.

Response: DHS is not opposed to employers pre-populating the Form I-9 with respect to information such as name and address, but DHS is not able to allow the data collected to be saved online. Employers may save the business or organization name and address in their own database. DHS is not opposed to auto-filling Section 1 of Form I-9 by a company’s human resource system provided the employee and employer review and complete the attestation. Additionally, if Section 1 of Form I-9 is being completed on behalf of the employee, then the Preparer-Translator section must be completed. DHS will consider pre-populating certain fields when an enhanced Form I-9 is developed. However, DHS cannot adopt this suggestion at this time.

53. **Fourteen (14)** commenters made suggestions for the electronic collection of Form I-9 data and development of an electronic Form I-9.

53a. **Seven (7)** commenters suggested that employers should be able to validate Form I-9 information electronically against other government databases either by merging Form I-9 with E-Verify or replacing the form with E-Verify.

Response: DHS appreciates the commenters’ suggestions but is unable to adopt them at this time. The verification process reflected in the Form I-9 is required by statute together with implementing regulations. While both the Form I-9 and E-Verify processes are based on similar information, statutory and regulatory requirements call for the Form I-9 to be more comprehensive and the first stop for employment eligibility

verification. Moreover, all employers must use Form I-9, whereas use of E-Verify is mostly voluntary. With respect to allowing employees to present documents electronically for Section 2, DHS regulations provide that employers must physically examine original documentation presented by the employee.

53b. **Two (2)** commenters stated that Form I-9 is a burden because the form and documentation cannot be submitted electronically, while **another** commenter requested that Form I-9 have electronic signatures.

Response: DHS appreciates the burden to employers but cannot change this regulation at this time. USCIS, with other DHS partners, is working to develop electronic signature capabilities for Form I-9 but cannot provide an estimate of when this initiative will be available to the public.

53c-53d. **Two (2)** commenters asked that DHS provide additional room on the form for electronic annotations and other documents which can be recorded. **One** commenter asked that DHS add a provision that an electronic form can be annotated electronically.

Response: DHS cannot adopt the commenters' suggestion to add provisions or additional room on the form for electronic annotations. The scope of DHS's current action on Form I-9 is limited to revising the paper form and does not include making electronic enhancements.

53e. **One (1)** commenter suggested that DHS should provide a way to file Form I-9 online while also assigning a level of verification compliance for each employer.

Response: DHS is unable to provide a way for employers to file Form I-9 online. Under the statute, Form I-9 is not filed with a federal agency but is instead retained by the employer. However, the form is subject to inspection by DHS, the Special Counsel for Immigration-Related Unfair Employment Practices, and the Department of Labor. Since Forms I-9 are retained by employers, it is not possible for DHS to grade employers on their verification compliance.

Miscellaneous Form I-9 Comments

54. **Three (3)** commenters felt that Form I-9 is not an effective means for employment eligibility verification. **Two (2)** commenters believed that Form I-9 is outdated while also being an additional source of profit for DHS. **Another commenter** stated the Form I-9 is not effective unless the date entered is verified against government databases.

Response: The requirement that employers verify the identity and employment authorization of their employees in a manner prescribed by the Form I-9 is statutory. Therefore, congressional action would be necessary before the Form I-9 verification requirement could be eliminated. When used properly, Form I-9 helps to preserve jobs for those who are authorized to work in the United States; in addition, Form I-9 can be a valuable tool for combatting fraud and identity theft. Also, employers can supplement Form I-9 verification by participating in E-Verify to confirm the employment authorization. Under this DHS program, confirmation by DHS and SSA of employment authorization is accomplished electronically without charge. E-Verify will verify employee employment authorization information with information contained in government records. DHS believes that E-Verify and Form I-9, when used properly, are effective at verifying employment authorization.

55. **Two (2)** commenters questioned what USCIS's intent was in changing Form I-9.

Response: Since the three-year expiration date of OMB approval for Form I-9 is approaching, DHS has determined that it is an appropriate time to implement improvements to Form I-9 in order to minimize disruption for employers. The improvements DHS is currently proposing include adding new fields to Section 1, such as the employee e-mail address and telephone number. DHS anticipates that having these two fields on Form I-9 will be helpful for users and DHS. For example, if an employer using E-Verify does not provide notice of a Tentative Nonconfirmation to an employee, then E-Verify would still be able to reach the employee so the case can be resolved properly. Another important change was that the proposed form clarifies the alien attestation area of Section 1 and made the text easier to read and understand. Also, DHS is proposing to add a 3-D barcode in order to promote the modernization of USCIS forms. These changes, together, necessitated that the Form become two pages long. DHS believes that employers will appreciate having more space on Form I-9. Lastly, USCIS worked to make the instructions clearer and easier to understand.

56. **Six (6)** commenters stated the estimated burden to complete the form is too short.

Response: DHS has conducted additional testing to determine how long it takes to complete Form I-9 and we determined an average completion time of 35 minutes. Some employees will take longer to complete the form and others will complete the form much more quickly.

57. **Ten (10)** commenters were concerned with the amount of time that employers would have to transition from using the current form to the new Form I-9. **Five (5)** commenters were specifically concerned with allowing enough time for Web Services (E-Verify) clients and electronic Form I-9 providers to change to the new form. **One (1)** commenter suggested a 30-day notice to employers before implementation of the new form. **Four (4)** commenters thought there needs to be a phase-in period for any new Form I-9, allowing 180 days (6 months) advance notice for transition of company procedures from a one page document to a two page document, while another recommends 120 days.

Response: DHS will take into consideration the concerns raised by the commenters. DHS will help employers transition to the new form through reference and press materials, as well as outreach efforts.

58. **One (1)** commenter made note that he or she was unable to view the proposed new Form I-9.

Response: The new Form I-9 is available as an attached PDF under the corresponding docket folder on www.regulations.gov.

59. **Four (4)** commenters requested the development of an enhanced Form I-9 that would help to reduce technical errors.

Response: DHS is currently developing an enhanced Form I-9 and a Form I-9 wizard, both of which should help to reduce errors when completing Form I-9.

60. **Two (2)** commenters requested that DHS provide different versions of Form I-9. **One (1)** commenter requested a fillable and non-fillable PDF version. **One (1)** commenter requested DHS provide an unlocked PDF version.

Response: There are very limited uses for a Form I-9 that is electronically non-fillable. DHS is willing to provide a non-fillable Form I-9 to employers upon request but will not post this version

on our website to reduce confusion. An employer may request a non-fillable version of Form I-9 by contacting USCIS. The purpose of locking the form is to create a standard form that is consistent. In order for DHS to avoid employers unintentionally manipulating the form, DHS has decided the form must remain locked. Employers are permitted to recreate the form electronically within their own personnel systems so long as it meets specific requirements as outlined in DHS regulations and described in the *Handbook for Employers (M-274)*.

61. **Three (3)** commenters requested that the public comment period be extended due to the extensive changes proposed in the Form I-9.

Response: The public comment period is not established or regulated by USCIS, but rather by the procedures under the Paperwork Reduction Act and OMB regulations. The public will have a second chance to comment on the revised Form I-9 after USCIS has considered public comments and updated its revisions to the form. The proposed Form I-9 and instructions will then be opened for public comment for an additional 30 days. During this time, the public will have the opportunity to make additional comments. Note that DHS is seeking OMB approval of the revised Form I-9 and instructions; OMB's current approval expires on August 31, 2012.

62. **One (1)** commenter requested that DHS revise every section of Form I-9 to make it easier for employer and employees to understand.

Response: DHS believes that the new changes to Form I-9 have made the complete Form I-9 easier to understand for employers and employees.

E-Verify & Self-Check

63. **Four (4)** commenters had suggestions about E-Verify and Form I-9. **Two (2)** commenters requested that the Form I-9 mirror E-Verify on the information it collects. That commenter, along with **two (2) other commenters**, requested that E-Verify replace Form I-9.

Response: Statutory and regulatory requirements govern the Form I-9 and the information contained therein. Because the requirements are not necessarily the same as those of E-Verify or Self-Check, Form I-9 cannot mirror the E-Verify nor can E-Verify replace the Form I-9.

64. **Six (6)** commenters had questions about E-Verify. **Two (2)** commenters suggested that E-Verify be mandatory in the United States. **One (1)** commenter asked if there will be any changes to E-Verify Tentative Nonconfirmation (TNC) documents to include additional information being added to the proposed Form I-9. **One (1)** commenter asked where the E-Verify case number should be written on Form I-9. **One (1)** commenter suggested that use of Self-Check should eliminate the Form I-9. **One (1)** commenter requested that E-Verify extend the time frame an employer has to submit the case in E-Verify.

Response: While E-Verify comments are appreciated, they are not related to the comments on the proposed Form I-9 revisions and, therefore, are outside the scope of this action. You may raise your concerns by contacting E-Verify at 888.464.4128 or E-Verify@dhs.gov.

Handbook for Employers (M-274)

65. **Four (4)** commenters had suggestions regarding the *Handbook for Employers (M-274)*. **One (1)** commenter suggested DHS identifying which Form I-9 information sources (i.e. *Handbook for Employers*

(M-274) and I-9 Central website) holds more authority. **One (1)** commenter requested that DHS change the handbook to be “more training-friendly” for employers. **One (1)** commenter suggested that the handbook be submitted for comment with Form I-9 since the instructions are to be treated as incorporated amendments of USCIS regulations while also including the handbook in the burden estimate for completing the Form I-9, while **another commenter** requested that the handbook as well as I-9 Central be updated to correspond with the release of the new Form I-9.

Response: Guidance materials on Form I-9 completion are simply resources in different formats to help employers and employees complete Form I-9 correctly. DHS currently provides more plain language guidance information on I-9 Central that may be helpful for employers seeking to develop training materials. The *Handbook for Employers (M-274)* is not form instructions and therefore should not be treated as incorporated amendments of USCIS regulations. Rather, the Handbook is considered a separate guidance document and therefore is not included in the burden estimate. Form I-9 has its own instructions, and those were submitted for comment and included in the burden estimate. Employers are not required to read the Handbook; it is intended for use as a reference guide when completing Form I-9. DHS plans to update I-9 Central and the *Handbook for Employers (M-274)* once OMB approves the revised Form I-9.

66. **Two (2)** commenters requested the DHS include information in guidance materials that the Form I-9 may not be used for unsanctioned or impermissible purposes.

Response: DHS will add additional guidance on I-9 Central concerning use of Form I-9.

Unrelated

67. **Three (3)** commenters requested that DHS allow employers throughout the United States the ability to complete and retain the Spanish version of the form. **Another commenter** noted the Spanish version of the new Form I-9 be released simultaneously.

Response: In order to ensure the form is able to be understood by the numerous government agencies whose work activities may involve the form, DHS has determined it is in the best interest for all parties involved that only the English version of the form be completed and retained. DHS appreciates this comment and will consider this recommendation in the future. DHS will make a Spanish version of the new Form I-9 available to the public as quickly as possible after the revised form is approved.

68. **One (1)** commenter suggested that the government should fine everyone who comes to the United States without permission and then deport them immediately.

Response: This comment is outside the scope of the revisions being proposed for Form I-9, which is about verification of employment eligibility.

69. **Four (4)** commenters asked that Immigration Customs and Enforcement (ICE) release information on what items an employer may be fined on the current Form I-9 as well as the new proposed Form I-9.

Response: While DHS understands the commenters concerns, the request is unrelated to the proposed revisions to Form I-9 and instructions.

70. **One (1)** commenter requested that DHS coordinate Form I-9 requirements with the Social Security Administration.

Response: Form I-9 does not require a Social Security number; however, E-Verify employers are required to collect this number. DHS believes this comment is outside the scope of the proposed revisions to Form I-9.

71. **One (1)** commenter requested that DHS perform significant outreach to the agricultural community to assure the new Form I-9 is workable.

Response: DHS has provided the public an opportunity to review Form I-9. USCIS is dedicated to ensuring that all employers are fully informed of our programs and processes. Employers may request training on Form I-9 by calling USCIS at 888-464-4218 (Monday through Friday, 8 a.m. to 5 p.m., local time) or emailing USCIS at I-9Central@dhs.gov.

72. **One (1)** commenter objected to the failure of USCIS to submit Form I-9 and guidance materials for full regulatory review.

Response: The revisions made to the Form I-9 and instructions are in accordance with the PRA requirements. DHS disagrees that full regulatory review is necessary. The guidance material (e.g. *Handbook for Employers (M-274)*) is only for informational purposes.

73. **One (1)** commenter requested help on family immigration.

Response: This comment is outside the scope of the proposed revisions to Form I-9. Please refer to the USCIS Web site at www.uscis.gov for immigration information.