

**I-765V Public Comments
60-Day Period (ending July 26, 2016)
SUMMARY OF RESPONSES**

Commenter:

All comments were from a letter jointly-signed by:

The American Immigration Lawyers Association (AILA)
Asian Pacific Institute on Gender-Based Violence (APIGBV)
ASISTA Immigration Assistance
Catholic Legal Immigration Network Inc. (CLINIC)
National Domestic Workers Alliance
We Belong Together

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FORM I-765V Instructions			
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1	I. Instructions Comment: A. What is the Purpose of the I-765V Form? (Page 1)	Commenter recommends amending the text above by adding the following sentence: <i>Regardless of your immigration status, if your § 106 employment authorization is granted, you will not accrue unlawful presence during the work authorization period.</i>	Thank you for your comment. USCIS is reviewing.
2	B. Who May File Form I-765V, comment regarding remarriage (page 2)	Commenter suggests amending the language to read as follows: NOTE: If you remarry prior to adjudication of Form I-765V, Application for Employment Authorization for Abused Nonimmigrant Spouse, you will be ineligible for issuance of employment authorization under INA § 106.	Comment accepted and corresponding edit made.
3	C. General Instructions. Note of Confidentiality	Commenter suggests a detailed Confidentiality section be added under the General Instructions heading.	USCIS will not make the suggested edit. USCIS has extended, through policy, the protections of 8 USC section 1367 to abused spouses of nonimmigrants applying for employment authorization pursuant to INA section 106. See Policy Memo 602-0130 Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants.
4	C. General Instructions. Note on Evidence	Commenter suggests a sentence, "You may file your application with any credible evidence of your eligibility." be added to the Evidence section under the General Instructions heading.	Comment accepted and corresponding edit made.
5	C. General Instructions. Note on Biometrics	The commenter believes the instructions on biometrics have the potential to be very confusing to applicants. Commenter believes USCIS should provide additional information to clarify who, if	The instructions provide that biometrics may be collected and are simply a reflection of 8 CFR 103.2(b) (9) which provides that USCIS may require any individual to appear and provide biometrics. USCIS

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		anyone, is required to submit biometrics and how soon after the submission of the application they may be required. In the case of other forms that use similar language about biometrics in the instructions, like the I-751 and the N-400, biometrics are nevertheless routinely required except for age-based exemptions. If USCIS anticipates routine scheduling of biometrics appointments for I-765V applicants, commenter recommends that the language in the instructions be modified accordingly. Furthermore, the instructions do not mention whether there would be a fee for biometrics and whether that would be waivable for those who are unable to afford it. If there is no fee, commenter suggests adding in a sentence which specifically states, "There is no filing fee or biometrics services fee for Form I-765V."	does not anticipate routine collection of biometrics from Form I-765 applicants. However, if applicants receive an ASC appointment notice, they must comply with its instructions. As for fees, 8 CFR 103.7(b)(1)(i)(C) (2) provides that there is no biometric services fee when the fee is waived. USCIS is exempting all Form I-765V filers from a fee, thus there is no biometric services fee. We have clarified the instructions as requested.
6	C. General Instructions. Note on Copies	Commenter recommends that USCIS not take action to immediately destroy original documents submitted by an applicant where requested to do so by USCIS. Comment: "In many instances, an abused spouse applying for work authorization may be traumatized, and under great stress, and understandably may miss or misunderstand an instruction to submit copies instead of originals. A policy of automatically destroying original documents mistakenly submitted by an applicant who has been subjected to domestic violence, thereby resulting in the destruction of what might	The Government Paperwork Elimination Act (GPEA), Pub. L. 105-277, tit. XVII, se. 1703, 112 Stat. 2681, 2681-749, Oct. 21, 1998, 44 U.S.C. 3505, provides that, when possible, Federal agencies use electronic forms, electronic filing, and electronic submissions to conduct agency business with the public. To facilitate electronic adjudication and support the digitizing of files as required by GPEA, USCIS has decided to implement this policy to destroy all original documents upon intake after the filing has been electronically scanned, uploaded, and stored. In accordance with this policy, to reduce administrative burden and

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		<p>be critical supporting evidence of eligibility for work authorization, undermines the protection this remedy was created to provide. Commenter suggests that USCIS consider other alternatives, such as mailing the documents back to the applicant, sending the applicant an RFE for a Form G-884 Return of Original Documents, or sending the documents to the National Records Center to combine with the A file so that the applicant can later retrieve the documents by filing a Form G-884.”</p>	<p>minimize storage costs, all unrequested original documents will be destroyed after digital storage as of September 2016.</p> <p>In addition to GPEA, the National Archives and Records Administration’s (NARA) permanent record standards also require that USCIS streamline its process for digitizing records. USCIS has updated its system of records to comply with the NARA-required 300dpi minimum standard for scanning permanent records. In accordance with the Federal Records Act, NARA has authorized agencies to destroy certain records that do not “have sufficient administrative, legal, research, or other value to warrant their continued preservation by the Government.” See 44 U.S.C. §3303a(a). Once approved by NARA, retention periods in the schedules are mandatory and authorize the disposal of unneeded records.</p> <p>In order to mitigate concerns about the new policy, USCIS has developed a list of “original” and “hard to replace” original documents that will be returned after they are electronically stored. See <u>Cobell v. Norton</u>, 240 F.3d 1081, 1106-07 (D.C. Cir. 2001) (finding that although the Treasury Department destroyed certain records in accordance with NARA guidelines, the Treasury Department still had a fiduciary obligation under the Indian Trust Fund Management Reform Act of 1994, to maintain those records). Items submitted with an application that will be scanned and returned are passports, foreign government documents, or</p>

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			documentation that appears to be issued by a foreign government. Difficult to replace documents and original documents requested by USCIS will be returned. Non-originals or originals that are not considered difficult to replace will be shredded. Originals that were returned to USCIS after an attempt to return them to the filer will be stored for a year then destroyed pursuant to the General Records Schedule. USCIS forms will include instructions that state “unrequested originals <i>may</i> be destroyed” in order to provide notice that should suffice in case the attempt to return documents fails.
7	C. General Instructions. Note on completing the form when information is unknown	Commenter recommends “that the general instructions explain how applicants should respond to questions where the information requested may be unknown.”	Comment accepted and edits made to How to Fill Out Form I-765V section: “If a question does not apply to you, type or print “N/A,” unless otherwise directed. If you do not know the answer to a question, type of print “unknown,” unless otherwise directed.”
8	D. Specific Instructions. Item Number 4: Social Security Number (page 4)	Commenter recommends that “reference to social security numbers be limited to those which have been officially issued by the Social Security Administration.”	Comment accepted and corresponding edit made.
9	D. Specific Instructions. Item Numbers 19.a. – 19.f. Form I-94 Arrival-Departure Record (page 4)	Comment reads” The instructions as written make it seem like an applicant may not file a \$106 work authorization application without having an I-94 number. The instructions should clarify that applicants who do not have this information	Although your comment is appreciated, USCIS will not make the suggested edit. The following language was added to the How to Fill Out Form I-765V section and is applicable to every question of the Form I-765V: “If a question does not apply to you, type or print “N/A,”

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		readily available may write “N/A” or “unknown.” as long as the applicant has other evidence of eligible nonimmigrant status.	unless otherwise directed. If you do not know the answer to a question, type of print ‘unknown,’ unless otherwise directed.”
10	D. Specific Instructions. Part 2. Information About Your Spouse	Commenter suggests “bolding the “if known” to clarify that it is appropriate for the applicant to write “N/A” or “unknown” if he or she does not have the information requested.”	Comment accepted and corresponding edit made.
11	D. Specific Instructions. Part 2. Information About Your Spouse. Item Number 5. A-Number, Item Number 6, USCIS Online Account Number	Commenter asks for “if known” to be added to each question.	The sentences “Provide the information requested in this section, if known. ” and “If you do not know the answer to a question, type or print ‘unknown,’ unless otherwise directed.” were added to the general instructions under the Information About Your Spouse heading to address each question in the section.
12	D. Specific Instructions. Part 2. Information About Your Spouse. USCIS Online Account Number	Comment: “The instructions regarding the USCIS Online Account number seem to suggest that the abusive spouse will log on to his/her account to provide the survivor spouse applicant with the USCIS Online Account number. We do not find this instruction helpful as abusive spouses are not especially likely to actively help survivors apply for INA §106 work authorization applications. We suggest deleting the rest of this instruction in its entirety. In the alternative, USCIS may provide information in its instructions how the survivor may access this account independently and safely.”	Comment accepted and information on locating the abuser’s USCIS Online Account Number was deleted.
13	D. Specific Instructions.	Commenter requested the addition of “if known”	The sentences “Provide the information requested in

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	Part 2. Information About Your Spouse. Item Numbers 7.a.-7.e. Form I-94 Arrival-Departure Record	to the end of the first sentence of the section. Moreover, the commenter “strongly encourage[s] USCIS to delete all language in the instructions that may mislead an applicant into believing that this information must be sought if not known.”	this section, if known. ” and “If you do not know the answer to a question, type or print ‘unknown,’ unless otherwise directed.” were added to the general instructions under the Information About Your Spouse heading to address each question in the section.
14	D. Specific Instructions. Part 2. Information About Your Spouse. Item Numbers 7.a.-7.e. Passport and Travel Document Numbers	Commenter requested the addition of “if known” to the first sentence of the section.	The sentences “Provide the information requested in this section, if known. ” and “If you do not know the answer to a question, type or print ‘unknown,’ unless otherwise directed.” were added to the general instructions under the Information About Your Spouse heading to address each question in the section.
15	D. Specific Instructions. Part 4. Questions Regarding Race and Other Physical Attributes	Comment: “Inquiries regarding one’s race, ethnicity, and physical attributes (height, weight, eye and hair color) should not be necessary for §106 work authorization and is incongruent with other survivor-based forms of immigration relief like VAWA self-petitions, T and U visas. We recommend deleting items 1-6 on page 7 of the instructions and the corresponding fields on the I-765V. To the extent that these inquiries are deemed necessary, USCIS should provide increased notice to crime victims about the purpose of collection of such information, as well as who has access to this information, given the increased safety and confidentiality concerns facing victims, and the confidentiality protections afforded victims under 8 U.S.C. section 1367.”	The race and ethnicity questions are for identity verification purposes and comply with the applicable OMB guidance, “Standards for the Classification of Federal Data on Race and Ethnicity.” That data is required for FBI Form FD-258 in advance of the ASC appointment. The questions have been removed because I-765V applicants are not routinely subject to background checks.
16	D. Specific Instructions.	Commenter recommends that USCIS follow the	We have revised the instructions to clarify that a scan

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	Part 5. Applicant's Statement, Contact Information, Certification, and Signature Item Numbers	directive in the June 21, 2016, USCIS interim memo regarding copies of original signatures.	or fax of an original signature is acceptable.
17	D. Specific Instructions. Comment regarding Instructions on Biometrics	Comment: "The instructions in the box reference a biometrics appointment that, according to the earlier instruction, may or may not occur. As stated above, we recommend clarifying whether and when biometrics will need to be completed for INA §106 work authorization applications. In addition, we are concerned about the instruction that the applicant must attest to the contents of the application at the Application Support Center (ASC). Though we are aware that this instruction appears on other USCIS forms (N-400, I-751, I-192, etc.), in the context of an INA §106 work authorization application, there should be more clarity regarding biometrics and VAWA confidentiality provisions, and applicants should be assured that ASC officials will not have access to their case file. This instruction is NOT included in other applications for survivor-based forms of immigration relief (e.g. I-918, I-914) and to add this additional barrier for §106 work authorization applicants is unwarranted and burdensome."	The instructions provide that biometrics may be collected and are simply a reflection of 8 CFR 103.2(b) (9) which provides that USCIS may require any individual to appear and provide biometrics. USCIS does not anticipate routine collection of biometrics from Form I-765V applicants. However, if applicants receive an ASC appointment notice, they must comply with its instructions. USCIS has extended, through policy, the protections of 8 USC section 1367 to abused spouses of nonimmigrants applying for employment authorization pursuant to INA section 106. See Policy Memo 602-0130 Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants.
18	Required Documentation	Commenter is concerned that an applicant must submit a signed personal statement in support of the application and a protection order (if one	The relevant evidentiary requirement section is edited to read as follows, "Evidence of the abuse, such as protection orders, police reports, court records,

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		exists) in order to obtain employment authorization.	medical records, reports from social services agencies, a signed statement from you detailing abuse suffered since your admission to the United States, and/or affidavits from third parties who can knowledgeably attest to the abuse you experienced.”
19	Required Documentation: Note on Credible Evidence	Comment: “We recommend that USCIS clarify the “credible evidence” standard pursuant to existing guidance. For instance, this section could state: <i>Applicants for §106 work authorization may submit “any credible evidence” and the applicant is not required to demonstrate the unavailability of primary or secondary evidence. An applicant may not be denied for failure to submit particular evidence. It may only be denied on evidentiary grounds if the evidence that was submitted is not credible or otherwise fails to establish eligibility. It is within the Service’s sole discretion to determine what evidence is credible and to determine what weight to give that evidence.</i> ” (citation omitted).	Thank you for your suggestion. USCIS issues policy guidance, such as the memo you have cited to, for clarification and explanation of our policies. It would be impractical to include detailed policy interpretations in form instructions. No change will be made.
20	Required Documentation: Note on VAWA Confidentiality	Comment: “Similarly, we believe the discussion on VAWA Confidentiality should also appear in the general instructions, but applicants may benefit from seeing it again. In this section, the note on VAWA confidentiality contains language that is very legalistic. We recommend language similar to the I-918 U Visa Instructions regarding the “Prohibition on Disclosure of Information.” For example: <i>Prohibition on Disclosure of Information. Information concerning §106 work authorization</i>	USCIS has extended, through policy, the protections of 8 USC section 1367 to abused spouses of nonimmigrants applying for employment authorization pursuant to INA section 106. See Policy Memo 602-0130 Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants. USCIS declines to include detailed policy interpretations in form instructions.

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		<i>applications is protected against disclosure. Adverse determination of admissibility or deportability cannot be made based on information obtained from the perpetrator of battery or extreme cruelty. The disclosure of information relating to a pending or approved application for work authorization under INA §106 is prohibited except in certain circumstances, such as to investigative agencies who have a reason to know based on a legitimate law enforcement purpose."</i>	
21	Required Documentation: Renewal Application for Employment Authorization	Commenter suggests this section be written as follows: "You may apply for employment authorization renewal in the five-month period (150 days) prior to the expiration of your current EAD. If you file for renewal more than 150 days before the EAD expiration, USCIS may reject your submission and return it to you with instructions to resubmit your renewal request closer to the EAD expiration date. USCIS encourages applicants requesting EAD renewals to file within 90 to 120 days prior to the EAD expiration date."	We have removed language pertaining to renewal timelines for employment authorization. Processing times for application forms for immigration benefits may generally be located at www.uscis.gov .
22	Required Documentation: Inconsistent Voice	Comment: "Some portions of this section refer to the applicant as 'you' and other times it refers to the "applicant" (e.g. 3. Evidence of the applicant's current residence in the United States."). We recommend using a consistent voice for clarity.	Edits have been made in response to the comment.
23	Where to File	Commenter requests "that these applications be adjudicated at the Vermont Service Center where	USCIS appreciates your comment and your request will be taken into consideration when I-765V adjudications

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		there are specialized adjudicators trained in the dynamics of domestic violence, VAWA confidentiality and the proper evidentiary standards in these cases.	are assigned.
24	Fee	Commenter states the instructions do not mention whether there is a fee for biometrics associated with Form I-765V and whether fee exemptions are available. Commenter suggests, if there is no fee, adding a sentence which specifically states, "There is no filing fee or biometrics services fee for Form I-765V."	Edits have been made in response to the comment.
25	Processing Information	<p>Comments:</p> <p>1. Advisal on Document Destruction: As mentioned above, we recommend that USCIS not take action to immediately destroy original documents where such documents were not requested by USCIS.</p> <p>2. Requests for Interview: We are very concerned about the prospect of §106 work authorization applicants being scheduled for interviews at USCIS Field Offices, and stridently recommend against it. This goes well beyond the scope of existing guidance on §106 applications, and would lead to inconsistent adjudications nationwide.</p> <p>3. Approval: The instructions state that if the application is approved, USCIS will either mail the EAD to a safe mailing address or require the applicant to visit the local USCIS office to pick it</p>	USCIS appreciates your comments. Anyone with an application pending with USCIS may be required to appear for an interview pursuant to 8 CFR 103.2(b)(9). Employment authorization cards will generally be mailed to the safe address on file.

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		up. It is unclear when or why it would be necessary for an applicant go to a USCIS Office to pick up a work authorization document. We recommend that approved EADs be mailed to the applicant's safe mailing address.	
26	Privacy Act Statement	Commenter recommends "adding in language reiterating that any disclosure of information must be done in accordance with VAWA confidentiality provisions at 8 USC §1367."	USCIS has extended, through policy, the protections of 8 USC section 1367 to abused spouses of nonimmigrants applying for employment authorization pursuant to INA section 106. See Policy Memo 602-0130 Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants.
27	Outstanding Concerns	Commenter listed concerns regarding the adjudicative process, outreach, and data collection.	USCIS appreciates your comments and takes them under advisement.

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1	Part 4: Biographic Data	Commenter recommends deleting the Biographic Information section "for purposes of congruence with other applications for survivor-based forms of immigration relief (VAWA, U, T visas)."	Biographic data is collected as part of a background examination when required to obtain the information for FBI Form FD-258 in advance of their ASC appointment. The race and ethnicity questions are for identity verification purposes and comply with the applicable OMB guidance, "Standards for the Classification of Federal Data on Race and Ethnicity." We have removed the Biographic data section from the form, because I-765V applicants are not routinely

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			subject to background checks.
2	Applicant's Certification	Commenter recommends the "Applicant's Certification should reference VAWA confidentiality provisions."	While USCIS appreciates the comment, USCIS will not make the recommended change. USCIS has extended, through policy, the protections of 8 USC section 1367 to abused spouses of nonimmigrants applying for employment authorization pursuant to INA section 106. See Policy Memo 602-0130 Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants.

The primary goals we set out to accomplish with this revision:

- 1) To comprehensively update the form and instructions so they are more user-friendly for applicants.
- 2) To provide applicants the information they need in order to prepare complete and accurate Form I-765V applications, including providing specific information for certain filing categories, if needed.
- 3) To help applicants understand the required evidence and documentation they should submit with the Form I-765V to minimize requests for evidence and decrease delays in adjudication.
- 4) To more comprehensively address eligibility requirements for employment authorization.

Form I-765V

We have removed the Biographic data section from the form posted for 60-day public comment. That data is collected as part of a background examination when required to obtain the information that the applicant must provide for FBI Form FD-258 in advance of their biometrics appointment. The race and ethnicity questions are for identity verification purposes, are not intended to ascribe any characteristics to the applicant, and comply with the applicable OMB guidance, "Standards for the Classification of Federal Data on Race and Ethnicity." Nevertheless, because I-765V applicants are not subject to background checks, those questions have been removed.