

Appendix to Employment Eligibility Verification, Form I-9, Supporting Statement (Collection Number 1615-0047)

On November 24, 2015, USCIS published a 60-day information collection notice in the Federal Register at 80 FR 73200. USCIS received comments from **one-hundred and thirty-three (133)** commenters on the 60-day notice. The following is a summary of the comments and USCIS's responses:

**Favorable Comments**

1. **USCIS received more than twenty-five (25) favorable comments on the proposed revisions to Form I-9.** Commenters indicated they found the form to be clearer and better organized and that they appreciate USCIS's efforts to revise the form. They also indicated the proposed changes would be likely to reduce the number of technical errors on the form, particularly in Section 1. While some comments highlighting the length of the proposed instructions, commenters indicated that the expanded instructions provide detailed support when completing Form I-9.

**Purpose of the form and proposed revisions**

2. **USCIS received six (6) general comments about the purpose of the form and the revision process.**

2a. Three (3) commenters asked USCIS to explain the purpose and value of the form.

**Response:** Form I-9 is used for verifying the identity and employment authorization of individuals hired for employment in the United States. The law establishing this requirement is the Immigration Reform and Control Act, which was passed in 1986 for the purpose of removing the employment magnet that attracts individuals to reside in the United States illegally. Under this law, all U.S. employers must ensure proper completion of Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens.

2b. One (1) commenter stated that the Form I-9 isn't broken and doesn't need to be fixed.

**Response:** USCIS has developed this version of Form I-9 in response to requests from stakeholders for USCIS to make improvements to the form to help employees and employers avoid common mistakes and technical errors. The form has been designed with specific features and additional instructions to meet this goal.

2c. One (1) commenter stated that every revision to a required form is a new opportunity to trap an employer into a violation for "using the wrong form." The commenter requested USCIS finalize the form and stop making changes to it.

**Response:** USCIS was required to renew Form I-9 at this time pursuant to the requirements of the Paperwork Reduction Act because OMB three-year approval for the form was expiring. During these renewals, USCIS has the opportunity to make revisions to the form. During this renewal, USCIS redesigned the Form I-9 in a way that would help users avoid common technical errors that result in employer fines. The proposed form includes field validation, helper text and hover text that provide quick access to instructions during completion of the form, error messages and drop-down menus, all of which have been designed to support this goal. When the final form has been approved by OMB, USCIS will provide guidance regarding the revisions to the form and when employers must transition to using the revised form. USCIS provides this guidance through multiple communication channels. Employers and employees are invited to contact us with any questions about Form I-9:

- Employers: 888-464-4218 or 877-875-6028 (TTY)
- Employees: 888-897-7781 or 877-875-6025 (TTY)
- E-mail: I-9Central@dhs.gov

2d. One (1) commenter stated that too many companies require “this [Form I-9] information” from job applicants and that the companies fail to follow up after the applicant provides information. The commenter expresses concern that this could provide an avenue for fraud and suggests that the government should be involved with every organization that requires “this information.” Finally the commenter suggests that once a staffing service requires any personal information, that “the candidate [for employment] should be considered their employee until a written document releases all confidential information.”

**Response:** By law, all employers must ensure proper completion of Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. Employers are required to retain a completed Form I-9 for each employee during employment and must also retain Form I-9 after employment ends for a specific period as required by law. Forms I-9 may be inspected by authorized officials from Department of Homeland Security (DHS), Department of Justice (DOJ) or the Department of Labor (DOL). An employee is defined as “an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors or those engaged in casual domestic employment.” See 8 C.F.R. 274a.1(f). The question of how the staffing agency manages personal information for job applicants and employees is beyond the scope of this information collection revision.

### **Supporting Documents**

**3. One (1) commenter indicated he was unable to find any documents explaining the proposed revisions to Form I-9.**

**Response:** As part of the 60-day Federal Register notice, USCIS published the following supporting documents: the proposed Form I-9 and Instructions and tables of changes for the form and instructions. These documents are accessible through the eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

### **Table of Changes - Instructions**

**4. One (1) commenter noted a typo in the Table of Changes - "changed your 'first' name from Smith to Jones" should be "changed your 'last' name from Smith to Jones."**

**Response:** USCIS has revised this error.

### **Employer Responsibilities**

**5. One (1) commenter asked USCIS about the process for verifying refugees who may lack documentation, as well as the criteria for evaluating documents that may be provided by refugee populations.** The commenter asked how to tell the difference between legal documents and potentially fraudulent documents and how to process a background check for an individual with an unknown background.

**Response:** The commenter’s questions seek guidance regarding proper completion of Form I-9 and are, therefore, beyond the scope of the revisions proposed by USCIS. However, USCIS notes that Form I-9 is the process that employers must use to verify an employee's identity and employment

authorization and applies to any employee, regardless of citizenship or immigration status. This process does not include conducting background checks. When completing the Form I-9 process, the employee must be allowed to choose which document(s) he/she wants to present from the Form I-9 Lists of Acceptable Documents. In lieu of an acceptable document, an employee may present an acceptable receipt. A Form I-94, Arrival-Departure Record, with an unexpired refugee admission stamp is an acceptable receipt that establishes both employment authorization and identity for 90 days.

The employer should physically examine each original document(s) the employee presents to determine if it reasonably appears to be genuine and to relate to the person presenting it. If the document(s) presented reasonably appears on its face to be genuine and to relate to the employee presenting it, the employer must accept the document. If the document does not reasonably appear to be genuine or to relate to the person presenting it, the employer may reject the document and ask for another acceptable document. The employee must still be allowed to select the document he or she will present. If an employer suspects a document to be fraudulent, he or she may report the incident to ICE by calling toll-free at 1-866-DHS-2ICE.

For additional information regarding Form I-9 and acceptable documentation, please see USCIS's I-9 central Website ([www.uscis.gov/i-9central](http://www.uscis.gov/i-9central)) and the Handbook for Employers (M-274) (<https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>).

### **Additional Data Fields**

#### **6. USCIS received sixteen (16) comments requesting the addition of specific data fields.**

6a. One (1) commenter requested USCIS add a "Memo" and a "Second Reviewer Signature" field that could be used to document discrepancies and capture review information by an E-Verify/IMAGE employer. Four (4) commenters requested that USCIS add a field to capture the employee's last date worked or termination date and/or the date until which the employer must retain the Form I-9. One (1) commenter requested USCIS add an "Employment Authorization End Date" field to assist in calculating the date employment authorization ends for employees with temporary employment authorization, such as students or H1-B visa holders. One (1) commenter requested USCIS add a "comment" box/field to Page 8 [Section 3] for Employer Representatives completing re-verifications to add comments when using a receipt for 240-day or 90-day rule updates. Five (5) commenters requested USCIS add an E-Verify Case Number field.

**Response:** Due to the space limitations on the form, USCIS is not able to add additional fields as proposed by these commenters. In addition, the proposed data fields would be considered optional data fields, designed for the convenience of the employer rather than required for proper completion of employment eligibility verification. Because failure to fully complete Form I-9 may be considered by ICE when assessing employer violations, USCIS has made an effort to limit the number of optional data fields on the form, thereby minimizing confusion and the potential for inadvertent errors. However, to accommodate additional optional information that employers may want to record on Form I-9, USCIS has provided an "Additional Information" field in Section 2 where employers may note such information. For example, employers may write the E-Verify case number, employee termination date or form retention dates. More information related to this field is available on page 11 of the form instructions.

- 6b. One (1) commenter requested USCIS to add a field below List C in Section 2 to allow employers to record I-20 or DS-2019 information for employees who are F-1 or J-1 visa holders and choose to present and I-20 or DS-2019 with an I-94 as a List C document.

**Response:** Due to space limitations on the form and the small number of employees to which the extra lines would apply, USCIS will not accept this recommendation to add additional field to provide a specific space in List C for the I-20 or DS-2019. However, USCIS has created an “Additional Information” field on the form where employers may record information regarding additional documentation.

- 6c. Two (2) commenters requested USCIS add a field for notaries public or for the placement of a notary seal.

**Response:** USCIS declines to revise Form I-9 to include special fields for notary publics or notary public seals. A notary public who has been designated as an authorized representative for an employer is not acting in the capacity of a notary public and therefore special fields for notary public are not necessary. When acting as an authorized representative, the notary public should not provide a notary seal on Form I-9. All of the fields required for an authorized representative of the employer to complete Form I-9 are already provided.

- 6d. Two (2) commenters requested USCIS to add guidance to the form I-9 instructions specific to notaries public. One commenter requested that the guidance include information specific to the California Business and Professionals Code that prohibits notaries, even in a non-notarial capacity, from completing or making a certification on Form I-9.

**Response:** USCIS is unable to comment on or provide guidance regarding state-enacted laws and declines to add specific instructions for notaries public in the proposed form instructions. No special instructions apply to notary publics acting as authorized representatives on the employer’s behalf when completing Forms I-9. An employer may designate any individual to act as the employer’s representative for Form I-9 purposes. An authorized representative must complete Form I-9 applying the same rules and procedures as the employer.

- 6e. One (1) commenter requested USCIS to add an additional data field in Section 3 to capture the EAD and I-20 document information for employees who are F-1 nonimmigrants under a cap-gap extension of status and employment authorization based on their request to change to H-1B nonimmigrant status, and who need to be reverified.

**Response:** Due to space limitations on the form, and considering that the majority of employers will rarely be presented with more than one document by their employees for Section 3 completion, USCIS is declining to revise the form to provide for an additional document area in Section 3. However, for those employers who are presented with more than one document, USCIS has provided an “Additional Information” field where employers may note additional document information.

### **Changes to Form I-9 Requirements**

- 7. Eight (8) commenters requested USCIS to make changes to Form I-9 requirements.**

7a. Two (2) commenters requested USCIS give employers more time to complete Form I-9 by extending the three-day rule. One of the commenters suggested USCIS consider a five-day period. One (1) commenter suggested USCIS should change the retention period for Form I-9 from the current three years after the date of hire or 1 year after the date of termination, whichever is later, to 10 years from the date of termination. The commenter indicated the change would support enforcement efforts by allowing investigators to establish pattern and practice violations and increase the likelihood that a company will face fines for Form I-9 errors. One (1) commenter requested USCIS change Form I-9 requirements to allow individuals who are only able to provide their name, address and phone number as identification to complete Form I-9. One (1) commenter suggested USCIS should increase fines for paperwork violations to \$500-\$5,000 to send a message to employers that failure to comply with I-9 requirements will be very costly, even for first-time offenders. One (1) commenter suggested that USCIS should require employers to make clear, legible, and viewable copies of all documents submitted by employees. One (1) commenter suggested USCIS should eliminate any ambiguity in Form I-9 by changing Form I-9 requirements to ask questions that distinguish between U.S. citizens and noncitizens. The commenter also suggested that USCIS require additional information of noncitizens, including the date on which the noncitizen obtained his or her immigration status or employment authorization, and that noncitizens should be required to provide documents proving the status they select on Form I-9 rather than providing any appropriate document or combination of documents from the Lists of Acceptable Documents. One (1) commenter suggested USCIS require employers to request specific immigration documents for employees who select "A lawful permanent resident" as their status in Section 1. The commenter indicated this would not be a discriminatory request because the employee has already indicated he or she possesses a green card. One (1) commenter recommended that USCIS revise Form I-9 regulations to allow employees in a non-immigrant status who are authorized to work for a specific employer to present a Notice of Action (Form I-797) showing the employee has filed an Application to Register Permanent Residence or Adjust Status (Form I-485) as an acceptable receipt which the employee may present during reverification. The receipt would extend the employee's previous employment authorization for a period of up to 240 days. One (1) commenter states that unspecified "classes of employees" have been omitted from Form I-9 regulations at 8 CFR §274.a.12 and requests USCIS engage in rulemaking to add these classes of employees to the regulations and make corresponding updates to the Lists of Acceptable Documents at 8 CFR §274a.2(b)(1)(v)(A), (B), and (C).

**Response:** USCIS is unable to adopt any of these suggestions as they are beyond the scope of this information collection revision and would require statutory or regulatory changes.

7b. One (1) commenter requested that USCIS make the Social Security Card a required document rather than an optional document in order to reduce Social Security number errors. The commenter also requested that USCIS allow only REAL ID compliant driver's licenses or IDs that do not bear markings indicating that they may not be used for federal purposes for Form I-9. The commenter indicated that states which are not compliant with REAL ID have serious problems with fraudulent applications and other states are issuing licenses and IDs to undocumented individuals. Finally, the commenter requested USCIS add a pop-up to Form I-9 and update the form instructions and guidance to indicate the changes.

**Response:** USCIS has determined that it will not adopt the commenter's suggestions as they are beyond the scope of this information collection revision and would require changes to applicable laws and regulations. Providing a Social Security number is mandatory only for the employees of E-

Verify participants. The majority of employers do not currently use E-Verify. Therefore, the majority of employees do not need to provide their Social Security numbers to complete the Form I-9 process.

In addition, a driver's license that is Real ID compliant is not required to be acceptable for Form I-9 purposes. Under the Immigration and Nationality Act (INA), an acceptable State-issued driver's license or identity document is one that includes a photograph or information such as name, date of birth, gender, height, eye color and address is acceptable as an identity document for Form I-9 purposes.

- 7c. One (1) commenter requested that USCIS revise the language in the List of Acceptable Documents, List B #1 and #2 to remove the text "or information such as" and replace it with a comma.

**Response:** USCIS declines to accept this suggestion. The suggestion would result in requiring that these two documents (List B #1, State-issued driver's license/ID card; and List B #2, ID card issued by a government agency) contain both a photograph and "name, date of birth, gender, height, eye color, and address" whereas currently, such documents may contain either a photograph or identifying information. Changing the requirements for acceptable identity documentation as suggested is outside the scope of this information collection revision. Moreover, the language "or information such as" is drawn directly from statutory and regulatory requirements which cannot be changed through an information collection revision.

- 7c. One (1) commenter recommended USCIS mandate E-Verify employers attach printouts of the E-Verify case results to the employee's Form I-9.

**Response:** USCIS declines to adopt this suggestion. Adding requirements for E-Verify employers is beyond the scope of this notice. In addition, companies that are enrolled in E-Verify are currently required to print and attach the E-Verify Case Details report or note the E-Verify case number on Form I-9. Requiring every employer to print and attach the case details report would be unduly burdensome.

### **Anti-Discrimination Notice**

#### **8. USCIS received two (2) comments requesting changes to the Anti-Discrimination Notice.**

- 8a. One (1) commenter recommended USCIS to make the following changes:
- Revise the second sentence to read, "Employers CANNOT specify which document(s) the employee may present to establish employment authorization."
  - Add the words "or continue to hire" after "The refusal to hire" in the third sentence.
  - Revise the third sentence to use "the" instead of "an" before "employer" and "employee" and place a parentheses around the "s" in "documents"
  - In the fourth sentence, add the text "or continue to employ" after the word "hire"

**Response:** USCIS agrees with the commenter's suggestions and will incorporate the revisions to the second, third and fourth sentences of the Anti-Discrimination Notice.

- 8b. One (1) commenter recommended USCIS add language to the Anti-Discrimination Notice to address the receipt rule and the E-Verify requirement that List B identity documents presented for Form I-9 must contain a photograph. The commenter proposed the following language to address the receipt rule:

- Present the replacement document within 90 days of the hire or, in the case of reverification, the date employment authorization expires.
- Present the Form I-551 by the expiration date of the “Temporary 1-551” stamp or, if the stamp has no expiration date, within one year from the issuance date of the arrival portion of the Form 1-94 or Form I-94A.
- Present, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form 1-766, or a Social Security account number card that contains no employment restrictions and other document described under paragraph (b)(1)(v)(B) of this section.

**Response:** USCIS will not accept the recommendation to extend the Anti-Discrimination Notice to include information about the receipt rule or E-Verify List B photo requirement. The Anti-Discrimination Notice applies to all employees; however, the receipt rule and E-Verify List B photo requirements only apply to certain employees. The receipt rule only applies to employees who do not yet have a document from the List of Acceptable Documents to complete the form. The photo requirement only applies to employees who are employed by a company that participates in E-Verify. USCIS provides information about the receipt rule and E-Verify List B photo requirement in the instructions to the Form I-9 and Handbook for Employers, M-274, and on the USCIS I-9 Central website. Including information about these items to the Anti-Discrimination notice, which is applicable to all employers and employees, is likely to cause confusion.

### **Employee Last Name Field**

#### **9. USCIS received two (2) comments about the Employee Last Name Field.**

- 9a. Two (2) commenters provided feedback about the instructions for completing the employee Last Name (Family Name) and First Name (Given Name) fields when the employee has only one name. The commenters expressed concern over the instructions directing the employee to enter a single name in the last name field and write “Unknown” in the first name field. The commenters stated their concerns stem, in part, from the inconsistent ways federal agencies treat individuals with single names. One of the commenters also expressed concerns for the employee who believes his or her single name is a first name, but then enters the name in the last name field in accordance with the guidance and then signs Form I-9 attesting under penalty of perjury to the accuracy of the information on the form. The second commenter also expressed concerns about whether the guidance directing an employee to enter the word “Unknown” in the first name field would increase the risk of the employee receiving an E-Verify tentative nonconfirmation.

**Response:** While USCIS appreciates the commenter’s concerns, USCIS has determined that instituting a standard process for entering a single name in the Last Name field is necessary to meet the goal of reducing errors in Form I-9 completion and confusion. USCIS has chosen this process because it will facilitate review of Forms I-9 in connection with inspections. Also, USCIS has determined, based on the systems E-Verify checks, that the use of the word Unknown in the First Name field on Form I-9, will generate the fewest numbers of E-Verify tentative nonconfirmations for individuals with only one name.

### **Other Names Used Field**

**10. USCIS received thirteen (13) comments regarding the “Other Names Used” field and the proposal to change the field name to “Other Last Names Used.”**

10a. Four (4) commenters supported the change from “Other Names Used” to “Other Last Names Used,” as it will mitigate issues with people entering nicknames in the field, will reduce overall burden, and protect against unnecessary disclosure of personal information that could contribute to employment discrimination. Of these four commenters, one (1) indicated that while the change was positive and strongly supported, it does not go far enough. The commenter requested that USCIS change the field to an optional field. Another asked USCIS to consider whether the purpose of the field (to clarify questions about documents and information when names have changed), will be met if the field is limited only to last names. The commenter noted that it is not uncommon for people to have changed (or used different) first names and in some cultures, a first name is changed upon marriage. This commenter also asked USCIS to provide guidance for how multiple last names (e.g., multiple divorces and remarriage) should be entered into the field.

**Response:** USCIS appreciates the public’s support of the change being made to the “Other Names Used” field to “Other Last Names Used.” The change was made to avoid possible discrimination issues and to protect the privacy of transgender and other individuals who have changed their first names. USCIS believes that the change from “Other Names Used” to “Other Last Names Used” strikes an effective balance of collecting information that may be useful and necessary to clarify document or identity information, while still protecting the privacy of an employee. USCIS does not agree, however, that this field should be made optional as it is necessary for proper identity verification. To remove the field would undermine the purpose of the form. USCIS will provide additional guidance on entering names after OMB approves the proposed information collection.

Form I-9 information should never be published or stored in any publically accessible system. USCIS expects employers to treat Forms I-9 as private information that can only be accessed by authorized individuals; however employees are free to ask that employers take extra care to secure their Forms I-9.

10b. Seven (7) commenters suggested or provided feedback on suggestions for USCIS to consider alternate labels such as “Other Legal Names Used,” “Birth Names,” “Birth Last Names,” for this field or that USCIS consider limiting use of the “Other Last Names Used” field to situations where an employee provides identity documentation or a Social Security card showing a name that does not match the name the employee listed in Section 1 of Form I-9. One of the commenters also suggested that other names could be listed in the “Additional Information” field.

**Response:** USCIS appreciates the commenters’ suggestions for other possible field labels; however USCIS does not agree that changing “Other Last Names Used” to any of the other suggestions would be beneficial, but instead would overly complicate the Form I-9. USCIS changed the “Other Names Used” field to “Other Last Names Used” to reduce the possibility of discrimination and to protect the privacy of transgender and protected individuals, such as victims of crime, who may have changed their first names. The other labels suggested by commenters, particularly “Birth Names” and “Other Legal Names Used” have the same potential to create privacy and discrimination issues as “Other Names Used,” because the field labels would potentially capture both first and last names. “Birth Last Names” is too limiting as it would potentially eliminate any other last names used from birth through current employment, and would potentially defeat the purpose of the field. Limiting the field only to specific circumstances relating to documents would be potentially confusing to employers and



employees and may result in unnecessary document requests, over-documentation or potential discrimination. While an employer may make notes in the additional information field regarding name or document issues, the employer is strongly encouraged to first use the provided fields as intended before moving to the “Additional Information” field.

10c. One (1) commenter suggested that USCIS should NOT limit this field to other last names. The commenter indicated they have previously used the field when an employee has provided more than three names. An additional commenter (1) recommended that if USCIS were to implement this suggestion, that USCIS provide guidance that the field would be optional and that employees concerned about privacy or discrimination should not be required to provide information about additional names.

**Response:** USCIS does not agree with the proposed suggestions. An employee should enter his or her full legal name using the “Last Name,” “First Name” and “Middle Initial” fields as applicable. Multiple names can be entered into the “Last Name” and “First Name” fields. The change USCIS has made to limit the field to “Other Last Names Used” addresses issues of privacy and potential discrimination for transgender or other individuals who have changed their first name. USCIS has determined that “Other Last Names Used” must remain a mandatory field for identity verification purposes.

10d. One (1) commenter requested that USCIS implement functionality to automatically add a slash (/) when NA is entered in the Other Names Used Field. The commenter indicated that leaving out the slash is a common mistake in this field.

**Response:** This recommendation cannot be applied to this field because the software used to develop the form is unable to distinguish between the last name “Na,” which would be properly entered in this field without a slash and “NA,” meaning “not applicable.”

### **Employee Address Field**

#### **11. USCIS received ten (10) comments regarding the Section 1 Employee Address field.**

11a. Five (5) commenters have requested USCIS to change Form I-9 requirements to allow employees who are part of a state address confidentiality or “Safe-at-Home” program to enter a P.O. Box in the Section 1 Employee Address field rather than a physical address.

**Response:** In response to the commenters’ concerns, USCIS is removing from the instructions and Section 1 helper/hover text the language, “Do not provide a Post Office Box (P.O. Box).”

11b. One (1) commenter requested USCIS to include the notation “No P.O. Box” after the street number and name so that the field is visible to employers completing a paper form.

**Response:** USCIS will not add a notation indicating P.O. Boxes are not acceptable to the Section 1 of the paper version of Form I-9. In response to the commenters’ concerns, USCIS has removed from the instructions and Section 1 helper/hover text the language, “Do not provide a Post Office Box (P.O. Box).”

11c. Three (3) commenters expressed concerns over the guidance the form provides regarding use of a P.O. Box in the Employee Address field. Although all three commenters identified that USCIS does

provide instructions precluding use of a P.O. Box and one commenter commended USCIS for including this information in hover text, all three commenters pointed out that there is not an automatic message when the employee enters a P.O. Box in the address field and an employee would have to know to look for and be able to find the instructions to benefit from them. One of the commenters also noted that this issue occurs with some other fields on the form.

**Response:** In response to the commenters' concerns, USCIS has removed from the instructions and Section 1 helper/hover text the language, "Do not provide a Post Office Box (P.O. Box)," so this type of automatic message is not necessary.

11d. Two (2) commenters discussed how the employee's address information that is entered onto Form I-9 is used. One (1) of the commenters questioned whether the address information field is mandatory or if it may be left blank.

**Response:** The Employee Address field is a key component of the identity verification portion of the Form I-9 process and therefore, must be a mandatory field that must be completed. Moreover, it is standard identity information requested on most USCIS forms.

11e. One (1) commenter requested USCIS to clarify the term "residence" as it relates to the information an employee should enter in the Section 1 Employee Address field. The commenter indicates that employees may have different understandings of what "residence" means which could result in the employee entering incorrect information in this field. The commenter recommends USCIS revise the guidance to state that the employee should list the address of where they are staying at the time that the I-9 is completed, even if it is temporary and clarify that the address of the employer should not be listed in this field.

**Response:** As described in the form instructions, the employee must enter the employee's actual residence address or, if the employee does not have an actual residence address, some description of the employee's residence by its location, whether by reference to a place, or to the relevant city, town or post office. While USCIS does not believe further clarification is appropriate for the form instructions, USCIS will add additional guidance to the M-274 and I-9 Central regarding this issue.

### **Date of Birth Field**

**12. Three (3) commenters provided feedback about the Section 1 date of birth field.** One (1) commenter requested USCIS to break out the date of birth field into three fields: Month, Day, Year. Two (2) additional commenters suggested that USCIS should add functionality to the birth date field to prevent employees from entering the date they complete the form rather than their birthdate, and to flag invalid dates of birth.

**Response:** USCIS will not accept the recommendation to break out the date of birth field into three fields. The form was designed to give users multiple ways to enter dates on Form I-9. Users may enter numeric dates, or they may use the drop-down calendar as necessary. Users are never required to enter letters for the month in any date field. USCIS agrees that the form should not allow the date the form is completed to be entered in the Date of Birth field. USCIS has revised the field to prevent entry of "today's" date.

USCIS notes that the form is designed to recognize invalid dates of birth, such as February 30th or March 32nd. Today's date, dates in the future or dates that are more than 120 years in the past are not valid.

### **Social Security Number Field**

#### **13. USCIS received several comments regarding the Social Security number field in Section 1 of the form.**

13a. One (1) commenter requested USCIS add an “Applied for” check box which would be used by E-Verify employers to indicate that a newly hired employee does not yet have a Social Security Number. The commenter indicated this would alleviate confusion about whether and employer should complete Form I-9 for an individual who does not yet have a Social Security Number.

**Response:** USCIS will not add an “Applied for” checkbox to the Social Security Number field. Only employees of E-Verify participants are required to provide their Social Security numbers or attest that they have applied for one. Adding this checkbox would not be helpful to the majority of employees that are not required to provide a Social Security number or attest that they have applied for one on Form I-9.

13b. One (1) commenter requested that USCIS:

- Provide individual boxes for each digit of the Social Security number and to indicate on the face of the form that providing a Social Security number is voluntary rather than requiring employers to write “Applied for – In Process” on the form after printing;
- Include a warning for E-Verify employers that the Social Security Number field must be completed; and
- Retain the previous guidance to leave the field blank until an employee receives a Social Security number.

If however, USCIS continues with the proposed change, the commenter requested USCIS provide updated guidance to employers about how to update the “Applied for – In Process” notation once the employee’s Social Security number has been received.

**Response:** USCIS has accepted the recommendation to provide individual boxes for each digit of the Social Security number when a blank form is printed. Further, when the form is completed on a computer, then printed, any Social Security number entered will be formatted into individual boxes.

USCIS will not accept the recommendation to state on the face of the form that the Social Security number is voluntary. While the field is voluntary for the majority of employees, employees whose employer participates in E-Verify are required to provide their Social Security number. Adding the word “voluntary” to the face of the form or incorporating a warning will confuse both groups of employees. In addition, leaving the Social Security number blank is not an error if the employer is not an E-Verify employer.

USCIS agrees that the requirement to add in the “Applied for – In Process” notation is overly burdensome. Therefore, USCIS has decided to remove this requirement.

13c. One (1) commenter requested USCIS to add a warning to the Social Security Number field in Section 1 that would be triggered when the employee validates the form. The warning would notify the employee that he/she must provide a Social Security Number if their employer participates in E-Verify.

**Response:** USCIS will not accept the recommendation to add the proposed warning to the Social Security Number field. Currently, a majority of employers do not use E-Verify and USCIS is concerned that addition of a warning message to all employees that is specific to E-Verify would be

confusing for employees whose employers do not use E-Verify. USCIS also believes that the helper and hover text that have been incorporated into the form will make the information available during form completion, but are not as likely to cause confusion as a pop-up warning.

- 13d. Two (2) commenters provided feedback about the Section 1 Social Security Number field. One of the commenters requested that USCIS clarify whether the Social Security Number field is required in Section 1 of the form and if there are any compliance issues if the employee chooses not to complete the field on the form.

**Response:** The Social Security Number field on Form I-9 is not a mandatory field, unless the employee works for an E-Verify employer. USCIS has provided instructions for the Social Security Number field and provided helper text for this field which may be activated by clicking on the question mark in the field.

The instructions state that “Providing your Social Security Number on Form I-9 is voluntary unless your employer participates in E-Verify.” Additionally, employers who are using E-Verify must have the employee’s SSN to create a case in E-Verify otherwise the employer will be in violation of the Memorandum of Understanding for Employers (MOU) and will not be in compliance with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Sec. 403(a). The employer is responsible for ensuring that the employee has filled out Form I-9 correctly.

#### **E-mail and Telephone Number Fields**

#### **14. USCIS received ten (10) comments regarding the E-mail and Telephone Fields in Section 1.**

- 14a. Four (4) commenters requested USCIS add the word “optional” to the data field labels for the Employee E-mail and Telephone fields. In addition, one (1) commenter suggested USCIS reformat Section 1 to accommodate the addition of “optional” by moving the state and ZIP code fields to another line and shrinking the size of the QR code.

**Response:** While USCIS appreciates the commenters’ suggestions for reformatting Section 1 and adding “optional” to the E-mail and telephone number fields, USCIS is unable to accept the suggestions. An employee must complete the E-mail Address and Telephone Number fields. The employee may choose whether to complete the E-mail Address and Telephone Number fields by entering the requested information or by entering N/A but may not leave the field blank. Because the employee must complete the fields, adding “optional” to these fields would confuse employees and increase the risk of employee error in completing these fields.

- 14b. One (1) commenter requested USCIS to reconsider requiring employees to enter N/A in the voluntary E-mail Address and Telephone Number fields in Section 1. The commenter indicated that because the fields are voluntary, entering N/A is unduly burdensome. This commenter along with one other commenter also asked USCIS to clarify the sentence “The employer’s e-mail address should not be used.” in the instructions for this field. The commenter indicates the sentence is confusing because it seems to suggest that the employee must use a personal e-mail address rather than a work e-mail when completing the form. The commenter also asks USCIS to include field validation functionality to prevent false phone numbers from being entered into the form.

**Response:** USCIS does not agree that entering “N/A” is overly burdensome and will not adopt the commenter’s suggestion to remove the requirement. The employee must complete each field with the requested information or N/A because the form will not validate unless the field has been completed.

For those not completing Form I-9 using a computer, entering “N/A” ensures that the form is fully completed.

USCIS has modified the language to clarify that the employee should enter their own personal or work e-mail address in this field and not their employer’s e-mail address. Some employers were entering their own e-mail addresses in this field and therefore, E-Verify was not able to send notifications to employees as intended.

Form I-9 uses an Adobe Acrobat platform and there are limits to the capability of the scripts that were used to design the form. While USCIS has been able to ensure only numbers are entered in this field, the scripts are not able to identify incorrect telephone numbers.

- 14c. One (1) commenter recommended USCIS to remove the instructions that state “The employer’s e-mail address should not be entered in this field” and replaced it with: “You should not provide the e-mail address of another individual, such as your employer.” The language as proposed could be interpreted to mean that the employee should not provide an e-mail address that is under the employer’s domain and issued to the employee pursuant to his or her employment. If that interpretation was, in fact, the intent of these instructions, the language should be revised to clarify the same.

**Response:** USCIS agrees and has incorporated this change.

- 14d. Two (2) commenters stated that the e-mail address and telephone number are not necessary. One (1) of the commenters also indicated that employees who receive an e-mail from USCIS regarding a USCIS or SSA tentative nonconfirmation are confused by the e-mail and that E-Verify doesn’t currently collect the telephone number.

**Response:** USCIS believes that the E-mail Address and Telephone Number fields are necessary to retain on Form I-9. USCIS’s goal in collecting the e-mail address is to assist employees who work for E-Verify employers by providing E-Verify notices and information directly to the employee. While employees are not required to provide their e-mail address or telephone number, if an employee provides the e-mail address and the employer is an E-Verify participant, the employer is required to enter the e-mail address provided into E-Verify. The employee’s telephone number is not currently collected in E-Verify but may be used for audit purposes. USCIS understands the commenters’ concerns regarding the potential for employee confusion upon receipt of an e-mail from E-Verify, and will consider reviewing its e-mail to minimize this confusion.

- 14e. Two (2) commenters requested USCIS to remove the e-mail address from Section 1 of the Form I-9. One (1) commenter requested removal of the field because the field is not needed to verify employment eligibility and may seem discriminatory. The other commenter requested removal because not all employees have or wish to provide an e-mail address. This commenter also suggested USCIS reformat Section 1 to move the e-mail address to the end of the Employee Information section.

**Response:** USCIS will not adopt the suggestion to remove or relocate the E-mail Address field. The instructions make it clear that the E-mail Address field is not mandatory. While employees are not required to provide this information, USCIS feels that the E-mail Address field is helpful information to include on the form. If an employee provides an e-mail address and the employer is an E-Verify participant, the employer enters the employee’s e-mail address into E-Verify. USCIS’s goal in

collecting the e-mail address is to assist employees who work for E-Verify employers by providing E-Verify notices and information directly to the employee.

USCIS believes that relocating the field for the employee's e-mail address to the lower attestation portion of Section 1 will create confusion. The field is optional and employees who do not wish to provide an e-mail address or do not have one may enter N/A in this field.

### **Employee Signature Field**

#### **15. USCIS received two (2) comments requesting a change to the Employee Signature Field.**

15a. Two (2) commenters requested USCIS add the word "signed" to the date field associated with the employee's signature. The commenters indicated the addition would prevent employees from entering an incorrect date, such as a birthdate in this field.

**Response:** USCIS will not accept the recommendation, as the recommendation may open the door to backdating or completion of the date field on a day other than the day of signature.

### **Preparer and/or Translator Certification**

#### **16. USCIS received nineteen (19) comments regarding the Preparer and/or Translator Certification.**

16a. Nine (9) commenters indicated that the "No Preparer or Translator" check box is unnecessary, confusing and/or likely to be overlooked by employees who complete Section 1 themselves. The commenters highlighted the fact that a significant number of employees do not use a preparer or translator, much less multiple preparers or translators, that employees may believe their portion of Form I-9 is complete when they sign Section 1 and that the location of the field, after the employee's signature, will contribute to employees overlooking the field. One of these commenters also indicates that while the detailed instructions indicate that the "No Preparer or Translator" box should be checked if the employee does not use a Preparer or Translator, that not many people will read the detailed instructions. Another of the commenter requested USCIS clarify whether the "No Preparer or Translator" field is required. Two of the commenters also suggested that if USCIS retains the check boxes, that the format of the boxes should be changed to radio buttons that default to the "No Preparer or Translator" selection and that the certification should remain hidden unless the employee checks the box that indicates one or more preparers or translators were use.

**Response:** USCIS does not agree that the "No Preparer or Translator" checkbox is unnecessary. The requirement that the employee make an affirmative statement regarding his or her use of preparers and/or translators is intended to reduce errors and burden caused by incomplete fields on Form I-9. To clarify the employee and preparer/translator's responsibilities, USCIS has revised the "No Preparer or Translator" checkbox to read "I did not use a preparer or translator" and "A preparer or translator assisted the employee in completing Section 1." USCIS has rearranged the instructions on the face of the form to better clarify each party's role in completing this section, and revised the instructions to reflect these changes. Employees are only required to select the "I did not use a preparer or translator" checkbox to indicate that he or she did not use a preparer or translator, and are not required to enter N/A in each field of this area. Because of the changes that USCIS has made to this section, USCIS will not accept the recommendation to change the check boxes in the Preparer/Translator Certification field to radio buttons.

16b. Three (3) commenters requested USCIS clarify and/or provide further guidance regarding the new penalties for a preparer or translator. One commenter indicates that a preparer or translator's failure to

sign the form is currently a paperwork violation. However, the new proposed instruction would make it a criminal violation. The commenter understands that the purpose of the new warning is to encourage preparers and translators to take their job seriously, however the commenter is concerned that the change may discourage or prevent individuals from acting as preparers and translators due to potential liabilities. The commenter also believes that this change may require an update to the Form I-9 regulation. Another commenter questioned the legal basis for requiring a sworn declaration, verification, certificate, statement, oath, or affidavit from a preparer or translator and indicated, 28 USC §1746, relating to unsworn declarations under penalty of perjury, is not applicable and should not be referenced in the proposed instructions. The commenter also questioned the basis for a criminal penalty for failing to sign the Preparer and/or Translator Certification, noting that neither INA §274A nor the document fraud provisions at INA §274C impose such a requirement, nor does 8 CFR §274a.2(b).

**Response:** USCIS did not intend for the proposed change to the preparer/translator warning to increase the level of violation for preparers/translators or instigate a regulatory change. The warning was not a proposed revision to Form I-9, but instead has always been a part of the Preparer/Translator Certification attestation. For general authority, see 18 U.S.C. 1621, as well as 18 U.S.C. 1001 and 1546.

16c. Two (2) commenters request USCIS to clarify guidance regarding the address the preparer/translator must provide when completing the Preparer and/or Translator Certification. The commenter asks USCIS to reconsider requiring the preparer and/or translator to provide his or her residential address. The commenter suggests that USCIS allow the preparer and/or translator to provide their employer's address if they are working on behalf of the employer. The commenter reasons that an individual may not wish to disclose their personal address and that requiring it may be a disincentive for individuals to act as preparers and/or translators.

**Response:** USCIS does not accept this recommendation. The preparer or translator who assists the employee in completing Section 1 should provide his or her residential address, because Section 1 relates to individuals and not businesses, and DHS prefers that preparers' and/or translators' information is consistently documented on the form.

16d. Two (2) commenters stated that the current Preparer and/or Translator Certification should not be revised. The commenters oppose the additional burden the proposed change would place on the employee.

**Response:** USCIS does not accept the recommendations. The checkboxes in the Preparer and/or Translator Certification are used to affirm whether a preparer and/or translator assisted with completion of the form. The checkboxes also control functionality that is triggered when the checkbox for multiple preparers or translators are used which provides additional certification fields that may be completed and attached to the form. This page is also available to be printed for manual completion. To clarify that this extra page need only be printed out when required, USCIS has created a separate Supplement document. The checkboxes are designed to reduce burden and technical errors by ensuring that the certification is properly completed and accurately reflects whether a preparer or translator was used and to provide the employee with ready-made additional certifications associated with the form, rather than requiring the employee to print multiple copies of Section 1 to capture additional preparer/translator information.

16e. One (1) commenter requested that USCIS Add the check boxes for “No Preparer or Translator,” “One Preparer or Translator,” and “Multiple Preparers or Translators” found in the Smart PDF to the

paper version. The commenter also asks USCIS to clarify the instructions regarding whether the “No Preparer and/or Translator” box must be chosen when the paper version of the form is completed and suggests that USCIS not require the box to be checked if the paper version of the form is used.

**Response:** The checkboxes for indicating whether and how many preparers and/or translators used are available whether Section 1 is completed on paper or using a computer. USCIS agrees that the area and instructions should more clearly reflect the employee and preparer/translator responsibilities in the Preparer and/or Translator Certification area. USCIS has clarified that the employee completing the form on paper must select one of the checkboxes and complete the fields of the Preparer and/or Translator Certification as appropriate. However, as explained in USCIS’s response in 16a, USCIS disagrees that those using the paper version of the form should not be required to check the box, “No Preparer and/or Translator” if none was used and is retaining this requirement for paper users as well as those completing the form using a computer.

16f. One (1) commenter suggested that USCIS should only require one of the checkboxes to be chosen if some part of the Preparer/Translator Certification is completed.

**Response:** USCIS does not agree that the Preparer and/or Translator checkboxes should only be required if information is entered in these fields. The requirement that the employee make an affirmative statement regarding his or her use of preparers and/or translators is intended to reduce errors and burden caused by incomplete fields on Form I-9. USCIS no longer requires employees to also enter N/A in each field of this area if he or she did not use a preparer and/or translator.

16g. One (1) commenter indicated that if the box for “One Preparer and/or Translator” or “Multiple Preparers and/or Translators” is checked that it is not possible to complete the Preparer and/or Translator Certification. Instead this section must be completed manually after the form is printed. The commenter suggested that USCIS enable the section of the form to be filled in on the computer.

**Response:** This area of the form has been designed to require a checkbox selection to enter information in the associated fields. Once the user makes a selection, the fields are then able to be filled in on a computer. Only the Signature and Date fields must be entered manually once the form is printed. In the case of the Preparer and/or Translator Certification, a preparer and/or translator checks the box and assists the employee in completing Section 1, then prints the form. The employee and preparer/translator will sign and date the form in their respective areas on the printed form.

#### **Employee Citizenship Status Field – Section 2**

**17. USCIS received seven (7) comments regarding the Employee Citizenship Status field in Section 2.**

17a. Five (5) commenters expressed confusion at the purpose of the Employee Citizenship Status field in Section 2 and asked USCIS to clarify the purpose of the field. Three (3) of these commenters also expressed concern about the fact that the field is required to be completed when the form is completed online, but not when the form is completed on paper. These commenters also suggested that USCIS remove the field because its purpose is unclear.

**Response:** USCIS will not adopt the suggestion to change or remove the Employee Citizenship Status drop-down field in Section 2. However, USCIS has changed the instructions to require that the field be completed when the form is completed on paper. USCIS also has renamed the field



Citizenship/Immigration Status” to better correlate with the related selections employees may make in Section 1. When the form is completed on a computer, the Citizenship/Immigration Status box in Section 2 activates the enhanced features of Section 2. This feature allows the form to present the user with documents that relate specifically to his or her citizenship status. If the employer and employee fill in the form during a single session, the Citizenship/Immigration Status will be populated with the number of the citizenship or immigration status the employee selected in Section 1. If, however, the employer is completing Section 2 at a different time than the employee fills in Section 1, the employer will need to enter the number that corresponds to the citizenship or immigration status the employee chose in Section 1 to activate some of the enhanced features of Section 2. Given that all employers are required to review the employee’s completed Section 1 to ensure it is properly completed, USCIS does not believe that retention of the Citizenship/Immigration Status field is overly burdensome. USCIS chose this design to reduce document-related errors when completing Form I-9.

- 17b. Three (3) commenters provided feedback about the display of information in the Employee Citizenship Status box. One commenter asked how information will be displayed and whether the drop-down menu will be available for rehires. Two commenters suggested that the title of the citizenship or immigration status be used rather than numbers in this field.

**Response:** USCIS chose to represent the Citizenship/Immigration Status field with numbers rather than with the actual statuses so that it is clear on the form that the employer is not attesting to the employee’s immigration or citizenship status by completing this field. When the form is filled out on a computer, it will display a drop-down menu with the numbers 1-4. These numbers correlate to the statuses listed in Section 1. Employers are required to enter the number of the citizenship status the employee selected in Section one 1 whether the form is manually completed or completed online. There will not be a drop-down menu for rehires as this is not necessary information for inclusion in Section 3. There are no smart features in Section 3 of the form that require activation.

- 17c. One (1) commenter requested USCIS to add functionality to the form to prevent an employee from failing to select a citizenship or immigration category in Section 1. The commenter suggested USCIS make the fields appear red until the section is properly completed.

**Response:** USCIS will not implement the suggestion. USCIS has incorporated features in the form that are designed to ensure that the form is properly completed. The employee is required to complete the attestation in Section 1 and the employer is required to verify that Section 1 has been filled out correctly. This form has buttons located at the bottom of Sections 1-3 called Click to Finish. These buttons will check the form for completeness. If the attestation section has not been completed a message will pop up stating “You must make a citizenship status selection.” Additionally, the attestation section will be highlighted in red to indicate that the section needs to be completed.

- 17d. One (1) commenter requested USCIS eliminate the “Employee Citizenship Status Field” on page 2 of the form or, if USCIS will not eliminate the field, that USCIS update the instructions for the field as follows: the instructions to Section 2 should indicate that the employee information at the top of Section 2 will prepopulate based on the information entered by the employee in Section 1. Second, the pop-up instructions for the citizenship status field indicate that the field should be left blank for reverifications and rehires, but this may not be clear to users of the paper form.

The commenter also requests that USCIS provide clear guidance about which items in the employee information section may lead to fines if left incomplete or if completed in accordance with instructions that conflict with the fillable form.

**Response:** USCIS will not accept this recommendation to eliminate the Citizenship/Immigration Status field. USCIS designed this feature of the proposed form to help reduce document-related errors when completing Form I-9. Because the form feature that prepopulates the Citizenship/Immigration Status field is only available when the form is completed on a computer, USCIS has revised the instructions to include additional information about this field. USCIS also has included more technically specific information on this function in the helper text related to this field. Additionally, the form instructions have been updated to indicate the field should be left blank when Section 3 of the form is completed.

If the employee and the employer complete Sections 1 and Sections 2 separately, the employer can choose the number of the box the employee selected in Section 1 from the available drop-down in this field to activate the drop-down menus. This ensures that the form can be completed either at the same time or at separate times, depending on the employer's preference.

While this feature is more useful to those who complete Form I-9 using a computer, all employers are required to review the employee's completed Section 1 and record the number of the box the employee selected in Section 1.

USCIS has worked closely with all our components and partners agencies, including ICE/HSI and the Office of Special Counsel, to develop this form. Regarding potential fines for failure to complete the Citizenship/Immigration Status field, USCIS believes that information regarding fines is not appropriate to include in the form instructions.

#### **Employer Last Name Field**

**18. One (1) commenter suggested USCIS change the field label for the last name field in the Employer Certification to more clearly indicate that the employer or employer representative's last name, not the employee's, should be entered in this field.**

**Response:** USCIS agrees to make this change.

#### **Drop-Down Menus**

**19. USCIS received thirteen (13) comments regarding the drop-down menus in the proposed form.**

19a. Six (6) commenters indicated that the drop-down menus to the form are missing items. The specific items noted are:

- List A does not include a receipt for a U.S. Passport;
- List C does not include the Department of Health, Education and Welfare or the Social Security Board as issuing authorities for the Social Security Card
- List C does not include the expired Permanent Resident Card with a Form I-797 Notice of Action reflecting a one-year renewal

**Response:** USCIS agrees in part with the comments, and will add the Department of Health, Education and Welfare and the Social Security Board to the drop-down menus of issuing authorities for List C. USCIS disagrees with the comments regarding the drop-down menus for a receipt for a U.S. Passport and the Form I-797 Notice of Action reflecting a one-year renewal of the Permanent Resident Card. USCIS has not added a receipt for the replacement of a lost, stolen or damaged U.S. Passport because the Department of State does not issue receipts for these items that are acceptable for Form I-9 purposes. USCIS has not included a specific line-item for an expired Permanent

Resident Card with a Form I-797 Notice of Action reflecting a one-year renewal because this combination document is a List C #8 that is entered on the proposed form by selecting Employment Auth. Doc issued by USCIS, then entering I-551 with I-797 in the free text space. Generally, the expiration date for an expired document that is extended by a supporting document is the date on the supporting document. USCIS will provide guidance on entering combination documents on the form in the M-274 and I-9 Central on the USCIS website following OMB approval of the revisions to this information collection.

- 19b. Two (2) commenters requested USCIS to add an option for a free text field under issuing authority and other drop-down menus to allow for those cases where the employer may need to record information that is not available in the drop-down. One commenter expressed concerns that an employer might be required to pick an option from a dropdown when none of the options may be appropriate. The other commenter noted that a free text field would enhance the flexibility of the form and enable employers to record the names of issuing authorities that may change over time without altering the form.

**Response:** USCIS designed the drop-down menus for Section 2 of Form I-9 to ensure that every possible combination of available documents and receipts, as well as their issuing authorities, was available for selection. USCIS chose to provide dropdowns in the Issuing Authority fields when a certain document had a limited or standardized number of selections, such as states. USCIS provided free text fields in the Issuing Authority field for documents that had too many possible issuing authorities, such as Voter Registration Cards, birth certificates, etc. The limitations were designed to reduce the number of technical errors that could be introduced for certain documents when using a computer to complete Form I-9. Therefore, USCIS does not agree that allowing free text entry in all fields should be expanded to all fields and will not incorporate this change.

- 19c. Two (2) commenters requested USCIS to eliminate or clarify the requirement for the employee to select from a dropdown whether they are entering an Alien Number or USCIS Number in Section 1. One commenter indicated the requirement is confusing and burdensome because the A-number and USCIS number are currently the same. The second commenter noted that the requirement to distinguish the A number and USCIS number only applies when the form is completed on a computer. The commenter suggested that USCIS should remove the field or make the requirement consistent across all versions of the form.

**Response:** USCIS will not remove the drop-down menu or eliminate the requirement that the employee identify whether a number entered in the Alien Registration Number/USCIS Number field is an A-Number or a USCIS Number. Requiring the employee to distinguish whether the number entered in the field is an A-Number or USCIS Number ensures the employee is properly completing the field and not providing some other type of document number. USCIS has reviewed the instructions to ensure they are consistent, regardless of the method of completion.

- 19d. One (1) commenter requested USCIS clarify the listings for receipts in the Section 2 Lists of Acceptable Documents drop-down menus. The commenter expressed concern that the listings are confusing and may result in employers accepting receipts inappropriately.

**Response:** USCIS designed the drop-down menus for Section 2 of Form I-9 to ensure that every possible combination of available documents and receipts was available for selection. Due to space constraints, many of the document names were abbreviated to fit in the dropdowns. USCIS does not agree that the use of the word receipt is confusing; each document is listed along with its receipt if

one is applies to that document. Therefore, USCIS will not accept the recommendation to re-review or revise the dropdowns in Section 2 to remove receipts.

- 19e. One (1) commenter requested USCIS standardize agency names in the drop-down menus by spelling-out all agency names rather than abbreviating the names.

**Response:** USCIS is unable to accept this suggestion. We have attempted to standardize the names and lengths of the Issuing Authorities listed in the drop-down menus, however due to technical limitations, the full names of issuing authorities have sometimes been abbreviated to fit in the available space. For example, U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services is simply too long to include on a drop-down menu.

- 19f. One (1) commenter requested USCIS update the Section 2, List B drop-down menu of states for driver's licenses/ID issuing authorities to correct the list's alphabetical order. The commenter noted that although the list includes the full names of the states, the list is alphabetized according to the abbreviation for each state, e.g. Virginia is before Vermont.

**Response:** Thank you for noticing the incorrect alphabetization of the states in List B. USCIS has corrected the drop-down list.

## **Documents**

### **20. USCIS Received ten (10) comments regarding documents and how to record them on the proposed form.**

- 20a. One (1) commenter outlined two issues with entering List A documents: 1) for an employee with a STEM OPT extension, the commenter noted that when the EAD is selected in List A, that the remaining fields populate with N/A, which blocks the employer's ability to enter additional document information in List A as stated in the current Handbook for Employers (M-274); 2) List A will not allow the employer to enter an expiration date in the past, while current guidance tells the employer to enter the date of a student's expired EAD together with the Form I-20.

**Response:** USCIS will provide guidance for employers on entering certain combination documents in the M-274 and on I-9 Central following OMB approval of the revisions to this information collection. Generally, the Additional Information field should be used in these situations. USCIS has updated the instructions to clarify that additional document information can be entered in the Additional Information field.

- 20b. One (1) commenter requested that USCIS add the Replacement Certificate of Naturalization (Form N-570) to the List C drop-down menu.

**Response:** A Replacement Certificate of Naturalization (Form N-570) falls within List C under item C #8 as an employment authorization document issued by USCIS. Examples of acceptable documents that qualify in the List C #8 category are more appropriately placed in USCIS guidance materials rather than listing them in the drop-down menu.

- 20c. One (1) commenter requests USCIS to reconsider three issues related to entering documents in List C: 1) requiring employers to select a document name with or write the word "unrestricted" when entering a Social Security Card in List C; 2) listing documents by name rather than form number; and 3) requiring an employer completing the paper version of the form to enter Employment Auth. Doc (USCIS) when completing the form. The commenter indicates that since only unrestricted Social

Security cards are acceptable, that the requirement to indicate the Social Security card presented is unrestricted is redundant, burdensome and may be legally incorrect, as the official document title is simply Social Security card. The commenter asks USCIS to reconsider listing documents in the drop-down menu by form number rather than name. The commenter indicates that the form numbers are confusing and that there is inconsistency in the drop-down menus when both numbers and names are used. If USCIS retains the form numbers, the commenter requests USCIS to review the drop-down menus to ensure the use of form number is consistent across all the drop-down menus. Finally the commenter indicates that writing “Employment Auth. Doc (USCIS)” is confusing and may cause issues during audits if an employer does not note the type of document presented or photocopy the document so they can later show that the document was an appropriate List C #8 document.

**Response:** USCIS agrees that the title of the Social Security card in the dropdown on the form is redundant, and has revised the document name in the dropdowns on the form and in the instructions to read “Social Security Card (Unrestricted).”

The platform in which the proposed form is designed limits the number of characters which can be included in drop-down fields. USCIS responded to this limitation by choosing to use certain abbreviated terms and form numbers in the drop-downs menus and to explain the items in the form instructions. Employers completing the paper version of the form can use the USCIS abbreviations, the actual title of the document, or any other commonly used abbreviation that reasonably describes the document presented.

20d. Six (6) commenters provided feedback regarding document titles and abbreviations which can be entered on the form. The commenters all request USCIS to clarify whether employers are required to use only the abbreviations and document titles or form numbers provided by USCIS in the drop-down menus or the tables provided in the form instructions. Commenters indicated that the guidance and document tables in the instructions suggest that only the titles provided by USCIS should be used and expressed concern that employers would no longer be able to use reasonable abbreviations or alternate, but accurate, document titles, particularly when completing the paper version of the form. One of the commenters suggested that USCIS move the tables of document names to the Handbook for Employers (M-274).

**Response:** Due to technical limitations, USCIS was required to abbreviate or provided shortened references for documents to allow them to fit in the drop-down menu fields. USCIS provided the tables of document names to ensure that individuals completing the paper version of the form have access to the same information as individuals completing the form on a computer. USCIS has clarified the form instructions to note that the provided abbreviations, while not required, can be used when completing the form. Employers may use any abbreviations that reasonably describe the document presented. USCIS declines to move the tables from the instructions to the Handbook for Employers (M-274). The form instructions are available to all users and can be accessed through the link provided on the form itself. The instructions are also designed to logically address each field and area of the form in order and may be easier for employers to navigate.

20e. One (1) commenter requested USCIS to clarify guidance regarding the issuing authorities that can be entered in Section 2. The commenter appreciates the drop-down menus but is concerned that the menus may limit employers by suggesting that only the drop-down menus should be used. The commenter highlights an example using a U.S. Passport. Current guidance allows an employer to list Department of State, DOS, or National Passport Office, or “specific city” passport agency when

completing Section 2, while the proposed drop-down menu only provides for Department of State as an issuing authority.

**Response:** USCIS has provided drop-down menus and tables of recommended abbreviations to assist employers with completing Section 2. When completing the form on a computer, the employer must use the drop-down menus provided. If the document provided by the employee does not fit within the documents and/or issuing authority provided in the dropdown, the employer may print Section 2 and write in the document name and issuing authority in Section 2. When completing the paper version of the form, employers may continue to use common document names and abbreviations that reasonably describe a document presented.

### **Format**

#### **21. USCIS received twenty-two (22) comments regarding the format of the proposed Form I-9.**

21a. One (1) commenter requested USCIS to change the format for entering dates to allow for only numeric data entry. The commenter did not find the drop-down calendar function or alpha entry for the month to be efficient.

**Response:** USCIS will not accept this recommendation. The form was designed to give users multiple ways to enter dates on Form I-9. Users may enter numeric dates, or they may use the drop-down calendar as necessary. Users are never required to enter letters for the month in any date field.

21b. One (1) commenter recommended USCIS to move the Preparer/Translator Certification to the back of page one and bring forward the first four lines of Section 2 be moved to page 1. The change would allow all of the employee's information, including their document information to be captured on only one page.

**Response:** USCIS will not adopt this recommendation. The Preparer and/or Translator Certification must remain part of Section 1, as the area can only be completed by the employee or a person who assists the employee in preparing and/or translating Section 1. Moving this area as the commenter suggests would mistakenly imply that the employer is responsible for assisting the employee in completing Section 1.

The areas to insert the employee's name and citizenship status at the top of Section 2 are completed automatically if the form is completed using a computer. If the form is completed on paper, the employer or his or her agent can enter the employee's information from Section 1 in the appropriate fields in Section 2. This assists employers in ensuring Sections 1 and 2 both have the employee's name at the top so that the pages are easily related to one another for recordkeeping purposes.

21c. Three (3) commenters recommended USCIS change the format of the citizenship attestation fields in Section 1. Two commenters requested USCIS adjust the spacing between the field description and the data entry fields in the citizenship/immigration status block to make them a consistent size and improve the look of the form. One commenter recommended that USCIS draw lines around the status choices or highlight the fields to draw attention to them.

**Response:** The spacing in the Section 1 Citizenship/Attestation section is necessary to accommodate the helper text icons that show on a computer screen when the form is completed using a computer. USCIS agrees that the spacing may look awkward to users who complete the paper version of the form. USCIS has made a change in Section 1 to put boxes in the attestation area. The new format will

improve the appearance of the paper version of the form, while still allowing for the display of helper text icons when the form is completed on the computer.

21d. Three (3) commenters suggested that USCIS should draw more attention to the “Employee Information From Section 1.” The commenters indicate that the location and appearance of the field make it easily overlooked.

**Response:** USCIS agrees that adding a graphic element to this field will draw more attention to it, and will add a bold frame to the section. In addition, when the form is completed on a computer, the information entered into the field will be shown in bold.

21e. One (1) commenter asked whether the proposed Form I-9 can be used on mobile devices.

**Response:** USCIS has designed the proposed form to be compatible with all major Adobe-compatible operating systems and browsers.

21f. Five (5) commenters requested USCIS to go back to a one-page Form I-9. One of the commenters indicated that because there are only a few fields that are actually entered on Form I-9, that those fields should be included on a single page, rather than two pages so that employers will only be required to print one page most of the time.

**Response:** USCIS redesigned the Form I-9 with the goals of making it easier to use and help reduce user errors on the form. While USCIS appreciates the commenters’ interest in keeping the form at one page, we found that we needed more space in order to make the data fields clearer and more usable for employees and employers. As such, we are unable to revert the form back to being one page. In addition, if fields are dropped from the form upon printing, DHS cannot be assured that the employer and employee reviewed all fields before signing the form.

21g. One (1) commenter requested USCIS to include the statement “For reverifications and rehires only” on page 3 if the form prints as three pages.

**Response:** USCIS will not adopt this recommendation. While the form is designed to be viewed as three pages or even four when completed on the computer, the form will print as two pages in most cases. The form will print additional pages when an employee uses multiple preparers and/or translators to complete the form, however Section 3 will be still be included on the second page of the form, so there is no need for an additional heading for Section 3.

21h. One (1) commenter indicated that the order of the boxes for “Name of the Employer” and the “Signature of the Employer” in Section 3 has been switched from the 03/08/13 version of the form, however the instructions have not changed to match this order.

**Response:** USCIS has changed the order of the fields.

21i. One (1) commenter suggested USCIS should separate Section 1 from Sections 2 and 3 and make Section 1 a separate form. The commenter reasons that it is not reasonable to think Section 1 and 2 will be completed at the same time, so separate forms make sense.

**Response:** USCIS does not agree that the sections of Form I-9 should be separated into individual forms. While the employer and employee will separately fill-in sections of the form, the Form I-9 represents a single employment verification process. By law, the employer bears responsibility for

reviewing and ensuring the entire form and process are properly and timely completed. In addition, separating the sections of the form would remove many of the built-in functions that have been designed to reduce technical errors and are activated when the form is completed in a single session.

21j. One (1) commenter requested USCIS to keep the form at two pages.

**Response:** Due to the limitations of the Adobe software, the online version of Form I-9 appears to be three pages. When the form is saved or printed it is only two pages long unless the employee uses multiple preparer or translators. In this case, a Supplement page populated with the employee's name and containing additional preparer/translator certifications will be generated.

21k. One (1) commenter requested USCIS to align the text of the "Additional Information" field into a single line at the top of the box.

**Response:** USCIS has made this change.

21l. One (1) commenter recommended that USCIS repurpose the white space in Section 1 under List B and List C to create a field that could be used to capture an E-Verify case number, TPS extensions AC-21, 240-day extension, 180-day extension, 120-day extension, SEVIS number on Form I-20, DS-2019, and other information. The commenter suggests the addition of the field will simplify completion of the form for employers and will improve training and audit processes because it will provide a standard field to capture this information.

**Response:** USCIS will not accept this recommendation to add additional fields due to the number of requests for the addition of specific data fields and space limitations on the form. USCIS has provided an Additional Information fields that may be used to notate TPS extension, AC-21, 120-, 180- and 240-day extensions.

The SEVIS number serves as the document number for the Form I-20 and DS-2019. When an employee provides an I-20 or DS-2019 in combination with a Foreign Passport and I-94 the combination makes a List A document. The I-20 or DS-2019 should be entered as the document number for third List A document. USCIS will ensure the instructions and helper text clarify what information can be entered in the Additional Information field.

21m. One (1) commenter indicated that the addition of a header field in Section 3 is confusing and may cause some individuals to believe they need to complete the fields in the header as well as the boxes below the header.

**Response:** USCIS has added shading to the area to visually separate the header from the name and date fields to create a more unified appearance.

21n. One (1) commenter recommended that USCIS clarify Section 3 by separating field A (New Name (if applicable)) and field B (Date of Rehire (if applicable)) into individual lines.

**Response:** USCIS will not accept this recommendation due to space and formatting constraints. Sections 1-3 of the Form I-9 are configured to fit into a two page document when printed. Changing the format to incorporate additional lines will extend the printed form beyond two pages.

### **Foreign language versions of the proposed form**



**22. USCIS received five (5) comments related to publishing a foreign language version of the proposed form.** Two (2) commenters suggested that USCIS publish a Spanish language version of the form and make it available for national use. Three (3) commenters suggested that USCIS should publish a Spanish language version of the proposed form. One of the three commenters went further to say USCIS should consider publishing multiple foreign language versions of the form in a bilingual format with both English and the foreign language appearing on the face of the form.

**Response:** In order to ensure the form is able to be understood by the numerous government agencies whose work activities may involve the form, USCIS has determined that only the English version of the form should be completed and retained.

USCIS will provide a simple fillable Spanish translation of Form I-9, but will not create a separate form-fillable tool for Spanish users, since the Spanish version of the form is only able to be used in Puerto Rico. As usual, employers outside of Puerto Rico may still use the Spanish translation to assist in completion of the English form. While USCIS does not accept the recommendation to provide bilingual forms, USCIS will consider translating the instructions into multiple languages in the future.

### **Functionality**

**23. USCIS received twenty-three (23) comments regarding the functionality and technical features of the proposed form.**

23a. One (1) commenter requests that USCIS clarify the use of the “Start Over” button. The commenter appreciates that the feature may have been added as a convenience to individuals completing the form, but expresses concern about the actual use of the feature, particularly in situations where an employee may be completing the form with a preparer or translator because there is no safeguard or guidance regarding who may use the “Start Over” button.

**Response:** The Start Over button erases the information that has been entered into the form so that the user can start over with entering information. Section 1 of the form, whether filled in by the employee him or herself or with the assistance of a preparer or translator is not considered completed until the form is printed, signed and dated by the employee, and if necessary, the preparer or translator.

23b. One (1) commenter requests that USCIS develop specific field validation for the List C Social Security field to prevent employers from accepting a restricted Social Security card. The commenter suggests USCIS could use questions to determine if a Social Security card includes a restriction on its face. If the employer indicates the card contains such a restriction, the form would then provide a warning that the card is not acceptable.

**Response:** USCIS is unable to accept the commenter’s proposal for multi-layer, question-based validations for Social Security cards at this time due to technical limitations. USCIS will retain this suggestion for consideration in the future.

Please note that the helper texts associated with the Social Security card contains a link to the Lists of Acceptable Documents on I-9 Central that contain images of acceptable documents including the Social Security card.

23c. One (1) commenter indicated that onboarding systems with electronic Forms I-9s have an issue with identification documents that do not have an expiration date on them and requested USCIS to add a

pop-up feature that explains what employers should do with List B identity documents that do not include an expiration date.

**Response:** USCIS is unable to provide comments regarding privately developed electronic Form I-9 systems. The proposed Form I-9 instructions indicate that an employer should enter N/A into the expiration date field for any identity document that does not contain an expiration date.

23d. One (1) commenter requested that USCIS incorporate into the form a warning that notifies employers who are E-Verify participants that a List B identity document must include a photograph. The commenter requests that the information be visibly incorporated into the form so that the employer can easily point to the requirement when an employee who works for an E-Verify employer fails to provide an identity document with a photograph, and is then resistant to providing an acceptable document because the requirement is not clear on the form.

**Response:** USCIS declines to accept the recommendation to add a warning to List B. However, USCIS has added instructions to the List B helper text. All employers are required to provide employees who are completing Form I-9 with a complete copy of the instructions and the Lists of Acceptable Documents. The instructions clearly state that “If an employer participates in E-Verify and the employee presents a List B document, the List B document must include a photograph.”

23e. Two (2) commenters provided feedback on the calendar feature for the form’s date fields. One commenter indicated the calendar feature doesn’t add value because it takes too many clicks to enter the date. The other commenter requested USCIS add the calendar to all of the form’s date fields in order to ensure consistency and accuracy of the dates entered.

**Response:** USCIS will not accept the recommendation to remove the calendar feature from the form’s date fields. Users can pick the date entry process that best suits their needs and has designed the form to provide multiple ways to enter dates. The date may be entered using the calendar or may be numerically entered, with or without slashes. When the form is completed on a computer, the calendar feature is available in all date fields on the form, except for the signature date fields which must be manually written once the form is printed and signed.

23f. Four (4) commenters recommended that USCIS incorporate field level data validation features, that would identify when false or incorrect numbers are entered in data fields and identify when document numbers and dates entered in Section 1 and Section 2, e.g. validating that the Social Security number entered in Section 1 is valid and matches the number of the Social Security number card provided for Section 2 or that the date of the I-94 card entered in Section 1 matches the expiration date of the same document when entered in Section 2.

**Response:** USCIS appreciates the commenter’s request for additional data validation features. The platform we have used to design this form only allows for basic validation of information added. At this time, USCIS is not able to develop more complex data validation features that would allow cross-validation of date and document number fields in this version of the form. We will consider your suggestion in future development efforts.

23g. One (1) commenter indicated that a common mistake with Form I-9 is that employees present documents that don’t match the citizenship status he or she selected in Section 1 and recommended USCIS limit documents that an employer can select in Section 2 based on the status the employee selects in Section 1.

**Response:** When the form is completed on the computer in a single session, the drop-down lists in Section 2 will be activated based on the citizenship or immigration status the employee selects in Section 1. All of the documents on the list of available documents will be visible in the dropdown, but the employer will only be able to select from the documents that relate to that status. For example, if an employee indicates that he is a U.S. citizen the documents available for selection in List A will be the U.S. passport and the U.S. passport card.

23h. Three (3) commenters requested that USCIS have the form automatically complete the employee's name on page 2.

**Response:** When the employee and employer complete Form I-9 at the same time using a computer, the proposed form has been designed to use information from Section 1 to populate the Employee Info from Section 1 area at the top of Section 2.

23i. Six (6) commenters asked USCIS to clarify and provide guidance on the process for completing the form, including:

- Whether the employer has fulfilled its obligations to provide a copy of the form and instructions to the employee if the employer provides the paper version of the form and instructions or provides the employee with a link to the online version of the form.
- Whether it is acceptable to complete different sections of the form on a computer or by hand or both and then compile the pages of the form to create a complete form.
- Whether the employee and employer may complete and print their respective sections of the form on separate computers.
- Whether partially completed forms can be saved to a USCIS website

In addition, two of the commenters expressed concerns about the potential process and burden when an employer and employee do not complete the form in a single session. The process described by the commenters assumes that the employer would save partially completed versions of the PDF form at each stage of the process (e.g., the employee would fill in Section 1, print and sign it, but the employer would save a copy of the unsigned Section 1 and retain it until the employee provided his or her documents for Section 2. The employer would then fill out Section 2 and print and sign that page of the form to add to the employee's printed and signed Section 1. The employer would also save the form with Section 1 and Section 2 filled in, but unsigned to later use for reverification, if needed. The employer would also then save a filled-out, signed version of the form to meet the Form I-9 retention and storage requirements. The commenter recommends that USCIS publish a how-to document for proper use and storage of the smart PDF form that provides guidance on naming and recalling stored forms and encouraging back-up procedures.

**Response:** USCIS has designed the proposed form to accommodate a wide variety of business processes, including those which employers have in place for the current form.

Employers who choose to provide Form I-9 and its instructions in paper to be completed manually have met their obligation provided the employee receives a complete copy of the form and all pages of the instructions. The proposed form includes a button with a hyperlink to the form instructions, so employers who provide a link to the online form have met their obligation to provide the full Form I-9 and instructions to the employee.

Each page of the form has been designed with flexibility to fit within current business practices. Each section of the form can be printed out separately or all at once. Employers may also choose to complete any or all sections of the form on paper or using a computer or separate computer, or a combination of all three possibilities. USCIS regulations allow employers to choose to retain completed Forms I-9 as hard copies, or scan and retain soft copies of signed forms to retain in an electronic recordkeeping system that meets USCIS regulations. USCIS will provide guidance in the M-274 and I-9 Central following OMB approval of the revisions to this information collection.

USCIS will not accept the recommendation to provide an option to save incomplete Forms I-9 on USCIS websites and databases because USCIS does not collect this form. By law, employers are responsible for retaining these forms.

23j. One (1) commenter asked whether there is any way for an employer to override the drop-down functionality in Section 2 if the employee presents documents that are consistent with their status, but not available in the dropdown.

**Response:** While USCIS finds it unlikely that this situation would occur, if the employee presents an acceptable document that is not available on the drop-down menu and the employer is sure that the correct citizenship or immigration status has been selected, the employer may print Form I-9 and write in the name of the document in the appropriate field.

23k. Two (2) commenters recommended USCIS to consider adding a limit on characters in certain fields so the form can identify when too many digits are entered in a field, e.g. I-94. This will prevent employees from entering the wrong document number.

**Response:** USCIS has already incorporated character limits on the Section 1 data fields. However it was not technically feasible to add character limitations on fields that perform multiple duties, such as the document fields in Section 2. These fields must accommodate different information depending on the citizenship or immigration status selected by the employee in Section 1.

23l. One (1) commenter requested USCIS to ensure that the proposed version of the Form I-9 is designed in such a way as to ensure it cannot be submitted unless it is first completed fully and correctly. Employers must be held accountable to ensure that Forms I-9 are completed fully and correctly by their employees. There should be a national database that federal agencies have access to, which reflects what persons completed Forms I-9 and when.

**Response:** While the proposed new enhancements to the form provide checks to ensure that Form I-9 has been properly completed, it is ultimately the responsibility of employers to review the Form I-9 and ensure proper completion. By law, Forms I-9 must be retained by the employer for the statutorily required retention period and are not submitted to USCIS except in connection with an inspection. Therefore, a national database of Form I-9 information is not possible.

23m. One (1) commenter reported that the document type fields on page 2 would not populate.

**Response:** The numbers provided in the Citizenship/Immigration Status field drop-down directly relate to the citizenship or immigration status box the employee selected in Section 1, as well as the document choices available in the drop-downs in List A, List B and List C of Section 2. If a number has not been entered or populated in that field, the employer will not be able to select documents from the dropdowns. USCIS successfully tested this functionality of the form.

23n. Three (3) commenters indicated that the need to tab twice to move between form fields is problematic.

**Response:** The tabbing function in this Adobe .PDF form must be in compliance with the Section 508 Amendment to the Rehabilitation Act of 1973 which allows electronic readers to use this form. This tabbing may slow down some users; however, the functionality that it provides is necessary to keep this form compliant.

23o. One (1) commenter stated that if an employee selects #4, an alien authorized to work, a drop-down box appears in sub-paragraph 1 (Alien Registration Number/USCIS Number), however there are no choices in that drop-down box and it becomes free form. The commenter requested USCIS consider removing this field.

**Response:** The drop-down menu which appears by the Alien Registration Number/USCIS Number field is activated when numbers are entered into the Alien Registration Number/USCIS Number field. The dropdown menu allows the employer to select whether the number is the USCIS Number or the Alien Number.

23p. Two (2) commenters expressed concern at the fact that the proposed Form I-9 will require users to have the most recent version of Adobe Reader to use the form online. One of the commenters suggests USCIS make a version of the form that is accessible to multiple application platforms.

**Response:** The current form available on the USCIS website requires a similarly recent version of Adobe Reader. USCIS has not received any complaints that employers are experiencing difficulty downloading the current form due to incompatibility with Adobe Reader. The proposed form supports Adobe Reader 10 or greater. Due to software limitations, USCIS is not able to offer a version of the form that is accessible to multiple application platforms.

23q. Two (2) commenters provided feedback regarding the Lists of Acceptable Documents dropdowns. One commenter recommended USCIS make the lists interactive. The other commenter suggested that USCIS allow an employee, when completing Section 1, to indicate which documents he or she will provide. The lists in Section 2 would then be used by the employer to confirm the documents.

**Response:** USCIS will not adopt the commenters' suggestions. USCIS has designed the List of Acceptable Document drop-downs in Section 2 to correlate to the citizenship or immigration status the employee chose in Section 1 and to only allow selection of documents that match the status selected by the employee. However, if the employee presents documents that do not match the selected citizenship or immigration status, the employee may correct any errors he or she may have made in Section 1. With respect to the suggestion to require the employee to indicate in Section 1 the documents he or she will present to the employer, USCIS notes that by regulation, the responsibility to record document information on Form I-9 rests solely with the employer. The employee is only required to present acceptable documents.

23r. One (1) commenter requested clarification regarding whether USCIS had consulted with the Department of Justice Office of Special Counsel regarding the functionality of the drop-down menus in Section 2, particularly the features that limit the documents that can be chosen from the drop-downs based on the citizenship/immigration status the employee selected in Section 1.

**Response:** Yes, USCIS consulted with the Department of Justice’s Office of Special Counsel regarding the proposed revisions to Form I-9. All documents are visible in the drop-down menus however some documents are restricted because they are not compatible with the employee citizenship status selected.

23s. One (1) commenter requested USCIS to review and make modifications to field-level validations in the form. The commenter expressed concern that the form highlights non-mandatory fields that are not filled in as errors.

**Response:** USCIS declines to accept this suggestion. In most instances, the form requires the user to affirmatively choose to complete or not complete each field. Once the user clicks the “Click to Finish” button, the form searches each field to ensure that the user has entered something in each field. If the employee chooses to not enter an e-mail address or telephone number, he or she must enter N/A to complete the field. USCIS requires employees to make a selection in the Preparer and/or Translator Certification if they have not used one, and will ensure that the form and instructions will make these responsibilities more clear.

23t. One (1) commenter requested USCIS to incorporate functionality to prevent a Native American Tribal Document from being entered in both List B and C in Section 2. The commenter also suggested USCIS should develop functionality to prevent duplicate or near duplicate information from being entered.

**Response:** USCIS will not accept this recommendation. By regulation, a Native American Tribal document is an acceptable document under both List B and List C. Employees may present Native American Tribal documents to satisfy both List B and List C concurrently.

23u. One (1) commenter suggests USCIS provide additional guidance on Native American Tribal documents to clarify what documents are acceptable.

**Response:** Guidance on acceptable Native American Tribal documents is provided in the M-274 on page 42 and on USCIS’s I-9 Central webpage (see the Questions and Answers section). As of 2016, there are more than 560 federally recognized Native American tribes. Native American tribal documents from federally recognized tribes are considered acceptable as a List B and/or C document for Form I-9 purposes. Employers whose employees present a Native American tribal document may check the current list of federally recognized tribes at the Bureau of Indian Affairs website at [www.bia.gov](http://www.bia.gov) to ensure the tribe that issued the document is federally recognized. USCIS will consider whether additional guidance is appropriate.

23v. One (1) commenter requested USCIS to clarify whether the generation of a QR Code once Form I-9 is filled-in indicates that the form is "approved" as properly completed per USCIS requirements. In other words, is the QR Code in effect a stamp of approval from USCIS? The commenter also requests clarification of whether using the “smart” Form I-9 and completing it on a computer provides any type of safe harbor or makes it less likely that the that the employer will be audited. The commenter noted that if the QR code creates a safe harbor that it will lead to inequitable treatment and may increase the burden of employers who don’t complete the “smart” Form I-9 on a computer.

**Response:** The proposed Form I-9 is not an electronic form. Generation of the QR code does not indicate that USCIS has approved the form nor does it indicate that the information on the form is correct. It does not provide a safe harbor. The QR code collects the information that was typed into

each field of the form and converts it to a digital barcode that can be used by government officials or employers to quickly “read” the form.

USCIS designed the QR code to generate once each field on the form has been filled in. The employer is still responsible for ensuring the form is properly and timely completed. If the form contains incorrect information such as misspellings or incorrect dates, the QR code will capture those errors.

The QR code is not a required field. Forms I-9 completed in paper will not have a QR code.

23w. One (1) commenter requested USCIS standardize the size of the QR codes in Section 1 and Section 2 and adopt the smaller Section 1 QR code in both locations. Using the smaller QR code in Section 2 will provide space on the form which could be repurposed to specific fields for additional information.

**Response:** USCIS will not implement this recommendation. The QR code is a specific, unique code generated each time the form is filled in. The size of the QR code, as well as the code that appears under it, is dependent on the amount of information that has been entered in each section. A U.S. citizen entering a passport will have smaller QR codes in each box than an Alien Authorized to Work who is a foreign student who presents three different documents. The size of the QR box provided has been designed to accommodate the maximum amount of information that users may enter on the form.

#### **Completing fields with N/A**

#### **24. USCIS received five (5) comments regarding the use of N/A.**

24a. Five (5) commenters requested USCIS to provide clarification regarding the purpose and use of N/A in completing Form I-9. Commenters noted that the requirement to use N/A, particularly for optional fields, such as Middle Name, E-mail Address and Telephone Number, and the New Name fields in Section 3 is unnecessary and burdensome. Commenters requested that USCIS:

- Clearly indicate when requested information is optional
- Make the instructions for completing the form using N/A for the paper version of the form consistent with the instructions for completing the form on a computer
- Not penalize employers for failing to use N/A or treat failure to use N/A as a correctable technical error
- Allows use of alternate terms such as “none”

**Response:** USCIS has proposed enhancements to this form when being completed on a computer in an attempt to reduce technical violations. In order for the form to check to make sure that all fields have been completed, the user is required to enter N/A into certain fields. The new Form I-9 instructions instruct users when to enter N/A into these fields. When users check the Click to Finish button the user is notified of any fields that have not been filled out, including fields that may need to be marked N/A. Employers are responsible for ensuring that all fields on Form I-9 are properly filled out.

USCIS has revised the instructions in response to public comment to clarify how N/A should be used throughout the form.

DHS provides guidance regarding Form I-9 violations on the Immigration and Customs Enforcement website at [www.ice.gov](http://www.ice.gov), in the Handbook for Employers (M-274) and on the USCIS I-9 Central web pages.

### **Instructions and Guidance**

#### **25. USCIS received seventy-one (71) comments regarding the form’s proposed instructions and guidance.**

25a. One (1) commenter requested USCIS to explain why information relating to the use of Form I-9 for CNMI from 2009 to 2011 was removed from the “What is the Purpose of this Form?” section. The commenter indicated that the information is helpful to employers, particularly when they are self-auditing forms and trying to ensure that the correct version of the form was used.

**Response:** USCIS removed references to Form I-9 CNMI from much of its guidance materials once the form was discontinued in 2011 and CNMI began using the standard Form I-9. The change was made to ensure guidance is consistent with current Form I-9 requirements. USCIS does provide specific information on and forms specific to the Commonwealth of the Northern Mariana Islands on USCIS’s I-9 Central web page ([www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central)).

25b. One (1) commenter requested USCIS add language to the section, “What is the Purpose of this Form?” to refer employers to the Handbook for Employers, M-274.

**Response:** USCIS will not add this language to this section of the form instructions. USCIS references guidance materials, including the Handbook for Employers (M-274) and USCIS’s I-9 Central web page, in the General Information section of the instructions, which is immediately below the “What is the Purpose of this Form?” section.

25c. One (1) commenter requested USCIS to consider adding the words, "only one of the following," to the instruction on the face of the form in Section 1 that states an alien authorized to work "must provide an Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number to complete Section 1."

**Response:** USCIS has modified the language to read – “Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.”

25d. One (1) commenter requested USCIS to provide additional details for how to verify the authenticity of documents in the Handbook for Employers, M-274.

**Response:** USCIS will consider the commenter’s suggestion when updating the Handbook for Employers (M-274) and guidance on USCIS’s I-9 Central web page.

25e. One (1) commenter requested USCIS to provide clarification on how an employer should proceed if an employee presents a passport from a country that was previously recognized by the Department of State, but is no longer recognized.

**Response:** USCIS will consider providing clarifications on the acceptability of passports in a future revision to guidance materials. If an employee presents a passport from a country recognized by the U.S. government and for some reason that country is not listed as a drop-down menu choice, the



employer may print the form and write the name of the country on Form I-9. Passports presented by employees must currently be valid.

25f. One (1) commenter requested USCIS clarify guidance for the C #8 category “Employment Authorization Document issued by the Department of Homeland Security.” The commenter requests clarification on the types of documents that can be entered in the field and how the documents should be entered.

**Response:** The instructions for List C state that if the user selects Employment Authorization Document the document field will be populated with List C#8 and the employer should enter the name of the document that the employee presented in that field. When a user selects “Employment Authorization Document (DHS)” a special double field is opened that allows the user to enter the name of the document. Guidance for the List C #8 category can be found on the USCIS I-9 Central web page at [www.uscis.dhs.gov/i-9-central](http://www.uscis.dhs.gov/i-9-central). USCIS may consider providing additional clarifications in a future revision of its guidance materials.

25g. One (1) commenter requested USCIS to add language to the Presenting Form I-9 Documents section on page 5 of the Instructions to remind employees that they should not provide more documentation than is necessary and that they should not be asked to provide a document or document(s) to confirm the citizenship or immigration status which the employee checked in Section 1.

**Response:** USCIS agrees to modify the language to more clearly instruct employees on how much documentation to present.

25h. One (1) commenter requested USCIS to clarify guidance for entering the issuing authorities of List B documents when an employer is completing the paper version of the form. In particular, the commenter wishes USCIS to confirm that when the employer is entering a Driver’s License or State ID, that the employer should enter the name of the state that issued the document rather than writing “Driver’s license issued by state/territory”

**Response:** USCIS has clarified in the instructions that for documents whose issuing authority is a state, the employer must enter the state in the Issuing Authority field.

25i. Two (2) commenters requested USCIS to clarify the form instructions regarding what types of receipts can be used for Form I-9 and how the validity period for the receipt should be counted.

**Response:** The proposed revisions to the form instructions included information regarding acceptable receipts and the receipt validity periods. USCIS does not believe that additional information in the form instructions is appropriate. However, USCIS may consider providing additional information in guidance materials following OMB approval of the revisions to this information collection.

25j. One (1) commenter requested USCIS to clarify whether Form I-9 is required for volunteers and unpaid interns that meet U.S. Department of Labor criteria for volunteer or unpaid internship.

**Response:** USCIS has revised the description of “employee” in the form instructions to clarify that the term does not include volunteers, independent contractors, or certain casual domestic employment. However, USCIS cannot provide clarification regarding volunteers or unpaid

internships meeting U.S. Department of Labor criteria. DHS regulations govern whether a Form I-9 must be completed for a particular individual.

25k. One (1) commenter requested USCIS to provide guidance for how to complete Section 1 when a preparer or translator who is assisting the employee is not physically present, but is on the phone or using screen-sharing software.

**Response:** USCIS will consider providing guidance on this issue once the proposed form and instructions are approved by OMB.

25l. One (1) commenter requested USCIS to revise language on page 6 of the instructions relating to documents that reasonably appear to be genuine because of a conflict between the language, “If your document(s) reasonably appears to be genuine and to relate to you after asking any reasonable clarifying questions, your employer must accept the document(s)” and agency guidance on I-9 Central which states that the employer should ask the employee for a reasonable explanation and take other actions if there are certain questions pertaining to the document. For instance, for an employee who writes more than one last name in Section 1, but presents a document from the List of Acceptable Documents that has only one of those last names, the employer should ask for clarification and attach a memo to the Form I-9 to explain the discrepancy.

**Response:** USCIS does not agree that the language of the instruction is in conflict with agency guidance and will not adopt this recommendation. The proposed instructions state: “If your document(s) reasonably appears to be genuine and to relate to you, your employer must accept the documents. If your document(s) does not reasonably appear to be genuine or to relate to you, your employer must reject it and provide you with an opportunity to present other documents from the Lists of Acceptable Documents.” The situation to which the commenter refers is an example of a situation where the employer has determined that the presented document may not reasonably appear to be genuine. Information on what to do in these specific instances will continue to be located in the guidance that will be provided once the proposed form is approved by OMB.

25m. One (1) commenter requested USCIS to clarify the requirements for J-1 and F-1 nonimmigrant visa holders. The commenter requests USCIS to provide guidance on completing Section 1, particularly how to derive the employment authorization expiration date using the DS-2019, I-20 or EAD. The commenter also requests USCIS to clarify guidance for how the DS-2019 and I-20 should be entered into Section 2, particularly List C.

**Response:** The proposed Form I-9 and Form I-9 Instructions provide specific instructions on form completion for all employees. Specifically, Section 1 instructions and the form helper text provide instructions for completing the form for employees such as J-1 Exchange Visitors and F-1 Nonimmigrant Students attesting to being an alien authorized to work. Also, the proposed Form I-9 Instructions directs students to the Handbook for Employers (M-274) for guidance on documents students may present and provides specific instructions on entering Form I-20 or DS-2019 information on Form I-9. USCIS will consider providing further guidance on J-1 and F-1 nonimmigrants in future revisions to the M-274 and I-9 Central.

25n. One (1) commenter requests USCIS to clarify how the Block A – New Name field should be used. The commenter requests USCIS add the following sentence to the instructions, “For other notifications of a name change, unrelated to Section 3, an employer may, but is not required to, use this field.”

**Response:** USCIS agrees to add language to the instructions indicating that an employer may use this field when an employee changes their name.

25o. One (1) commenter requested USCIS to clarify the Section 2 requirements for an Alien Authorized to Work. The commenter is concerned about the potential for confusion and discrimination claims because to complete List A of the form using an I-94 and Foreign Passport, the employee must provide both documents, while Section 1 of the form only requires the employee to provide a Foreign Passport or Form I-94.

**Response:** USCIS has clarified in the instructions that an employee who is an Alien Authorized to Work is not required to present a document that contains the number he or she provided in Section 1.

25p. One (1) commenter requested USCIS to clarify when new hires must write their Foreign Passport information in the Alien Authorized to work field of Section 1. The commenter suggests that USCIS clarify that only new hires who present an electronic I-94 document must list their Foreign Passport information in Section 1. The commenter also asked USCIS to provide information about the penalties and fines if the field is left blank.

**Response:** The clarification suggested by the commenter is based on the current version of Form I-9. However, USCIS received input from stakeholders that some work-authorized individuals who arrived in the United States by air or seaport experienced delays in obtaining their electronic Form I-94 number which adversely affected their ability to timely complete Form I-9. Therefore, USCIS designed the proposed form to only require an employee to provide either an Alien Number or I-94 Number or Foreign Passport Number and Country of Issuance. The employee may choose which number to enter in Section 1. In order to preserve all of the employee's choices, USCIS declines to provide the clarification requested by the employers. Information about the fines and penalties associated with an ICE audit can be found at: <https://www.ice.gov/factsheets/i9-inspection>.

25q. One (1) commenter requested USCIS to provide information about the penalties for employers who do not complete the "Employee Information from Section 1" fields at the top of Section 2 and 3 of the form.

**Response:** USCIS will not adopt the commenter's request. Penalties are enforced by ICE and are posted on ICE's website (<https://www.ice.gov>) as well as USCIS's I-9 Central web page at <https://www.uscis.gov/i-9-central/penalties>. This information is too extensive to include directly on the form.

25r. One commenter requested USCIS to provide additional warnings and guidance regarding the retention of forms after signature. The commenter indicated employers are unclear about the use of a pdf document to save completed Forms I-9.

**Response:** USCIS will not accept this recommendation to provide further warnings and guidance about the retention of Form I-9. The current form instructions contain information regarding the Form I-9 retention requirements. It is not possible to summarize the retention requirements on the form itself given space limitations. USCIS has provided guidance in the instructions that clarify that the PDF form issued by USCIS may be completed using a computer, but will always need to be printed, signed and dated to be considered complete. These instructions will only apply to the USCIS-developed form issued by USCIS: Forms provided by electronic Form I-9 developers may meet

USCIS electronic signature requirements and not require printing in order to be signed, dated and retained. To the extent that the commenter is requesting clarification on electronic storage of completed Forms I-9, USCIS will continue to provide such guidance in the Handbook for Employers (M-274) and on the USCIS I-9 Central web page.

25s. Two (2) commenters requested USCIS to add additional warnings regarding the immigration consequences of falsely attesting to U.S. Citizenship on Form I-9.

**Response:** USCIS does not agree to provide extra warnings concerning immigration consequences for falsely attesting to being a U.S. citizen on the face of the form. The current attestation already warns employees about imprisonment and fines for making false statements. However, USCIS agrees that this information would be helpful to include in in the M-274 and on I-9 Central following OMB approval of the revisions to this information collection.

25t. One (1) commenter requested USCIS to add an additional warning at the top of page 2 of Form I-9 stating that only the employer should complete this page. The commenter indicated that the warning at the bottom of page 1 of the form may be insufficient, especially for employees completing the form on a computer.

**Response:** USCIS will not accept this recommendation. The top of page 2 of the form contains instructions clearly indicating that only the employer or authorized representative may complete page 2. USCIS has very little available space on Form I-9 to add an additional warning to employees not to fill out this section. USCIS will not accept the recommendation to provide further warnings concerning who is responsible for completing each section of the form. USCIS has already included instructions on the face of the form, and throughout the helper text, hover text, error messages and full set of instructions to indicate who is responsible for completing each section of Form I-9. All of these instructions are visible when the employee completes the form using a computer.

25u. One (1) commenter requested USCIS to publish a supporting statement and principal officer's certification for the proposed Form I-9, as well as a copy of the proposed changes to the Handbook for Employers, M-274 and I-9 Central. Without this information, the commenter believes the public does not possess sufficient information to comprehensively review and comment upon the proposed changes.

**Response:** USCIS does not agree with the commenter's suggestion and does not believe that these materials are necessary to be posted with the proposed changes to Form I-9 and instructions. Guidance materials are not part of the information collection revision process and can only be updated after approval of the revisions by OMB. USCIS will forward the Supporting Statement to OMB in conjunction with the proposed revisions to this information collection, and OMB will be post the documents for the public on its website as appropriate. For necessary information to comment on the proposed revisions, the public may visit USCIS's website to refer to the current form, form instructions, and guidance materials.

25v. One (1) commenter requested USCIS to provide instructions to employers for how to verify the citizenship attestation in Section 1 of the form using the documents provided by the employee for Section 2.

**Response:** USCIS will not accept the commenter's request. The employer is not responsible for verifying the citizenship attestation in Section 1, but, rather, ensuring that Section 1 is properly

completed, examining identity and employment authorization documents presented by the employee, determining whether the documents presented are acceptable and completing Section 2. USCIS has designed the proposed form so that the numbered citizenship/immigration status checkboxes in Section 1, the Citizenship/Immigration Status field at the top of page 2, and the drop-down menus for the Lists of Acceptable documents to work together when the form is completed on a computer. The choice made by the employee in Section 1, which is added in the Citizenship/Immigration Status field on Section 2, will activate the drop-down menus to display and allow document selections that are consistent with the status the employee selected in Section 1. If the employer selects a document in Section 2 that does not match the status selected in Section 1, the form will generate a warning instructing the employer to have the employee review Section 1 and make any updates needed.

25w. One (1) commenter requested USCIS to provide guidance within Form I-9, possibly in Section 1 or near the employee signature field, regarding how the form should be completed for a minor.

**Response:** The form instructions and the helper text for the ‘Signature of Employee’ and ‘Signature of Preparer or Translator’ fields in Section 1 of the proposed Form I-9 provide instructions regarding the alternate procedures for completing the form for minors (individuals under age 18). The Form I-9 Instructions also directs employers and employees to the Handbook for Employers: Guidance for Completing Form I-9 (M-274) for additional guidance.

25x. One (1) commenter suggested USCIS to add instructions on the face of Form I-9 for employers completing the paper version of the form that the Citizenship/Immigration Status field on the top of page 2 should be left blank.

**Response:** USCIS has updated the instructions for the Citizenship/Immigration Status field at the top of Section 2 to instruct the employer to complete the Citizenship/Immigration Status field with the number of the citizenship or immigration status the employee selected in Section 1. This change is being made in an effort to keep the instructions regarding completion of the form using a computer or on paper as uniform as possible.

25y. One (1) commenter noted that the proposed instructions for entering documents may be affected by other rulemakings if the rulemakings change what documents an employee may present and/or what information should be collected.

**Response:** USCIS will ensure that the form and instructions are revised if they are affected by other rule-makings.

25z. One (1) commenter suggested that on page 9 of the instructions under the paragraph starting with List B-Identity that USCIS add a comma after the word “field” followed by the words “unless the employer uses E-Verify. If the employer uses E-Verify, the employee must present a List B document with a photograph when presenting a List C document.”

**Response:** USCIS has adopted this suggestion and revised the proposed form instructions accordingly.

25aa. Two (2) commenters requested USCIS to provide guidance allowing staffing agencies to enter the first day an employee is entered into a job or assignment pool as the employee’s first day of employment. One of the commenters also noted that this guidance appears in the current instructions for Form I-9, but has been removed in the proposed version and was wondering whether the guidance had changed.

**Response:** USCIS has not changed our guidance regarding staffing agencies. USCIS proposed removing the information from the form instructions because it only applies to a discreet group of employers. When completing Section 2 of Form I-9, the staffing agency may still choose to use either the date an employee is assigned to his or her first job or the date the new employee is entered into the assignment pool as the first day of employment. This guidance will be included in the M-274 and on I-9 Central following approval of the revisions to this information collection by OMB.

25bb. Five (5) commenters requested USCIS to clarify the purpose of the Additional Information field and clearly define in the instructions what information can be entered in this field. The commenters expressed concerns that the proposed instructions, particularly those addressing extensions and student or exchange visitor documentation, are incomplete and may be confusing to employers.

**Response:** USCIS has revised the instructions for the Additional Information field to more clearly state the special circumstances that may require an entry to be made in this field. The Additional Information field takes the place of information that was historically required to be notated in the margins of the form. If the employer must make a notation in the margin for an employee, it should be entered in this field. The notations themselves have not changed.

25cc. Three (3) commenters indicated that the numbered lists under “Alien Registration Number/USCIS Number,” “Form I-94 Admission Number,” and “Foreign Passport Number” are redundant and recommends that USCIS reformat this section to place the numbered list above “Alien Registration Number/USCIS Number” and note that the list applies to all three numbers to avoid confusion and simplify the instructions.

**Response:** USCIS agrees and has edited the instructions to remove the redundancy.

25dd. One (1) commenter requested that USCIS to allow employers that have developed an electronic Form I-9 the option to incorporate the Form I-9 and instructions into one link or separate them into individual links. The commenter also requested USCIS to allow employers the option to provide only the employee instructions for completing Section 1 rather than the full instructions. The commenter is concerned that employees may be overwhelmed by the full instructions.

**Response:** USCIS does not agree with the commenter’s suggestions. USCIS believes that is important for employees to have access to all of the instructions to the form. The instructions may be provided in paper or electronically. The electronic version of the instructions may be incorporated with the Form I-9 in a single link or may be a separate link.

25ee. One commenter requested USCIS to clarify language in the instructions, specifically the last sentence of Page 1 which begins “You are not required to print, retain or store the page containing the Lists of Acceptable Documents...” The commenter is concerned that the sentence may confuse employers regarding their obligation to provide or make available to the employee all pages of the instructions, including the Lists of Acceptable Documents.

**Response:** USCIS has clarified the instructions regarding the employer’s requirements for the Lists of Acceptable Documents.

25ff. One (1) commenter requested USCIS to clarify whether there is a maximum number of preparers and/or translators that can assist the employee with completing Section 1.

**Response:** USCIS does not restrict the number of preparers and/or translators that can assist an employee in completing Section 1. USCIS has designed the form to generate a Supplement page with 4 preparer or translator certifications when a preparer and/or translator completing the certification on a computer selects the “A preparer and/or translator assisted the employee in completing Section 1” and chooses the number of preparers and translators from the dropdown provided. The Supplement can also be accessed by clicking on a separate link for the Form I-9 on the Forms page of the USCIS website. If an employee uses more than 5 preparers and/or translators, the employee and preparer or translator can access additional Supplement pages using a separate link on the USCIS website or open a new form on the computer, repeat the process of selecting the checkbox and completing the dropdown. The form will generate the additional page of preparer or translator certifications. The Supplement page can be printed and completed manually or it may be filled in on a computer and printed to allow the preparer(s) or translator(s) to sign and date. The USCIS will ensure this clarification is reflected in the instructions and in any guidance published concurrently.

25gg. One (1) commenter requested USCIS to clarify the instructions for Form I-9 relating to minors. The commenter notes that the minor and special placement exceptions for Form I-9 do not apply if the employer participates in E-Verify.

**Response:** USCIS agrees that the exception for minors does not apply when an employer participated in E-Verify; however, special placement exceptions may still apply. USCIS has clarified this information in the instructions.

25hh. One (1) commenter asked USCIS to clarify retention requirements for agricultural associations or employers, or farm labor contractors that are recruiters or refers for a fee. The commenter is requesting clarification because the proposed instructions indicate that these types of organizations are unable to purge Forms I-9 “one year from termination.” If USCIS intends to retain the language as written the commenter requests USCIS provide a definition of “agricultural employer.”

**Response:** The proposed instructions regarding the retention requirements are based on statutory requirements. These requirements state that recruiters or referrers for a fee (without hiring) must retain Forms I-9 for three years after the date of the hire. A “recruiter or referrer for a fee” is limited to agricultural associations, agricultural employers, or farm labor contractors as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Public Law 97-470 (29 U.S.C. 1802). USCIS has revised the form instructions to include the reference to this law. USCIS also will revise the Handbook for Employers (M-274) and I-9 Central to provide additional guidance regarding these types of recruiters or referrers for a fee.

25ii. One (1) commenter requests that USCIS add an instruction that states that employees may not provide photocopies of documents. The commenter believes such an instruction will help in communicating with employees who mistakenly believe they can provide photocopies of documents for Section 2.

**Response:** USCIS will not accept this recommendation. The proposed instructions clearly state that employers must “Ensure that each document is an unexpired, original (except for certified copies of birth certificates) document.” However, USCIS does understand that some employees may be confused by the option to provide a copy of a birth certificate. USCIS will consider adding clarifying information in guidance materials following OMB approval of the revisions to this information collection.

25jj. One (1) commenter requested USCIS to add stronger language and/or call attention to the language of the instructions which distinguishes the proposed form from an electronically generated and stored Form I-9, which may be produced by private developers. The commenter raises concerns that employers may fill out and store the PDF version of the form, ignoring the requirement that the form be printed and signed, and that these incomplete PDFs will be stored in an unsecured file with little or no audit capability.

**Response:** USCIS agrees that some employers may construe a form completed on a computer that has technical features to be an electronic form. USCIS has included stronger language in the instructions reminding employers that Forms I-9 obtained from the USCIS website are not considered electronic Forms I-9 under DHS regulations and, therefore, cannot be electronically signed, and that the employer must always print a hard copy of the form, then sign and date the hard copy by hand where required.

USCIS will also provide more detail about the differences between the proposed form and forms that can be considered electronic in updates to the M-274 and on I-9 Central following OMB approval of the revisions to this information collection.

25kk. One (1) commenter suggested that USCIS clearly identify which potential errors on the form are technical/procedural and which are substantive. The commenter indicated there is a possibility that the differences in the instructions for completing the paper version of the form as opposed to completing the form on a computer will result in increased errors and liability for employers.

**Response:** USCIS declines to accept the recommendation to indicate which potential errors are substantive and which errors are technical violations. However, in response to public comments, USCIS has made revisions to this information collection to better ensure that regardless of how the form is completed, all users have the same information and will have a very similar end product.

25ll. One (1) commenter recommended that USCIS replace the words “cross out” with “draw a line through” in the instructions for how to make corrections on Form I-9.

**Response:** USCIS accepts this suggestion and has made the change in the proposed form instructions.

25mm. One (1) commenter suggested that USCIS should not add the following instruction for the Alien authorized to work status in Section 1: “4. An alien authorized to work: An individual who is not a citizen or national of the United States, or a lawful permanent resident, but is authorized to work in the United States. Asylees, refugees, and certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau should select this status.” but should retain the original language: “4. Alien authorized to work: If you are not a citizen or national of the United States or a lawful permanent resident, but are authorized to work in the United States, check this box.” instead.

**Response:** USCIS agrees that this change could be confusing and has removed this information from the helper and hover text on the proposed form.

25nn. One (1) commenter requests USCIS to clarify guidance regarding the Employer’s Business Organization address. The commenter asks USCIS to explain the meaning of the phrase the “address that identifies the location of the employer.” The commenter also asks USCIS to clarify whether an



employer must continue to update the employer's business address on Form I-9 if the employee's worksite changes after initial hire.

**Response:** USCIS proposed this language due to public concern that the current guidance was very confusing. In a situation where a company has multiple locations, the person signing Section 2 should use the most appropriate address that identifies the location of the employer. The employer must decide what address best identifies their location. For instance, if the employer deems that address to be the headquarters address, that is the address that should be entered in this field.

USCIS does not require the employer to continue to update the address on Form I-9 if the employee's worksite changes over time (or any time after the initial hire). While USCIS is retaining the language as proposed in the instructions, USCIS will update guidance materials following OMB approval of the revisions to this information collection.

25oo. One (1) commenter requested USCIS to revise the proposed instructions to centralize those instructions that relate to E-Verify and add instructions that address how an E-Verify employer should complete Form I-9 for an employee who recently applied for a Social Security number, for an employee who is unable to provide a List B document with a photograph due to religious objections, and an employee who presents a Form I-551 (Permanent Resident Card) or I-766 (Employment Authorization Document) that the employer must photocopy and retain.

**Response:** USCIS declines to accept this suggestion. Form I-9 instructions are meant to inform users how to complete Form I-9. Although the Form I-9 instructions include some references to E-Verify, E-Verify users have their own set of instructions and USCIS does not intend to use the Form I-9 instructions to inform employers on how to use E-Verify.

25pp. Two (2) commenters recommended that USCIS change the General Instructions to incorporate the sentences "Both employers and employees are responsible for completing Form I-9" into the "General Instructions." One of the commenters recommended adding the sentence, while the other recommended removing the "What is the Purpose of This Form?" as its own header and incorporating the content, including the above sentence into the General Instructions. This commenter also recommends USCIS revise the language of the instructions regarding photocopies of documents to read "if made, copies must be retained and presented..."

**Response:** USCIS agrees with the recommendation to move the information in the "What is the Purpose of this Form?" section under General Instructions and has revised the instructions accordingly.

25qq. One (1) commenter recommended USCIS change the word "Document" in the second sentence of the Entering Documents the Employee Presents to "document."

**Response:** USCIS will not accept this recommendation. The word "Document" in this context is referring to a specifically titled field and should be capitalized.

25rr. Three (3) commenters suggested USCIS should change the form of address in the instructions to third person address (i.e., the employer, the employee, the preparer or translator, etc.), rather than the more familiar direct address (i.e., you) so it is clear to whom each instruction applies.

**Response:** USCIS will not adopt the recommendation to revise the form instructions in the third person. The instructions, as written, clearly delineate the party whose role it is to complete a given section. The second-person pronouns align with each role.

25ss. One (1) commenter requested USCIS to add to the helper text for Last Name (Family Name) the sentence, “Your last name is the name recorded on your birth certificate, marriage certificate, or legal document changing your last name.”

**Response:** USCIS will not accept this recommendation. We do not agree that the proposed language covers all instances of documents that can prove a last name, and is concerned that this language could lead employers to mistakenly believe they must ask employees for the specified documents.

25tt. One (1) commenter recommended that all of the revisions adopted onto the Smart PDF instructions [helper/hover text] also be made available for the paper and electronic Form I-9 instructions.

**Response:** USCIS will not accept this recommendation. The proposed form instructions provide specific information to complete each field of the form, regardless of the method of completion. The helper and hover text available when completing the form on the computer provides this same information, but also may provide slightly more technical instruction that a user completing a specific field using a computer may need.

25uu. One (1) commenter requested USCIS to clarify the relationship between the form instructions and the helper/hover text provided in the form when it is completed on a computer and to outline how the helper/hover text included in the form will affect electronic I-9 developers and systems.

**Response:** The helper and hover texts within the proposed form are abbreviated texts of the form instructions: These helper and hover text instructions include information useful for a user who is actively using a computer to complete the field, and who may need to know how certain form functionality will work. The helper and hover texts are available for the public to view in the Form I-9 Table of Changes available in Docket USCIS-2006-0068 on [www.regulations.gov](http://www.regulations.gov). Further, USCIS has provided a button at the top of the form that provides direct access to the form instructions when the form is completed on a computer that can access the Internet.

25vv. Five (5) commenters requested USCIS to make the process and instructions for completing the paper version of the form consistent with the instructions for completing the form on a computer, including specific items such as the use of N/A across form versions. Commenters indicate that the inconsistencies between the versions of the form increases confusion and may increase errors for employers that are trying to manage both versions of the forms. It will also make it difficult for employers to develop consistent training, and will limit the usefulness of the form.

**Response:** USCIS agrees that the instructions for completing the paper and electronic forms be consistent and has made revisions based on public comment received on the proposed revisions to this information collection.

25ww. One (1) commenter requested USCIS to review the section of the instructions that contains the warning that a preparer or translator who fails to sign his/her name may be subject to criminal prosecution. The commenter indicates that the proposed warning fails to consider a situation where the name of an individual who did not actually assist in filling out Section 1 could be purposely and fraudulently entered in the preparer or translator certification and the certification left unsigned in order create potential criminal liability for the individual.

**Response:** USCIS has reviewed the form instructions and believes that the instructions are sufficient. USCIS may consider adding information to address the commenter’s concern in its guidance materials following OMB approval of the revisions to the information collection..

25xx. One (1) commenter requested USCIS to relocate the content under new subheading “Signature Instructions for Preparers, Translators, and Other Individuals Assisting Employees in Completing Form I-9,” from the “Attesting to Your Citizenship or Immigration Status” section to a separate section specific to preparers and/or translators.

**Response:** USCIS agrees with the commenter’s concern and has made the appropriate revisions the form.

25yy. One (1) commenter requested USCIS to review and revise the instructions relating to the Preparer and/or Translator Certification, specifically the sentence: “[T]o be completed and signed if Section 1 is prepared by a person other than the employee.” The commenter indicates that this language and where it is located could be confusing and could cause employees to believe they do not need to take any action in the Preparer and/or Translator Certification.

**Response:** USCIS agrees with the commenters concerns and has made the appropriate revisions to the form.

25zz. One (1) commenter requested USCIS to align the process for documenting multiple preparers or translators so that the computer and paper processes are the same.

**Response:** USCIS agrees with the commenter and has updated the instructions and the form accordingly. Users who complete the form using a computer and those who complete the form on paper should have a similar user experience. The extra page for multiple preparer/translators that is generated when the user completes the form on a computer will also be a separate Supplement page accessible to those using the paper process.

25aaa. One (1) commenter requested USCIS to clarify the instructions and helper text to make clear whether the employee or the employer is responsible for checking the appropriate box in the Preparer and/or Translator Certification.

**Response:** USCIS agrees and has revised the instructions, helper text and hover text as the commenter recommended.

25bbb. One (1) commenter stated that the form instructions and text for the Preparer and/or Translator Certification are in conflict. The instructions state that one of the Preparer and/or Translator Certification checkboxes must be selected, however the text on the proposed form indicates that a box needs to be checked only if a preparer or translator is used.

**Response:** USCIS agrees with the commenter’s concerns. USCIS has revised the form to more clearly indicate that employees must check the, “I did not use a preparer or translator” checkbox if they do not use one. Preparers and translators must check the second box if they assist the employee in completing Section 1 and indicate how many preparers and/or translators were used. If the employee requires more than one preparer or translator, the additional preparer or translator must complete a separate Preparer or Translator Certification using a Supplement page. The Supplement

page includes 4 Preparer and/or Translator certifications that may be used whether completing the form in paper or on a computer.

25ccc. One (1) commenter recommended that USCIS to expand and move to the beginning of the instructions the statement: “Employers may photocopy or print blank Forms I-9 for future use. All pages of the instructions and Lists of Acceptable Documents must be available, either in print or electronically, to all employees completing this form.”

**Response:** USCIS agrees that this information would best serve employers if it were placed at the beginning of the instructions and has revised the instructions accordingly.

25ddd. Two (2) commenters provided suggestions for the instructions relating to QR codes. One commenter recommended USCIS include information in the instructions to address the purpose, use and creation of the QR code. The other commenter suggests USCIS provide employers with instructions or references to acquire instructions for reading QR codes. This commenter also requests USCIS clarify how the QR code will work when portions of the form are completed manually.

**Response:** USCIS will not add additional information about the QR code in the form instructions, because the QR codes require no action from the employee or the employer. The QR code automatically generates when the form is filled out on the computer, then printed. The generated QR code only contains the information entered into the form using a computer: Manual entries are not captured. Employers may, but are not required, to use the QR code in their business processes using any number of commercially available QR code reader they prefer.

25eee. One (1) commenter requested USCIS to change the form Instructions that require the employee to enter N/A in fields where the employee has the option of whether or not to provide information, e.g., “Middle Initial,” “Other Last Names Used,” to allow the employee to enter alternate, appropriate words or abbreviations or to leave fields blank.

**Response:** USCIS declines to accept this suggestion. USCIS has designed the proposed form to reduce technical errors and has incorporated specifically designed features and data validation when the form is completed using a computer to support this goal. As a result, users must now complete all of the data fields on the form, regardless of the method of completion to ensure uniformity once the form is printed, signed and retained. To ensure consistent data validation, USCIS standardized the form to accept N/A for fields that would otherwise remain blank or be completed with a various words or abbreviations. USCIS has provided guidance for using N/A throughout the form and instructions.

25fff. One (1) commenter requested USCIS to ensure that the instructions for completing the paper form mirror as closely as possible the instructions for completing the form online. The commenter also requested USCIS incorporate the helper/hover text guidance for recording the expiration date of certain receipts into the instructions.

**Response:** The helper and hover texts are abbreviated versions of the form instructions, but provide slightly more technical direction that is only of use when a user is completing a specific field on the computer. USCIS agrees that the information on receipts should be available to all users regardless of method of completion and has revised the instructions as appropriate.

25ggg. One (1) commenter suggested USCIS to remove field-specific instructions from the primary instruction document in favor of the helper/hover text embedded in the proposed form and provide a separate field-by-field instruction document for those who complete Form I-9 by hand. The commenter noted that the content of the helper/hover text, in many cases mirrors the full instructions exactly.

**Response:** USCIS declines to accept this suggestion. The same instructions must be available to all users. The helper and hover text are limited instructions. While they may, in some case, be faster use and easier to find, they do not replace the form instructions.

25hhh. One (1) commenter requested USCIS change the language of the instructions regarding the Employer's Business or Organization Address (Street Number and Name) to read "If your company has multiple locations, use the most appropriate address that identifies the location hiring the employee."

**Response:** USCIS agrees that the suggested text clarifies the address employers must provide and has revised the instructions accordingly.

25iii. One (1) commenter suggested that USCIS revise the instructions for completing Section 3 of Form I-9. The commenter recommended including noncitizen nationals among the categories of individuals who should not be verified and suggested adding a block identifier to the signature area in Section 3.

**Response:** USCIS will not accept this suggestion. The suggestion relates to a previous version of the instructions, and not to the revised draft instructions that were published for public comment. USCIS has completely retooled the draft instructions to better explain main concepts as well as provide step-by-step guidance for completing each field in Section 3.

The suggestion to clarify that noncitizen nationals are not to be reverified has already been included in the draft instructions that were published for public comment.

USCIS will not accept the suggestion to add a block identifier to the Signature area in Section 3. The Signature area relates to any and/or all of the blocks that must be completed in this section. Because not all of the blocks are required in each circumstance, adding a block identifier would create the incorrect presumption that the Signature block is not required in each circumstance.

25jjj. One (1) commenter suggested USCIS to incorporate an instruction specific to E-Verify and rehired employees under Completing Section 3: Reverification and Rehires in the Rehires sub-header. The commenter recommends including: "If you rehire an employee within three years from the date that a previous Form I-9 was completed, you may either rely on the employee's previously completed Form I-9 or complete a new Form I-9. Employers must use E-Verify for rehired employees. However, E-Verify has special rules for rehired employees. Refer to the E-Verify User Manual (M-775) for more information regarding rehires and E-Verify."

**Response:** USCIS has chosen to provide limited E-Verify guidance on Form I-9. However, USCIS agrees that additional guidance would be helpful to employers who use E-Verify and plans to revise its guidance materials accordingly.

25kkk. Three (3) commenters recommend that USCIS clearly separate the form instructions into two parts: employee instructions and employer instructions. The commenters indicate the change would

reduce the amount of paper waste; employees would be more likely to read the shorter instructions; and there would be greater clarity about what is required.

**Response:** USCIS will not accept this recommendation. USCIS has already provided a clear division in the instructions. Separating the instructions further into two distinct sets will give employers the mistaken impression that they need only provide a copy of the employee instructions to the employee. Employees should have access to a complete copy of the instructions.

25lll. One (1) commenter requested USCIS to clarify the requirements for signing and dating the form when it is completed on the computer. The commenter also asked USCIS to clarify whether the requirement to print and sign applies to Forms I-9 that are built into online onboarding systems.

**Response:** USCIS is clarifying the instructions regarding printing and signing the printed form to state that they relate solely to the Form I-9 developed by USCIS. The proposed form is not considered an electronic form as described in DHS regulations. If employers develop and use electronic Forms I-9 with electronic signatures that comply with DHS regulations, for their employees, the employer is not also required to print, sign and date a paper Form I-9 for those employees. USCIS will also provide additional guidance on this issue following OMB approval of the revised information collection.

25mmm. One (1) commenter requests that USCIS remove the language “Once you print the Form” from the instructions for providing the employee’s Social Security number. The language may be confusing because it erroneously assumes the employee will be printing the form.

**Response:** USCIS agrees and will incorporate this change.

25nnn. Three (3) commenters indicated that the 15-page instruction document is too long and is likely to be overwhelming for some employees, particularly those with limited English proficiency or low-literacy.

**Response:** USCIS believes the information as contained in the instructions will meet USCIS’s goal of reducing errors on the form, and therefore, USCIS disagrees that the form instructions should be reduced. USCIS has taken many steps to ensure that the instructions, while lengthy, require minimal burden to review:

- The instructions have been separated from the form, so the employer can print one copy and keep it on hand for multiple employees to use.
- USCIS has also formatted the instructions with major topic headers and bold field names so a user can easily locate only the pieces of information he or she needs to complete the form.
- The online version of the instructions can be searched by keyword using the “find” or “search” feature of most operating systems.

In addition to the detailed instructions, simplified instructions have been built into the form if the form is being completed on a computer. This text can be accessed by clicking the question mark icon or hovering over a field.

Once the revisions to the information collection are approved by OMB, USCIS may consider translating the instructions into multiple languages.

25ooo. One (1) commenter requested USCIS to review the document title tables in the instructions and correct inconsistencies and redundancies.

**Response:** USCIS agrees and has revised the instructions accordingly.

25ppp. Two (2) commenters noted a typographical error on page 11 of the instructions. The U.S. Citizen ID Card (form I-197) was incorrectly identified as U.S. Citizen ID Card (Form I-97).

**Response:** USCIS has corrected this error.

25qqq. One (1) commenter noted that Page 1 of 15 of the instructions shows an expiration date of 03/31/2016 while all other dates show as XX/XX/XXXX and suggested USCIS may need to update.

**Response:** USCIS will update the page numbers and the expiration date of the form in the instructions following approval of the revisions to this information collection by OMB.

25rrr. One (1) commenter noted that the deadline for comments was incorrectly listed as January 25, 2015.

**Response:** USCIS thanks you for your comment. The closing date was updated to the correct date of January 25, 2016 as soon as the error was identified.

25sss. One (1) commenter indicated that he was unable to open the link in the proposed instructions for the Spanish language version of Form I-9.

**Response:** Links provided in the proposed form and instructions are placeholders that show where the final links will exist once the form is approved. Before publication of the approved form, these placeholder links will be updated with live links to the revised form and instructions. For the current version of Form I-9 in Spanish, go to [www.uscis.gov/forms/I-9](http://www.uscis.gov/forms/I-9).

### **Terminology and Text Changes**

#### **26. USCIS received thirty-seven (37) requests for changes to the terminology and text used in the proposed form and instructions.**

26a. One (1) commenter suggested that USCIS reference common terms such as “green card” and “green card holders” in the helper text that describe individuals with lawful permanent residence. The commenter indicates some employees who are lawful permanent residents aren’t familiar with or don’t understand the term lawful permanent resident and may mistakenly check “Alien Authorized to Work” as their citizenship/immigration status.

**Response:** USCIS will not add the term “green card” to the instructions. The term “green card” is a colloquial term which is commonly used by the public to describe a Permanent Resident Card (Form I-551). The term was originally used to refer to an earlier version of the card, which was green.

26b. Four (4) commenters recommended that USCIS remove language relating to State workforce agencies from the Employer Certification in Section 2. Two commenters indicated the statement would be confusing to those who complete Forms I-9 for state employers. The other commenter recommended removing the language because it is not an attestation statement and the information is already covered in the form instructions.

**Response:** USCIS agrees to remove this sentence from the Employer Certification statement.

26c. One (1) commenter recommended twenty-nine (29) non-substantive textual changes to the proposed instructions:

26c.i Three (3) General Comments:

- a. All of the revisions adopted into the Smart PDF instructions [helper/hover text] should also be made for the paper and electronic Form I-9 instructions.

**Response:** USCIS will not accept this recommendation. The instructions has been written to assist both paper and Smart users to complete each field of the form. The helper and hover texts within the proposed form are abbreviated texts of the form instructions. They include information useful for a user who is actively using a computer to complete the field and may need to know how certain form functionality will work.

- b. In some places the instructions use “nonimmigrant,” in other places “non-immigrant.” Please use “nonimmigrant” consistently throughout the instructions.

**Response:** USCIS agrees with this comment and has updated the instructions.

- c. In some places, after the first use of United States (U.S.), the instructions use “U.S.” and in others use “United States.” Please select either and use it consistently throughout the instructions. If space allows, “United States” is recommended.

**Response:** USCIS will not accept this recommendation. “U.S.” is the adjective form used before a noun, such as U.S. Citizenship and Immigration Services. “United States” is spelled out when used as a noun, such as “president of the United States.” This is the format used throughout the form and instructions, and is the official style used by DHS.

26c.ii Three (3) comments on the Anti-Discrimination Notice:

- a. Revise the second sentence to read, “Employers **CANNOT** specify which document(s) the employer may present to establish employment authorization.”

**Response:** USCIS has made the suggested change and also added “and identity” to the end of the sentence to ensure both types of documents are covered.

- b. Revise the third sentence to use “the” instead of “an” before “employer” and “employee” and place a parentheses around the “s” in “documents” such that the sentence will read, “The employer must allow the employee to choose the document(s) to be presented ...”

**Response:** USCIS has made the suggested change.

- c. In the fourth sentence, add the text “or continue to employ” after the word “hire” such that the sentence reads, “The refusal to hire or continue to employ an individual because ...”

**Response:** USCIS has made the suggested change.

26c.iii Two (2) comments on the General Instructions section:



- a. In the second paragraph, second sentence, change “Employers” to “The employer” and “employees have” to “the employee has” and add at the end of the sentence, “during the completion of the form.” The sentence in full: “The employer must ensure that the employee has access to every page of these instructions during the completion of the form.”

**Response:** USCIS has changed “Employers” to “The employer” and has clarified the sentence to read “The employer must ensure that all pages of the instructions and Lists of Acceptable Documents are available, either in print or electronically, to all employees completing this form.”

- b. In the second paragraph, third sentence, before the word “form” and in the third paragraph, first sentence, add before the words “Form I-9” the words “USCIS PDF.”

**Response:** USCIS does not agree with this recommendation. Acronyms are not easily understood by many users, however USCIS has revised the instructions to better clarify that document being referred to is the form provided by USCIS.

26c.iv Two (2) comments on “Obtaining and Using Forms I-9” section:

- a. In the heading, change the word “Forms” to “Form”.

**Response:** USCIS has removed this header completely.

- b. Make use of N/A consistent across different Form I-9 formats.

**Response:** USCIS has reviewed the instructions to ensure each area of the form clearly states when N/A is required.

26c.v Five (5) comments on completing Section 1: Employee Information and Attestation - Entering Your Employee Information

- a. Add a period to the error message in the Smart PDF if “Unknown” is entered in both the first name and last name fields following “Last Name Fields.”

**Response:** USCIS accepts this suggestion.

- b. Under “Address (Street Name and Number),” add “in the United States” at the end of the first sentence.

**Response:** USCIS will not accept this recommendation, because some employees who are authorized to work in the United States may live in Canada or Mexico and travel across the border into the United States each day to work.

- c. In the City or Town instructions, make the sentence “If your residence does not have a physical address, enter a description of the location of your residence, such as “3 miles southwest of Anytown post office near water tower” the last sentence. This is consistent with the Address (Street Name and Number instructions) that applies to the United States, Canada, and Mexico.

**Response:** USCIS will not accept this suggestion. While an employee may live in a dwelling that does not have a specific address, all dwellings are located in an area that has a place name,

whether it is the name of a city, town, village, county, township, reservation, or other such location.

- d. Under U.S. Social Security Number, USCIS makes reference to “E-Verify” for the first time. There should be a registered trade mark (®) added.

**Response:** USCIS only requires the registered trademark symbol when the E-Verify logo is used, and will not incorporate this suggestion.

- e. Change the second option to add, “or will after the SSA’s recommended 10 day waiting period to apply for” after “You have applied for” and then following the rest of the instructions for using “Applied for – In Process.” USCIS also could add a third option, “You are waiting on the SSA to apply for a Social Security number in accordance with SSA instructions, leave this field blank. Once you print the form, write “Waiting on SSA” in this space, then sign and date Section 1.”

**Response:** Providing the Social Security number on Form I-9 is voluntary unless the employer participates in E-Verify. While USCIS agrees that this information would be beneficial to employees whose employers participate in E-Verify, it will confuse the majority of employers who do not participate in E-Verify. Many already mistakenly believe their employee must provide a Social Security number or some phrase indicating they have applied for one when completing Form I-9. Therefore, USCIS will not accept the suggestion to add it to the instructions, but will provide this information in any guidance materials following OMB approval of the revisions to the information collection.

26c.vi One (1) comment on the Completing the Preparer and/or Translator Certification section:

- a. In option (3), the second sentence, add “USCIS PDF” before the word “form;” In option (3), the fourth sentence, specify that “separate Form I-9” at the end of the sentence applies to the paper form and add, “a separate page that will automatically be created by the USCIS PDF of Form I-9.”

**Response:** USCIS does not agree with this recommendation. Acronyms are not easily understood by many users, however USCIS has revised the instructions to better clarify that document being referred to is the form provided by USCIS.

26c.vii Three (3) comments on Presenting Form I-9 Documents

- a. In the second paragraph, fourth sentence, replace the word “show” with “establish” and in the example replace “the” before “foreign” with “a”. In that same example, replace “incident to such” at the end of the sentence to “because of the alien’s”. The segment should read, – “for example, a foreign passport together with a Form I-94 containing an endorsement of the nonimmigrant status and employment authorization with a specific employer because of the alien’s status.”

**Response:** USCIS strives to incorporate plain language into our forms whenever possible and disagrees with the suggestion to replace show with establish. “Show” is the more easily understood, plain language term. USCIS will not accept the suggestion to revise the section to read – “for example, a foreign passport together with a Form I-94 containing an endorsement of the nonimmigrant status and employment authorization with a specific employer because of the alien’s status.” That revision does not clearly state the nature of the endorsement.

- b. In the second paragraph, fifth sentence, replace the word “show” with “establish”. This occurs twice in this sentence.

**Response:** USCIS strives to incorporate plain language into our forms whenever possible and disagrees with the suggestion to replace show with establish. “Show” is the more easily understood, plain language term.

- c. In the second paragraph, change the third and second-to-last sentences to the following, “If you present a List A document, you should not be asked to also present a List B and/or a List C document. If you present both a List B and a List C document, you should not also be asked to present a List A document.”

**Response:** USCIS accepts this suggestion.

26c.viii One (1) comment on Completing Section 2: Employer or Authorized Representative Review and Verification

- a. In the first paragraph, last sentence, after “as necessary”, replace the rest of the sentence with an added comma and then the text, “by drawing a line through the incorrect information, entering the correct information, and then initialing and dating any corrections made.” Then add another sentence to the end of the sentence, “Do not use correction fluid to conceal any incorrect information or changes made to the form.”

**Response:** USCIS will not incorporate this suggestion. However, USCIS will consider providing more information about making corrections in its guidance documents, which will be provided following OMB approval of the revisions to the information collection.

26c.ix Two (2) comments on Entering Employee Information from Section 1

- a. In the first paragraph, first sentence, remove the word “and” after “name”, add a comma and then the word, “and citizenship or immigration status.”

**Response:** USCIS accepts this suggestion in part and has removed the word “and” after name. USCIS has not added “and citizenship or immigration status,” but has clarified the instructions for entering the Citizenship/Immigration status from Section 1.

- b. In the first paragraph, last sentence, after “name”, add the words, “and citizenship or immigration status.”

**Response:** USCIS declines to accept this suggestion. USCIS has instead revised the instructions for this section.

26c.x Seven (7) comments on the Entering Documents the Employee Presents section:

- a. In the first paragraph first sentence, revise the text to read, “You, the employer, or your authorized representative . . . .”

**Response:** USCIS accepts this suggestion and has updated the instructions.

- b. Also make lower case the word “Document” in the second sentence.

**Response:** USCIS does not accept this suggestion. “Document” refers to a specifically titled field.

- c. In the third paragraph regarding List A documents and in the fourth paragraph, first sentence regarding List B and List C documents, please change the word “show” to “establish.”

**Response:** USCIS strives to incorporate plain language into our forms whenever possible and disagrees with the suggestion to replace show with establish. “Show” is the more easily understood, plain language term.

- d. In the second sentence add the word “a” before “List B”, after “List B” add “document and/or a”, and add the word “document” after “List C”.

**Response:** USCIS disagrees with the suggestion to make this change. The plural form is appropriate here because List B and List C documents must be presented in combination.

- e. In the sixth paragraph, first sentence, replace the words “cross out” with “draw a line through.”

**Response:** USCIS accepts this suggestion and has updated the instructions.

- f. In the sixth paragraph, remove the parenthetical, add a comma and the words, “which is” after the word “individual”.

**Response:** USCIS accepts this suggestion and has updated the instructions.

- g. In the ninth paragraph, at the end of the first sentence, add a comma after “List C” and then add, “unless you participate in E-Verify. If you participate in E-Verify, the employee also must present a List B document with a photograph when presenting a List C document.”

**Response:** USCIS accepts this suggestion in part. USCIS has not made the change as suggested, but has modified the instructions to state clarify that if a minor works for an E-Verify employer, he or she must present a List B document with a photograph.

### **Electronic I-9, Electronic Signatures and Alternatives to Form I-9**

#### **27. USCIS received seventeen (17) comments and recommendations regarding electronic Forms I-9, electronic signatures, remote hiring and document examination and suggestions for alternatives to Form I-9.**

- 27a. Eight (8) commenters indicated they would like for USCIS to develop a Form I-9 that includes electronic signatures. One of the commenters requested that USCIS consider delaying release of the enhanced Form I-9 until the form includes compliant electronic signatures. Four of the commenters also requested that USCIS integrate use of remote processing, such as video conferencing, to inspect the documents the employee presents for Section 2.

**Response:** USCIS declines to delay release of the enhanced Form I-9. The proposed form is not considered an electronic Form I-9. It is a fillable form that includes specific functionality designed to help employers and employees complete Form I-9 while reducing technical errors.

The issues of electronic signature, a fully electronic form, and capabilities for remote document examination are outside the scope of this information collection revision. USCIS may consider the

commenters' suggestions when examining future improvements to the employment eligibility verification process.

- 27b. One (1) commenter suggested that USCIS reduce the need to complete forms by developing a web portal that would allow employers to automatically verify the employment eligibility of an individual using the individual's Social Security number, first and last name and date of birth.

**Response:** USCIS thanks you for your comment suggesting an alternate verification system; however, the suggestion is outside the scope of this information collection revision process. The Form I-9 verification system is required by statute and cannot be changed through the information collection revision process.

- 27c. Seven (7) commenters suggested that USCIS should develop a fully electronic Form I-9 with electronic signatures or should consider alternatives to Form I-9, such as integrating the form into E-Verify or replacing the form with E-Verify or a similar system. One commenter recommended USCIS include fingerprint and photo capabilities within the electronic form.

**Response:** While USCIS appreciates the commenters' suggestions, they are outside the scope of this information collection revision process. USCIS will retain these comments for future consideration when examining improvements to the employment eligibility verification process.

#### **Timeline for Implementing the Proposed Form**

#### **28. USCIS received nine (9) comments regarding the implementation timeline for the proposed Form I-9.**

- 28a. Eight (8) commenters requested USCIS to provide information about the process for transitioning to the revised form, the impact of the proposed form on electronic Form I-9 developers, and a grace period of 120-180 days to allow employers to update their recordkeeping and training materials, train their employees on changes to the form and to provide sufficient time for electronic developers to build out some or all of the form's "smart" features.

**Response:** USCIS states in the form instructions that the proposed Form I-9 is not considered an electronic Form I-9. Employers are not required to incorporate the "smart" features of the proposed Form I-9 into their own electronic versions of this form. As provided in DHS regulations, developers must ensure that the name, content and sequence of the data elements and instructions of their electronic form match those of the approved USCIS issued form and that no additional data elements or language are inserted. The electronic form must also meet the requirements of DHS regulations at 8 CFR 274 (e)-(i). USCIS may consider including additional guidance in the Handbook for Employers (M-274) or on USCIS's I-9 Central webpage following OMB approval of the revised information collection.

Upon approval of the information collection by OMB, USCIS plans to publish a notice in the *Federal Register* announcing the newly revised form and any applicable transition period.

- 28b. One (1) commenter requested that USCIS avoid rolling out the proposed Form I-9 during the last quarter of the year.

**Response:** USCIS must submit a request to OMB for renewal of Form I-9 prior to the current approval expires on March 31, 2016. The date OMB approves this information collection is the date

the public must begin using the form. USCIS cannot predict when OMB will approve the information collection. However, upon OMB approval, USCIS plans to publish a notice in the *Federal Register* announcing the newly revised form and any applicable transition period.

### **Burden Statement and 60-day Notice**

**29. Five (5) commenters raised issues with the sufficiency of the 60-day notice and the accuracy of the USCIS's burden estimate.** All five commenters questioned the 35-minute (paper version) and 26-minute (computer version) burden estimate for completing the form. The commenters indicated that the increased length of the instructions and new technical features of the form should have translated into a longer time to complete the form. One (1) of the commenters stated that because the instructions were increased by 2.5 times, the time to complete the form should have increased proportionally.

Two (2) of the commenters also questioned:

- The accuracy of the 55,400,000 figure for the number of respondents for the proposed form when compared with the 78,000,000 respondents reported in 2012.
- The accuracy of the \$0.00 cost for the proposed form as compared to the 2012 cost of \$1,235,864,000 published in 2012.
- The sufficiency of the 60-day notice, because USCIS did not publish a supporting statement or copies of proposed revisions to the Handbook for Employers, M-274 or the I-9 Central web pages. The commenters requested that USCIS publish these documents for a 60-day period in accordance with 5 CFR 1320.8(d)(2)(ii) to allow the public to assess the accuracy of the burden estimates.

### **Response:**

#### **Time for completing the proposed form:**

The time burden estimates included in the 60-day notice are accurate and the commenters are mistaken in believing that an expansion in the length of the instructions should translate into a corresponding, proportional increase in the length of time to complete the form.

USCIS conducted a burden study to determine the amount of time required to complete the proposed Form I-9. The burden study showed that despite the increased length of the instructions and the changes to Form I-9 that the time to complete the proposed form manually averages 35 minutes and the average time to complete the form on the computer is 26 minutes.

During the burden study, USCIS had testers complete the form multiple times using different citizenship statuses and document combinations. Each time testers completed the form, they reduced the amount of time it took to complete the form.

USCIS found that, during the study, testers navigated through the information in the full set of instructions, or if completing the form on a computer, made use of the helper and hover text.

The efficiencies gained by the testers are largely attributable to the redesign of the form instructions. The instructions are now more technically focused and logically follow the data entry fields of the form. They have also been separated into sections for the employee and employer, limiting the need for users to search the entire set of instructions to identify their responsibilities in completing the form or find answers. Testers reported that the instructions were easier to navigate and use as compared to the shorter, but vaguer instructions published with previous versions of the form.

USCIS found that testers who completed the form on the computer experienced even more significant efficiencies than those testers who completed the form in paper.

Number of Respondents:

The 55.4 million respondents identified in the burden are the percentage of 78 million users who would likely adopt the process of completing the proposed form on a computer. The number is based on a poll taken as part of the burden study for the proposed form.

Cost:

The \$0 figure in the burden statement indicates that there is no change in cost burden from the 2012 figure of \$1,235,864,000.

The proposed form, like the current form that expires on 3/31/2016, is a fillable PDF that may be completed on a computer or using paper. Both versions must be printed and signed.

The 60-day Notice:

USCIS does not agree that the lack of a supporting statement renders the Form I-9 60-day notice of proposed changes insufficient. There is no requirement to post a supporting statement with the 60-day notice. In addition, members of the public were provided with information in the 60-day notice regarding how to ask questions or request additional information from USCIS. USCIS notes that no requests were received.

USCIS has provided a draft copy of the proposed Form I-9 and instructions and a table of changes for each document. The number and wide variety of comments that USCIS has received on the proposed form and instructions indicate that the public has had sufficient notice and ample opportunity to review and provide feedback on each document.

USCIS also does not agree that Form I-9 guidance materials require public comment. They are not information collections, but instead informational, based on existing laws and regulations or information collections that have gone through public notice and comment.

In addition, while guidance documents are not published as part of changes to an information collection, USCIS provides 24-7 online access to our published guidance materials, gives public notice when publish new or updated guidance documents and offers multiple, ongoing avenues for stakeholders and members of the public to ask questions or submit comments to the agency regarding employment verification guidance, including:

Contacting us by phone:

- Employers: 888-464-4218 or 877-875-6028 (TTY)
- Employees: 888-897-7781 or 877-875-6025

Contacting us by e-mail: [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov)

Submitting Comments through E-Verify Listens

**Other**

**30. USCIS received four (4) comments focusing on topics other than Form I-9.**

30a. One (1) commenter stated that “Any revision to this electronic system is only as good as the SAVE query which at present does not show AKA or current name. For the most part when a query is complete, there is an error on name as the person's entry name is the only offered name from the data query. Unlike SSA which shows current name, USCIS does not show current name.”

**Response:** The proposed form is not considered an electronic form as described in DHS regulations. It does not interface with the Systematic Alien Verification for Entitlements (SAVE) program. This comment addresses issues with the SAVE name check and is outside the scope of the revisions being proposed for Form I-9, which is about verification of employment eligibility.

30b. One (1) commenter expressed concerns about driver’s licenses and undocumented individuals in New Jersey and suggested specific enforcement actions to prevent these individuals from acquiring jobs.

**Response:** This comment raises issues that are beyond the scope of this information collection revision.

30c. One (1) commenter suggests that there is “not a reason to change enforcement rules when regulations and requirements are not adhered to” and provides a job advertisement for an assistant chef published on Craigslist as support for this statement.

**Response:** This comment raises issues that are beyond the scope of this information collection revision.

30d. One (1) commenter suggested that “USCIS should be forced to track stolen social security numbers and fake I-9 forms when working with those people applying for DACA or any other Obama Amnesty Executive Order.”

**Response:** This comment raises issues that are beyond the scope of this information collection. However, please note that USCIS employs extensive fraud detection and prevention efforts which are designed to identify and address fraud wherever it is found in USCIS programs.