

**SUPPORTING STATEMENT FOR
EMPLOYMENT ELIGIBILITY VERIFICATION
OMB Control No.: 1615-0047
COLLECTION INSTRUMENT(S): Form I-9**

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.*

This information collection has been developed to facilitate compliance with section 274A of the Immigration and Nationality Act (the Act). Section 274A of the Act, as amended, prohibits the knowing employment of unauthorized aliens and the hiring of individuals without first verifying their employment authorization and identity. The purpose of this information collection is to comply with section 274A of the Act.

In a final rule, DHS is extending the effective date of the final rule, “International Entrepreneur Rule,” which amended DHS regulations at 8 CFR parts 103, 212 and 274A to add new regulatory provisions guiding the use of parole with respect to entrepreneurs of start-up entities. However, one change made by this rule will go into effect on July 17, 2017, the original effective date of the rule. This change updated a document acceptable by employers for completion of Employment Eligibility Verification (Form I-9).

2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

Form I-9 collects information from employees, form preparers and translators, employers, recruiters and referrers for a fee (limited to agricultural associations, agricultural employers, or farm labor contractors), and state employment agencies, as applicable. Form I-9 is completed in connection with an individual’s employment in the United States. The form contains three sections. The purpose of Section 1 of the form is to collect, at the time of hire, identifying information about an employee (and preparer or translator if used), and for the employee to attest to whether he or she is a U.S. citizen, noncitizen national, lawful permanent resident, or alien authorized to work in the United States. The employee must also present documentation for review evidencing his or her identity and authorization to engage in this employment. The purpose of Section 2 of the form is to collect, within 3 days of the employee’s hire, the employer’s identifying information (or that of a recruiter or referrer for a fee or state employment agency, as applicable) and information regarding the identity and employment authorization

documentation presented by the employee and reviewed by the employer (or recruiter or referrer for a fee or state employment agency, as applicable). The purpose of Section 3 of the form is to collect information from the employee and employer regarding the continued employment authorization of the employee. This section, if applicable, is completed at the time that the employee's employment authorization and/or employment authorization documentation recorded in either Section 1 or Section 2 of the form expires. This section may also be used if the employee is rehired within 3 years of the date of the initial execution of the form and to record a name change if Section 3 is completed. Failure of employers to ensure proper completion and retention of the form will undermine the effective enforcement of provisions of the immigration laws that are designed to control the employment of unauthorized aliens. The Act requires employers to maintain the form and make it available for inspection by officers of the Department of Homeland Security (DHS), the Office of Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice (now called, "Immigrant and Employee Rights Section"), and the Department of Labor. The Act also has penalty provisions for failure of employers to ensure proper completion of the form and for failure of employers to retain the form for the requisite timeframes.

USCIS is submitting this request because DHS is revising the Form I-9 Lists of Acceptable Documents and associated drop-down menus, as well as the Document Title table in the form instructions, to include a technical change by adding the Department of State (DOS) Form FS-240 Consular Report of Birth Abroad, or successor form, to "List C." This change formally recognizes the Form FS-240, or successor form, as an acceptable document to establish employment authorization for Form I-9 purposes and is being made pursuant to an amendment to the regulations made by the final rule, "International Entrepreneur Rule" that is effective on July 17, 2017. DHS is also making clarifying changes in the form instructions by removing "the end of" when describing the time for completing certain Form I-9 requirements. In addition, DHS is updating the form instructions to reflect the name change of the Department of Justice's Civil Rights Office of Special Counsel for Immigration-Related Unfair Employment Practices from the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) to the current name, Immigrant and Employee Rights Section (IER). Finally, the form instructions include the new website address for this office, <https://www.justice.gov/crt/immigrant-and-employee-rights-section>.

Additional changes would be made to Form I-9 as a result of the International Entrepreneur final rule, which included changes that would permit aliens with parole under the rule to be able to present their employers with their foreign passport and Form I-94 (Arrival/Departure Record) indicating entrepreneur parole to satisfy the Form I-9 requirement to present evidence of identity and employment authorization. However, these changes will not go into effect on July 17, 2017. Instead, DHS is issuing a final rule to extend the effective date of the final International Entrepreneur Rule with respect to these provisions, including the corresponding changes to the form and form instructions. The effective date is being extended to March 14, 2018.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.*

The use of this form provides the most efficient means of collecting and maintaining the required data. Since this form is maintained by employers and is not submitted to USCIS/DHS, e-filing is not applicable to this information collection. However, by Interim Final Rule: Electronic Signature and Storage of Form I-9, Employment Eligibility Verification, published by Immigration and Customs Enforcement on June 15, 2006 (71 FR 34510), this form can now be electronically stored by the employer. That interim final rule was finalized on July 22, 2010 (75 FR 42575). Employers can now electronically reproduce and store a Form I-9, provided that the resulting form is readable and identical to the form issued by DHS.

The Form I-9 can be completed electronically online by visiting USCIS Web site at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=75bce2e261405110VgnVCM1000004718190aRCRD&vgnnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>. The form can be completed online and saved by the employers to their systems or printed to be placed in the employees' files.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

A search of DHS automated forms tracking system was accomplished and revealed no duplication. There is no similar data collected.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

The use of this form affects small businesses. However, DHS has made efforts in the design of the form to minimize the amount of data collected, the time required to complete the form, and the education level necessary to complete the form. In addition, DHS now allows the employer to store the form electronically.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

The purpose of this information collection is to comply with section 274A of the Act and implementing regulations requiring the verification on Form I-9 of the identity and employment authorization of individuals hired for employment in the United States. Failure of employers to collect and retain the information requested on the form will undermine the effective enforcement of the provisions of immigration laws that are designed to control the employment of unauthorized aliens.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*

- *Requiring respondents to report information to the agency more often than quarterly;*
- *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
- *requiring respondents to submit more than an original and two copies of any document;*
- *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
- *In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

The special circumstances described in paragraph 7 do not apply to this form.

8. *If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public*

comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Final rule: delay of effective date: On July 11, 2017, USCIS published a Final Rule in the Federal Register at 82 FR 31887. The effective date of the regulation entitled “International Entrepreneur Rule,” published in the Federal Register on January 17, 2017, at 82 FR 5238, is being delayed from July 17, 2017, to March 14, 2018, except for the revision to 8 CFR 274a.2(b)(1)(v)(C)(2) which will go into effect on July 17, 2017. Written comments must be received on or before August 10, 2017.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

DHS does not provide payments or gifts to respondents in exchange for a benefit sought.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

There is no assurance of confidentiality. This collection of information is covered under the Privacy Impact Assessments (PIAs) [DHS/USCIS/PIA-036\(b\) - Form I-9 Employment Eligibility Verification Update, dated June 21, 2013](#); and [DHS/USCIS/PIA-030\(d\) - E-Verify Program, dated July 27, 2012](#); and associated System of Records Notice (SORN) [DHS/USCIS-011 - E-Verify Program](#), which was last published in the Federal Register on August 11, 2014, at 79 FR 46852.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person’s from whom the information is requested, and any steps to be taken to obtain their consent.*

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

Type of Respondent	Form Name / Form Number	No. of Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours) ***	Total Annual Burden (in hours)	Avg. Hourly Wage Rate*	Total Annual Respondent Cost
Employers, recruiters and referrers for a fee (limited to agricultural associations, agricultural employers, or farm labor contractors), and state employment agencies.	Employment Eligibility Verification, Form I-9	55,400,000	1	.33 hours (20 min.)	18,282,000	\$33.40	\$610,618,800
Individuals or Households (Employees)	Employment Eligibility Verification, Form I-9	55,400,000	1	.17 hours (10 minutes)	9,418,000	\$33.40	\$314,561,200

Record keepers	Record keeping	20,000,000**	1	.08 hours (5 min.)	1,600,000	\$33.40	\$53,440,000
Total		130,800,000			29,300,000		\$978,620,000

* The above Average Hourly Wage Rate is the [May 2016 Bureau of Labor Statistics](#) average wage for All Occupations of \$23.86 times the wage rate benefit multiplier of 1.4 (to account for benefits provided) equaling \$33.40. The selection of “All Occupations” was chosen as the expected respondents for this collection could be expected to be from any occupation.

**The 20 million record keepers are a subset of the 55 million respondents. Record keeping is generally only a portion of HR functions. Not everyone who completes Form I-9 will be responsible for its retention.

*** Time burden – Time per response breakdown:

Time burden for Employers – 20 minutes total

- **8 minutes** - Accessing the helper and/or hover text, if applicable, and consulting the form instructions as needed
- **10 minutes** - Completing Section 2, including reviewing documentation presented by the employee
- **2 minutes** - Section 3 of the form when necessary – In limited circumstances the employer would need to review one document, sign and date.

Time burden for Employees – 10 minutes total

- **3 minutes** – Accessing the helper and/or hover text, if applicable, and consulting the form instructions as needed
- **5 minute** – Gathering the required supporting documentation
- **2 minutes** – Completing Section 1 of the form

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record

storage facilities.

- *If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.*
- *Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices.*

There is no cost burden to respondents for actually responding to this information collection- start-up, maintenance, and operating costs associated with completing the paperwork. There is no fee associated with this information collection.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

Annualized Cost Analysis

A. Collection and Processing Cost	\$ 11,520,000
B. Total Cost to Government	\$ 11,520,000

Government Cost

Federal government cost is estimated at \$11,520,00. This figure includes the cost to conduct on-site employer compliance reviews in accordance with section 274A of the Act. The compliance review costs are calculated by multiplying the number of ICE Forensic Auditors (144) x \$80,000 (average annual salary with benefits).

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

Data collection Activity/ Instrument	Program Change (hours currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (hours currently on OMB Inventory)	Adjustment (New)	Difference
Form I-9	18,282,000	0	0	0	0	0
Total(s)	18,282,000	0	0	0	0	0

There is no change in the estimated burden hours as previously reported for this information collection. There is no change in the information being collected. In this information collection, DHS is adding the Department of State (DOS) Form FS-240 Consular Report of Birth Abroad, or successor form to the Lists of Acceptable Documents under the “List C” column and associated drop-down menus as well as to the Document Title table in the form instructions. The reason for this change is to conform to a change to DHS regulations describing the documents acceptable for Form I-9 being made in the provision of the International Entrepreneur Rule that is effective on July 17, 2017. The rule makes a technical change to 8 CFR 274a.2(b)(1)(v)(C) to add Form FS-240 Consular Report of Birth Abroad, or successor form, to the list of acceptable documents evidencing employment authorization. Since 2011, Form FS-240 has been exclusively issued by DOS as evidence of a U.S. citizen’s birth abroad and acquisition of U.S. citizenship at birth, as well as used to replace a lost, stolen, or damaged Form FS-545 Certification of Birth Abroad or Form DS-1350 Certification of Report of Birth. This technical change will formally recognize the Form FS-240, or successor form, as an acceptable document to establish employment authorization for Form I-9 purposes.

DHS is also making clarifying changes in the form instructions by removing “the end of” from page 5 of the instructions when describing the Form I-9 document presentation requirements for individuals who are employed for less than 3 days. DHS is also removing “the end of” from page 6 of the instructions when describing when Section 1 must be completed. In addition, DHS is updating the form instructions to reflect the name change of the Department of Justice’s Civil Rights Office of Special Counsel for Immigration-Related Unfair Employment Practices from the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) to the current name, Immigrant and Employee Rights Section (IER). Finally, the form instructions include the new website address for this office, <https://www.justice.gov/crt/immigrant-and-employee-rights-section>.

The International Entrepreneur Rule would necessitate additional changes to be made to the Lists of Acceptable Documents of Form I-9, associated drop-down menus, and page 6 of the form instructions to replace “nonimmigrant” with “individual” and adding “or parole” when describing who and under what circumstances an individual may present to his or her employer with a foreign passport and Form I-94 under List A of Form I-9. The rule would amend DHS regulations by adding to the regulations at 8 CFR 274a.12(b), entrepreneur parolees to the class

of aliens authorized for employment incident to status or parole with a specific employer and who may present the foreign passport and Form I-94 under List A of Form I-9. However, DHS is extending the effective date of these changes until March 14, 2018. Therefore, these changes are not immediately effective.

Data collection Activity/ Instrument	Program Change (cost currently on OMB Inventory)	Program Change (New)	Difference	Adjustment (cost currently on OMB Inventory)	Adjustment (New)	Difference
Form I-9	0	0	0	0	0	0
Total(s)	0	0	0	0	0	0

There is no change in the estimated cost burden associated with this information collection. There is no change in the information being collected.

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.*

DHS does not intend to employ the use of statistics or publication thereof for this collection of information.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

DHS will display the expiration date for OMB approval of this information collection.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

DHS does not request an exception to the certification of this information collection.