May 29, 2012

U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Sunday Aigbe, Acting Chief
Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, DC 20529

Via E-mail: uscisfrcomments@dhs.gov

Re: Comments to Revisions of Form I-9, (Employment Eligibility Verification) - OMB Control Number 1615-0047

Dear Sir or Madam:

The American Council on International Personnel (ACIP) and the Society for Human Resource Management (SHRM) are pleased to submit these comments in connection with the revision of Form I-9, Employment Eligibility Verification. ACIP and SHRM are grateful for the opportunity to work with U.S. Citizenship and Immigration Services (USCIS) to improve Form I-9 and the employment eligibility verification process.

ACIP is an organization comprised of approximately 220 corporate and institutional members with an interest in the movement of personnel across national borders. Each of our members employs at least 500 employees worldwide, and in total, ACIP members employ millions of United States citizens and foreign nationals in all industries throughout the United States. ACIP sponsors seminars and produces publications aimed at educating human resource and legal professionals on compliance with immigration and employment verification laws, while working with Congress and the Executive Branch to facilitate the movement of international personnel.

The Society for Human Resource Management (SHRM) is the world’s largest association devoted to human resource management. Representing more than 250,000 members in over 140 countries, the Society serves the needs of HR
professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

**GENERAL RECOMMENDATIONS**

Before commenting on specific elements of the revisions to Form I-9, we would like to make some general recommendations.

1. **Length of Revised Form I-9**

We would like to strongly suggest that the revised Form I-9 (which is three pages long, including the required List of Acceptable Documents) *not* require more sheets of paper than the current Form I-9 (which is two pages long, including the List of Acceptable Documents).

The current Form I-9 may be printed double-sided and distributed as a one-sheet document. The proposed revised Form I-9 would require at least two sheets of paper per form, resulting in unnecessary additional costs and administrative burdens in the production, completion, review and storage of each Form I-9. We believe a clear form can be created which retains the current single-page format. For employers who complete literally tens of thousands of Forms I-9 per year, these increased costs and burdens would be substantial and do not seem justified by the changes proposed to the Form I-9.

2. **Electronic Form I-94**

The revised Form I-9 and instructions do not seem to address the upcoming change in the Form I-94 process. The U.S. Customs and Border Protection (CBP) will, in the very near future, introduce electronic Form I-94 instead of a paper-based copy. The revised Form I-9 and instructions still refer to Form I-94 in its paper-based format and do not make any references to the electronic Form I-94. We believe it is critical to both employees and employers that the revised Form I-9 clearly addresses how the electronic Form I-94 may be used in the I-9 context.

3. **Handbook for Employers (M-274)**

We believe that the Handbook for Employers (M-274) should be more prominently noted in the proposed instructions to the revised Form I-9. The M-274 carries significant importance in guiding employers in completing the I-9 process, but is referenced in only a few places in the instructions; as a result, the existence (much less importance) of the M-274 would not be clearly evident to someone who is new to the I-9 process.
Our other comment regarding the M-274 is that we believe it is critical that the agency promptly update the M-274 each time Form I-9 is revised.

4. Consistency with I-9 Central and M-274

Currently, there are three agency resources that users can utilize to understand the I-9 process and complete the form: I-9 Central (an electronic web-based resource), the M-274 Handbook for Employers, and the printed instructions accompanying Form I-9. It is not clear to employees and employers which of these three documents provides the most complete and/or up-to-date information. If the agency persists in having multiple sources of information and instructions regarding the I-9 process, any lack of consistency among those multiple sources unnecessarily adds complexity and confusion to the I-9 process. As was stated in the American Immigration Lawyers Association (AILA) Letter to USCIS Verification Division ("Comments Concerning I-9 Central") on March 12, 2012, some of the inconsistencies between I-9 Central and M-274 involve guidance on issues dealing with spelling of the name on Form I-9; providing documentation supporting a name change; clarification regarding acceptance of expired documents; and acceptability of laminated Social Security account cards. We wholeheartedly agree with AILA’s observations and comments on this point.

To summarize, we believe there should be one resource for current instructions and information regarding the I-9 process. To the extent that there are multiple sources, it is critical that those sources not contradict each other or create confusion for employees and employers.

5. Time to Complete Form I-9

The current estimated burden for "reviewing instructions and completing and retaining" each Form I-9 is listed as 13 minutes. We would like to note that the instructions for Form I-9 have become increasingly complex and lengthy: the current M-274 is a 69-page document; the instructions accompanying the proposed revised Form I-9 are six pages (not counting the form itself). We do not believe that any individual could read and understand that volume of material in the 13 minutes estimated for the entire I-9 process (which includes completing the employee and employer sections of the form, as well as processing the form through whatever retention system the employer utilizes).

We believe it is important that the form reflect a realistic burden on the public, both to enable the agency to understand the cost and resources required by employers, and to create realistic expectations for employers who must budget the time and resources required for the I-9 process.
6. Electronic Version of Form I-9

Our organizations have been supportive of creating an electronic version of Form I-9. We firmly believe that an electronic version of the Form I-9 will enable employers to complete the form in a shorter amount of time and would eliminate a need for a paper-based format of the form. An electronic version of Form I-9 would enable employers to more accurately review their responses and make sure that they are in compliance with the regulatory requirements.

COMMENTS ON FORM I-9 INSTRUCTIONS

The following are specific comments to Form I-9 instructions:

1. Form Instructions/Section 1 - Employee Information and Attestation

   a. Email Address and Telephone Number

   The revised form provides space for the employee’s e-mail address and telephone number; however, that information is optional. Since many individuals will not wish to provide the information due to privacy concerns, if these fields are to remain on the form, we would encourage USCIS to explain the need for this information and how it could be used. Without such an explanation, we believe few individuals would provide the information, thereby undermining the purpose of including the fields and needless taking up valuable space on the form.

   b. USCIS Number

   The revised form contains space for the employee’s “Alien Registration Number/USCIS Number.” The instructions to the form contain no explanation regarding what constitutes a USCIS number. Since we, who are very familiar with the I-9 process, do not know what a “USCIS number” is, we believe few, if any; employees or employers would understand what information is being requested. Therefore, we believe it is critical that the instructions provide clear explanation of what is a USCIS number.

2. Form Instructions/Section 2 – Employer Review and Verification

   a. Definition of 3 Business Days

   We would like to point out that some employers continue to be confused of their obligations in the I-9 process due to different schedules of their business operations and how that fits within the definition of 3 business days. Many employers do not operate on a regular 9:00 a.m. - 5:00 p.m. shift, on the same
shift as administrative employees responsible for completing the I-9 process, or even for five consecutive days per week. For instance, in the manufacturing or product-distribution fields, shift work is often conducted on a 24/7 cycle. If a company’s corporate office is closed on weekends and the employee’s third business day at work falls on a weekend, the employer should be able to complete Section 2 of Form I-9 on the next regular business day.

Given the variety of work schedules of employers and employees, we urge the agency to provide a clear definition on the form's instructions, in the M-274, and on I-9 Central regarding what is considered 3 business days for employers that do not operate on a regular schedule.

b. Definition of Program End date from the Form I-20

We would like to comment that the end date in this section needs to be defined. So, we recommend that after the words Form I-20, the instructions should state “if on CPT or OPT.”

c. Expired Documents

The first sentence of this paragraph should be rewritten to conform with the second sentence (which provides an exception to the seemingly definitive statement in the first sentence). Specifically, we would suggest that the first sentence read, “In most circumstances, only unexpired, original documentation is acceptable.” The many exceptions to this rule amply illustrate how legally complex the I-9 process has become and the need for the agency to be extremely specific, precise and complete in all its written instructions and guidance regarding the I-9 process.

3. Form Instructions/Section 3 – Reverification and Rehires

On page 4 of 9 of the instructions, under number 2 in this section, and the words “lawful permanent resident”, we suggest that USCIS add the words “and conditional permanent residents.”

On page 5 of 9 of the instructions, under numeral 2 and “the necessity to complete Block B of the form,” the instructions should state “if an employee was rehired within 3 years of the date that the Form I-9 was initially executed.”

4. Form I-9/Employee Name Box above Section 2 (page 8 of 9)

We would like to comment that the “Employee Family Name” box located above Section 2 of the revised Form I-9 is confusing and should be incorporated as part of Section 2.
We would recommend revising the language on the left hand side of the box to say “Employee Family Name in Caps (last name), Given Name (first name), and Middle Initial as listed by employee on page 1.”

**COMMENTS ON THE REVISED FORM I-9**

Our comments on specific elements of the proposed Form I-9 are as follows:

1. **Form I-9/Certification Section (page 8 of 9)**

   We would like to use this opportunity to commend USCIS for clarifying the Certification section of Form I-9 by including the language on “employee’s first day of work for pay” instead of asking for certification that the “employee began employment on (month/day/year).”

2. **Form I-9/List of Acceptable Documents (page 9 of 9)**

   We would urge the agency to revise the sentence at the bottom of this page “Refer to Section 2 of the instructions, entitled ‘Employer Review and Verification,’ for more information and acceptable receipts” by adding the following at the end of the sentence “if person is unable to present original and unexpired documents.” Also, this revised sentence should be moved above the chart, where it would be much more noticeable to individuals completing the form.

   The second sentence “All documents must be unexpired” should be revised to reflect the requirement that all documents must be original and unexpired. Additionally, this sentence would be more helpful if it were located at the bottom of the page (i.e., below the chart).

   We would encourage the agency to change the title of the first document in List C (“Social Security Account Number card”) to clarify that this document refers to what is commonly referred to - even on the website of the U.S. Social Security Administration \(^2\) - simply as a “Social Security Card.”

   In List C, document number 8 “Employment authorization document issued by the Department of Homeland Security” should be revised to “Employment authorization document not listed elsewhere issued by the Department of Homeland Security.” The revised language would provide more clarity to employers completing the form.

\(^2\) [http://www.ssa.gov/ssnumber/](http://www.ssa.gov/ssnumber/)
ACIP and SHRM once again are grateful to USCIS for the opportunity to comment on the revisions to Form I-9. We would be pleased to provide additional information and feedback at any time.

Sincerely,

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ACIP

Mike Aitken
Vice President, Government Affairs
Society for Human Resource Management