

May 24, 2012

Regulatory Coordination Division
Office of Policy Strategy, USCIS
Department of Homeland Security

Re: FR Doc. 2012-7340, Federal Register Volume 77, Issue 59
60-Day notice of information collection under review: **I-9 Employment Eligibility Verification**

Dear Regulatory Coordination Division:

I am writing to comment on the most recent proposed draft of the Form I-9 and instructions. The International Scholars Office at the Massachusetts Institute of Technology (MIT) facilitates the arrival of foreign national researchers, professors, visiting scientists, postdoctoral associates, and other talented international visitors in the J-1, H-1B, O-1 and other visa categories. MIT is host to over 2800 enrolled international students and 2000 international scholars from 90 countries each year. We are, therefore, familiar with Form I-9 and the difficulties employers have had in using and understanding it in the past.

It is encouraging that after many years of hearing a variety of suggestions for revisions to the Form I-9, from the American Immigration Lawyers Association and other sources, USCIS is undertaking the task of improving the instructions and making the form itself more accommodating of information from a variety of immigration documents. I have only a few suggestions and comments on the draft instructions, list of acceptable documents, and the Form I-9:

Instructions, Page 1:

Maiden Name – Suggestion: insert definition of maiden name as “(family name before you married)”

U.S. Social Security number – Add the following, “If you do not yet have a social security number, leave blank.”

Page 2

4. Alien Authorized to work

b. “Next, list your Alien Registration Number (A-number)/USCIS number.” A concerted effort will be needed to educate the public, employees, and foreign nationals in order to spread the word that there will no longer be Alien Registration Numbers or “A numbers,” and instead the number will be called the “USCIS number.”

This name, “USCIS number” is certainly not the ideal designation for the former A number, because “USCIS number” is such a general and broad term. “USCIS number”

could be construed to mean any number of things, such as USCIS case file number on an I-797 receipt or approval notice, the I-94 number, or many other things. There has got to be a better label than “USCIS number” to replace A-Number, but that is a separate issue for another comment collection.

Page 3, **Employers must:**

2. “If the employee is a student or exchange visitor who presented a foreign passport with a Form I-94, [...]” Nowhere in the instructions or the form itself does it instruct an employer how to enter the “expiration date” of the I-94 Admission Record of an F-1, M-1, or J-1. Nowhere does it state that the end date of such I-94 is likely to be “D/S,” duration of status. On the Form I-9 itself, where employers are likely to record passport dates, I-94, and I-20 or DS-2019 dates, the “Expiration Date” space says “if any” or “(mm/dd/yy).” Nowhere does it indicate that an alternative format to mm/dd/yy is possible. I know from questioning people in academic institutions around the state and the country, that they leave “expiration date” blank because they don’t understand “D/S” on an I-94 is an expiration date.

2. b. “The Program end date from the Form I-20 or the *employment authorization* date from the DS-2019.”

Form DS-2019 indicates the program start and end dates of the exchange visitor. Although many J-1 exchange visitors are employment authorized incident to status, the purpose of the J-1 exchange visitor program *is not employment*. In fact, all language in SEVIS and on the Form DS-2019 itself uses the word “program.” #2b should, therefore, be worded the same for I-20s and DS-2019s and the instructions should refer to “The program end date from the Form I-20 or the program end date from the Form DS-2019.”

Page 3, **Receipts**

Although an employment authorization document (EAD) is recognizable to some people, to others, the words “employment authorization” could mean any document that grants employment authorization. It would be best for the instructions on this page and all other pages to *be more specific* and consistent with the List of Acceptable Documents, by using “I-766 Employment Authorization Document.”

Page 4. **“There are 3 types of acceptable receipts”**

Missing from this list are receipts for the beneficiaries of portable H-1B Temporary Worker petitions. Although there are only 85,000 new H-1B slots available in the U.S. each year, it does bear mentioning this, because some portion of H-1B workers will “port” their H-1s to a new employer during their careers.

Employment Eligibility Verification Form I-9

Section 1 Employee Information and Attestation, **middle of the page**

The form says “*For aliens authorized to work, list your Alien Registration Number/USCIS-Number or Form I-94 Admission Number*”

Because these instructions say “or,” it would be clearest if the same “or” is placed between numbers 1. and 2. See below:

1. Alien Registration Number/USCIS-Number ;Or
2. Form I-94 Admission Number

Section 2 Employer Review and Verification, instructions at the top of the page:

The instructions say “*For each document you review, record the following information, document title, issuing authority, document number, and expiration date, if any.*”

However, on the Form I-9 itself, in the List A section, there is only room for one document’s required information (document title, issuing authority, document number and expiration date). It is obvious that USCIS believes the employer will choose to enter the passport information first, at the top of the List A section. The space provided for two additional documents, below, allow entry of Document Number and Expiration Date **only**. There is not space for document title, document number or issuing authority, as referred to in the instructions on the first page. The instructions and Section 2 should be consistent.

Section 3 Reverification and Rehires:

Suggestion that words referring to the List of Acceptable Documents be added to C. See red below.

C. “If employee’s previous grant of employment authorization has expired, provide the information for the document, **from List A or List C**, that established employment authorization in the space provided below.

I greatly appreciate the opportunity to comment, and hope revised instructions and I-9 Form will be released for use in the very near future.

Sincerely,

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