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Sent: Tuesday, May 29, 2012 6:23 PM

To: uscisfrcomment@dhs.gov

Subject: Form I-9 Comments OMB Control Number 1615-0047

Please find attached comments on the proposed Form I-9. Further communication can be directed to:

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California Cotton Ginners Association
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May 29, 2012

DEPARTMENT OF HOMELAND SECURITY

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

Re: Agency Information Collection Activities: Revision of an Existing Information
Collection,
Form I-9, Employment Eligibility Verification

Docket ID: USCIS-2006-0068

The above listed agricultural organizations appreciate the opportunity to comment on the proposed revisions to Form I-9, and do submit comments as follows:

Form I-9 Instructions

The instructions that accompany the Form I-9 have increased from three (3) pages in the previous version to six (6) pages in the proposed Form I-9. Agricultural employers have felt for many years that the I-9 process was confusing, for themselves, the employees they hire, and the authorized individuals that hire workers and verify documents. This was most closely related to not knowing what information was required in a particular area, especially if information from multiple documents could be used. The expanded instructions provide a clearer picture of the verification process and how the form is to be filled-out. Additionally, the new instructions are presented in a “step-by-step” format which should make them much easier to follow.

Recommendation

The proposed instructions appear to be formatted and presented in an easy to understand fashion. No changes are recommended, except for formatting and content changes to make the instructions consistent with the following recommendations.

Form I-9 (2 Pages)

The Form I-9 in the proposed format requires two (2) pages, or both sides of the same page. The prior version of Form I-9 required only a single side of a single sheet of paper. That format allowed employers to print the “List of Acceptable Documents” on the reverse side of the page, if they were capable of doing so, in an effort to ensure the list was always available with the Form I-9. The ability to print the list on the reverse side of the form not only made it possible to keep those documents together, it saved paper and time associated with distributing, collecting, and storing the Form I-9.

Increasing the Form I-9 to two (2) pages will create a number of issues. First, employers will no longer have the ability to print the “List of Acceptable Documents” on the back, which will result in more time, paper, and effort being expended to get the Forms I-9 distributed, collected, and stored. Second, employers that are unable or choose not to print on both sides of a single sheet of paper will be shuffling more pages around, experiencing the problems described above, as well as increasing the risk that a page of the Form I-9 will be lost or misplaced after it is completed. Third, there is an increased risk for unnecessary paperwork violations caused by the multipage document. When the two (2)-page Form I-9 is not printed double sided, there is a significant risk that the information on one page will not pertain to the employee on the other. This can cause major problems for employers if the two (2) pages somehow get mixed up with others. It would also be very time consuming to try to sort out the mess created by a two (2)-page document, especially during an I-9 audit.

It seems that the portion at the very top of the second page of the revised Form I-9 for the employee’s name is meant to safeguard against this. It is simply a marker to ensure that the second page of Form I-9, which is completed by the employer, pertains to the same employee that completed the first page (Section 1). For agricultural employers this is hardly a safeguard from mixing-up hundreds and hundreds of pages of Forms I-9 because hiring often occurs out in the field, rather than in an office, and during harvest and other busy times of the year dozens of workers may be hired at one time. To their credit, agricultural employers do a very good job of getting Forms I-9 completed in the field setting and transported back to the farm office or whatever site is used for Form I-9 storage. However, errors do occur, form can be misplaced, and may at times be unaccounted for, only to turn up a week or a month later. In agriculture, such risks will always be present, but those risks are amplified with a multipage document, and the consequences for retaining only half of a two (2)-page document will be felt by growers and farm labor contractors.

We do recognize that the risks described above relating to page mix-ups of the multipage document can be avoided by double sided printing. For those employers that are capable of double sided printing, the risk would be associated with a failure to complete that new portion of the document. If the purpose of the “name” section at the top of the second page is to facilitate

the unity of the first and second page, that need is removed when the pages are printed on both sides of a single page, or otherwise joined or connected. In those instances, it is very likely that the name section will be overlooked completely and left blank because it serves no discernable purpose when the first and second pages are adjoined. Those employers are now setting themselves up for a completely unnecessary paperwork violation that could have been avoided if the Form I-9 remained on a single page.

Recommendation

The simplest solution is to reduce the proposed Form I-9 to one (1) page. All of the concerns listed above are eliminated with a single page document. Condensing the document, eliminating unnecessary spaces and information fields, and reformatting will do the trick. While we do recognize that some of the formatting changes do appear to make the Form I-9 easier to understand, we feel that some of these changes were only made to utilize two (2) full pages of space. We also believe that any benefit from the formatting changes will be nullified by the issues inherent in a two (2)-page document. The remaining comments will address some of the areas that can be eliminated to accommodate the reduction to a single page.

Optional Areas (U.S. Social Security Number, E-mail Address, Telephone Number)

A place for listing the U.S. Social Security Number has long been part of Form I-9. However, this information is optional (an employee need not provide it number) unless the employer participates in E-Verify, as indicated by the Form I-9 instructions. The E-mail Address and Telephone Number spaces are new to Form I-9, and it has been indicated that the purpose of this information is to assist DHS in contacting employees regarding verification of employment authorization.

The SSN is not required save for a single situation, but many employees and employers alike believe it is mandatory. Some employers or authorized individuals have erroneously believed that the SSN must also be listed in the space for List C documents, even when a List A document or a different List C document was presented. This gives the appearance of discriminatory over documentation because an optional field is believed to be mandatory. Eliminating this field would solve the problem.

E-mail Addresses and Telephone Numbers may be beneficial to DHS in contacting an employee regarding verification of employment authorization, but this has never been done before to our knowledge, and certainly if it was the Form I-9 was probably not the tool to do so. We believe that that should not change: the Form I-9 was not meant to be a message slip to contact employees. Additionally, since there is no requirement to update the Employee Information when something changes, there is a good chance that whenever DHS does try to utilize the Forms I-9 to contact employees, their E-mail Addresses, Telephone Numbers, and even their

Home Addresses will have changed. The personal information in a Form I-9 executed today will likely change at some point, and it will therefore be useless for the expressed purpose of contacting employees.

Recommendation

The simplest solution to these issues is to eliminate the optional fields. The purpose of the Form I-9 will not be compromised by doing so, there will be less confusion, and space will be made available to condense the Form I-9 to a single page.

Employee Attestation

This portion in Section 1 has been greatly expanded in terms of space utilized, as well as information required by “aliens authorized to work.” In prior versions of Form I-9, this portion has caused some confusion for employees that marked “lawful permanent resident” or “alien authorized to work” because of the information that is requested. Specifically, employees that marked “lawful permanent resident” did not know if they were required to write the expiration date for their card. Some cards have an expiration date, some cards do not, and there is no space that specifically requests the expiration date for the Permanent Resident Alien card. This causes many employees that indicate they are lawful permanent residents to write the expiration date from their Permanent Resident Alien card in the space for the expiration of an alien’s work authorization. Apart from this technical error, some employers or authorized representatives mistakenly believe that an employee must be re-verified for employment authorization whenever the expiration date listed nears. This causes re-verification of lawful permanent residents, which may be considered an act of discrimination. This confusion would be mitigated by clearly indicating that no expiration dates from Permanent Resident Alien cards are to be listed, even if the card contains an expiration date.

The space available for writing numbers has also been suspect, simply for the reason that the space is somewhat small. The new version of Form I-9 contains a designated space for the numbers required, which is a tremendous improvement. The only issue in this regard relates to the portion for aliens authorized to work where there is the option of listing an Alien Registration Number or Form I-94 Admission Number. The way that the proposed Form I-9 is formatted gives the appearance that both numbers are required (by using 1. And 2.). The instructions do make clear what is needed in that portion, but the form itself suggests that two (2) numbers must be listed by aliens authorized to work, not to mention the foreign passport information.

The information concerning foreign passports has never before been requested in Section 1. The foreign passport number requirement is presumably for tracking purposes, although it also seems that only a select group of people would actually be able to complete the foreign passport number and country of issuance requirements. We fail to see the need for listing this

information, as it has never before been required and a considerable portion of aliens authorized to work will simply write "N/A" because they received their Form I-94 within the U.S. or entered without a foreign passport. This field therefore seems unnecessary.

The positive change to this section is the Employee Signature box. For many years employees have signed their name above the signature box in the white space. The proposed format clearly shows the designated signature space and eliminates the blank space above that portion.

Recommendation

The first and simplest fix to potential issues with the "attestation" portion of Section 1 is to eliminate the fields requesting "Foreign Passport Number" and "Country of Issuance." This action will not hinder the purpose of the Form I-9, it will avoid confusion, and it will allow more space to maintain the entire Form I-9 on a single page. The second fix is to make it clearer that an Alien Registration Number OR an I-94 Admission Number is required, not both numbers, as it currently appears on the proposed form. Third, something should be included to make it clear that lawful permanent residents do not need to list an expiration date, even if one is listed on their Permanent Resident Alien card. If such an indicator that no expiration date is required is not possible, it might be prudent to distinguish each category (citizen, noncitizen national, lawful permanent resident, alien authorized to work) so it does not appear that information might overlap. Fourth, this portion of Section 1 should be reformatted or condensed to save as much space as possible. The prior versions of Form I-9 managed to use a very minimal amount of space for this portion. It is not necessary to be that conservative, but the appearance of the proposed form is daunting and shrinking the space would make it much more feasible to get the Form I-9 back to a single page. Incorporating the above suggestions will help in that effort.

Preparer and/or Translator Certification

This portion of the Form I-9 has been reformatted to include greater space for the signature, name, address, etc. This portion also takes up much more vertical page space. This seems to be simply a formatting decision to utilize more page space due to the expansion of the Form I-9 to two (2) pages. This change seems unnecessary, given the prior format of this portion did not seem to be an area of contention or confusion.

Recommendation

Maintain the original formatting of this portion, as it was not creating any discernable problems and it will help facilitate the single page form by using less vertical page space.

Page 2, Employee Name

See above comment and recommendation on Form I-9 (2 Pages).

Section 2. Employer Review and Verification, List A

This section has always caused some issues with employers and authorized representatives because it never seemed quite clear enough that List A and Lists B and C were mutually exclusive. This led to issues with over documentation and potential discrimination problems, as well as paperwork violations. The proposed format seems to be the best formatted version yet to clearly distinguish those areas. This should eliminate many of the problems experienced with past versions. However, the inclusion of a third area in List A for Document Number and Expiration Date seems to be only a space user with no real value. It seems that the List A documents have not changed, nor have the requirements for recording information found in the documents. Therefore, the two (2) areas that were available in the prior version of Form I-9 should still suffice.

Recommendation

Eliminate the third field for Document Number and Expiration Date in List A. The field is unnecessary and eliminating it will free more space to facilitate a single page document.

Section 2 Certification

One area that was frequently overlooked was the date on which the employee began work for pay. The reason was quite simple: the space was hidden. The new format of this portion brings the date requirement out into the open where it will be easy to find. This portion also includes an expanded format for the Employer or Authorized Representative to sign and write their personal information. Like the expansion in the Preparer and/or Translator portion, this expansion does not fix any existing problems, but only takes up more vertical page space.

Recommendation

Maintain the original formatting of this portion, as it was not creating any discernable problems and it will help facilitate the single page form by using less vertical page space.

Section 3. Reverification and Rehires

Section 3 in its entirety is unnecessary, if for no other reason than the fact that a new Form I-9 may be utilized and retained with the original Form I-9, rather than completing this section on a rehire or re-verification. The actual space available in Section 3 only allows for one (1) rehire, re-verification, or name change. In the agricultural industry, where rehires are commonplace year after year, Section 3 would only be utilized on the first rehire, then a new Form I-9 would have to be used for the second rehire, then it would be likely that any subsequent rehires would require a new Form I-9 because the date will be more than three (3) years from the original hire date. Most other industries would encounter similar situations, or the first rehire date would already be more than three (3) years from the original date of hire. For all intents and purposed,

Section 3 could be completely eliminated and it would not impact the ease of executing the document for rehire purposes.

This section is also unnecessary for re-verification purposes. When employees are required to be re-verified, the most current Form I-9 must be used. The frequency with which the Form I-9 has been revised in recent years suggests that most employers will need to complete a new Form I-9 when it becomes time to re-verify an employee because the original form will have expired. Again, eliminating Section 3 and simply requiring all re-verification to be done on a new Form I-9 will not create any problems with the process, and may in fact eliminate some issues that might exist with employers that do not know how to properly use Section 3.

The only obstacle that elimination of Section 3 presents is distinguishing between original Forms I-9 and those used for rehire or re-verification. This can be solved by placing a marker or some sort of indicator at the top of Section 1 or Section 2 that the employee or employer would mark for 1) Initial Employment, 2) Reverification, or 3) Rehire. In all three (3) instances, a space can be made available to indicate the date on which the event occurred (initial employment, re-verification, or rehire). Any re-verification recordings can be placed in Section 2, but the form would be marked to show that it is a re-verification rather than an initial hire, and the new form would be maintained with the original. In cases of rehiring an employee, the date of the event would be indicated by the marker box, the form would be signed as appropriate, and likewise stored with the original. Essentially, any use of Section 3 can be accomplished by utilizing existing areas of Sections 1 and 2, and by adding a small area for designating the Form I-9 as Initial Employment, Reverification, or Rehire.

Recommendation

Section 3 should be eliminated in its entirety to simplify the process and make space available to reduce the Form I-9 to a single page. Existing areas in Sections 1 and 2 can be utilized for all purposes achieved by Section 3, and a marker or indicator to designate the subsequent Form I-9 (to be kept with the original) as Initial Employment, Reverification, or Rehire, along with the dates of those events, will identify the purpose for each form.

Thank you for allowing us the opportunity to submit these comments. Further communication can be directed to:

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