



May 23, 2012

By email: uscisfrcomment@dhs.gov

By overnight delivery:

Sunday Aigbe, Chief,
Acting Chief, Regulatory Products Division
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20529-2020

Submitted via www.regulations.gov

**Re: Proposed Revisions to Employment Eligibility Verification Form I-9
OMB Control Number 1615-0047**

Dear Ms. Aigbe:

The Alliance of Business Immigration Lawyers (ABIL) submits the following comments in response to the notice (77 Federal Register 59 at Page 18256) inviting public comment on the revised Form I-9 (Employment Eligibility Verification).

ABIL is a professional organization comprised of leading business immigration lawyers with a global reach. ABIL possesses a total immigration staff that is among the world's largest, while also maintaining the strictest standards for inclusion of any immigration alliance and boasting more highly rated lawyers than any other in the field. Companies spanning the globe rely on ABIL lawyers for comprehensive assistance with corporate strategic planning regarding international employees, advice and legal help with the migration concerns of employees and their families, solutions for compliance and immigration status requirements, and the preparation and submission of all types of immigration paperwork. ABIL members have together published three books in the immigration field. More information about ABIL and its member firms is available at www.abil.com.

As U.S. government agencies increase their inspections, ABIL has provided significant support to corporate clients in assisting with I-9 and other compliance audits, setting up compliance programs, advising on E-Verify and electronic I-9 management, and preparing clients for audits and investigations by two Department of Homeland Security components, U.S. Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS) Verification Division, and the Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), within the Civil Rights Division. ABIL also conducts staff training on compliance issues and have developed useful tools and manuals.

I. Introduction

USCIS is seeking public comment under the Paperwork Reduction Act (PRA) on proposed revisions to Form I-9. ABIL, an organization of attorneys possessing extensive knowledge of the I-9 verification process as well as continuous interaction with employers and other stakeholders in the process from the inception of the I-9 requirement in 1986, submits the comments below for consideration by the Office of Management and Budget under the PRA and USCIS. We are providing both positive feedback as well as our suggestions for change. Please note that the commentary on Form I-9 as proposed begins (after our initial comment in Section II) with an evaluation of the proposed revised Form I-9 and the List of Acceptable Documents then proceeds through the accompanying Form instructions. An annotated copy of these documents, reflecting ABIL's comments, is also attached as an exhibit for your reference.

II. Inadequate Regulatory Compliance

As a preliminary matter, ABIL formally objects to the failure of USCIS to submit for full regulatory review (with opportunity for public comment) the proposed three-page instructions to Form I-9 and another set of instructions contained on Form M-274(Rev. 06/01/11) N, the "Handbook for Employers," also titled, "Instructions for Completing Form I-9," a 64-page set of instructions, accessible at <http://www.uscis.gov/files/form/m-274.pdf>. These instructions are to be treated as incorporated amendments of USCIS regulations pursuant to 8 C.F.R. § 103.2(a)(1), which provides in relevant part:

Every application, petition, appeal, motion, request, or other document submitted on the form prescribed . . . shall be executed and filed in accordance with the instructions on the form, **such instructions** (including where an application or petition should be filed) **being hereby incorporated into the particular section of the regulations in this chapter requiring its submission.** (Emphasis added.)

For an example of how the I-9 instructions impose substantive legal requirements, see Angelo A. Paparelli, "Instruct Us Again on the Immigration Rules," May 5, 2012, accessible at: <http://www.nationofimmigrants.com/immigration-regulations/instruct-us-again-on-the-immigration-rules/>.

Given the effect of this regulation, the failure by USCIS to conduct a complete regulatory review and offer the public an opportunity to comment on the full range of the instructional changes

(including Form M-274's "Instructions"), to the proposed Form I-9, the submitting agency has not complied with several federal statutes and presidential directives including the Administrative Procedure Act, the PRA, the Regulatory Flexibility Act, Executive Orders 12866 and 13563 and OMB Circular A-4.

Moreover, the PRA public burden and cost estimate of \$414,375,200 is woefully inadequate. The time estimate for completion of the form is three minutes per I-9 based on the following USCIS calculation:

This figure was derived by multiplying the number of respondents (78,000,000) x frequency of response (1) x hour per response .16 hours (10 minutes). The annual recordkeeping burden is added to the total annual reporting burden which is based on 20,000,000 recordkeepers at .05 hours (3 minutes) per filing.

The three-minute estimate which, according to the three-page I-9 instructions, includes reading the instructions, could not conceivably include a reading of the M-274's 64 pages of instructions. Moreover, given the number of respondents (projected by USCIS to be 78 million), the cost burden estimate must inevitably be many multiples of \$414,375,200.

For the foregoing reasons, ABIL urges the OMB to remand this information collection review to USCIS as unapproved and to direct the agency to comply in full with the Administrative Procedure Act, the PRA, the Regulatory Flexibility Act, Executive Orders 12866 and 13563 and OMB Circular A-4 by taking the regulatory changes required in those regulations as a result of 8 C.F.R. § 103.2(a)(1) and its effect of introducing an amended regulation governing I-9 compliance obligations.

III. Form I-9, Page One

Starting with the very top of page one of Form I-9, the addition of the official seal of the Department of Homeland Security (DHS) (**Note 1**) is a welcome inclusion. In the past, employers and employees may not have fully realized the importance of the document they were executing, and the addition of the seal should have a positive impact in reminding them that this is a government document to be taken seriously.

We also think it is very helpful that now all of page one is for the employee to complete, and page two is for the employer. It will lead to less confusion than when the Form was separated by sections, as employees often accidentally filled in the wrong area of the form.

In the shaded box introducing Section 1, general timelines are laid out for the proper completion of Section 1 (**Note 2**). It would be a useful and instructive reminder to the employer to insert the timelines regarding how long the form must be retained, as explained on page six of the I-9 instructions: "Once the individual's employment ends, the employer must retain this form for either 3 years after the date of hire or 1 year after the date employment ended, whichever is later."

The clarifications to the first and last name boxes (to add Family Name and Given Name) at the top of Section 1 are also a helpful addition (Note 3). Many nationalities do not follow English syntax when recording their full name, so this clarification may help to avoid a source of confusion commonly encountered during the I-9 process.

The revised format for the input of the employee's address (Note 4) is another improvement, as the open spaces in the current I-9 often lead to confusion about the placement of the different components of the employee's address. However, as a practical matter, the box designated for the physical address (Street Number and Name) is not large enough to allow many addresses to be written legibly, and will likely lead to increased writing in the margins and/or illegibility. Please note this concern applies to all similar boxes designated for a street address on both pages of the form. We suggest that the form be reconfigured to allow for more space for the address. The box designated for the employee's U.S. Social Security Number (Note 5) is helpful as it now shows the appropriate number of digits the Social Security Number should have. However, we recommend that the box should contain a disclaimer making it optional for the employee unless the employer is enrolled in E-Verify. As other optional boxes are noted as such, the omission here would lead an employee to believe providing a Social Security Number was mandatory in all cases.

Despite being listed as "optional," the addition of boxes asking for the employee's E-mail Address and Telephone Number (Note 6) are unnecessary and should be removed. There is no requirement for an employee to provide this information to the employer or USCIS, nor is there a practical I-9-related reason for USCIS to request this information. The instructions say this information is for assisting USCIS in contacting the employee regarding verification of their employment authorization. However, should USCIS have questions or concerns about an employee's status or work authorization arising out of an executed I-9, the proper recourse is to contact the employer, not the employee. In any event, these sections represent a superfluous collection of information by USCIS, whether optional or not. They also lead to a large number of questions as to which email address or phone number are required and if there is a requirement to update this information.

The attestation of employment status and awareness of federal law (Note 7) should be made more prominent and be moved closer in proximity to the employee's signature, as is the case with the current I-9. The revised distance between the attestation and the signature, along with the multiple items in between the two, may lead an employee to sign his or her name without being fully aware of what they are attesting to. Additionally, it would be a useful preventative measure to include language alerting foreign nationals of potential immigration consequences including deportation for providing false information on the Form I-9.

In the same section, it states that a lawful permanent resident should list their "Alien Registration Number/USCIS-Number." It is unclear if only one or both are required. We recommend inserting "or" rather than "/" between the two. Also, there should be a boxed section for a lawful permanent resident to input their Alien Registration Number (Note 8), as there currently only exists a boxed section to fit the USCIS-Number. This may lead to unnecessary confusion as these two numbers contain a different amount of digits, only one of which properly fits the boxes.

In addition, the section immediately below (Note 9), designated for aliens authorized to work, should clarify that providing the Alien Registration Number, USCIS-Number, or Form I-94 Admission Number, are three distinct options. Ideally, each should be listed as a separate option, with its own row of boxes designated for whichever respective number the employee is choosing to offer. Of particular concern are the multiple places where the options are listed as “Alien Registration Number/USCIS-Number,” as denoting it in this manner may mislead a foreign national employee into thinking that they are not two distinct options. (Note 10)

The revised Form I-9 has added a section instructing certain employees who have submitted their Form I-94 Admission Number to include their Foreign Passport Number and Country of Issuance (Note 11). This requirement is confusing as the Form and Instructions state it is only required if the latest I-94 card is issued based on travel, meaning by Customs & Border Patrol and not USCIS. There is no reason to differentiate between types of I-94 cards. In order to avoid confusion, the passport information should be asked for in either all or no situations as most employees and employers don’t know the difference in I-94 cards. However, we believe these sections should be removed entirely, as this information is not relevant to the employee’s work eligibility, and does not need to be collected by USCIS for I-9 purposes. Furthermore, asking for this information may cause employers to ask for additional documents during the I-9 process in order to confirm the foreign passport information is correct. This action raises the risk to the employer of investigation or prosecution by the U.S. Office of Special Counsel, as it is possible the employee would present documents other than a foreign passport for I-9 Section Two. Since the information sought is irrelevant for employment purposes, there is no need to impose additional risks to the employer or burdens on the employee.

We understand, however, that the passport information (and visa information, which is surprisingly not requested here) may assist USCIS in confirming work authorization, specifically where the government’s system has not been properly updated to include the employee’s I-94 information. For this reason, one possibility may be to add a box or section that is optional, indicating to the employee that, if the employer uses E-Verify, providing this optional information (passport & visa information) may prevent possible delays and avoid a Tentative Nonconfirmation. It should be made clear, however, that the employee need not necessarily present the passport or visa to the employer for Section 2 purposes.

Under the Preparer and/or Translator Certification, there should be a method to indicate whether the signee was a preparer or translator (Note 12). There are different liability risks based on which role the signee assumed in completing the Form I-9, so it would be helpful if there was a box that could be checked off distinguishing a preparer from a translator. Our suggestion is the addition of a line that says “I am completing this form as a ___ preparer or ___ translator.” Also in this section, the box designated for family name only indicates that it should be filled out by a “Preparer,” but should be edited to read “Preparer/Translator” to avoid confusion (Note 13) and to match the signature box which states “Preparer/Translator.”

Based on past experience, it would be helpful to employers, if there were boxes on the front page of the I-9 for the employer to keep track of relevant dates. For example, in an area where there is free space, and under the heading “For Employer Use Only (Optional),” boxes could be provided for the employer to list the Hire Date, Termination Date, and Purge Eligible Date (Note 14). It is already common practice for employers to add these dates on completed I-9s, but the manner in

which they do so varies greatly and could benefit from uniformity. Since employers may not alter the I-9 by providing their own boxes for this purpose, the current trend is for the employer to track these dates via handwritten notes in the margin, which opens the door for human error. USCIS could pre-empt such practices by designating an area for this information.

As this is a two-page form, it would also be helpful to designate “Page 1 of 2,” “Page 2 of 2” at the bottom in case pages are separated (Note 15). It also lets employers know it is a two page form. Right now, it just says “Go to Next page.”

IV. Form I-9, Page Two

The first item appearing at the top of Page Two is a space for the employee’s name (Note 16), which we appreciate, as the employer will need this information in the event that Pages 1 & 2 become separated. We anticipate, however, employer confusion over who is to complete this field. As such, it would be helpful to clarify that this field is to be completed by the employer. In the alternative, The Section 2 header can be moved to the top of the page and the request for name could be underneath it.

In the area provided for recording document information, it would be a helpful reminder to employers if each List heading were followed by a description of the requirement(s) satisfied by presentation of a document from that list (to mirror the headings provided on the List of Acceptable Documents). List A (Note 17) should say “Identity *and* Employment Authorization.” List B (Note 18) should say “Identity,” and List C (Note 19) should say “Employment Authorization.”

Additionally, it would be helpful to provide a check box next to each list heading to allow an employer to indicate that a receipt was reviewed in lieu of an original document. This would be as simple as “☐ Receipt (reverification required)” after each List heading (Notes 17, 18, and 19).

We appreciate the additional space provided in Section 2 for recording document information, and it is helpful to have included field labels under all three Lists. These are definite improvements over the existing form.

Even with these improvements, however, Section 2 of the form continues to be problematic, particularly when employers have to record “non-traditional” documentation, such as receipts for immigration benefits petitions. Providing the additional fields (Note 20) under List A is helpful in this regard, but still presents problems, as employers are not given a field in which to indicate which document information is being provided in which field, nor are they given guidance regarding which document information should go first.

To make Section 2 more user-friendly, and to prevent paperwork errors in Section 2 that can leave even the most prudent employers at risk for fines, we would like to suggest a somewhat dramatic redesign.

In our review of thousands of I-9s completed by our clients, it is striking that their oldest I-9 forms typically have the fewest errors. As such, we suggest a return to the format of Section 2 of

the 05/07/87 version of the Form I-9. That form listed the acceptable documents (in abbreviated form) on the face of the Form I-9, leaving the employer to do less writing and resulting in fewer mistakes (it was nearly impossible, for example, for an employer to record document information under the incorrect List heading).

With our suggested redesign, rather than completing the Document Title, employers would simply check a box to indicate which document(s) they have reviewed. Issuing authorities would only be required where necessary (not required for U.S. Passports, Permanent Resident Cards, Employment Authorization Documents – but required for Foreign Passports, Driver’s Licenses, and Birth Certificates). Fields would then be provided for document numbers and expiration dates, with additional fields provided for I-94/I-551 information and for the I-20/DS-2019 or receipt information.

Should USCIS opt not to “go retro” with Section 2, we ask that USCIS consider at least providing fields for employers to record the document titles and issuing authority for the second and third items in List A (**Notes 21 and 22**). Perhaps even more helpful would be to provide options in the margin for each of the two “extra” fields where employers could check a box to indicate which document information is listed: “I-94,” “I-551,” “I-797,” “I-20,” “DS-2019,” etc.

A final comment/request with regards to the document area: to avoid inconsistency and confusion for employers recording non-traditional work authorization documentation (who are currently instructed to make certain notes in the margin such as “AC-21”), we ask that USCIS consider using the white space currently under Lists B and C (**Note 23**) to provide check boxes. The boxes and text would read similar to the below:

- ☐ Employment authorized for up to **240 days** due to timely-filed petition for extension (attach proof of filing, copy of I-129, and proof of payment of the filing fee)
- ☐ Employment authorized under **AC-21** due to a timely-filed H-1B change of employer petition (attach proof of filing, copy of I-129, and proof of payment of the filing fee)
- ☐ Employment authorized for up to 180 days due to timely-filed I-765 petition for a **STEM extension** (attach copy of I-20 indicating the extension of work authorization if available; otherwise attach proof of filing, copy of I-765, and proof of payment of the filing fee)
- ☐ Employment authorized pursuant to **cap-gap** provisions due to timely-filed H-1B change of status petition (attach copy of I-20 indicating the extension of work authorization if available; otherwise attach proof of filing, copy of I-129, and proof of payment of the filing fee)
- ☐ Automatic extension of **TPS** until _____ (attach copy of the expired EAD card and a copy of the relevant Federal Register Notice)
- ☐ I-797 receipt notice for filing of **I-751** petition extends expired Permanent Resident Card until _____

The Certification portion of Section 2 is a vast improvement over the old version of the form. We particularly like that it is clearer that the employer must input the date of hire, and the separate fields for first and last name, city/town, state, and zip code are helpful.

We do suggest making the date of hire field a box rather than a blank (**Note 24**) to be certain that the employer does not miss the field.

We also suggest clearly indicating that the employer may input the date that Section 2 of the I-9 is completed (in lieu of the first day of work for pay) when the form is completed prior to the first day of work (but after accepting a job offer) (Note 25). If USCIS does not wish to explicitly allow this practice, we suggest making it clear that an employer must update/correct this field in the event that the first day of work is rescheduled.

Similar to Section 1, we suggest allowing additional space for the street name and number in the employer's address. (Note 4).

In Section 3, we suggest indicating that the employer is not required to complete Section 3 for a name change by indicating "only *required* if Section 3 is being completed due to a reverification or rehire *and* the employee's name has changed. Otherwise, optional." (Note 26).

Finally, we recommend that in Section 3, in the attestation area, that boxes be added for the company representative's name title. As it stands, employers are only required to sign, making it difficult (as many signatures are illegible) to determine who completed the section. (Note 27).

V. Form I-9, List of Acceptable Documents

Directly underneath the heading for the List of Acceptable Documents page, it is stated that "All documents must be unexpired" (Note 1). As explained in the instructions, this is not necessarily true, as situations arise where documents that appear to be expired may be valid and accepted. For this reason, we suggest an asterisk at the end of this statement, directing the reader to the final statement on the page: "Refer to Section 2 of the instructions, entitled 'Employer Review and Verification,' for more information about acceptable receipts." The words "and expired documents" should be added to the end of this statement. This addition will be useful for employers who encounter expired documents in the certain situations where they will be acceptable (such as TPS beneficiaries), as they will be led to the appropriate information and instructions.

In List A, Box 5, Subheading b(1) (Note 2), the first requirement listed for the submission of Form I-94 is that the Form must have the same name as the passport. This is a problematic addition because as previously mentioned, many foreign nationals do not follow English syntax when recording their names. It is also quite common for there to be slight variations of names on the passport, visa, and I-94 card as well other documents. This may be due to space constraints, translations, name variations, or numerous other reasons. Furthermore, it is common for many foreign nationals to assume an anglicized name in an attempt to better assimilate into the U.S., which may result in discrepancies across the various documents. In addition, this requirement may also lead to the employer having to ask for supplemental documentation which is problematic as described above. Considering that the guidance contained in the M-274 instructs employers to use reasonable judgment when an employee submits documents containing name variations (see M-274, pages 41-42, questions 26-28), mandating that foreign nationals' documents must not have name variations is not reasonable. In addition, this requirement for only the I-94 card in List A places an untenable undue burden on foreign nationals who present an I-94 card for I-9 purposes as compared to all other employees who are able to present other

documents with name variations. For all of these reasons, this requirement should be removed provided that the employer can determine that the documents refer to the same person.

Under the same subheading, the second requirement (b(2)) ends by declaring that there not be “any restrictions or limitations identified on *the form*. (Emphasis added) (Note 3). This language is ambiguous, even in context as it is not explicitly tied to a specific form, and will potentially lead to confusion on the part of the employer.

In List C, Box 1, we appreciate and commend the Service on the addition of the enumerated descriptions of what restrictions might be found on a Social Security Card that would serve to make it an unacceptable List C document (Note 4). We believe this will be helpful to employers by expressly reminding them which language to watch out for when accepting Social Security Cards as proof of employment authorization.

In List C, Box 4 (Note 5), we suggest that USCIS add an upfront reminder and clarification that the birth certificate presented must have been issued by a government authority, and not by a civilian institution such as a hospital. We find it to be very common that an employee will not recognize the significance of the criteria only listing governmental bodies as issuing authority, and often bring in ineligible hospital birth certificates. Even a simple statement such as “A birth certificate from a hospital or other medical facility will not suffice” would help prevent confusion.

In List C, Box 8, “Employment authorization document issued by the Department of Homeland Security” is listed as an option (Note 6). However, there is no elaboration in the Instructions or the M-274 tied to this category whereby an employer might recognize which documents may be used in satisfaction of this requirement. Thus, we would suggest the addition of a list or a more specific definition of the types of documents that are acceptable to satisfy this option.

VI. Instructions for Employment Eligibility Verification

Page 1:

Under the instructions for filling out Section 1, Employee Information and Attestation, employees are directed to provide their maiden name (Note 1): “List your maiden name, if applicable. If you have no maiden name, write “N/A.” We feel this statement should be removed, and employees should be allowed to leave this section blank if it does not apply to them. There is no need to add an additional requirement to state “N/A.” Additionally, many cultures do not regard maiden names in the same manner as American custom, and this has often times lead to confusion by employees in completing the form. For example, men of certain cultures may find it appropriate to include their mother’s maiden name in this box - information which is not otherwise verified by the process and has the potential to lead to subsequent confusion about their identity. Therefore we also recommend that a definition of what USCIS means by “maiden name” be added to the Instructions.

As mentioned above (see I-9, Page One commentary), we do not believe it is appropriate for USCIS to solicit employees' e-mail address and/or telephone number (Note 2). Should USCIS have questions or concerns about an employee's status or work authorization arising out of an executed I-9, the proper recourse is to contact the employer, not the employee.

Page 2:

Also discussed in the I-9, Page One commentary, we believe the fourth heading, "Alien authorized to work," has various identifiable issues that should be removed or modified. First, we again suggest that the distinction between submitting an Alien Registration Number and a USCIS-Number should be drawn more vividly by substituting the word "or" where you currently use "/" (Note 3). Again, this simple step may help avoid confusion to both the employer and employee.

In the same section, and in a likewise attempt to avoid confusion, we suggest the removal of subheadings (1) and (2) (Note 4). As previously discussed, there is no requirement for an individual to present their foreign passport in order to prove that they are authorized to work in the United States. Further, requiring the recording of this material places undue burden on the employer to confirm things that are not relevant to the I-9 process and opens the door for significant legal issues. The fact that the information is unnecessary, combined with this added risk of confusion and procedural hassles, should combine to make this section of the instructions expendable. Thus, we respectfully request these sections be removed from both the I-9 and the accompanying Instructions.

In the last set of instructions for Section 1, titled "Minors and Certain Employees with Disabilities (Special Placement)," there is language that could use clarification. Specifically, the sentence "(t)hese individuals have special procedures for establishing identity if they cannot present an identity document for Form I-9" (Note 5). Although limited guidance is provided in the instructions here, they also refer employers to the M-274 Handbook. We have found that many of the given examples of when special procedures may be established for minors are unclear, leading employers to assume that the rule applies to all minors even if they have a relevant document in satisfaction of List B. To that end, we think it would be helpful to include language clarifying that it is acceptable for minors to execute Form I-9 themselves, and without a parent or guardian, as long as they have a List B document.

In addition, for minors and special placement employees, as well as for those employees who may opt to present a receipt in lieu of a List A or B document, it would be helpful to provide instructions specific to E-Verify. Because E-Verify employers are instructed to accept only a List B document with a photo, and because certain List A documents result in photo-matching, it is not clear to many E-Verify employers whether they may still accept receipts for List A and B documents. Our recommendation is to indicate that such situations should be treated as akin to situations in which an employee does not have an SSN at the time of hire: that the I-9 be completed using the receipt, then updated at the time an original document is presented, and that the E-Verify query be delayed until presentation of the original document. For minors and special placement employees the instructions should refer to the option in E-Verify to indicate that no List B document was presented due to the special circumstances.

For the first set of instructions under the Section 2 heading, Employer Review and Verification, the second sentence does not completely relay the practical implications for when Section 2 may be completed (Note 6). It is quite common for the employer to send out Form I-9 in advance of the start of employment. Therefore, we propose the addition of clarifying language after the second sentence, such as: “However, they may have an employee complete Form I-9 after acceptance of the job offer but prior to the start of employment.” We believe this instruction may provide better guidance to employers regarding their onboarding practices.

Page 3

In the second paragraph on page 3 of the instructions (Note 7), which provides guidance on the List of Acceptable Documents, we feel further clarification may be warranted. There are many situations which may arise whereby the documents presented to the employer do not explicitly fit these instructions and in fact, the employer must go to the M-274 for guidance. We suggest the addition of the following disclaimer or something similarly explanatory: “Please note that not every scenario or document provided may clearly fit into List A, B, or C as described on the List of Acceptable Documents. Please refer to the M-274 for further information.” This information could also (or in the alternative) be added to the bottom of the List of Acceptable Documents.

In the last paragraph of the introduction to Section 2 instructions, there are two areas for clarification. First, the second sentence “If photocopies are made, they should be made for all new hires” (Note 8). This sentence should be continued to also include “and reverifications.” By adding this language, employers will be on notice that they need a consistent and coherent policy for the copying of documents not just for new hires but also for employees whose employment authorization has had to have been reverified in Section 3. Second, at the end of this paragraph (Note 9), it would be appropriate to include a clarification on the copying of documents for other purposes that may be related to Form I-9. Suggested language could be: “The copying of documents for I-9 purposes is separate from requirements under state law, local law, or E-verify concerning the copying of documents.” We believe this language will be instructive to employers and alert them to the need to develop a streamlined process for the maintenance of the copies of documents presented during the I-9 process, separate from any other processes.

Under the subheading “Receipts,” the first sentence could use stronger language indicating that a receipt is not available any time the employee is simply unable to produce a necessary document. By changing the wording to “the employee can present an acceptable receipt *in limited circumstances* in lieu of a document...” we think it will supply a clear reminder that only lost, stolen, or mutilated documents may be represented by a receipt. (Note 10). This clarification of acceptable receipts is further discussed in the M-274.

Page 6

The first paragraph describes the Form I-9 copying and retention policies (Note 11). We think it would be helpful to include at the end, a statement referring employers to Page 23 of the M-274, where they can find the USCIS worksheet designed to help employers calculate the proper I-9 retention period. By providing a clear path to this worksheet, USCIS would be helping to facilitate proper and efficient compliance with its I-9 policies.

One final note, we believe it might be helpful to include the following sentence (**Note 12**) from the same section, “Form I-9 may be signed and retained electronically, in compliance with the Department of Homeland Security regulations at 8 CFR 274a.2” to the beginning of the first page of the I-9. It is a clear and efficient instruction and might serve as a useful reminder to both employers and employees alike.

VII. Conclusion

We wish to thank you in advance for considering these comments and recommendations. We feel that the recommended changes would assist employers in their efforts to comply with the Form I-9 requirements, reducing their risk of fines for simple paperwork violations. The changes would also reduce the amount of time that employers must spend completing the form.

Respectfully submitted,

Charles Kuck, President
Sharon Mehlman
Nicole Kersey
Angelo Paparelli
Julie Perl

On behalf of Alliance of Business Immigration Lawyers

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Employment Eligibility Verification

Department of Homeland Security

U.S. Citizenship and Immigration Services (USCIS)

USCIS
Form I-9

OMB No. 1615-0047
Expires 08/31/2012

► **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of work for pay, but not before accepting a job offer.)*

Print Name: Family Name (Last Name)		Given Name (First Name)		Middle Initial	Maiden Name, if applicable	
Address - Street Number and Name		Apt. Number	City or Town		State	Zip Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		E-mail Address (optional)		Telephone Number (optional)	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (see instructions)
- ☐ A lawful permanent resident (Alien Registration Number/USCIS-Number)
- ☐ An alien authorized to work until (expiration date, if applicable, month/day/year). Some aliens may write "N/A" on this line. See instructions.

For aliens authorized to work, list your Alien Registration Number / USCIS-Number or Form I-94 Admission Number:

- Alien Registration Number / USCIS-Number:
- Form I-94 Admission Number:

If you received your Form I-94 when traveling to the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the foreign passport number and country of issuance lines. See instructions.

Signature of Employee:	Date (mm/dd/yyyy):
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Preparer and/or Translator Certification. *(To be completed and signed if Section 1 is prepared by a person other than the employee.)*

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer/Translator:		Date (mm/dd/yyyy):	
Print Family Name of Preparer (Last Name)		Given Name (First Name)	Middle Initial
Address (Street Number and Name)		City or Town	State Zip Code

3-D Barcode

14

Employee Family Name in Caps (last name),
Given Name (first name), and Middle Initial:

16

Section 2. Employer Review and Verification

(Employers must complete and sign Section 2 within 3 business days of the employee's first day of work for pay. Employers must examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

List A 17	OR	List B 18	AND	List C 19
Document title:		Document title:		Document title:
Issuing authority:		Issuing authority:		Issuing authority:
Document Number:		Document Number:		Document Number:
Expiration Date (if any): (mm/dd/yyyy) ▶		Expiration Date (if any): (mm/dd/yyyy) ▶		Expiration Date (if any): (mm/dd/yyyy) ▶
Document Number:				
Expiration Date (if any): (mm/dd/yyyy) ▶				
Document Number:				
Expiration Date (if any): (mm/dd/yyyy) ▶				

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of work for pay (mm/dd/yyyy): 24. (State employment agencies may omit this date.) 25

Signature of Employer or Authorized Representative		Title of Employer or Authorized Representative		Date (mm/dd/yyyy)	
Print Family Name (Last Name)		Given Name (First Name)		Employer's Business or Organization Name	
Employer's Address (Street Number and Name)		City or Town		State	Zip Code

Section 3. Reverification and Rehires (To be completed and signed by employer.) 26

A. New Name (if applicable)	B. Date of Rehire (if applicable)
Family Name (Last Name) Given Name (First Name) Middle Initial	(mm/dd/yyyy) ▶

C. If employee's previous grant of employment authorization has expired, provide the information for the document that establishes current employment authorization in the space provided below.

Document Title:	Document Number:	Expiration Date (if any) (mm/dd/yyyy):

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative:

27

Date (mm/dd/yyyy):

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired* 1

Employees may present one selection from List A or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States A card that includes one of the following restrictions, for example, is not acceptable: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION 4 (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States 5
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: 2 a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. Native American tribal document
		6. Military dependent's ID card		6. U.S. Citizen ID Card (Form I-197)
		7. U.S. Coast Guard Merchant Mariner Card		7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		8. Native American tribal document		8. Employment authorization document issued by the Department of Homeland Security 6
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274).

Refer to Section 2 of the instructions, entitled "Employer Review and Verification," for more information about acceptable receipts. 1



Instructions for Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services (USCIS)

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/2012

Read all instructions carefully before completing this form.

Anti-Discrimination Notice. It is illegal to discriminate against any work-authorized individual in hiring, discharge, recruitment or referral for a fee, or in the employment eligibility verification (Form I-9 and E-Verify) process based on that individual's citizenship status, immigration status, or national origin. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination. For more information, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) at 1-800-255-7688 (employees), 1-800-255-8155 (employers), or 1-800-237-2515 (TTY), or visit www.justice.gov/crt/about/osc.

What Is the Purpose of This Form?

Employers must complete Form I-9 to document that they have verified the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 6, 1986, to work in the United States. In the Commonwealth of the Northern Mariana Islands (CNMI), employers must complete Form I-9 to document that they have verified the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 27, 2011.

General Instructions

Employers are responsible for completing and retaining Form I-9. For the purpose of completing this form, the term "employer" means all employers, including those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors.

Form I-9 is made up of three sections. Employers may be fined if the form is not complete or if Sections 1, 2, and 3 are not kept together. Do not mail completed forms to ICE or USCIS.

Section 1. Employee Information and Attestation

Newly hired employees must complete and sign Section 1 of Form I-9 no later than the first day of work for pay. Section 1 should never be completed before the employee has accepted a job offer.

Employees must provide the following information to complete Section 1:

Name: List your full legal family name, given name, and middle initial. Your family name is your last name or surname. If you have two last names or a hyphenated last name, include both names in the last name field. Your given name is your first name. Your middle initial is the first letter of your second given name, or the first letter of your middle name, if any.

1 Maiden Name: List your maiden name, if applicable. If you have no maiden name, write "N/A".

Address: List the address where you currently live, including Street Number and Name, Apartment Number (if applicable), City, State, and Zip Code. Do not provide a Post Office Box address (P.O. Box).

Date of Birth: List your date of birth in the mm/dd/yyyy format. For example, January 23, 1950 should be written as 01/23/1950.

U.S. Social Security Number: List your nine-digit Social Security number. Providing your Social Security number is voluntary. However, if your employer participates in E-Verify, you must provide your Social Security number.

2 E-mail Address and Telephone Number (optional): List your e-mail address and telephone number. Providing your e-mail address or telephone number is voluntary. However, including it may assist DHS in contacting you regarding verification of your employment authorization.

All employees must attest in Section 1, under penalty of perjury, to their citizenship or immigration status by checking one of the following four boxes provided on the form:

1. A citizen of the United States

2. Noncitizen national of the United States: Noncitizen nationals of the United States are persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.

3. Lawful permanent resident: A lawful permanent resident is any person who is not a U.S. citizen and who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. The term "lawful permanent resident" includes conditional residents. If you check this box, write your Alien Registration Number (A-Number)/USCIS-Number on the line next to your selection.

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.

If you check this box:

a. Record the date that your employment authorization expires, if any. Aliens whose employment authorization does not expire, such as refugees, asylees, and certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau, may write "N/A" on this line. 3

b. Next, list your Alien Registration Number (A-Number) / USCIS-Number. If you have not received an A-Number/USCIS-Number, record your Admission Number. You can find your Admission Number on Form I-94, "Arrival-Departure Record."

4 → (1) If you were issued this Form I-94 when you entered the United States, such as at an airport or land border, then also record information about the foreign passport you used to enter the United States (number and country of issuance).

→ (2) If you received this Form I-94 from USCIS within the United States, or you entered the United States without a foreign passport, write "N/A" on the foreign passport number and country of issuance lines.

Sign your name in the "Signature of Employee" block and record the date you completed and signed Section 1. By signing and dating this form, you attest that the citizenship or immigration status you selected is correct and that you are aware that you may be imprisoned and/or fined for making false statements or using false documentation when completing this form.

Preparer/Translator Certification

The Preparer/Translator Certification must be completed if the employee requires assistance to complete Section 1 (e.g., the employee needs the instructions or responses translated, someone other than the employee fills out the information blocks, or someone with disabilities needs additional assistance). The employee must still sign Section 1.

Minors and Certain Employees with Disabilities (Special Placement)

Parents or legal guardians assisting minors (individuals under 18) and certain employees with disabilities should review the guidelines in the *Handbook for Employers: Instructions for Completing Form I-9 (M-274)* on www.uscis.gov/I-9Central before completing Section 1. These individuals have special procedures for establishing identity if they cannot 5 present an identity document for Form I-9. The special procedures include (1) the parent or legal guardian filling out Section 1 and writing "minor under age 18" or "special placement," whichever applies, in the employee signature block; and (2) the employer writing "minor under age 18" or "special placement" under List B in Section 2.

Section 2. Employer Review and Verification

Before completing Section 2, employers must ensure that Section 1 is completed properly and on time. Employers may not ask an individual to complete Section 1 before he or she has accepted a job offer. 6

Employers must complete Section 2 by examining evidence of identity and employment authorization within 3 business days of the employee's first day of work for pay. For example, if an employee starts work for pay on Monday, the employer must complete Section 2 by Thursday of that week. However, if an employer hires an individual for less than 3 business days, Section 2 must be completed no later than the first day of work for pay.

Employers cannot specify which document(s) employees may present from the Lists of Acceptable Documents listed on the last page of Form I-9 to establish identity and employment authorization. Employees must present one selection from List A **OR** a combination of one selection from List B and one selection from List C. List A contains documents that show both identity and employment authorization. List B contains documents that show identity only, and List C contains documents that show employment authorization only.

Employers must:

1. Physically examine each original document the employee presents to determine if it reasonably appears to be genuine and to relate to the person presenting it. The person who examines the documents must be the same person who signs Section 2.
2. Record the document title, issuing authority, document number(s) and expiration date (if any) from the original document(s) the employee presents.

If the employee is a student or exchange visitor who presented a foreign passport with a Form I-94, the employer should also enter in Section 2:

- a. The student's Form I-20 or DS-2019 number (Student and Exchange Visitor Information System-SEVIS Number); and
- b. The program end date from the Form I-20 or the employment authorization expiration date from the DS-2019.

3. Enter the employee's first day of work for pay.
4. Provide the name and title of the person completing Section 2.
5. Sign and date the attestation on the date Section 2 is completed.
6. Record the employer's business name and address.
7. Return the employee's documentation.

Employers may, but are not required to, photocopy the document(s) presented. If photocopies are made, they should be made for all new hires. Photocopies may only be used for the verification process and must be retained and presented with Form I-9. Employers must always complete Section 2 even if they photocopy an employee's document(s). Making photocopies of an employee's document(s) cannot take the place of completing Form I-9. Employers are still responsible for completing and retaining Form I-9.

Expired Documents

Only unexpired, original documentation is acceptable. However, in some instances, a document that appears to be expired may be acceptable if the expiration date shown on the face of the document has been extended, such as for individuals with temporary protected status. Refer to the *Handbook for Employers: Instructions for Completing Form I-9 (M-274)* or I-9 Central (www.uscis.gov/I-9Central) for examples.

Receipts

If an employee is unable to present a required document (or documents), the employee can present an acceptable receipt in lieu of a document from the Lists of Acceptable Documents on the last page of this form. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable. Employers cannot accept receipts if employment will last less than 3 days.

Employees must present receipts within 3 business days of their first day of work for pay and must present valid replacement documents within the timeframes described below.

There are 3 types of acceptable receipts:

1. A receipt showing that the employee applied to replace a document that was lost, stolen or damaged.
The employee must present the actual document within 90 days.
2. The arrival portion of Form I-94/I-94A with a temporary I-551 stamp and a photograph of the individual.
The employee must present the actual Permanent Resident Card (Form I-551) by the expiration date of the temporary I-551 stamp, or, if there is no expiration date, within 1 year from the date of issue.
3. The departure portion of Form I-94/I-94A with a refugee admission stamp.
The employee must present an unexpired Employment Authorization Document (Form I-766) or a combination of a List B document and an unrestricted Social Security card within 90 days

When the employee provides an acceptable receipt, the employer should:

1. Record the document title in Section 2 under the sections entitled List A, List B, or List C, as applicable.
2. Write the word "receipt" and its document number in the "Document Number" space. Record the last day that the receipt is valid in the "Expiration Date" field.

By the end of the receipt validity period, the employer should:

1. Cross out the word "receipt" and any accompanying document number and expiration date.
2. Record the number and other required document information from the actual document presented.
3. Initial and date the change.

See the *Handbook for Employers: Instructions for Completing Form I-9 (M-274)* at www.uscis.gov/I-9Central for more information on receipts.

Section 3. Reverification and Rehires

Employers should complete Section 3 when reverifying that an employee is authorized to work. Employers may also complete Section 3 when rehiring an employee within 3 years of the date Form I-9 was originally completed. When completing Section 3, if the employee's name has changed, record the name change in Block A.

For employees who provide an employment authorization expiration date in Section 1, employers must reverify employment authorization on or before the date provided.

Some employees may write "N/A" on the space provided for the expiration date in Section 1 if they are aliens whose employment authorization does not expire (e.g., asylees, refugees, certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau). For such employees, reverification does not apply unless they choose to present evidence of employment authorization in Section 2 that contains an expiration date (e.g., Form I-766, Employment Authorization Document).

Reverification also applies if evidence of employment authorization (List A or List C document) presented in Section 2 expires, except employers should not reverify:

1. U.S. citizens and noncitizen nationals; or
2. Lawful permanent residents who presented a Permanent Resident Card (Form I-551) for Section 2.

Reverification does not apply to List B documents.

If both Section 1 and Section 2 indicate expiration dates triggering the reverification requirement, the employer should reverify by the earlier date.

For reverification, an employee must present unexpired documentation from either List A or List C showing he or she is still authorized to work. Employers CANNOT require the employee to present a particular document from List A or List C. The employee may choose which document to present.

To complete Section 3, employers should follow these instructions:

1. Complete Block A if an employee's name has changed at the time you complete Section 3.
2. Complete Block B with the date of rehire if you rehire an employee within 3 years of the date this form was originally completed, and the employee is still authorized to be employed on the same basis as previously indicated on this form. Also complete the "Signature of Employer or Authorized Representative" block.
3. Complete Block C if:
 - a. The employment authorization or employment authorization document of a current employee is about to expire and requires reverification; or
 - b. You rehire an employee within 3 years of the date this form was originally completed and his or her employment authorization or employment authorization document has expired. (Complete Block B for this employee as well.)

To complete Block C:

1. Examine either a List A or List C document the employee presents that reflects that the employee is currently authorized to work in the United States;
2. Record the document title, document number, and expiration date (if any); and
3. Complete the "Signature of Employer or Authorized Representative" block, including the date.

Note that for reverification purposes, employers have the option of completing Section 3 of a new Form I-9. However, if there is a more current version of the Form I-9 at the time of reverification, you must complete Section 3 of the most current version of the form. You must attach the new Form I-9 to the employee's original Form I-9.

What Is the Filing Fee?

There is no fee for completing Form I-9. This form is not filed with USCIS or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the "USCIS Privacy Act Statement" that follows.

USCIS Forms and Information

For more detailed information about completing Form I-9, employers and employees should refer to the *Handbook for Employers: Instructions for Completing Form I-9 (M-274)*.

You can also obtain information about Form I-9 from the USCIS Web site at www.uscis.gov/I-9Central, by e-mailing USCIS at I-9Central@dhs.gov, or by calling 1-888-464-4218.

To obtain USCIS forms or the *Handbook for Employers*, you can download them from the USCIS Web site at www.uscis.gov/forms or call the USCIS toll-free number at 1-800-870-3676.

Information about E-Verify, a free and voluntary program that allows participating employers to electronically verify the employment eligibility of their newly hired employees, can be obtained from the USCIS Web site at www.dhs.gov/E-Verify, by e-mailing USCIS at E-Verify@dhs.gov, or by calling 1-888-464-4218.

Employees with questions about Form I-9 and/or E-Verify can reach the USCIS employee hotline by calling 1-888-897-7781.

Photocopying and Retaining Form I-9

A blank Form I-9 may be reproduced, provided all sides are copied. The Instructions and Lists of Acceptable Documents must be available to all employees completing this form. Employers must retain each employee's completed Form I-9 for as long as the individual works for the employer. Once the individual's employment ends, the employer must retain this form for either 3 years after the date of hire or 1 year after the date employment ended, whichever is later. **11**

Form I-9 may be signed and retained electronically, in compliance with Department of Homeland Security regulations at 8 CFR 274a.2. **12**

USCIS Privacy Act Statement

AUTHORITIES: The authority for collecting this information is the Immigration Reform and Control Act of 1986, Public Law 99-603 (8 USC 1324a).

PURPOSE: This information is collected by employers to comply with the requirements of the Immigration Reform and Control Act of 1986. This law requires that employers verify the identity and employment authorization of individuals they hire for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

DISCLOSURE: Submission of the information required in this form is voluntary. However, failure of the employer to ensure proper completion of this form for each employee may result in the imposition of civil or criminal penalties. In addition, employing individuals knowing that they are unauthorized to work in the United States may subject the employer to civil and/or criminal penalties.

ROUTINE USES: This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The employer will keep this form and make it available for inspection by authorized officials of the Department of Homeland Security, Department of Labor, and Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 13 minutes per response, including the time for reviewing instructions and completing and retaining the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, N.W., Washington, DC 20529-2020; OMB No. 1615-0047. **Do not mail your completed Form I-9 to this address.**