

AMERICAN PAYROLL ASSOCIATION

April 28, 2019

Ms. Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529-2140
<http://www.regulations.gov> (USCIS-2006-0068)

Re: Agency Information Collection Activities, Proposed Extension of a Currently Approved Collection, Employment Eligibility Verification; OMB Control Number 1615-0047

Dear Ms. Deshommes:

The American Payroll Association (APA) offers the following recommendations in answer to the four points addressed in the *Federal Register* notice at 84 *Fed. Reg.* 7101 on March 1, 2019.

About APA and Immigration

Established in 1982, APA is a nonprofit professional association serving the interests of more than 20,000 payroll professionals in the United States. APA's primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws. APA's Government Relations Task Force (GRTF) works with legislative and executive branches at the federal and state levels to help employers understand their legal obligations. Significant emphasis is placed on minimizing the administrative burden on government, employers, and individual workers.

APA's GRTF Immigration Subcommittee works closely with the Outreach Branch in the Verification Division of U.S. Citizenship and Immigration Services (USCIS) and the Immigrant and Employee Rights Section in the Civil Rights Division of the U.S. Department of Justice (DOJ), offering recommendations on improving the Form I-9 and E-Verify system and sharing information to assist APA members with compliance. In addition, USCIS, DOJ,

and U.S. Immigration and Customs Enforcement (ICE) have partnered with APA to offer seminars to payroll professionals to raise awareness about employment verification requirements.

APA does not advocate for or against matters associated with residency, citizenship, and right-to-work. Establishing policies on immigration reform, security, and civil rights are outside of APA's mission. Instead, our efforts are focused on verification of employment requirements and employers' administrative burden.

Written Comments and Suggestions on the Four Points

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

APA Comments and Recommendations

- a. The information collection complies with the role given to USCIS by Congress to ensure a legal workforce, protect jobs for authorized workers, and facilitate the use of E-Verify.
- b. Do not replace Form I-9 with E-Verify for the following reasons:
 - i. E-Verify does not include employee attestation, which is important to ensure that the employment verification information provided to employers by employees is accurate. The lack of attestation places a greater burden on employers for employment verification than is required by the Immigration and Nationality Act.
 - ii. Without the official Form I-9, employers would be forced to create their own form to collect and record employees' information required by the E-Verify system. This creates the potential for increased errors, discrimination, and inconsistency for purposes of compliance and enforcement.
 - iii. The Form I-9 is necessary for compliance with reverification requirements. E-Verify does not support reverifications of an employee's employment eligibility.

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

APA Comments and Recommendations

- a. The estimate of time (~10 minutes) for an employee to read and understand the instructions accompanying the Form I-9, including the list of acceptable documents, seems low.
3. Enhance the quality, utility, and clarity of the information to be collected.

APA Comments and Recommendations

- a. Update the information in the INS Memorandum of March 6, 1997, by Paul W. Virtue, Acting Executive Commissioner Programs, HQIRT 50/5.12, *Interim Guidelines: Section 274A(b)(6) of the Immigration & Nationality Act Added by Section 411 of the Illegal Immigration Reform & Immigrant Responsibility Act of 1996*, and publish it publicly on the ICE and USCIS websites. In addition, the updated guidelines should be included in the Handbook for Employers M-274: Guidance for Completing Form I-9. Revised guidelines would help employers complete the Form I-9 correctly.
- b. The M-274 and the USCIS I-9 Central website include pictures of a limited list of acceptable employee documents. This list should be expanded to include as many state drivers' licenses and identification cards as possible. Nearly all states publish pictures of these documents on their websites. Also, the M-274 only includes one example of a Social Security card. Pictures of all Social Security cards should be included along with those cards that are not authorized for employment.
- c. Clarify in the M-274 that use of a P.O. Box is acceptable in Section 1 under certain circumstances. The guidance should explain the procedure for employers, such as when the employer is allowed to confirm with the employee that a P.O. Box is appropriate.
- d. Form I-9 and instructions:
 - i. Publish examples of correctly completed forms for every employee situation with acceptable documents. The only Section 1 example in

the M-274 is for a U.S. citizen. The only Section 2 example in the M-274 is for a U.S. citizen using a List A document.

- ii. Specify the required information (e.g., address) that an authorized representative completing Section 2 should enter on a remote employee's form. Publish examples of how to comply when completing the form for a remote employee (e.g., video conference not allowed, Section 2 representative must be in the physical presence of the employee, the employer or the employee may select the representative). In addition, the suggestion of using a notary as a representative requires clarity. Many notaries are not willing or authorized to complete the form, and if a notary does complete the form, it should not be notarized.
- iii. Show examples of what and how information is to be entered in the additional information space in Section 2.
- iv. Show examples of how to enter and update receipts used in Section 2.
- v. Show examples of how to enter and update employment authorization document (EAD) extensions for temporary protected status (TPS) beneficiaries.
- vi. Specify that minors and special placement employees are required to present a List A or List B document when the employer uses E-Verify.
- vii. Specify the abbreviations preferred by USCIS for employee documents as well as clarify that other common abbreviations also may be used.
- viii. Show examples of how to complete the form for special situations such as exchange visitors, students, and temporary agricultural workers.
- ix. Show examples of how to complete the form for extensions of stay for other nonimmigrant categories.
- x. Show examples of how to correct the form and who may make corrections to each section of the form. In addition, specify what actions the employer must take in the event that the employee is no longer available to make corrections to Section 1 of the form.

- xii. Provide guidance on what the employer must do when using E-Verify and the employee does not have a Social Security number (SSN).
- 4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

APA Comments and Recommendations

- a. Completing Form I-9 for a remote employee is a significant and growing problem as more employees are working from home. Some employers now operate with nearly 100% of their workforce performing duties virtually. USCIS should consider allowing technologies, such as video conferencing, to be used to address this issue and lessen the burden on employers, but without compromising employers' responsibility for compliance.
- b. Define the minimum information that must be included in the audit trail of an electronic system used to complete Form I-9. This includes the reports that an electronic system must be able to generate. Standardization is beneficial for government agencies, system suppliers, and employers.
- c. Define the compliant methods for an electronic system to confirm an employee's identity when:
 - i. Accessing an electronic system: Most employers already require a level of certainty on the use of electronic systems for employment verification. Specifying the methods that are acceptable and unacceptable will reduce the burden on employers and help them to evaluate the software offered by system suppliers. For example, what are the compliant methods for an employee to access the system (e.g., a link or URL with a unique identifier or just a unique identifier)?
 - ii. Signing Section 1 using an electronic system: This may include a checkbox to confirm the perjury statement, a button to accept the

signature, a unique identifier (SSN or phone number), or an electronic signature with checkbox to confirm.

Thank you for the opportunity to comment on the Form I-9 and instructions. Please contact APA with any questions or to discuss these recommendations further.

Sincerely,



David Fowler, Jr.
Chair, GRTF Immigration Subcommittee



Alice P. Jacobsohn, Esq.
Senior Manager, Government Relations