

April 29, 2019

Samantha L Deshombres
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services (USCIS)

Re: Employment Eligibility Verification, Form I-9; Extension, Without Change, of a Currently Approved Collection; Docket ID USCIS-2006-0068; Office of Management and Budget (OMB) Control Number 1615-0047

Dear Ms. Deshombres:

Hyland Software, Inc. through its LawLogix division (“LawLogix”) submits the following comments in connection with the proposed extension of the Form I-9 collection request which was announced in the Federal Register on March 1, 2019 (84 Fed. Reg., No. 441, 7101).

LawLogix is the leading provider of electronic I-9 and E-Verify compliance software and I-9 remediation services for organizations across the United States. Based in Phoenix, Arizona, the LawLogix division consists of approximately 100 employees, including attorneys, software engineers, customer support and account provisioning specialists, corporate trainers, and marketing and sales executives, each of whom is dedicated to the automation of I-9 and immigration practices.

Our clients represent some of the largest and most complex employers nationwide, including many Fortune 500 companies. Together, they create millions of electronic I-9 records every year through our Guardian Electronic I-9 and E-Verify software application. We also assist many small and medium size businesses in a wide variety of industries where immigration compliance can be especially challenging due to the nature of their hiring and available resources.

In an effort to provide a voice to this diverse group of employers, we utilized an online feedback tool to collect comments and suggestions on the Form I-9 process – specifically, ideas for how the USCIS can enhance the quality, utility, and clarity of the information to be collected and minimize the burden on employees and employers. This letter summarizes the various comments and input from our clients (hereinafter, “respondents”) and offers specific suggestions on how to improve the overall I-9 completion process.

Form I-9 Feedback

At the onset, LawLogix recognizes the many improvements made to the I-9 and E-Verify programs during the last few years, specifically in the areas of employer outreach and communication. However, as this comment will describe, the Form I-9 can still be a very unforgiving process to employers, especially in light of the increase in worksite enforcement and the considerable penalties at stake. As explained more fully below, LawLogix recommends that the USCIS provide additional allowances for remote workers, clarify

information requested in Section 1 of the Form I-9, include new instructions and guidance on the Lists of Acceptable Documents, consider E-Verify participants when drafting instructions on the Form I-9, and generally look for ways to simplify the verification process whenever possible.

1. Form I-9 policies must change in light of “remote” hiring in the US

The vast majority of respondents, which include several Fortune 500 companies, expressed a strong desire to “modernize” the I-9 rules for employees hired in remote or distant locations. As the USCIS is aware, current policy requires that employers verify employment eligibility by reviewing original documents **in-person** with the employee and completing and retaining the Form I-9 within 3 business days of the employee’s start date (in most cases). While the regulations permit the designation of an authorized representative to perform these tasks, employers face several challenges, including:

- Determining who can serve as an authorized agent
- Confusion regarding whether notaries can perform this task – certain states expressly prohibit notaries from getting involved
- Ensuring that the representative completes the process according to the Form I-9 rules, and within very tight timelines
- Maintaining the security and confidentiality of Form I-9 information

LawLogix has been addressing these challenges for many years through guided electronic I-9 workflows and key partnerships with “remote agent” networks. Nevertheless, we strongly urge USCIS to consider policy changes to ease employers’ burdens – especially as an increasing number of employees are now working from home or in truly remote locations. Below are a few specific quotes from our clients:

- “Given where technology is in this time and place, we believe the remote hire process should be revised to best utilize current technology. Consideration should be given to electronically viewing acceptable documents for potential hires in very remote areas.”
- “I would like to see the modernization of the remote system! Requiring employees to visit a remote agent is an inconvenient start to the new job for many.”
- “We have quite a few remote associates and it would be wonderful if the I-9 were to be modified to account for the remote aspect. Video verification such as Skype/FaceTime/Zoom of I-9 forms would be wonderful.”
- “An updated process for completing Form i-9 for remote employees would help reduce undue burden on employees and employers.”
- “Modernize remote hire process to consider video verification or certain methods such as JPEG, color photo to be able to validate authorization.”

- “Allow the use of technology to validate/verify acceptable documents when not able to meet in person.”
- “As companies are becoming more agile and allowing for more remote /flexible working conditions for employees - the I9 form/process needs to be updated to accommodate these types of scenarios for both new hire and reverifications with the new advancement with technology, tools and systems that are available.”
- “Provide examples of who can serve as an authorized representative – notaries are not always permitted to do I-9s, and employees should be able to ask friends or colleagues to perform this task.”

LawLogix recognizes and understands that several of the suggestions described above may require changes to the underlying Form I-9 regulations, specifically in regards to the requirement that employers “physically” examine documentation presented.¹ LawLogix strongly encourages the USCIS to seek approval of such changes and initiate discussions through the regulatory unified agenda with interested stakeholders. Video examination (perhaps in combination with E-Verify) would provide employers with much-needed flexibility while also addressing document fraud or tampering concerns.

In the interim, the USCIS should consider providing additional guidance on completing I-9s for remotely hired employees through its website and other communication channels. Particularly, LawLogix recommends that the USCIS clarify one of the most vexing questions for employers completing remote I-9s: who can serve as an authorized agent.

Current guidance simply references “personnel officers, foremen, agents or notary public” without providing any other information.² The USCIS should consider adding more specific examples (e.g., attorney, accountant, colleague), or at the very least, remind employers that the law provides great flexibility in the use of intermediaries for verification purposes. These instructions should also include specific prohibitions if they exist (i.e., who may NOT serve as an authorized representative).

To further the above, the USCIS should dedicate an entire section of I-9 Central to the remote hire process including guidance tailored specifically for the various audiences involved – new hire employee, employers, and authorized agents. The USCIS should also clarify frequently asked questions such as:

1. What information can be pre-populated in Section 2 for the agent?
2. What is the proper “title” that the agent should indicate?
3. Can the employee bring a copy of the supporting document(s) to be maintained with the I-9 file (keeping in mind, that the agent will still need to review and examine the original documents)?

¹ See 8 CFR 274a.2(b)(1)(ii)(A).

² USCIS, “Completing Form I-9 for Remote Hire,” found online at <https://www.uscis.gov/i-9-central/whats-new/completing-form-i-9-remote-hire> (last updated 12/20/2018).

LawLogix is happy to provide additional questions and comments from our clients to further expand USCIS' remote I-9 educational resources.

2. Clarify information requested in Section 1 of the Form I-9

Several respondents noted that the Form I-9 instructions for new hire employees (in Section 1) should be modified to address frequently asked questions and confusion over the information required. LawLogix already addresses some of these items through field validation and by enabling employers to add customized help text, but changes to the form itself (or instructions) would be helpful.

Specifically, respondents suggested the following:

- Include an instruction for the "Other Last Names Used" field which notes that employees should NOT enter their "current" last name or any "nicknames" in this field.
- Include an instruction that a physical address is preferred in Section 1 but P.O. Boxes are also permissible.
- Fields that require non-null entries should be marked as such; if N/A is required it should be listed on the form or its instructions.
- The section for translator/preparer should NOT be shadowed grey - employees believe this is for office use only and frequently miss it.

3. Clarify certain document rules in the Lists of Acceptable Documents

The Form I-9 process involves specific (and often confusing) rules regarding the documents that can be accepted for employment eligibility verification purposes. While some of these processes are described in the M-274 handbook and validated by the LawLogix Guardian system, several respondents noted that document review instructions should be included directly on the Lists of Acceptable Documents for quick and easy access. The following suggestions were presented:

- "It would be very helpful if you noted that we may accept an expired EAD or I-551 if accompanied with additional evidence that extends work authorization – and then refer them to the M-274 handbook for these special instructions"
- "Indicate the types of Birth Certificates which are acceptable – e.g., a Birth Registration is acceptable, however a transcript of the Birth Certificate is not acceptable."
- "Be more precise with the List C "catch-all" Employment Authorization document issued by the Department of Homeland Security by providing examples and noting that an I-766 should be recorded in List A, not List C (a common mistake)"

4. Include additional instructions on the Form I-9 that relate to E-Verify

Several respondents noted that the Form I-9 should include more explicit instructions for employers using E-Verify – specifically with regards to long standing Form I-9 rules which “change” once an organization begins using the E-Verify system. While the Guardian electronic I-9 system enforces these rules for employers automatically, the differing standards can cause confusion for busy HR and hiring managers. Below are a few of the suggestions we received:

- “The Lists of Acceptable Documents should Indicate which documents are NOT acceptable for E-Verify purposes (for example, List B documents that do not have a photograph)”
- “Mention the specific documents for which we must retain photocopies”
- “In section 2, we request that an additional blank be added in the List A section for the I-766, Employment Authorization Card to collect both the Alien Number and the Document Number as required by E-Verify”
- “Enable employers to request an employee’s social security card (if not already provided) in order to validate that the SSN they wrote in Section 1 is correct (goal is to reduce needless TNCs)”

5. Simplify the Form

Lastly, several respondents indicated that the Form I-9 is becoming too complicated, especially for smaller employers who do not always have the resources to keep up with changing requirements. Many of these comments noted that even minor changes to the Form I-9 rules can have a significant impact when employers need to rewrite policy manuals and update training materials with new processes. The following comments (and suggestions) were presented:

- “While I appreciate the additional instructions and guidance, I think they should return to a one-page format. It seems like some of the information being requested (such as addresses) are not critical to employment verification”
- “Section 3 is very confusing because it has so many uses – reverification, rehire, and name changes. I think they should allow name changes to be recorded by the employer at the top of Section 1”
- “The N/A requirement is burdensome and other areas are unclear. Many of my hiring managers believe that the dates have to be in mm/dd/yyyy format or they will be fined”

Conclusion

As the comments above illustrate, the Form I-9 can be a surprisingly complex process, even for employers who consider themselves to be well-versed in the various requirements and rules. While the USCIS has certainly improved its Form I-9 education and outreach over the past few years, many HR representatives still struggle with fundamental questions on form completion and retention.

To that end, LawLogix recently launched an “Ask the Expert” column on our website to address frequently asked questions (see <https://www.lawlogix.com/ask-the-expert>) from the employer community. LawLogix encourages the USCIS to further demystify the Form I-9 process through better instructions and specific allowances for remote workers to ease the increasing burdens faced by employers today.

LawLogix appreciates the opportunity to share these comments and feedback with the USCIS, and looks forward to continuing our partnership with you in helping employers comply with ever-changing Form I-9 and E-Verify rules and requirements.

Thank you for your time and consideration in this matter.

Sincerely,



John Fay
President
LawLogix