



**Privacy Impact Assessment Update
for the**

Form I-9 “Employment Eligibility Verification” Update

DHS/USCIS/PIA-036(a)

July 27, 2012

Contact Point

Brian C. Hobbs

**E-Verify Program/Verification Division
US Citizenship and Immigration Services
(202) 443-0114**

Reviewing Official

Mary Ellen Callahan

Chief Privacy Officer

**Department of Homeland Security
202-343-1717**



Abstract

The Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS) Verification Division manages the business process in support of the statutory requirement that requires employers to maintain Form I-9, *Employment Eligibility Verification*, which is completed by their new employees. This form serves to verify employment authorization for all new employees. The purpose of this update is to: (1) describe the collection of additional information in "*Section I: Employee Information and Attestation*" of Form I-9, and (2) describe the update to Form I-9 instructions.

Introduction

In 1986, Congress mandated that employers verify the employment authorization of all new employees hired after November 6, 1986.¹ In response to this mandate, Form I-9, "*Employment Eligibility Verification*," hereinafter referred to as Form I-9, was created and is now issued by the U.S. Citizenship and Immigration Services (USCIS). All U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the United States. This requirement applies to both U.S. Citizens and non-citizens. The employer must examine Form I-9 and identity document(s) (e.g., driver's license, passport, birth certificate, etc.) an employee presents to determine whether the document(s) reasonably appear to be genuine. The employer records the identity document information on Form I-9.

Form I-9 helps employers verify those individuals who are authorized to work in the United States. Employers must complete a Form I-9 for every new employee hired after November 6, 1986.

As part of the creation of the Department of Homeland Security (DHS) with the Homeland Security Act of 2002, elements of the former Immigration and Naturalization Service (INS), including USCIS that were responsible for most documentation of alien employment authorization including Form I-9, were transferred to DHS. As such, USCIS is the component of DHS that manages the employment eligibility verification process. USCIS does not collect information via this process; rather, information is collected by employers directly from their employees.

USCIS is updating Form I-9 PIA dated April 15, 2011, to describe the collection of additional information in "*Section I: Employee Information and Attestation*" of Form I-9 and to describe the update to Form I-9 instructions.

Collection of Additional Information

To better support the verification process, USCIS is collecting additional information in "*Section I: Employee Information and Attestation*" of Form I-9. This collection of information includes both optional and mandatory fields. A description of the specific data elements USCIS is adding to Form I-9 is as follows:

¹ The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. § 1324a).



Employee Email Address and/or Telephone Number

USCIS is modifying Form I-9 to include employee email address and telephone number as optional fields. Employees who provide this information will assist the employer in contacting the employee if the employer identifies an omission of information or other error on the Form I-9.

Foreign Passport Number and Foreign Passport Country of Issuance

USCIS is modifying Form I-9 “*Section I: Employee Information and Attestation*” to include “Foreign Passport Number” and “Foreign Passport Country of Issuance.” This additional collection is necessary as the E-Verify system² verifies employment eligibility based on a primary identifier which is provided by employees on Form I-9. At least one primary identifier is required for the DHS verification of employment eligibility. For non-citizens, a primary identifier is currently either an I-94 number³ or an Alien Number (A-Number) from an Employment Authorization Document (EAD). However, some non-citizens may not have an I-94 number or A-Number, yet they may potentially be authorized to work in the United States. To accommodate this population, E-Verify has developed the capability to verify employment authorization using the combination of foreign passport number and Country of Issuance, which results in a new primary identifier for non-citizens.

The Foreign Passport Number and Foreign Passport Country of Issuance data fields are required to be filled out by the employee if he meets all of the following criteria:

- (1) He attests to being an “Alien Authorized to Work;”
- (2) He does not have an Alien Registration Number;
- (3) He did not receive an I-94 from USCIS; and
- (4) He entered the United States using a foreign passport.

Form I-9 Instructions

USCIS is updating and expanding the Form I-9 instructions to inform employees of the purpose for collecting the additional data elements identified above. The instructions provide notice that the collection of the email and phone number is optional and is to assist the employer and not USCIS in contacting an employee regarding verification of the employee’s employment authorization. Also, based on public feedback regarding Form I-9, USCIS added additional instructions to assist employees in filling out the form correctly. Finally, USCIS is updating the Privacy Act Statement and Form I-9 instructions to ensure that the individual completing Form I-9 receives notice and to ensure that the purpose for collecting information associated with the form is transparent.

² DHS/USCIS/PIA-030 E-Verify Program and associated updates and DHS/USCIS-011 E-Verify Program System of Records 75 Fed. Reg. 28035 (May 19, 2010).

³ Form I-94 is a DHS form generally issued to aliens at the time they lawfully enter the United States. Form I-94 is used to document status in the United States, the length of stay, and departure.



Reason for the PIA Update

USCIS is updating the Form I-9 PIA (April 15, 2011), to (1) describe the collection of additional information in “*Section I: Employee Information and Attestation*” of Form I-9, including the employee email address and/or telephone number, foreign passport number, and foreign passport country of issuance; and (2) describe the update to Form I-9 instructions.

Privacy Impact Analysis

In each of the below sections consider how the system has changed and what impact it has on the below fair information principles. In some cases there may be no changes and indicate as such.

The System and the Information Collected and Stored within the System

USCIS does not collect information via this process; information is collected by employers, directly from their employees. Employers only collect those data fields contained on Form I-9.

The new Form I-9 will now collect not only foreign passport number, but also foreign passport country of issuance. Previously, the Form I-9 did not collect passport country of issuance. Adding passport country of issuance to the foreign passport number provides DHS/USCIS an additional means of verifying whether the individual has work authorization. DHS/USCIS will only receive this information if the employer is participating in the E-Verify program. Individuals who provide a foreign passport to demonstrate employment eligibility must provide the passport to their employer for review. As a result, the employer already has access to the passport number and country of issuance.

The foreign passport number and country of issuance create a primary identifier for the individual. This creation of a new primary identifier based on foreign passport information could pose a privacy risk if the passport is lost or compromised and used by an unauthorized individual to gain employment authorization. All identity documents pose a risk of unauthorized use if lost or compromised; however, it is the responsibility of the employer to verify that the image and name of the individual presenting the document match the actual document. USCIS provides guidance to employers via the M-274: Handbook for Employers – Instructions for Completing Form I-9.

In addition to the addition of country of issuance of foreign passport, DHS/USCIS has added email and phone number to the form as optional fields. The Form I-9 clearly states that the information is optional and is collected to assist with employment authorization and is not collected by DHS/USCIS. This collection is optional and the employee may opt-out of providing this information.

Uses of the System and the Information

Employers will continue to use information on Form I-9 to determine employment authorization of the employee who submits the form as required by USCIS. There is no change to the uses of the system and the information.



Retention

There is no change to the retention schedule for Form I-9 with the collection of additional information. The retention of Form I-9 information remains the same as described in the April 15, 2011, PIA.

Internal Sharing and Disclosure

There are no changes in internal sharing and disclosure as a result of this update. USCIS has no direct control over Forms I-9/Forms I-9 for Commonwealth of the Northern Mariana Islands (CNMI) because the forms are collected and maintained by employers and thus USCIS does not share this data.

External Sharing and Disclosure

There are no changes in external sharing and disclosure as a result of this update. USCIS does not collect Form I-9 in the normal business process, so it cannot share the information. The employer may only share Form I-9 and any copies of supporting documents, if retained, with authorized officials for enforcement of the INA and 18 U.S.C. §§ 1001, 1028, 1546, or 1621.

Notice

This PIA, reissuing of the DHS/USCIS-011 E-Verify Program SORN, the updated instructions, and the revised Privacy Act Statement (See Appendix A) provide notice of the changes to Form I-9. There are no additional changes to the notice procedures outlined in the April 15, 2011 PIA.

Individual Access, Redress, and Correction

There is no change to individual access, redress, or correction as a result of this update. Since the information on Form I-9 is both collected and controlled by the employer, and DHS is not actively involved in the collection or storage of the Form, the employee must work with the employer to redress any issues.

Technical Access and Security

Technical access and security of Form I-9 remain unchanged by this PIA update and no further technical access and security risks have been identified.



Technology

Technology of Form I-9 remains unchanged by this PIA update and no further technology risks have been identified.

Responsible Official

Brian C. Hobbs
Privacy Branch Chief
USCIS Verification Division
Department of Homeland Security

Approval Signature

Original signed and on file with the DHS Privacy Office.

Mary Ellen Callahan
Chief Privacy Officer
Department of Homeland Security



Appendix A: USCIS Form I-9 Privacy Act Statement

AUTHORITIES: The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. § 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, an employer should not continue to employ an individual without a completed form. Failure of the employer to ensure proper completion of this form 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.