



Questions and Answers

**American Immigration Lawyers Association Verification and
Documentation Liaison Committee
Joint Meeting with USCIS Verification, U.S. Immigration and Customs
Enforcement Homeland Security Investigations, and the U.S.
Department of Justice Immigrant and Employee Rights Section
Washington, D.C.
May 10, 2017**

Overview

On May 10, 2017, the American Immigration Lawyers Association (AILA) Verification and Document Liaison Committee met with USCIS' Verification Division, U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI), and U.S. Department of Justice Immigration and Employee Rights (IER) to respond to questions, provide updates, and address follow-up items. The questions and answers are provided below for the benefit of interested stakeholders.

Questions and Answers

New I-9/ I-9 Completion

1. We understand that a new I-9 form will be published in July 2017 to reflect changes related to the new entrepreneur parole rule. Will this I-9 be available to the public for comment? What, if any, additional changes will be made to the I-9 at that time?

USCIS Response: [The new version of the Form I-9, dated 07/17/2017 N, will become mandatory on Sept. 17, 2017, replacing the version dated 11/22/2016 N, which may continue to be used until Sept. 16, 2017. The International Entrepreneur Rule was published in the Federal Register by the Department of Homeland Security \(DHS\) on Aug. 31, 2016, as a \[proposed rule\]\(#\) and the Federal Register accepted comments on this proposed rule until Oct. 17, 2016. A \[final rule\]\(#\) was published on Jan. 17, 2017, with an effective date of July 17, 2017. Form I-9 was included in this rule and available for public comment from Aug. 31 to Oct. 17, 2016.](#)

2. The current Form I-9 instructions contain information that is now incorrect regarding acceptance of receipts for EAD extensions. Specifically, it does not reflect the new rules regarding the automatic EAD extensions. We are concerned that employers who follow the instructions may take incorrect actions. Will the I-9 instructions be revised in conjunction with the July version of the Form I-9 or at another time? If not, what actions will USCIS take to advise the public of how to correctly accept receipts for EAD extensions?

USCIS Response: The instructions for Form I-9 will not be revised. We have provided employers with instructions and information related to the 180-day automatic extension of the validity period of Form I-766, Employment Authorization Document (EAD), covered by 8 CFR 274a.13(d) in the M-274, Handbook for Employers. Additionally, we have provided information about the rules concerning automatic EAD extension on I-9 Central.

3. The font on the new PDF version of the I-9 is very small and there doesn't appear to be a way to enlarge it. Is there a mechanism to increase the size of the font? Employers are concerned that when printing the form, the type is difficult to read, and if they need to provide the form to a third party for E-Verify purposes, the text may be illegible.

USCIS Response: The only mechanism to increase the font size would be to change the proportion on the screen to a larger percentage when viewing on a computer screen.

4. During the November 17, 2016 stakeholder event, USCIS noted a glitch on the online PDF version of the Form I-9, and stated that the 11/14/2016 PDF had been pulled, fixed, and reposted as of 11/17/2016. The initial version had a defect which caused the employee's social security number to be transposed when the I-9 was printed. To our knowledge, USCIS did not mark the repaired version in any way and USCIS did not send an alert or make any other announcement. As a result, employers who promptly adopted the new PDF I-9 and downloaded it between 11/14 and 11/17, have been using the defective version for months. Further, employees may have correctly typed their SSN into the defective form, reviewed the contents on screen, confirmed that the information was correct, printed it, but then may not have carefully reviewed every field again before signing.

- a. Has E-Verify addressed this issue, as it would appear that this may result in false TNCs?

USCIS Response: E-Verify reports show no increase in tentative nonconfirmations (TNCs) from Nov. 14, 2016 to April 16, 2017.

- b. Could USCIS provide written guidance to the public so that employers who saved and are using the defective form are aware that they need to re-download the corrected form?

USCIS Response: USCIS has published written [guidance](#) on I-9 Central and E-Verify concerning this issue informing employers of the possible glitch, how to tell if their form contains the glitch, instructions for correcting Forms I-9, and that they should download the most recent version of the form immediately.

5. Please clarify which documents satisfy the requirement for a "U.S. Military draft record" under List B? Does an original draft card (which contains only the name and Selective Service number) suffice? Does other documentation from the Selective Service satisfy the requirement?

USCIS Response: Yes. Any document issued by the Selective Service showing that a man has registered with the Selective Service System is considered a draft record on List B for Form I-9 purposes. Men who have registered since 1983 will have a registration acknowledgment card from the Selective Service. For more information on the Selective Service registration acknowledgment card, visit the Selective Service's website at www.sss.gov.

6. Two Forms I-9 were issued by USCIS in 2009; one in February and the other in August. It is our understanding that either/both of these forms could be used in 2010, and that they remained valid

until the March 13, 2013, version came out with the “N” designation. Is this correct? In some I-9 audits, the auditor has stated that the use of the February 2009 form after August 2009 was incorrect, as it was not “the most current version of the form.”

USCIS Response: Form I-9 Rev. 02/02/09 N and Form I-9 Rev 08/07/09 Y were both valid for use in 2010 and remained valid until Form I-9 Rev. 03/08/2013 N was made available. According to [published guidance](#), an “N” next to the revision date means that Form I-9 with an earlier revision date can no longer be used to verify employment eligibility. A “Y” next to the revision date means the form is valid but the prior version which includes the “N” is also valid and either can be used until the next release of a new form.

7. For reverification purposes, when an employee presents an I-94 card evidencing employment authorization incident to status, please confirm that the I-94 card qualifies as a List C document and does not need to be presented together with an unexpired foreign passport. Does this answer change if the foreign passport has expired since it was originally presented? If the answer to the former question is “yes,” please confirm the following:

USCIS Response: An unexpired Form I-94 card qualifies a List C #8 document since it is a document issued by DHS. During reverification, the employer does not need to reverify the identity of the employee and the employer will only need the List C document to ensure unexpired work authorization.

- a. The “smart” version of the new Form I-9 does not have an option in Section 3 to record only the I-94 card. The employer must either select “Foreign passport with Form I-94, endorsement” or “Employment auth. document (DHS).” Please confirm that an employer may select “Employment auth. document (DHS)” and record only the I-94 card information.

USCIS Response: In Section 3, the employee is only required to present a document that shows continued employment authorization. If the employee originally presented a foreign passport with Form I-94, the employee may present an unexpired I-94 at the time of reverification or any List A or List C document. If the employee provided only the unexpired Form I-94 for reverification, the employer may select “Employment auth. Document (DHS)” on Form I-9.

- b. Would your office consider adding “Form I-94” as a drop-down option in Section 3 of the “smart” version of the Form I-9?

USCIS Response: USCIS is not considering adding “Form I-94” as a drop-down option under List C#8 because that document is not necessarily the preferred document and there are several documents that are equally acceptable.

8. In a recent USCIS stakeholder webinar (1/23/17), a PowerPoint presentation was provided to attendees. The PPT (and the discussion) explained how to proceed when an employer finds that an I-9 for a current employee is missing and stated that employers should immediately provide the employee with the I-9 and give him or her three business days to complete the form. What is the legal justification for the three business day rule in this scenario? We understand that the new form should be done within three days for initial completion, but we are not aware of a three business day requirement when an I-9 form is discovered to be missing mid-employment.

USCIS Response: The PowerPoint will be updated to advise employers that if an employer discovers a missing Form I-9, the employer and employee must complete a new Form I-9, as soon as possible.

The newly completed form should not be back-dated. Also, it may be helpful to keep a written explanation of what happened with the Form I-9.

9. If a transgender individual comes into the Human Resources office to provide information about his/her new name/identity, please confirm that this is not an I-9 event and should be treated as any other name change (i.e. the employer may write it in Section 3, or on the top of page 1, or not at all). If this occurs during a Section 3 re-verification, please confirm that Section 3 (on the latest version of the I-9) needs to be completed and that a new I-9 is not required.

USCIS Response: A new Form I-9 is not required in the case of a legal name change; employers may update Section 3 of Form I-9 with the new name in the space provided as they would for any individual who changes their name.

New M-274 Handbook for Employers

10. With respect to changes made to the M-274 (revision date 1/22/17 and released on 2/14/17) regarding how to complete the Form I-9, please confirm that employers may rely on then-publicly available guidance for I-9s completed between 1/17/2017 and 2/14/17 to the extent that the I-9s were completed differently than the new M-274 guidance suggests.

USCIS Response: Yes, that is correct.

11. Would USCIS change its website to reflect that the M-274 was not made available to the public until 2/14/17, to protect employers who completed I-9s during the gap between the new EAD regulation, the new I-9, and the availability of the M-274?

USCIS Response: There were no regulatory changes to Form I-9 when the newest version was released in November 2016 and all updated instructions on completing this form were posted on the same day as the form. The M-274 was available to the public and later updated to reflect changes to the new EAD regulation.

12. Employers have been advised for the last several years that P.O. boxes are not allowed in Section 1. In the 2013 version of the I-9 instructions, there was a strict prohibition against the use of P.O. boxes. With the new 2016 I-9, this language was removed and there is no guidance in the form instructions, the M-274, or on I-9 Central regarding P.O. boxes. In stakeholder events (and in the USCIS response to the public comments), it was stated that while a residential address is encouraged, P.O. boxes are no longer prohibited in Section 1. We ask USCIS to provide clear guidance to employers regarding this issue.

USCIS Response: Employees may enter a P.O. Box in the Address field in Section 1; however, preparers, translators and employers may not enter P.O. Boxes on Form I-9. USCIS will provide additional guidance on I-9 Central on the use of a P.O. Box.

13. With regard to the guidance regarding Native American Tribal Documents, it does not seem reasonable to ask employers to confirm that a facially valid document is actually valid based on whether the tribe is still federally recognized as of the date the document is presented.¹ In all other instances, employers are advised to take the documents at face value and not conduct additional investigations. This guidance may lead to discrimination against those providing tribal documents, most of whom are U.S. workers. Will USCIS reevaluate the M-274 guidance that suggests that the

¹ See M-274 at page 17. Available at <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>.

BIA website be consulted to confirm whether a tribe is federally recognized? In addition, we noticed that the new M-274 advises that a single Native American Travel Document can be used to complete both the List B and the List C column in Section 2. We previously understood that a Native American Tribal Document could be used as either a List B or a List C document but not both. Is this new guidance?

USCIS Response: A Native American Tribal Document can establish both identity and employment authorization on Form I-9. Additional guidance on Native American tribal documents is available on page 17 of the M-274. Federal recognition of tribes can change over time; therefore, it's important for employers verify the validity of a Native American Tribal Document by referring to the most current list of federally recognized tribes at www.bia.gov.

14. There has never been a requirement for an employer to write a memo when an employee makes corrections to Section 1, provided that an employer took the appropriate steps to note the change (different color pen, initial and date changes). We are concerned that the guidance on Page 30 of the M-274 states that an employer “should” attach a written explanation. Please confirm that “should” in this context is to be read as “may” and not “must.” Note: In contrast to the comment above, on page 31 of the M-274, the new guidance now states that if an employer makes a change in Section 2 or 3, it is only “helpful” to provide a written explanation. There is no legal difference between changes in Section 1 and Section 2. Is there a reason for the varying guidance?

USCIS Response: “Should” in this context does not mean “must.” There is no reason for the different language between Section 1 and Section 2; in both cases, we suggest that employers keep a written explanation of what happened with the Form I-9.

15. In several places in the M-274, guidance changes depending on who is being advised (employer versus employee). As a result, there are instances where it appears that USCIS is advising the employer to do something that only the employee can do. The statements change from “have the employee do X” to just “do X.” We are concerned that employers following the exact guidance in the M-274 will be in violation of the regulations. We are happy to provide examples but ask that USCIS consider reviewing the language of the M-274 and provide clarifications as needed.

USCIS Response: If you send us examples, we will update as necessary.

16. The M-274 states that Section 3 can be used for re-hires within 3 years of the original date of hire.² If an employer re-hires the same employee multiple times within this 3 year window, such as a seasonal employee who may work only certain times per year, can the employer complete multiple Section 3s within this 3 year window?

USCIS Response: In rehire situations, the employer may rely on the previously completed Form I-9 if the individual is hired within 3 years of the date of the initial execution of such Form I-9; not within 3 years of the last rehire date. See 8 CFR 274a.2(c)(1). If the current version of Form I-9 is different from the previously completed Form I-9, you must complete Section 3 on the current version.

If an employer's seasonal workers are continuing in their employment and have a reasonable expectation of employment at all times, DHS regulations do not require a new Form I-9 and

² *Id.* at 27.

the previously completed Form I-9 may be relied upon. See the M-274, pages 28-29 for more information.

17. AILA noted that several FAQs that were included in the last version of the M-274 have been omitted from the new M-274. Some of the deleted FAQs explain issues that most confused employers and it is unclear if the omissions are due to a change in policy. We ask USCIS to review the FAQs that were removed, and either add this guidance back into the M-274, or add it to I-9 Central. Some examples of FAQs that we believe are critical and should be made available to employers include:

USCIS Response: USCIS worked closely with internal partners that work directly with the public to determine which Q&As were used most frequently by the public and our partners. The removal of a Q&A from the M-274 does not necessarily indicate a change in policy.

- Deleted Q8: “If an employee enters an Alien Number or Admission Number when completing Section 1 of Form I-9, may I ask to see a document with that number?”

USCIS Response: USCIS worked closely with our internal partners who work directly with the public to determine which Q&As our customers refer to the most. This Q&A was indicated to be rarely used by our customers. USCIS will consider adding this information in the future.

- Deleted Q15: “An employee has attested to being a U.S. citizen or U.S. noncitizen national on Section 1 of Form I-9, but has presented me with Form I-551, Permanent Resident Card, or “green card.” Another employee has attested to being a lawful permanent resident but has presented a U.S. passport. Should I accept these documents?”

USCIS Response: I-9 Central displays a Citizenship Status/Document Matrix that indicates what documents each status may provide for Form I-9. Rather than calling out a specific status/document, USCIS believes it is of more benefit to our customers to review the chart when having questions about acceptable documents related to status.

- Deleted Q18: “Some employees have presented Social Security Administration printouts with their name, Social Security number, date of birth, and their parents’ names as proof of employment authorization. May I accept such printouts in place of a Social Security card as evidence of employment authorization?”

USCIS Response: This Q&A is currently available on I-9 Central.

- Deleted Q19: “What should I do if an employee presents a Social Security card marked “NOT VALID FOR EMPLOYMENT,” but states that he or she is now authorized to work?”

USCIS Response: This Q&A is currently available on I-9 Central.

- Deleted Q40: “I use a professional employer organization (PEO) that co-employs my employees. Am I responsible for Form I-9 compliance for these employees or is the PEO?”

USCIS Response: This Q&A is currently available on I-9 Central.

New USCIS Guidance on Automatic EAD Extensions

18. The 180 day automatic extension regulation became effective January 17, 2017 and states that the validity period of an expiring EAD will be automatically extended for an additional period not to exceed 180 days from the date of such document's expiration if a request for renewal on a form designated by USCIS is:

- (i) properly filed before the expiration date shown on the face of the EAD;
- (ii) based upon the same employment authorization category as shown on the face of the EAD (or, if it is a TPS code, the category listed is A12 or C19); and
 - a. is based upon a class of aliens authorized to work incident to status.³

Please clarify the circumstances governing the 180-day auto-extension rule for TPS beneficiaries whose EAD expiration date, or auto extension date, is reached prior to receiving a new EAD with a future expiration date.

- a. **Salvadoran and Haitian nationals with an EAD expiration date of July 22, 2017.** Provided such nationals present a USCIS I-797C Notice of Action dated prior to July 22, 2017, is it accurate to state that the employer may deem that they remain work authorized for 180 days beyond July 22, 2017, i.e., through January 22, 2018?
- b. **Honduran nationals with expired EADs dated July 5, 2016 (which were auto-extended through January 5, 2017) who have not yet received new EADs reflecting an extension date of January 5, 2018.** Must such nationals present a USCIS I-797C Notice of Action, dated as received prior to January 5, 2017, in order to benefit from the 180-day auto extension, i.e., through July 5, 2017?

USCIS Response (a & b): Temporary Protected Status (TPS) beneficiaries benefit from 2 possible extensions: (1) a 180-day automatic extension of their EAD if an EAD renewal application is filed in accordance with 8 CFR 274a.13(d) and (2) an automatic EAD extension announced in a notice published in the Federal Register based on an extension of the TPS country designation. The new expiration date to enter is either the date 180 days from the date the card expires, which is the date on the face of the EAD or as announced in the Federal Register of an automatic extension. More information regarding the 180-day automatic extension requirements, and guidance for determining the employee's automatically extended EAD validity date, may be found in the M-274, Handbook for Employers or on www.uscis.gov/i-9-central.

19. Please confirm that a national of a Central American country, like Guatemala or Nicaragua who presents a USCIS I-797C EAD extension dated prior to the expiration of their current EAD would be entitled to a 180 day extension of employment authorization under the new regulations, or until USCIS makes a decision on the extension application.

USCIS Response: Foreign nationals in certain employment eligibility categories who file an EAD renewal application may receive automatic extensions of their expiring EAD for up to 180 days if these requirements are met:

- Except for certain employees granted Temporary Protected Status (TPS), the employee timely filed an application to renew their EAD and the application remains pending;
- The eligibility category code on the face of the EAD is the same eligibility category code on the receipt notice, Form I-797C, Notice of Action, the employee received indicating USCIS's receipt of their EAD renewal application (except employees with TPS may have a C19/A12 combination); and

³ See 8 CFR 274a.13(d)(1).

- The eligibility category is listed on uscis.gov as qualifying for automatic EAD extensions. As of today, eligibility categories codes that qualify for a 180-day automatic extension are A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31 and A12 or C19.

For additional information, see the [M-274, Handbook for Employers](#).

20. The regulation at 8 CFR §274a.2(b)(vii) states that Form I-9 must be “reverified” to reflect that the individual is still authorized to work. This “reverification” would involve the employee presenting proof of continuing employment eligibility, which may include an EAD in combination with Form I-797C Notice of Action indicating that the EAD has been automatically extended for up to 180 days. The regulation states that the employer must “reverify by noting the document’s identification number and expiration date, if any, on Form I-9 and signing the attestation by a handwritten signature or electronic signature....”⁴ Notably, upon publication of the new regulations on November 18, 2016, and continuing through the January 27, 2017, effective date:

- It was not entirely clear to which categories of aliens the automatic extension applied;
- A revised M-274 was not published;
- There was no explanation on I-9 Central about how the I-9 should be completed to reflect the automatic extension; and
- Because of the lack of implementing language in the regulation, there was confusion as to whether the automatic extension would apply prior to January 17, 2017.

The new Form I-9 became effective January 22, 2017 but the I-9 instructions did not assist with any of these issues. The revised M-274 was made available to the public on February 14, 2017, although it is dated January 22, 2017. Lastly, a “[Fact Sheet](#)” was published on January 30, 2017, which explains how the Form I-9 should be completed with the automatic EAD extensions.⁵ Additionally, once the Fact Sheet and M-274 were published, electronic I-9 providers needed time to implement the coding necessary to follow the guidance. Please confirm the following:

- a. I-9s that were completed on or after January 17, 2017, but prior to implementation of the offered guidance by electronic providers or prior to the issuance of the M-274 Guidance or the Fact Sheet may have been completed in a way that differs from the offered guidance.
 - i. Do these I-9s need to be remediated to bring them into alignment with the guidance?

USCIS Response: [If an employer audits their Forms I-9 and discovers errors, the employer should correct the error and bring the Forms I-9 into compliance. Audits allow employers to ensure Forms I-9 have been completed correctly, and to make corrections if errors are found.](#)

- b. The Guidance suggests that Section 1 “should” be changed. Please confirm that this is not mandatory. Our understanding is that Section 1 is intended to be a “static” section and that any extension of employment authorization can effectively be recorded in Section 2 or Section 3 without a need for the employee to update Section 1. The logistics of managing updates of Section 1 are daunting for many employers, particularly those with remote employees.

⁴ *Id.*

⁵ See Fact Sheet Automatic Extensions of EADs Provided by the “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers” Final Rule, *available at* <https://www.uscis.gov/sites/default/files/USCIS/Verification/I-9%20Central/FactSheets/Fact-Sheet-AutoExtendEAD.pdf>.

USCIS Response: We recommend the employee update Section 1, but it is not mandated by regulation.

- c. This issue also arises in the context of an H-1B petition to extend status. The employee benefits from an automatic extension of employment authorization for up to 240 days. The M-274, on page 23, states that “[y]our employee *may* update Section 1 by crossing out the expiration date of the employment authorization noted in the attestation.”⁶ Please confirm that this is permissive and that employers will not be penalized if the employee has not updated Section 1 of the Form I-9.

USCIS Response: We recommend the employee update Section 1, but it is not mandated by regulation.

- d. Assuming that the update of Section 1 mentioned in the two questions above is optional, is there a reason why USCIS office would consider it wise for employers to have employees update Section 1?

USCIS Response: When your employee’s employment authorization or employment authorization documentation expires, you must reverify to ensure your employee is still authorized to work. The date that employment authorization expires in Section 1 may not match the document expiration date recorded under List A or List C in Section 2. The earlier date must be used to determine when reverification is necessary.” Therefore, we encourage employees to update Section 1.

E-Verify

21. A company does a self-audit and discovers a missing I-9 form for an employee. At the time the employee was originally hired, the company was not participating in E-Verify, but now it is. The company completes the Form I-9 using the current form version, but does not submit the information into E-Verify. Please confirm that this is the correct way to proceed in this scenario.

USCIS Response: Yes, this is correct because employers (other than federal contractors) can only use E-Verify for new hires. At the time the company enrolled in E-Verify, this employee was an existing employee and no E-Verify case would have been created for him or her. To prevent possible discrimination, system misuse, and protect system integrity, USCIS policy does not allow for the verification of existing employees in E-Verify. Federal contractors are exempted from this policy within the context of Executive Order 12989, as amended, in accordance with the rules set forth in the Federal Acquisition Regulation (FAR) final rule (FAR case 2007-013, Employment Eligibility Verification) that implements the executive order.

22. Many E-Verify employers centralize the E-Verify function. If a TNC occurs, employers often will download and then email or scan the document to an employee who is not at the E-Verify site. If an email or scan process is used, employers will not physically print the TNC. We understand from prior liaison meetings that E-Verify can see if an employer is not printing the TNC and may misinterpret this as inaction. May the employer download and then email or scan the TNC letter to the new hire as opposed to printing the document and handing it to the person or printing the document first and then scanning the printed document and sending it to the person?

⁶ See M-274 at 23. Available at <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>.

USCIS Response: The E-Verify Memorandum of Understanding (MOU) states if the employer receives a TNC issued by the Social Security Administration, the employer must print the notice. Employers that do not print the further action notice should be prepared to review their process and explain to E-Verify how they deliver further action notices to new hires.

23. On Page 10 of the new M-274, we noticed the statement on minors (and special placement individuals) needing a List B document with a photo, if their employer is enrolled in E-Verify. Is this new guidance? Is this consistent with the E-Verify guidance? If this is not new, is there a reason why this has not been previously addressed in the M-274 or on I-9 Central? We are concerned that this will result in many minors and special placement individuals (who already have impediments to employment) losing employment opportunities.

USCIS Response: Any List B document presented to employers who use E-Verify must contain a photograph. This is consistent with previously stated USCIS guidance. USCIS determined that this guidance should be included in the M-274 for clarity.

24. A company holds a federal contract at one specific hiring site. The other hiring sites are not subject to the contract. If all of the federal contract work is done at one hiring site, and no employees at other hiring sites work on the federal contract, may the employer sign up only a specific hiring site as a “federal contractor?”

USCIS Response: The E-Verify Federal Contractor rule requires covered contractors to enroll in E-Verify and “begin to use E-Verify to initiate verification of employment eligibility of all new hires of the contractor, who are working in the United States, whether or not assigned to the contract.” The rule then requires that a federal contractor verify its existing employees assigned to the contract, which in this case would be existing employees at one specific hiring site. The rule also provides the employer with an option to verify all existing employees of the employer, regardless of whether they are assigned to a contract. Federal contractors that are institutions of higher learning, state or local governments, federally recognized Indian tribes or sureties performing under a takeover agreement entered into with a federal agency under a performance bond are permitted to verify only employees assigned to the contract, whether existing employees or new hires.

25. In the STEM OPT extension context, an F-1 student will be working for a wholly-owned subsidiary that has its own FEIN separate from the parent company. The company is enrolled in E-Verify at the parent company level, covering all subsidiaries with one E-Verify number (each subsidiary being listed as a separate hiring site). Is it acceptable to apply for the STEM extension specifying work at the subsidiary? In other words, are all included FEINs linked to the one E-Verify number so that compliance can be tracked?

USCIS Response: Every employer who wishes to employ F-1 students with science, technology, engineering, and mathematics optional practical training (STEM OPT) extensions must be enrolled in and in good standing with E-Verify. Each employer must enroll the hiring site or location where the F-1 STEM OPT employee will work in E-Verify, and verify all new hires at each site, including the F-1 STEM OPT student, if he or she is a new hire. If the parent company has enrolled in E-Verify as an employer and has included all subsidiaries as hiring sites and E-Verify cases are being created for these subsidiaries, then the subsidiaries would be in compliance with the requirement of the STEM OPT extension.

26. We have noted that in some cases, it takes 30 days for an employer’s E-Verify account to be terminated once it provides notice that it would like to terminate its account. We acknowledge that

there are instructions to request expedited termination, but there is no guarantee such requests may be honored. Can USCIS please explain the reasoning behind the current 30 day termination waiting period? We submit that E-Verify should allow an account to remain active for 30 days so that any unresolved TNCs, etc. may be completed, but an employer's obligation to continue to enter new hire information and create new cases should cease upon notice of intent to terminate the account.

USCIS Response: Agency policy allows 30 days in part because it allows employers time to resolve open cases. All E-Verify participants are notified and give their consent to this in their E-Verify MOU. The agency has taken your suggestion regarding permitting an employer to cease creating new cases after providing the agency with a termination notice under advisement and will revisit this policy internally. In the meantime, the employer's obligations under the MOU regarding creating cases continue until the account is terminated.

27. On February 1, 2017, USCIS released the [Auto-Extended EAD Fact Sheet](#). On page 3, the fact sheet provides:

An employer may create a case in E-Verify for a new employee using the information provided on Form I-9 from Form I-797C. The receipt number entered as the document number on Form I-9 should be entered into the document number field in E-Verify.

Does the indication that the employer *may* create a case mean that the employer may choose to create a case on the normal timeline or may elect to wait until the new EAD is issued? If not, can USCIS please update this fact sheet to say that the employer *must* create a case using the normal timeline?

USCIS Response: If the employer uses E-Verify, they should create cases for all new employees, even employees who present a Form I-797C in lieu of an unexpired EAD. The guidance contained in the Fact Sheet in no way changes current E-Verify policy or guidelines, including the time in which to create E-Verify cases for new hires.

28. Federal contractors obligated to use E-Verify must create a case for each existing employee assigned to the contract within 90 calendar days of enrolling in E-Verify or within 30 calendar days of the employee's assignment to the contract, whichever is later. Alternatively, the contractor can choose to verify the entire workforce, but must create a case for all existing employees within 180 calendar days of enrollment, or within 180 days of notifying E-Verify of the decision to exercise this option. It is our understanding that an employer may exercise this option at any time after enrolling in E-Verify. Thus, if the company is managing federal contracts on an ongoing basis and comes to realize at a later date, that it is more practical to verify the entire workforce it can exercise that option at this later date, with the obligation of enrolling all current employees within 180 days thereafter. Please confirm that this understanding is correct. If so, how would an employer initiate the process? Is there a contact person at USCIS? Are there any criteria USCIS reviews before authorizing the change?

USCIS Response: The policy as described above is correct. An employer would initiate the process of verifying their entire workforce by changing their company profile in E-Verify. The agency does not perform an additional review before authorizing this change. Additional questions regarding the FAR E-Verify requirements can be referred to our Customer Contact Operations Branch at E-Verify@dhs.gov.

I-9 Central

29. Please confirm when I-9 Central FAQs will be updated so that they are consistent with the new I-9 Form and the new M-274.

USCIS Response: Most of the revisions made to Form I-9 have to do with the method of completing the form. Only a few policy changes that involve Form I-9 revisions would affect the FAQs. However, USCIS is reviewing and intends to update I-9 Central FAQs to ensure they are consistent with the revised Form I-9 and the M-274.

30. I-9 Central Q&A: Q: *If my employee changes citizenship status after completing Form I-9, are they required to change their attestation? A: There is no requirement to update the individual's attestation. The employee can voluntarily update Section 1 and initial and date the changes or complete Section 1 of a new Form I-9 and attach it to the existing Form I-9.*

This guidance is confusing and could lead to potential discrimination. If there is no requirement for the form to be updated, what would be the reason to allow the employee to update Section 1 or complete a new Section 1? We suggest that it would be better for an employer to advise the employee that a change in immigration status is not an I-9 event.

USCIS Response: USCIS agrees and intends to update I-9 Central.

31. I-9 Central Q&A: Q: *When an alien authorized to work has an I-94 with a D/S indicated as the expiration date do I need to write "D/S" in Section 1? A: "D/S" should be written in Section 1 when applicable (e.g., F-1 nonimmigrant student engaging in on-campus employment; nonimmigrant admitted under the Compact of Free Association Between the United States and the Federal States of Micronesia or the Republic of the Marshall Islands).*

We respectfully ask USCIS to clarify in the response to this question that in other instances, the expiration date of the work authorization (such as an EAD) should be written in Section 1, and it should be written in by the employee rather than the employer.

USCIS Response: USCIS agrees that this clarification is necessary and intend to update I-9 Central.

32. In late 2015, ICE and then-OSC jointly published "Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits," that includes a discussion as to what an employer should do if an internal audit reveals that the wrong version of the Form I-9 was completed. According to the Guidance, "as long as the Form-I-9 documentation presented was acceptable under the Form I-9 rules that were current at the time of hire, the employer may correct the error by stapling the outdated completed form to a blank current version, and signing the current blank version noting why the current blank version is attached".⁷ The guidance also mentions an alternative where the employer "may draft an explanation and attach it to the outdated form I-9." In addition, the I-9 Central section on correcting Form I-9 directs employers, through a link, to this same Guidance. However, the I-9 Central questions and answers, when addressing this point, provides the direction listed in the Guidance as secondary and says that the "best way" to remediate this situation is for the employer and employee to complete a new Form I-9 in the current version.⁸ This answer in I-9 Central is dated October 16, 2014. As there appears to have been a shift in the preferred method to address this situation, will I-9 Central be revised to reflect this shift and ensure consistency with the more recent Guidance document?

USCIS Response: Yes, USCIS intends to update I-9 Central.

⁷ See <https://www.ice.gov/sites/default/files/documents/Document/2015/i9-guidance.pdf>.

⁸ See "What should I do if I need to reverify an employee who filled out an earlier version of Form I-9?" <https://www.uscis.gov/i-9-central/questions-and-answers>.

33. I-9 Central Q&A: Q: *Can E-Verify Posters be downloaded or linked electronically to external web sites?* A: *E-Verify posters can be downloaded, printed and displayed by enrolled employers only. Electronically linking official (non-sample) E-Verify posters to external web sites is not permitted. Alternately, employers who wish to post E-Verify materials to their website may scan/upload printed E-Verify posters or use digital logos as permitted by their Guidelines and Licensing Agreement.*

Please reference the below link for more information on digitized logos: <http://www.uscis.gov/e-verify/about-program/trademark-and-logo-usage-guidelines> Last Reviewed/Updated: 09/15/2015

Can you please review this issue and consider revising the response to indicate that it is acceptable for an employer that wants to post the required E-Verify posters on its website to link to the official posters from the USCIS website? This would allow employers to ensure they are using the current versions of the poster. It also makes more sense to allow employers to include the link than to require that they scan and upload a printed version.

USCIS Response: *The current versions of the posters that E-Verify employers are required to post are only available to enrolled E-Verify users upon login to E-Verify. USCIS cannot provide access to users who are not enrolled via external links or otherwise into E-Verify.*

34. **Professional Employer Organizations (PEO)** – *This question was removed from our Fall 2016 agenda.*

Employers are increasingly using PEOs to assist with a variety of employment activities. Unfortunately, not all PEOs operate in the same way or have the same relationship with the employer or employees. As the use of PEOs is so common, we are seeking guidance on completing the I-9 and E-Verify when a PEO is involved.

PEOs are increasingly being used for HR functions such as payroll, benefits administration, and assistance with the I-9 and E-Verify processes. In some arrangements, PEOs register for E-Verify and manage the I-9 process for client companies. I-9s may be completed under the client company name or under the PEO name. The PEO is often considered a co-employer.

- a. Does it matter which company's name is listed on the I-9: The PEO name or the client company name? If yes, are employers/PEO's required to correct the I-9s that may have been completed using the "incorrect" company name?
- b. Is it acceptable to have two I-9s completed for each employee: one that is maintained by the PEO, and one that is maintained by the client company?
- c. If only one I-9 is completed, the contractual relationship between the PEO and the client company may not specify who maintains the I-9 if the contract ends. Should the I-9 follow the company that will be maintaining the employment relationship after the contract ends, assuming no contractual provision addresses this issue?
- d. In scenario c. above, if the PEO/client contract ends, which entity is responsible for maintaining I-9s of terminated employees? If only one I-9 is completed, a choice will need to be made as to who retains the original I-9. If the company that did not retain the I-9 is audited, will ICE take the position that this is a missing I-9?

- e. In the STEM EAD extension context, would PEO E-Verify registration be sufficient to obtain the STEM extension for a trainee at the client company?

USCIS Response: USCIS still has these questions under advisement.

35. Different Instructional Information on the Electronic I-9 vs. Paper Form I-9

AILA respectfully notes that the instructions on the Electronic I-9 are different from the paper Form I-9 instructions in Section 1. It would be helpful to employees and employers if the same language could appear on both the electronic I-9 system and the Paper Form I-9 instructions. We are providing the following examples for USCIS to review:

USCIS Response: The helper and hover texts available when the form is being completed on a computer are meant to act as supplemental instructions to the full set of instructions when the employee completes the form using a computer. They do not replace the full set of instructions, which employers are required to be familiar with and to provide to employees completing Form I-9. The full set of instructions is available at the click of a button if the employee needs to access them at any time during completion of the form when using a computer connected to the Internet.

Further, these helper and hover texts were designed to provide instructions that are specific to completing the form on a computer. The form contains features that are only visible to users completing the form on a computer. Instructions for using these features in a specific field were included in the helper and hover texts for that field.

- a. In Section 1, 4. Alien authorized to work: The first bubble in Section 1, alien authorized to work, includes additional text not included on the paper Form I-9 instructions as follows: "Select the status if it applies to you. If you select this box the rest of the fields in this area will contain N/A."

USCIS Response: When the form is completed in paper, the rest of the fields in the Alien Authorized to Work area in Section 1 will not contain N/A. To avoid confusion for paper users, and those using third-party forms that may have different features, this instruction is only available when completing the form using a computer.

- b. Signature of Employee: The electronic I-9 bubble leaves out the following language which is found in the paper Form I-9 instructions, "Further, falsely attesting to U.S. citizenship may subject employees to penalties, removal proceedings and may adversely affect an employee's ability to seek future immigration benefits."

USCIS Response: All employees are required to have access to the full set of instructions. This helper text seeks to summarize the longer instructions in the full set, then refers back to the full set of instructions.

- c. Last Name (Family Name): The electronic I-9 bubble gives instructions for reverifying or rehiring of the employees which is not on the paper Form I-9.

USCIS Response: This abbreviated instruction is condensed from the instruction for using these fields for Section 2 completion on page 6 under Entering Employee Information from Section 1 and to the instruction for using these fields for Section 3 completion on page 12 under Completing Section 3: Reverification and Rehires.

- d. First Name (Given Name): The electronic I-9 bubble gives instructions for reverifying or rehiring of the employee which is not on the paper Form I-9.

USCIS Response: This abbreviated instruction is condensed from the instruction for using these fields for Section 2 completion on page 6 under Entering Employee Information from Section 1 and to the instruction for using these fields for Section 3 completion on page 12 under Completing Section 3: Reverification and Rehires.

- e. M.I.: The electronic I-9 bubble gives instructions for reverifying or rehiring of the employee which is not on the paper Form I-9.

USCIS Response: This abbreviated instruction is condensed from the instruction for using these fields for Section 2 completion on page 6 under Entering Employee Information from Section 1 and to the instruction for using these fields for Section 3 completion on page 12 under Completing Section 3: Reverification and Rehires.

Questions for All Agencies

AILA expresses its sincere appreciation for government efforts to share information and provide training opportunities for its public stakeholders.

Trainings

Please provide an overview of current and anticipated training opportunities for the public, including any that are not posted online but that may be scheduled. In addition to the following web resources, are there are others we should note?

USCIS Response: Outreach provides a monthly schedule of the following 9 public webinar topics. The schedule is posted on the I-9 Central and E-Verify websites, disseminated through GovDelivery to over 400,000 subscribers, mentioned in the E-Verify Connection newsletter and highlighted in our social media channels throughout the month.

Form I-9

E-Verify Overview

E-Verify in 30

E-Verify for Web Services Users

Spanish E-Verify & Form I-9 Overview

Federal Contractor E-Verify

E-Verify for Existing Users

myE-Verify

Employee Rights

In addition, the Employer Responsibilities webinar is offered several times a year.

USCIS: <https://www.uscis.gov/i-9-central/about-form-i-9/getting-training>
<https://www.uscis.gov/e-verify/e-verify-webinars/take-free-webinar>
DOJ IER: <https://www.justice.gov/crt/webinars>
ICE HSI: <https://www.ice.gov/image>

USCIS Response:

<https://www.uscis.gov/e-verify/publications/manuals-and-guides/publications-manuals-and-guides>

<https://www.uscis.gov/e-verify/publications/newsletters/publications-newsletters>

<https://www.uscis.gov/e-verify/publications/foreign-language-resources>

<https://www.uscis.gov/e-verify/employees/employee-rights-toolkit>

Please also provide information about any training that may be available “on request” for individual companies or other organizations, such as trade associations, etc.

USCIS Response: Our subject matter experts are available to provide free customized webinars, live briefings, and answer questions about employment eligibility verification topics at payroll, human resource, or employee advocacy organization meetings or related events. We promote our free training opportunities using our traditional communications channels including webinars, live presentations, stakeholder articles, E-Verify Connection newsletter and social media. We also offer closed-captioning at our webinars upon request. Interested parties can send requests for customized or individual training to E-VerifyOutreach@USCIS.DHS.gov.

For each training or webinar offered:

- Are copies of PowerPoints or other training materials always provided to the attendees before, during, or after the training? If not, is it possible for an interested party that was not able to attend the training to receive such materials upon request? Would you consider posting the training materials online?

USCIS Response: Copies of PowerPoints used in public webinars are available on <https://www.uscis.gov/e-verify/publications/presentations/publications-presentations-brochures>. Our webinar hosts also provide access to download the PowerPoints at the end of each presentation. In addition, meeting attendees can request the PowerPoints from the presenters.

- Are trainings recorded, where possible, for quality control and review by agency personnel who are involved with determining policy?

USCIS Response: E-Verify does not record public or customized webinars.

- If an employer or counsel believes that there may be an inaccuracy in training materials or has suggestions to clarify or improve the contents, to whom should those comments be addressed?

USCIS Response: We welcome feedback or questions about our training materials. Our webinars include information on how to share feedback by emailing Francine.L.Hill@uscis.dhs.gov. Questions and feedback about the I-9 Central website can be emailed to Customer Support @ <mailto:I-9Central@dhs.gov> and those regarding the E-Verify website can be emailed to Customer Support@ E-Verify@dhs.gov. Also, Customer Support can be reached at 888-424-4218 Monday - Friday, from 8 a.m. to 8 p.m. Eastern time.

For stakeholder teleconference calls:

- Are there certain events or developments for which each agency offers a public engagement call as a matter of policy? If so, what type of events would normally warrant a stakeholder call?

USCIS Response: It is our policy to host public engagement calls for major program changes, such as the release of a new Form I-9. However, we look for every opportunity to engage with the public.

- Are stakeholder calls recorded by the government for quality control and/or review by agency personnel who are involved with determining policy?

USCIS Response: Unless stated, our stakeholder calls are not recorded. It is not our policy to record stakeholder calls.

- Would each agency consider posting a transcript of stakeholder calls, perhaps with some additional information when there is a question or issue that cannot be answered during the call or where the agency elects to follow-up or provide clarifying guidance?

USCIS Response: As we do not record stakeholder calls, we are unable to post a transcript. However, in most cases we post an executive summary of stakeholder calls on the USCIS Outreach website.

- If an employer or counsel believes there may be an inaccuracy in a stakeholder presentation that may be helpful for the public to better understand or suggestions to clarify or improve the content, to whom should those comments be addressed?

USCIS Response: Feedback and comments about our stakeholder presentations can be emailed to Francine.L.Hill@uscis.dhs.gov. You can email feedback and comments about the I-9 Central website to Customer Support @ I-9Central@dhs.gov and any concerning the E-Verify website to Customer Support @ E-Verify@dhs.gov. Also, Customer Support can be reached at 888-424-4218 Monday - Friday, from 8 a.m. to 8 p.m. Eastern time.

- AILA appreciates the challenges that are associated with providing general information versus responding to legal questions. Is there an internal protocol that is followed when legal issues are raised during a call?

USCIS Response: Regarding legal questions raised on stakeholder calls, it is our policy to redirect such questions to our Customer Contact Operations team in order to gather all necessary information to answer the questions.