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Reference: 8 CFR 274a.6

## **Final Guidance I-9 and 516 INS Procedures**

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### **OF INTEREST TO:**

Workforce Florida, Inc. and Regional Workforce Boards

### **SUBJECT:**

Policy for processing the federal I-9 form and the Agency 516 INS form

### **PURPOSE:**

The purpose of this issuance is to provide guidance to Regional Workforce Boards (RWBs), One-Stop Career Center employees and other workforce system partners on processing federal I-9 forms and the 516 INS forms.

### **BACKGROUND:**

In 1986 the Immigration Reform and Control Act (IRCA) established the responsibility for all United States employers to verify the employment eligibility and identity of all employees hired to work in the U.S. by completing the federal I-9 Form. The law allows, but does not require, employers to use state workforce agencies to provide employment eligibility verification for applicants referred to employers by the workforce system. The employer is deemed to have complied with the requirements of IRCA for an employee referred through the state workforce system if they possess and retain documentation that certifies that the workforce system verified the individual's employment eligibility. The AWI Form 516 INS is used to certify to the employer that the One-Stop Career Center has completed the federal Form I-9 for an individual referred to the employer.

In November 2007 federal regulations established the requirement that the state workforce agency process I-9s on all referrals to an H-2A job order (an agriculture order for which the employer petitions the federal government to bring in temporary alien agriculture workers). This federal requirement has since been rescinded and local One-Stop Career Centers are no longer required to process I-9s on referrals to H2A job orders that are received after March 15, 2010.

In 2009, the federal government, per 20 CFR 655.15, required the state workforce agency to process I-9s on all referrals by staff to an H-2B job order (other-than-agriculture job order for which the employer petitions the federal government to bring temporary alien workers into the United States). This requirement has not been rescinded and One-Stop Career Centers are required to process I-9s for all H-2B job referrals, until further notice.

In some cases, an employer may request the One-Stop Career Center to complete the employment eligibility verification for referrals to employment other than H-2B job orders. As noted earlier, the statutory authority contained in 8 CFR 274a.6 allows, but does not require, the One-Stop Career Center to perform this activity as a business service.

### **Form I-9 Procedure**

One-Stop staff should refer to [the USCIS Handbook for Employers](#) (Form M-274) for guidance and instructions on how to complete the Form I-9. The job applicant can either (1) present one document from List A that establishes both identity and employment authorization, or (2) a document from List B that establishes identity and one from List C that establishes employment authorization. If the documents (1) reasonably appear on their face to be genuine, (2) relate to the person presenting them, and (3) the applicant is authorized to work in the U.S., the staff should proceed to complete the I-9 Form. Staff must retain the original completed I-9 Form. Simply photocopying the documents presented by the job applicant is not an acceptable substitute for proper completion of the I-9.

RWBs may choose to retain a copy of the documents presented by applicants. If an RWB chooses to retain copies of an applicant's documents, they must do so for all applicants for whom an I-9 Form is processed. The copying of these documents is solely for the purpose of complying with the requirements of employment verification and must be kept on file with the original I-9 and the copy of the 516 INS for a period of not less than five years. The photocopies must not be used for any other purpose.

While the decision to retain photocopies of documents is left to the RWB's discretion, please keep in mind that the RWB may face potential liability for improper processing of the I-9 Form. Copies of supporting documentation will assist in showing that proper procedures were followed.

### **Form 516 INS Procedure**

Once the Form I-9 has been completed on a work eligible job applicant, the One-Stop Career Center staff should complete the top portion of the Form 516 INS to include the employer's name and address; the date of issuance; the applicant's personal information; the job order number and position applied for; the

document(s) presented to verify employment eligibility; the identifying number of the document(s); the staff's name and signature; the workforce board; name and location of One Stop Career Center and the date. Any restrictions, conditions, expiration dates or other limitations which affect the applicant's employment eligibility in the U.S. must be clearly stated on the form. Under no circumstances should the 516 INS Form be completed without first completing the federal I-9 Form.

The original 516 INS and a copy of the I-9 should be delivered directly from the One-Stop Career Center to the employer, personally by a staff member or by mail. It must be received by the employer within 21 business days of the date that the referred applicant is hired. The 516 INS certification should never be given to the referred individual for delivery to the employer.

The form must be signed by the applicant in the presence of the employer. The One-Stop center staff shall not, at any time, ask the applicant to sign the 516 INS.

### **AUTHORITY**

Agency for Workforce Innovation

Immigration Reform and Control Act of 1986

<https://www.oig.lsc.gov/legis/irca86.htm>

8 CFR 274a.6 Control of Employment of Aliens; State Employment Agencies

[http://www.access.gpo.gov/nara/cfr/waisidx\\_10/8cfr274a\\_10.html](http://www.access.gpo.gov/nara/cfr/waisidx_10/8cfr274a_10.html)

20 CFR 655 Temporary Employment of Foreign Workers in the United States

[http://www.access.gpo.gov/nara/cfr/waisidx\\_10/20cfr655\\_10.html](http://www.access.gpo.gov/nara/cfr/waisidx_10/20cfr655_10.html)