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USCIS to Permit Certain E-Verify Employers to Conduct Remote I-9 Document Examination

On August 1, 2023, United States Citizenship and Immigration Services (USCIS) will permit certain employers enrolled in E-Verify to remotely examine I-9 documentation.

Prior to the COVID-19 pandemic, employers were required to examine and inspect all I-9 documentation in person. At the start of the pandemic, the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) permitted temporary flexibilities that allowed for virtual examination and verification of I-9 documents in certain circumstances. In May, DHS [announced](#) the flexibilities will end on July 31, 2023. It also hinted that a Final Rule paving the way for remote I-9 document examination may be published, though the timing was not revealed. Less than three months later, it followed through with a Final Rule and authorization document that will allow, starting August 1, certain employers to utilize an alternative procedure to remotely examine their employees' I-9 documents. It also will release a new Form I-9 (edition 08/01/23) that will accommodate this change.

Remote Document Examination for E-Verify Employers

Employers must be registered in E-Verify and must be considered a participant in good standing to utilize the remote I-9 procedure.

A qualified employer who chooses to utilize the alternative procedure to examine Section 2 or reverification I-9 documentation for employees at an E-Verify hiring site must do so consistently for all employees at that site. However, a qualified employer may offer the alternative procedure for remote employees only but continue to apply physical examination procedures to employees who work onsite or in a hybrid capacity, so long as the employer does not adopt such a practice for a discriminatory purpose or treat employees differently based on their citizenship, immigration status,

or national origin.

Qualified employers who choose to use the alternative procedure must complete the following steps:

- Examine copies of Form I-9 documents (front and back, if the document is two-sided), or an acceptable receipt in limited circumstances, to ensure that the documentation presented reasonably appears to be genuine.
- Conduct a live video interaction with the individual presenting the document(s) to ensure that the documentation reasonably appears to be genuine and related to the individual. The employee must first transmit a copy of the document(s) to the employer (per the first step above) and then present the same document(s) during the live video interaction.
- Indicate on the Form I-9, by completing the corresponding box, that an alternative procedure was used to examine documentation to complete Section 2 or reverification, as applicable.
- Retain a clear and legible copy of the documentation (front and back if the documentation is two-sided).
- In the event of an I-9 audit or investigation by a relevant federal government official, make available the clear and legible copies of the identity and employment authorization documentation presented by the employee.

Employers who were participating in E-Verify and created cases (except for reverification) for employees whose documents were examined remotely utilizing COVID-19 I-9 flexibilities (March 20, 2020 to July 31, 2023) may choose to use the new alternative procedure starting on August 1 to satisfy the physical document examination requirement by August 30. Employers who were not enrolled in E-Verify during the COVID-19 flexibilities must complete in-person physical examination by August 30.

Revised Form I-9

The revised Form I-9 (edition date 08/01/23) will also have the following additional changes:

- Reduces Sections 1 and 2 to a single-sided sheet.
- Is designed to be a fillable form on tablets and mobile devices.
- Moves the Section 1 Preparer/Translator Certification area to a separate, standalone supplement that employers can provide to employees when necessary.
- Moves Section 3, Reverification and Rehire, to a standalone supplement that employers can print if or when rehire occurs or reverification is required.
- Revises the Lists of Acceptable Documents page to include some acceptable receipts, as well as guidance and links to information on automatic extensions of employment authorization documentation.
- Reduces Form instructions from 15 pages to eight pages.
- Includes a checkbox allowing employers to indicate they examined Form I-9 documentation remotely under a DHS-authorized alternative procedure rather than via physical examination.

Employers can use the current Form I-9 (edition date 10/21/19) through Oct. 31, 2023. Starting Nov. 1, 2023, all employers must use the new Form I-9 (edition date 08/01/23).

The changes to the I-9 process for E-Verify employers and the new I-9 form will continue to be a hot topic of discussion and enforcement by the federal government for years to come. For more information and assistance with I-9 compliance, please contact the authors or any member of Frost Brown Todd's [Labor & Employment Practice](#) or [Immigration Team](#).

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