

New Form I-9 Means New Regulations for Employers

U.S. Citizenship and Immigration Services recently announced that a revised version of Form I-9, Employment Eligibility Verification, will be available on August 1, 2023. Changes include a checkbox that employers enrolled in E-Verify can use to indicate they remotely examined identity and employment authorization documents under an alternative procedure that certain employers are allowed to follow. The Form I-9 process and in-person physical inspection are discussed in our [previous article](#).

The new regulations provide that, in order to participate in the remote examination of Form I-9 documents under the Department of Homeland Security-authorized alternative procedure, employers must be enrolled in E-Verify, examine and retain copies of all documents, conduct a live video interaction with the employee and create an E-Verify case if the employee is a new hire. Employers that are not enrolled in E-Verify must continue to follow the historical I-9 completion requirement that, within three business days after the first day of a new employee's first day of paid employment, employers must physically examine the work authorization and identity documentation to ensure that the documentation appears genuine and reasonably related to the employee presenting it.

The revised Form I-9:

- 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; and

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- 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.

The revised Form I-9 with an edition date of August 1, 2023, will be published on the [U.S. Citizenship and Immigration Services official website](#) on that day.

Employers can use the current Form I-9 with an edition date of October 21, 2019, through October 31, 2023. Starting November 1, 2023, all employers must use the new Form I-9.

Employers that do not participate in E-Verify have until August 30, 2023, as previously announced, to perform all required physical examination of identity and employment authorization documents for those individuals hired on or after March 20, 2020, and that have received only a virtual or remote examination under the COVID-19 temporary flexibilities.

Employers that are enrolled in E-Verify may choose not to utilize the new remote verification procedure, or they may offer the new alternative remote verification option for remote hires only while continuing to follow the in-person physical verification procedure for all employees who work onsite or in a hybrid capacity. Employers that use the alternative procedure must retain a clear and legible copy of all documents presented by the employee as part of the Form I-9 process. Employers enrolled in E-Verify that do not apply the new alternative examination rules are only required to retain a photocopy of the following document if presented by the employee:

- U.S. Passport
- U.S. Passport Card
- Form I-551 Permanent Resident Card
- Form I-766 Employment Authorization Document

Employers that choose to offer the alternative procedure to employees of an E-Verify hiring site must provide the alternative procedure for all employees at that site.

E-Verify enrolled employers that wish to utilize the alternative remote Form I-9 employee identity and employment eligibility verification process must:

1. Examine copy(ies) (front and back, if the document is two-sided) of the identity and employment eligibility document(s) or an acceptable receipt presented by an employee to ensure that the document(s) presented by an employee reasonably appears to be genuine.
2. Conduct a live video interaction with the employee presenting the document(s) to ensure that the documentation reasonably appears genuine and related to the employee. The employee must first send copy(ies) of their identity and work eligibility document(s) to the employer and then present the same document(s) during the video interaction.
3. Indicate on the Form I-9, by completing the corresponding box, that an alternative procedure was used to examine the document(s) to complete Section 2 for a new hire or Section 3 for reverification, as applicable. Employers may continue to use the Form I-9 with an edition date of October 21, 2019, from August 1, 2023, until October 31, 2023. If an employer uses the Form I-9 with an edition date of October 21, 2019, during this interim period for completing the alternative remote verification procedure now authorized, the employer must write “alternative procedure” in the Additional Information field in Section 2.

Employers may utilize an authorized representative acting on their behalf, such as a third-party vendor or professional, to complete the alternative remote verification procedure for them.

Employers that were enrolled in E-Verify at the time that they performed a remote examination of an employee’s Form I-9 documentation for Section 2 or reverification while using COVID-19 flexibilities; created an E-Verify case for that employee; and performed the remote inspection between March 20, 2020, and July 31, 2023, may use the alternative remote verification procedure to satisfy the required physical examination of the employee’s documents for that Form I-9.

Notably, DHS announced as part of its rollout of the new Form I-9 rules and form that if an employer is otherwise compliant with the law and regulations – and followed the COVID-19 flexibility guidance – Immigration and Customs Enforcement (ICE) will generally not focus its enforcement resources on Form I-9 verification violations for failing to complete physical document examination by August 30, 2023, particularly where the employer can show it has taken steps to complete physical document examination within a reasonable period of time.



Employers with questions regarding the revised version of Form I-9 or alternative options should contact Reinhart attorney [Ben Kurten](#).

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