



While recent changes to the I-9 process may affect *select* employers, the release of a new I-9 form will present changes to *all* employers.

Qualifying employers are able to utilize an alternative verification procedure to remotely verify I-9 documentation for employees. Employers qualifying for the alternative verification process may utilize the new procedure to verify employees that were previously onboarded remotely pursuant to COVID-19 flexibilities. A new Form I-9 edition has also been released that reflects the alternative verification procedure, among other changes. Additional details are below.

### **Alternative I-9 Verification Process**

The U.S. Department of Homeland Security (DHS) published a [final rule](#) on July 25, 2023, establishing a new alternative to the physical document examination for Form I-9 verification for certain employers. Pursuant to the new rule, qualifying employers may verify I-9 documentation remotely, provided that specific document retention and verification measures are followed.

The alternative verification procedure is available for employers who are enrolled, and participate in good standing, in E-Verify. Use of the alternative procedure is optional for qualified employers. However, if an employer chooses to offer the alternative procedure to new employees at an E-Verify hiring site, it must do so for all employees at that site. Employers are permitted to offer the alternative procedure for remote hires and continue to utilize traditional physical verification procedures for employees working onsite or in a hybrid capacity, as long as workers are not treated differently based on a protected characteristic.

An employer (or an authorized representative acting on the employer's behalf) choosing to utilize the alternative procedure must complete the following steps within three business days of the individual's first day of employment:

1. Notify the employee that they must provide a copy of their Form I-9 documents (front and back, if the document is two-sided) or an acceptable receipt to the employer. As Form I-9 documents, such as Social Security cards, passports, and driver's licenses, often contain sensitive personal identifiable information (PII), employers should take care to safeguard this documentation through appropriate measures.
2. Examine the copies of the presented Form I-9 documents to ensure that they reasonably appear to be genuine.
3. Conduct a live video interaction with the new hire presenting the document(s) to ensure that the documentation reasonably appears to be genuine and related to the individual.
4. 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 for reverification, as applicable.[\[1\]](#)
5. Retain a clear and legible copy of the documentation.

In the event of a Form I-9 audit or investigation, the employer must also make available the clear and legible copies of the Form I-9 documents presented by the employee.

### **Impact of the New Alternative I-9 Verification Procedure on Sunset of the COVID-19 Flexibilities**

[Following the sunset of the multiyear COVID-19 flexibilities](#), employers who do not qualify for the new alternative verification method must physically verify I-9 documentation for employees that were previously onboarded remotely by August 30, 2023. These employers must also continue to verify physical I-9 documentation in person for employees hired after July 31, 2023.

Employers qualifying for the new alternative verification procedure may utilize the new virtual verification process for employees who previously onboarded remotely using the COVID-19 flexibilities, in lieu of physical verification. Employers that prefer to utilize the physical inspection process may do so. These verifications must be completed by August 30, 2023.

### **New Form I-9 Version**

On August 1, 2023, U.S. Citizenship and Immigration Services (USCIS) published a new Form I-9 version for verification of employment eligibility. Employers may continue to use the prior form version (edition date 10/21/2019) until October 31, 2023. Starting November 1, 2023, employers must use the new Form I-9 (edition date 08/01/2023). The new Form I-9 makes several notable updates, including formatting modifications and

updates reflecting the new alternative document verification procedure. Some changes to the form include:

- Reducing Sections 1 and 2 to a single-sided page.
- Moving Section 1, Preparer/Translator Certification, to a separate, standalone supplement necessary only when applicable.
- Moving Section 3, Reverification and Rehire, to a stand-alone supplement necessary only when applicable.
- Revising the Lists of Acceptable Documents page to include certain receipts and guidance on automatic extensions of employment authorization.
- Reducing the length of the form instructions.
- Adding a check box allowing employers to indicate that they examined the Form I-9 documentation remotely under the new alternative procedure described above.

## **Potential Impacts**

The recent changes to the Form I-9 and verification procedures are likely to be welcome news for most employers, particularly those enrolled in E-Verify. Employers eligible to utilize the new alternative verification procedure, especially those with a substantial remote or geographically dispersed workforce, are likely to benefit from overall time and cost savings.

The introduction of an alternative remote verification process is also likely to affect third-party vendors and professional employer organizations (PEOs) that provide in-person verification services for employers. Qualifying employers that previously utilized third-party vendors for verification of remote workers may no longer require these services, while employers with remote or geographically dispersed workforces that decide not to enroll in E-Verify will likely continue to require in-person verification services.

For questions regarding the new Form I-9 version or compliance with the alternative Form I-9 inspection requirement, please contact experienced counsel.

## **Endnote**

[1] The prior Form I-9 (edition date 10/21/2019) does *not* contain a checkbox allowing employers to indicate that documentation was reviewed using the alternative procedure. Employers utilizing the alternative I-9 verification process with the 10/21/2019 Form I-9 version should annotate "alternative procedure" in the "Additional Information" section.

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