



Immigration ADVISORY ■

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Take Your Chance to Comment on the Benefits of Remote Document Examination: Form I-9 and E-Verify

by [Eileen Scofield](#)

Every U.S. employer must attest that it has verified each of its employees' identity and employment eligibility via an *in-person meeting with the employee with a physical examination of the employee's documents*. For decades, this in-person completion of Form I-9 for a remote employee has been an issue for many.

As a result of the COVID-19 pandemic, the Department of Homeland Security (DHS) announced a temporary alternative option to the in-person meeting and physical document examination. Due to physical proximity precautions, in certain situations, the in-person meeting is not required and the employer could examine its employees' identity and employment eligibility documents remotely (for example, a *virtual review*, review over video link, fax, or email).

Now, among other things, DHS is exploring the possibility of making this virtual review a permanent alternative to in-person meeting and physical document examination. [DHS is seeking input](#) from the public on the remote/virtual review alternative, the Form I-9 process, E-Verify, and information that can be used to inform and potentially improve DHS policies.

The comment deadline is December 27, 2021. Below are some of the questions DHS has posed. We have been working with a wide variety of employers, employees, providers of onboarding/ATS services, and trade groups that are using this opportunity to tell DHS what does and what does not work smoothly in the Form I-9, E-Verify, and onboarding process.

If you want to:

- Comment, please do so at the [Federal eRulemaking Portal](#) (docket number USCIS-2021-0022).
- Brainstorm and/or address potential intended or unintended consequences of certain suggestions, please contact us.
- Anonymously include your comments, contact us. Since we have a unique specialty in this area, we are preparing comments under our own name and contributing to the comments of a national organization.

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DHS's Questions to the Public Include the Following or Related Variations

Consideration for future remote (virtual) document examination procedures

1. What are the direct and indirect burdens on employees and employers related to the physical document examination requirement for Form I-9?
2. What are the direct and indirect burdens on employees and employers related to the use of authorized representatives to meet the physical document examination requirement?
3. What would be the direct and indirect benefits of offering a permanent option for remote document examination of Form I-9 identity and work eligibility documents (for example, allowing some employers to centralize Form I-9 processing)?
4. What would be the direct and indirect costs of offering a permanent option for remote document examination of Form I-9 identity and work eligibility documents (for example, training or technology acquisition costs)?
5. What would be the direct and indirect burdens on small employers for offering a permanent option for remote document examination of Form I-9 identity and work eligibility documents (for example, training or technology acquisition costs)?
6. What are the unique challenges faced by small employers with this process and these flexibilities?
7. What kinds of alternatives should be provided for small employers in adopting these flexibilities?
8. If employers were allowed a permanent option for remote document examination, what types of employers and employees do you anticipate would be interested in participating or not interested in participating?
9. How might participation requirements as a condition of these flexibilities, such as required enrollment in E-Verify, document or image quality or retention requirements, or required completion of training offered by DHS, impact an employer's desire or ability to utilize such a flexibility?
10. What would be the costs or benefits associated with making enrollment in E-Verify a condition of flexibilities for an employer?
11. If DHS were to permanently allow an option for remote document examination, what, if any, technical considerations would participating employers have to consider?
12. What impact would a permanent option for remote document examination have on employees and employers, if any?
13. If these flexibilities are permanently adopted, are there requirements DHS should adopt to ensure employee rights related to document examination are protected?
14. Are there solutions that would enable employers to verify that documents that are examined remotely appear to be genuine and relate to the individual presenting them?
15. What actions by DHS would encourage the commercial development of such solutions?
16. Should DHS consider changes to the current lists of acceptable documents on Form I-9, in the context of remote document examination?

17. If DHS considers changes to the current lists of acceptable documents, what would be the costs and benefits of such changes?
18. Are there any other factors DHS should consider related to remote document examination?

The pandemic experience

1. Did you or your organization use the temporary flexibilities for remote document examination for Form I-9 since March 20, 2020?
 - If not, why?
 - If so, what was your experience using the flexibilities?
 - How did small employers use these flexibilities?
2. If the employer performed any remote document examinations since March 20, 2020:
 - What were your experiences with internal technical capabilities to perform remote document examination (for example, video quality, image quality, document retention)?
 - What were your experiences related to employee-provided digital images or copies of documents for retention?
 - What were your experiences related to employees' remote completion and submission of Section 1 of Form I-9?
 - What processes and technology solutions were typically used to remotely examine documents (for example, over video link, fax, or email)?
 - Was the process always the same, or did it vary based on circumstances?
 - What, if any, internal policies were put into place for remote document examination practices?
 - Were any remotely examined documents rejected because they did not appear to be genuine or did not relate to the individual presenting them?
 - Were there any instances in which a document was accepted during remote examination, but upon subsequent physical inspection, the employer determined that the document did not appear to be genuine or did not relate to the individual presenting it? If so, what actions did the employer take?
3. If the employer performed any remote document examinations since March 20, 2020 and is enrolled in E-Verify:
 - Were any documents examined remotely for which E-Verify returned an Employment Authorized result, but upon subsequent physical examination, the employer determined that the documents did not appear to be genuine or relate to the individual presenting them?
 - If so, what actions did the employer take?
 - What, if any, challenges did employers experience in interpreting and following the requirements of participation in the E-Verify program during the period of remote document examination?
4. What other changes, if any, did employers make to Form I-9 document inspection procedures during the pandemic?
5. Did employers increase use of authorized representatives during the pandemic?

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If you have any questions or would like additional information, please visit our [Immigration Team](#) or [Labor & Employment](#) group or contact any of the following:

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