

## USCIS Launches New Form I-9, Alternative Procedure for Virtual Documentation Inspection

August 31, 2023

The US Citizenship and Immigration Services (USCIS) [recently launched a new Form I-9](#) for employers verifying employment eligibility and announced a new alternative procedure permitting certain employers to inspect employees' Form I-9 documentation virtually. [According to the agency](#), the latest development "responds to lessons learned during the COVID-19 pandemic, which demonstrated the substantial practical benefits of an optional alternative to the physical documentation examination procedures required by the employment eligibility verification regulations." Below, we've answered common questions regarding the new form and alternative procedure.

### What changes were made to the Form I-9?

Released on August 1, 2023, the new Form I-9 includes several changes to streamline materials and "[reduce employer and employee burden associated with the form](#)," including:

- Reducing Sections 1 and 2 to a single page.
- Designing it to be a fillable form on tablets and mobile devices.
- Moving Section 1's "Preparer and/or Translator Certification" to a supplemental page for use when necessary.
- Revising the "Lists of Acceptable Documents" page to include acceptable receipts and links to information on automatic extensions of employment authorization documentation.
- Changing Section 3, "Reverification and Rehire," to a supplemental page for use if or when rehire occurs or reverification is required.
- Including a check box for employers to indicate that they examined Form I-9 documentation remotely under the alternative procedure.

The instructions for completing the Form I-9 also were revised and reduced from 15 pages to eight pages, and they include guidance for employers choosing to use the alternative procedure for verification.

### What's the alternative procedure?

The alternative procedure permits qualified employers (explained below) to verify Form I-9 documents remotely via live video. Specifically, within three business days of an employee's first day of employment, an employer wanting to use this procedure must:

1. Examine copies (front and back, if the document is two-sided) of Form I-9 documents or an acceptable receipt to ensure that the documentation appears genuine.
2. Conduct a live video interaction with the employee presenting the document(s) to ensure that the documentation – which must be the same document(s) presented per Step 1 above – appears genuine.
3. Indicate via the new check box on the Form I-9 that the alternative procedure was used to examine

documentation to complete Section 2 or for reverification, as applicable.

- Employers using the prior Form I-9 (“Edition 10/21/2019”) should note that it does not contain a check box allowing them to indicate that documentation was reviewed using the alternative procedure.
- Employers utilizing the alternative procedure with the 2019 edition of the Form I-9 should write “Alternative Procedure” in the “Additional Information” box under Section 2.

Employers using the alternative procedure also are required to retain “clear and legible” copies of the identity and employment authorization documentation (front and back, if the document is two-sided) for employees whose documents were verified using the alternative procedure. Retaining required documentation and completing the Form I-9 in a timely, accurate and complete manner are critical, as employers may be required to produce Form I-9s and accompanying documentation in the event of an audit or investigation. Employers face stiff penalties in connection with Form I-9 violations – for example, in 2022, a [staffing company’s Form I-9 compliance violations](#) resulted in a fine of more than \$1.5 million. The violations included failing to produce in whole the requested Form I-9s, missing or blank pages, missing employee and employer attestations, untimely completion, invalid documents, and missing expiration dates.

## **Do employers have to record and save the live video?**

No. The alternative procedure only requires that employers conduct the live video interaction with the employee in a format that offers “at least an equivalent level of security to physical examination.” There is no separate requirement to record or save the live video.

## **Which employers can use the alternative procedure?**

Qualified employers may (but are not required to) use the alternative procedure if they are “participants in good standing in E-Verify.” Launched in 1996, E-Verify is a free, internet-based system that compares information entered by an employer from an employee’s Form I-9 to records available to the agency in order to confirm employment eligibility. The program, which currently has more than one million employer subscribers, requires employers to participate in training as part of the enrollment process.

To be in “good standing” and take advantage of the alternative procedure, an employer must:

- Be enrolled in E-Verify with respect to all hiring sites – the location(s) where an employer hires employees and they complete the Form I-9 – that use the alternative procedure.
- Be in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the US.
- Continue to be enrolled and a participant in good standing in E-Verify at any time during which the employer uses the alternative procedure.

Employers should note that USCIS requires qualified employers using the alternative procedure to complete the fraud awareness and anti-discrimination training that is required as part of the E-Verify enrollment process.

## **Does a qualified employer have to use the alternative procedure?**

No. The alternative procedure is completely optional and, as such, qualified employers can continue to physically examine I-9 documents. However, if an employer opts to offer the alternative procedure to some employees at any E-Verify hiring site, that employer must do so consistently for all employees at that site. Employers may choose to offer the alternative procedure for remote hires only but continue to apply physical examination procedures to all employees working on-site or in a hybrid capacity, as

long as the employer does not adopt this procedure for a discriminatory purpose. The USCIS notes that “[u]nder no circumstances can employers unlawfully discriminate, such as by deciding who is eligible for the alternative procedure based on a protected characteristic.”

## **Can employers still use the old Form I-9?**

Yes. Employers may continue to use the October 21, 2019, edition of the Form I-9 from August 1, 2023, until October 31, 2023. If, however, employers use the 2019 edition for the alternative procedure during this grace period, they must write “Alternative Procedure” in the “Additional Information” field in Section 2 of the Form I-9. Employers do not need to complete a new Form I-9 for any current employee with a properly completed Form I-9 on file, unless the employee needs to be reverified after October 31.

## **Can employers use the alternative procedure if an employee objects?**

No. Per the USCIS, employees who are “unable or unwilling to submit documentation using the optional alternative procedure” must be given the option to submit documentation in person for physical examination.

## **Can employers still use authorized representatives?**

Yes. The alternative procedure permits employers, including any authorized representative (such as a notary public or a professional service provider), to conduct the verification and live video and complete the Form I-9. However, employers remain liable for any violations in connection with the form or the verification process. Employers are still allowed to use authorized representatives to conduct physical verification and inspection of documents as well.

## **Next steps**

The recent changes to the Form I-9 and verification procedures are likely welcome news for large employers, particularly those with remote or geographically dispersed employees. Employers already enrolled in E-Verify should confirm they remain in good standing – and ensure that their HR and onboarding professionals have completed the required training. Employers that would like to use the alternative procedure, but have not enrolled in E-Verify, should do so and complete the required training. Employers also should determine the appropriate policy for using the alternative procedure, keeping in mind that such policy must be consistent and applied in a nondiscriminatory fashion. For example, employers can consider using the alternative procedure for remote hires only and retain the physical verification procedures for in-person and hybrid employees. HR and onboarding professionals also should be trained on the alternate procedure – and note that penalties for noncompliance can be steep.

Finally, employers who are not enrolled in E-Verify should keep an eye on continuing developments from the US Department of Homeland Security (DHS). For example, on August 3, 2023, DHS [proposed a new pilot program](#) for virtual Form I-9 inspections for employers not currently enrolled in E-Verify. Under the proposed pilot program, DHS would limit participating employers to those with 500 or fewer employees, and it would require interested employers to complete a formal application for the program.

If you have questions about the new Form I-9 or the alternative procedure, please contact a member of Cooley’s employment group.

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