

## REMOTE DOCUMENT EXAMINATION FOR FORM I-9 MAY BE ON THE HORIZON

On August 18, 2022, the U.S. Department of Homeland Security ("DHS") issued a notice of proposed rulemaking allowing for optional alternative procedures for the examination of documents required by the Form I-9 Employment Eligibility Verification.

Currently, to complete the Form I-9, employers must physically examine documentation presented by new employees within three business days after the first day of employment to ensure that the documents appear to be genuine and to relate to the new employee. On March 20, 2020, Immigration and Customs Enforcement announced that the physical examination requirements for completing the Form I-9 were being deferred due to the COVID-19 pandemic. Per the announcement, an employer, or an authorized representative acting on the employer's behalf, could inspect Form I-9 documents remotely (over video link, fax or email) within three business days of the new employee's first day of employment. The employer was required to obtain, inspect and retain copies of the documents and then enter "COVID-19" as the reason for the delayed physical examination in Section 2 of the Form I-9. Once normal operations resumed, the employer would then be required to physically examine the documents and Section 2 of the Form I-9 by entering the notation "documents physically examined" and the date of inspection. These flexibilities have been extended several times and currently expire on October 31, 2022.

Now, in light of the expansion of remote work arrangements and technological advancements, DHS is considering alternative options for the examination of documents required by the Form I-9, including making some of the current COVID-19 pandemic-related flexibilities permanent. While the proposed rule would not directly authorize remote document examination, it would create a framework under which DHS could pilot various options, respond to emergencies similar to the COVID-19 pandemic or implement permanent flexibilities.

Although still in the early stages rulemaking, DHS is considering some of the following options for alternative procedures for the examination of documents:

- Imposing some or all of the document retention requirements applicable to the remote examination process introduced during the COVID-19 pandemic.
- Adding a fraudulent document detection and/or an anti-discrimination training requirement for employers.
- Limiting the eligible population to employers who have enrolled, and are participants in good standing, in E-Verify.
- Limiting the eligible population to employers who have not been the subject of a fine, settlement or conviction related to employment eligibility verification practices.

DHS is requesting comments related to anticipated costs, increased burdens, and the population of employers eligible to benefit from alternative procedures for the examination of documents.

Employers should be aware of potential changes to Form I-9 procedures to ensure continued compliance. If you have any questions, would like assistance submitting a comment, or would like more information on this topic, please contact:

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