



New Form I-9 Available Now

By Roy Maurer

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The new version of Form I-9 (<https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf>) was released by U.S. Citizenship and Immigration Services (USCIS) on Aug. 1.

Employers can use the previous version of the form through Oct. 31, 2023. After that, all employers must use the revised Form I-9. The new form is scheduled to expire July 31, 2026.

The updated version of Form I-9 includes the following changes:

- Reduces Sections 1 and 2 to a single page, down from two pages.
- Moves the Section 1 Preparer and/or 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 out when necessary.
- 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 the form's instructions from 15 pages to eight pages.
- Includes a checkbox allowing employers to indicate they examined Form I-9 documentation remotely under a newly authorized virtual procedure (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/remote-verification-i-9s-becoming-available-qualified-e-verify-users.aspx) rather than via physical examination.

The form has also been designed to be fillable on tablets and mobile devices. No previous fields were removed in reducing the form from two pages to one, but multiple fields were merged into fewer fields when possible.

"The instructions are more streamlined and clearer," said Michael Neifach, an attorney in the Washington, D.C., regional office of Jackson Lewis. "I think it will be helpful and overall make it easier for employers to use, for example removing the requirement to enter N/A in certain fields."

Neifach said the most notable change to the form is the addition of the checkbox for employers interested in using the newly authorized alternative virtual verification procedures. Being able to virtually inspect and verify employment authorization documents is a "very welcome development and something that HR practitioners have been calling for for a long time," he said.

However, the new form may also have drawbacks. Leslie K. Dellon, a senior attorney at the American Immigration Council in Washington, D.C., said the shorter Form I-9 could lead to user errors.

"Form I-9 began as a one-page form and remained so for more than 20 years—but for the last decade, Form I-9 has been two pages," she said. "Based on experience with a one-page form, the American Immigration Lawyers Association (AILA) is concerned employees or employers will accidentally supply information for each other's sections, which is prohibited. AILA also is concerned that without more informative fields in both sections, employees and employers will make more mistakes. Such errors could have serious consequences, as the employee and employer must sign their section under penalty of perjury."

Dellon added that employers would benefit from having more examples of the many combinations of documents as acceptable proof of work authorization listed on the form or in the instructions, rather than being directed to multiple websites.

Remote Verification for E-Verify Participants

As Neifach pointed out, the biggest change with the new Form I-9 is the checkbox allowing employers enrolled in E-Verify to indicate they virtually examined identity and employment authorization documents, instead of reviewing documents in person.

To participate in the remote examination of Form I-9 documents, employers must be enrolled in E-Verify and be in good standing, examine and retain "clear and legible" copies of all documents, conduct a live video interaction with the employee during the verification process, and create an E-Verify case if the employee is a new hire.

"SHRM enthusiastically welcomes this new development, as we have been advocating for a remote Form I-9 verification process for years, particularly over the last three years with the implementation of the COVID-19 flexibilities," said Emily M. Dickens, SHRM's chief of staff, head of public affairs and corporate secretary. "The Remote Form I-9 Alternative Procedure reflects the modern reality of the American workforce and HR processes and takes account of current and emerging technology—all while investing in the integrity and the security of the U.S. immigration system."

Employers who were participating in E-Verify and created cases for employees whose documents were examined virtually between March 20, 2020, and July 31, 2023, may choose to use the new alternative procedure to satisfy the physical document examination requirement by Aug. 30, 2023. However, employers who were not enrolled in E-Verify during the COVID-19 flexibilities time frame must complete an in-person physical examination by Aug. 30.

Remote verification raises additional questions related to the new form, Neifach said. For example, how and where should employers note whether employees that went through remote verification over the last three years have brought in new documents, and do employers need to keep proof of the video call required for virtual review on file?

"I think these types of questions will be answered shortly by USCIS in published FAQs," Neifach said. "Employers just need to be very careful that they are following all the steps when conducting a virtual review, including obtaining and reviewing copies of the documents front and back, then scheduling the videoconference call and verifying that information in real time, making sure to keep copies of the documents on file and being prepared to provide that file during an audit."

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