



## ***Flexibility Allowing Remote Viewing of I-9 Documents Ends July 31, 2023***

NICOLE S. SCHRAM | 06.12.23

In response to the COVID-19 pandemic in March of 2020, U.S. Immigration and Customer Enforcement (ICE) announced temporary flexibility allowing U.S. employers to remotely examine employee's I-9 documents, instead of requiring physical inspections of such documents. This flexibility will end this summer, which means that employers will again have to physically inspect all new-hire I-9 documents beginning July 31, 2023. Employers should also prepare to complete in-person physical inspections of all I-9 documents that had been remotely inspected during the flexibility period by August 30, 2023.

### ***Background***

Federal regulations require employers to complete a Form I-9 for all new employees. As an integral part of the I-9 procedure, the employee must provide one or more original documents from Schedule A or Schedules B and C of the Form I-9 as evidence of their identity and work authorization. The employer must then perform an in-person inspection of the employee's original physical documents to determine whether the documents reasonably appear to be genuine and to relate to the employee.

When the social distancing requirements of COVID-19 forced some employees to work remotely, ICE announced a temporary relaxation of the physical document inspection rules. For those employees not working in the employer's workplace on a regular, consistent, or predictable basis, the employer was allowed to inspect I-9 documents via email, video, or other remote arrangement and note "COVID-19" in the additional information field of I-9 Section 2 to justify remote verification. The employer was nonetheless expected to request and inspect physical I-9 documents

in person when the employee returned to the office or when the flexibility was terminated, whichever was earlier, and note the physical examination on the employee's I-9.

### ***Employer Responsibility***

On July 31, 2023, the I-9 flexibility will be terminated, and employers must return to examining the original I-9 documents of their new hires in person, whether the employees work fully remotely or have a predictable schedule in the workplace.

Employers should also begin reviewing the records of those employees hired after March 2020, to determine which employees' I-9 documents were remotely verified during the flexibility period. Before August 30, 2023, employers are required to physically inspect those remotely viewed identity and employment authorization documents and make a note of such examination on the employee's I-9 form. The notation should be placed in the "additional information" box in Section 2, and should include:

- a phrase such as "documents physically examined,"
- the date of physical examination, and
- the initials of the examiner (if examiner is the same individual who originally completed the I-9), or the examiner's full name and title (if examiner did not originally complete the I-9).

To accommodate employees working far from the workplace, employers may designate an authorized representative to complete the Form I-9 and physically inspect the documents. The authorized representative could be a supervisor, notary public, or other trusted agent, and there is no requirement for specific agreement or other documentation of the relationship between the employer and authorized representative. The employer is still liable for any violations associated with the representative's completion of the I-9 form and document examination.

### ***Possibility for Future Change***

The Department of Homeland Security (DHS) published a proposed rule in August of 2022 that would allow alternatives to the physical I-9 document inspection requirement for some or all employers in the future. DHS is now reviewing the public's comments to that proposed rule. If DHS determines that the relaxed procedures offer an equivalent level of security, the rule may become permanent. For now, however, employers should follow the physical examination requirements.

The [employment](#) and [immigration](#) attorneys at Boardman Clark are available to advise on best practices in I-9 compliance and to answer any questions related to the

termination of I-9 document verification flexibilities.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

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## ***Author***

**Nicole S. Schram**

(608) 286-7241