



December 27, 2021

Oscar Lujan
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Verification Division
Immigration Records and Identity Services Directorate
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Via electronic submission: www.regulations.gov

**Re: Remote Document Examination for Form I-9, Employment Eligibility Verification
Request for Public Input
86 Fed. Reg. 59183 (October 26, 2021)
DHS Docket No. USCIS-2021-0022**

Dear Associate Chief Lujan:

The U.S. Chamber of Commerce (“Chamber”) welcomes the opportunity to comment on the Request for Public Input entitled “Remote Document Examination for Form I-9, Employment Eligibility Verification.” The Chamber has long supported efforts to modernize the employment verification process to provide companies with more flexibility to onboard and maintain much-needed talent in an increasingly competitive global marketplace. We look forward to working with U.S. Citizenship and Immigration Services (“USCIS”) and the U.S. Department of Homeland Security (“DHS”) as they endeavor to implement much needed improvements to the employment verification process.

The Chamber received significant feedback from companies of all sizes and across a host of industries regarding this request and there is significant support for DHS to provide businesses with a permanent option to virtually perform the verification of documents that establish a putative employee’s identification and employment authorization status in the U.S. The input we received is that the best course of action would be for DHS to provide a new option for employers to perform the I-9 process; it would not supplant the traditional in-person document verification to comply with federal employment verification requirements.

The Chamber supported ICE’s March 20, 2020 announcement that initially provided the flexibility to remotely perform the I-9 document verification. We continue to support the extension of these temporary policies through April 30, 2022.¹ There were many companies who used this policy flexibility to effectively onboard much-needed workers during the height of the

¹ See ICE Announces Extension to I-9 Compliance Flexibility, (Dec. 15, 2021), available online at [ICE announces extension to I-9 compliance flexibility | ICE](#) (accessed December 18, 2021).

pandemic. In doing so, these companies avoided critical workforce disruptions. However, there were many employers that, due to the critical shortcomings associated with the temporary policy, either declined to take advantage of the temporary policy flexibility altogether, or only made use of these policies for a brief period.

The most cited problem conveyed to us by our members was the requirements for a company to perform in-person document reviews within 3 days of a company resuming normal, in-person operations at their place of business. The significant business disruptions that this requirement in the temporary guidance would have caused for their businesses was the critical factor in their decision to either decline using these new procedures, or to stop utilizing the temporary virtual verification procedures made available by U.S. Immigration and Customs Enforcement (“ICE”) after their company moved towards in-person operations.

The Chamber believes that if DHS were to make several key changes that further incentivized the use of virtual documentation verification on the part of American businesses, company usage of these policies would not only increase, but the security and integrity of the employment verification process would improve demonstrably.

The Benefits Associated with the Temporary Remote Document Examination Procedures

Companies that took advantage of the remote document examination policy established in March 2020 improved the onboarding experience not only for their businesses, but also for their employees. Chamber members found the remote process to be much more efficient and cost-effective than the traditional in-person procedure. Given the difficulties many businesses had to confront during the COVID-19 pandemic, many companies conveyed to us that the ability to perform the document verification process virtually was indispensable in allowing them to continue both onboarding new hires and reverifying the documents for existing employees whose documents had expired. These temporary measures allowed many companies to avoid significant workforce disruptions during the worst periods of the pandemic.

In addition, many companies that utilized these remote document verification procedures conveyed to us that they benefited from a compliance perspective because the temporary virtual document verification policy provided their business with the ability to consolidate their internal processes for reviewing these documents. This provided them with not only the ability to save time and costs in performing the document review, but also increased the accuracy in verifying the documents and ensuring that the documents related to the putative employee presenting them to the company. This not only provides direct cost savings to the company by not having to expend time procuring physical space to have these in-person meetings; it also dispenses with the need for all of the employees involved who would have to travel for this in-person meeting, the gas they would expend on either automobile or air travel, and for companies utilizing “authorized representatives” to perform the document review, any costs associated with obtaining the services of said representatives. To accomplish this, many employers utilized commercially available video conferencing technology to perform the document review. The

flexible I-9 practices helped companies onboard new employees were able to more quickly, easily, and more safely than if they had to do so in-person.

It is crucial that any new policies sought by DHS should explicitly state which types of technological means are sufficient for performing the review of these documents, as the specificity will provide companies with the certainty to know what their duties and obligations are under the law. The Chamber understands that there are limitations to certain forms of technology and that DHS may conclude that certain technologies are not the most conducive for ensuring employers maintain I-9 compliance and thus impose certain limitations on the use of certain technologies for ensuring whether documents are genuine. As such, it is critical that the government provide clear guidance and instructions regarding what companies must do to ensure that they are properly examining these documents and that they do not run afoul of their legal obligations under the I-9 employment verification process.

The Limitations of the Temporary Document Verification Policy

Many companies conveyed to us that the biggest problem they had with the virtual document verification policy was the requirement to follow up with the in-person review of the physical documents. The vast majority of chamber members that declined to take advantage of this temporary policy at all specifically cited this issue as the outcome-determinative provision that caused their business to pass on conducting their I-9 document review virtually.

The reason companies chose to pass on utilizing these procedures is that once their company resumed normal, in-office operations, all the employees they onboarded using the remote verification procedures would have had to report to their employer within three business days for the in-person verification of their identity and employment eligibility documents. Several companies reported to us that since the pandemic began, they've onboarded thousands of workers. In some cases, many of the employees onboarded by these companies have never set foot inside a company facility, and within this cohort, a significant number of those workers were employed on a temporary basis and are no longer employed by these firms.

With regard to those temporary employees who have since left the employment of the company that performed the I-9 document verification for the employee virtually, there is a lack of guidance as to what companies should do to verify former employees, notwithstanding the statutory record retention requirements and the ability of the company to copy the documents under the INA.² As for the workers that were onboarded by a company using these virtual procedures and are still employed by said company, it is simply impractical for a business that onboarded thousands of people using virtual means to perform a physical inspection of the identity and employment eligibility documentation for thousands of workers in a 72 hour period. The disruption that this would cause for firms in this type of situation would have been

² See 8 U.S.C. 1324a(b)(3) and 1324a(b)(4), which, respectively, clarify the duration of time in which a company must retain I-9 records, and allow for the copying of the documents the employee presented to the employer to comply with the I-9 document review process.

significant. As such, this single concern drove many companies to not make use of the virtual verification option. Moreover, even for those companies that chose to take advantage of this flexibility during the height of the pandemic, a significant number of those companies discontinued using the virtual option to avoid potential liability for violations that could have arisen if they needed to verify their workers' documentation in short order.

Many companies that elected not to utilize the virtual verification process, or discontinue the use of it, chose to conduct in-person document reviews where "authorized representatives" performed the in-person document review. The practice of using authorized representatives/agents to perform the in-person document review had been exercised by employers prior to the pandemic. However, many chamber members conveyed to us that they used this option sparingly prior to the pandemic, as they remained liable for any errors made by their agents during this process. The use of agents provided needed flexibility for companies, but there remained several challenges for companies that left many businesses hungry for a virtual verification process that would have been workable for them. The challenges with this method of document verification included:

- agents not properly conducting the process/completing the form, thus raising costs to the company, subjecting the firm to potential liability, and either delaying the onboarding of new workers, or the continued employment of current workers;
- companies needing to allocate additional resources to ensure that its agents had the necessary training to complete the I-9 document verification process properly, and for companies that utilize electronic I-9 software programs, incurring added expenses to allow their agents to utilize the software;
- scheduling challenges in coordinating the meetings between the agents and employees, as well as a reticence among employees to share personal information and documents with individuals who are not employed by the company.

Using Technology to Improve the Employment Verification Process

The Chamber is encouraged that USCIS and DHS are interested in obtaining feedback from the business community to understand employers' experiences with the temporary virtual I-9 policy and explore alternative options to the traditional physical document examination rules. The Chamber firmly believe that companies should be able to complete this entire process through virtual means that do not require an in-person meeting for the document review.

The Chamber acknowledges that current regulations governing this process require the "physical examination of the documentation presented by the individual establishing identity and employment authorization" within three business days of the hire.³ However, these regulations do not require that this document review must take place in person. Moreover, the statutory text of the INA provides DHS with the flexibility to examine these documents using various cutting-edge technologies, particularly through the usage of video conferencing tools.

³ See 8 CFR 274a.2(b)(1)(ii)

The physical examination requirements under the current regulations are based upon outdated assumptions on what the most effective means are to verify whether the individual's identity and employment eligibility documents are genuine. Today, internet video conferencing is no longer a novel technology where the images conveyed to the employer's representative on his/her computer screen were so unclear as to prevent a legitimate examination of one's documents. When one balances the new technological capabilities with all the attendant benefits to moving towards virtual verification, including improved operational efficiencies for business, cost/resource savings for companies and employees, etc., DHS has a unique opportunity to enact a meaningful policy change that would help American businesses compete in an increasingly competitive global marketplace.

These changes should include not only creating a permanent option for companies to perform the I-9 document verification process virtually, but also integrating the I-9 and E-Verify systems for American employers that are enrolled in E-Verify. E-Verify employers should be able to enter employees' information into the government database to verify their work authorization and receive confirmation, without the need to separately complete and retain the Form I-9. We share the government's goal of reducing burdens and costs while maintaining the integrity of employment eligibility verification processes and promoting efficiencies. We welcome the opportunity to discuss technological solutions with the agency and provide additional input.

Expanding and Clarifying the Lists of Acceptable Documents

In order for DHS to implement the most impactful policy changes to the employment verification process, it must provide businesses with more certainty and guidance as to what documents are acceptable for individuals to submit for the purposes of complying with federal employment verification requirements. Specifically, DHS should give employers more flexibility to accept electronic documents or document copies instead of the original hard copy, which would significantly reduce the burdens on employers and employees alike, as well as prevent workforce disruptions. USCIS should update the M-274 Handbook for Employers to clarify that employers may accept electronic USCIS approval notices for Form I-9 purposes. USCIS processing delays, coupled with U.S. Postal Service delays due to COVID-19, frequently leave employers with no choice but to suspend employment when an employee has an electronic USCIS approval notice but has not yet received the physical notice in the mail. These types of disruptions would be easily avoidable if electronic documents and copies of documents were acceptable for the purposes of validating one's employment eligibility in the U.S.

Second, USCIS should allow longer automatic extensions of employment authorization to account for current lengthy processing times. For example, USCIS should lengthen the 240-day extension for Form I-129 extension of stay applicants and allow beneficiaries to continue working until USCIS adjudicates their petition. Companies should not have to suspend the employment of workers who no longer has up-to-date work authorization documentation because USCIS' processing delays are the proximate cause for their lack of documents.

Lastly, the Lists of Acceptable Documents on the Form I-9 cause confusion for employers because they do not reflect all permissible documents. Employment eligibility verification requirements are already complex, and ambiguities with regard to which documents employers may accept for these purposes increases the likelihood they will unintentionally commit I-9 violations. USCIS should provide a comprehensive resource to all stakeholders that explains what documents are acceptable for Form I-9 purposes. Ideally, this resource would include sample documents, clearly outline what documents are sufficient, and be accessible on the internet so all businesses, regardless of their size, will have the ability to best approach the employment verification process moving forward.

Relatedly, there have been several policy changes implemented by DHS and USCIS that have impacted what documents are sufficient to determine an individual's employment eligibility in the U.S. For example, USCIS expanded the eligibility for an automatic 180-day Employment Authorization Document (EAD) extension to the dependent spouses of H-1B, and L-1, and E nonimmigrant workers. To that end, USCIS clarified that E and L dependent spouses are to be considered work authorized incident to their status, regardless if they physically possess an EAD. There have also been many other temporary policy changes caused by COVID where the agency is providing employers with flexibility regarding certain documentation. DHS should clarify these policy changes publicly and provide employers with easy access to this guidance. The business community and workers would benefit greatly from additional clarity.

Conclusion

The Chamber appreciates DHS's interest in exploring alternative options to the physical document examination associated with the I-9 Employment Eligibility Verification process. Advancements in modern technology and the myriad changes in the business practices of employers over the past few decades necessitate policy changes that allows American companies to be nimble with regard to their hiring practices. The ability of businesses to onboard or maintain desperately needed workers in a timely fashion directly impacts their ability to operate in an increasingly competitive global marketplace.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Baselice', with a large, sweeping flourish extending to the left.

Jonathan Baselice
Vice President, Immigration Policy
U.S. Chamber of Commerce