

# Attention On-Boarding Managers: A New Form I-9 and New Options for Verifying Employment Eligibility (but There's a Catch ...)

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When the pandemic abruptly shifted many employment relationships from offices and other physical workplaces to remote environments, many governmental and regulatory authorities responded by modifying existing protocols to accommodate new realities. Among those were [temporary adaptations](#) to long-standing federal requirements for inspecting identification and verifying employment eligibility, whereby employers were permitted to forego standard document inspection procedures while completing [Form I-9](#).

After the Public Health Emergency officially ended in May 2023, the United States Immigration and Customs Enforcement (ICE) and its parent agency, the U.S. Department of Homeland Security (DHS) [announced](#) that pandemic-related document inspection flexibilities would sunset on July 31, 2023, and that employers would have a grace period through August 30, 2023, to complete physical inspections of original documents that were presented by employees hired between March 20, 2020 and July 31, 2023 ("Flexibility Period") that were not physically examined under the temporary flexibility policy. More recently, DHS [announced](#) new flexibilities to the I-9 inspection process, followed by the issuance of an updated Form I-9. Here is what employers need to know now.

## New Final Rule: Virtual Inspections Continue For Some

Under [regulations published](#) on July 25, 2023, DHS authorized an "alternative procedure" to supplement [existing requirements](#) that mandate employers to physically examine new employees' documentation within three business days of hiring. As of August 1, 2023, qualified employers can conduct virtual inspections of employee documents. For now, qualified employers are only those who use and are in good standing with the [E-Verify](#) system.

**In short, this means:**

- Rules requiring employers to physically inspect documents and create a record using the I-9 form **have not changed** for any business that is not a current

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E-Verify [participating employer](#) in good standing.

- An employer that registers for E-Verify and maintains good standing can virtually inspect employee documents for the I-9 process for new hires starting August 1, 2023. Employers who use the “alternative procedure” must obtain a copy of the employee’s I-9 documents and compare the documents virtually in a live-video conference with the employee.
- New E-Verify users (i.e., those whose participation began on or after August 1, 2023) must physically inspect original documents of all employees hired during the Flexibility Period by August 30, 2023, as summarized below.

## Original Document Inspection Deadline Remains: August 30, 2023

All employers that remotely inspected new hires’ identification and employment eligibility documentation during the Flexibility Period must physically re-inspect the employee’s original documents by August 30, 2023, unless the employer was registered for E-Verify when the remote inspection was conducted and continues to be a qualified employer.

Qualified employers who were registered for E-Verify and created a case in E-Verify for new hires during the Flexibility Period have the option of re-inspecting employee documents virtually by live-video. **A qualified employer that conducts virtual re-inspections must note on each employee’s I-9 form:**

- the comment “alternative procedure”;
- the date of the video interaction; and
- the reviewer’s initials and date near or below the annotations that were already entered following the initial virtual review.

Of note, employers that must (or do) physically inspect new hire documents may use an agent, e.g., a notary public, I-9 document review service, or other third-party, to conduct the in-person document inspection. In fact, since the pandemic, this option has grown in popularity, particularly with employers of virtual/remote workforces. Employers should be mindful, however, that the employer remains liable for any mistakes made by their reviewing agent.

## The New Form I-9

On August 1, 2023, DHS and the U.S. Citizenship and Immigration Services (USCIS) [released](#) a [new Form I-9](#) and [instructions](#). Both have been shortened, with the Form itself redesigned to fit on a single page and formatted as a fillable e-document that can be completed using a mobile phone or tablet.

As before, employers must retain and store completed I-9 forms for three years after date of hire or one year after the termination of employment, whichever is later. The forms must be made available for inspection by authorized government officials. Use of the new form will be mandatory starting on November 1, 2023.

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