

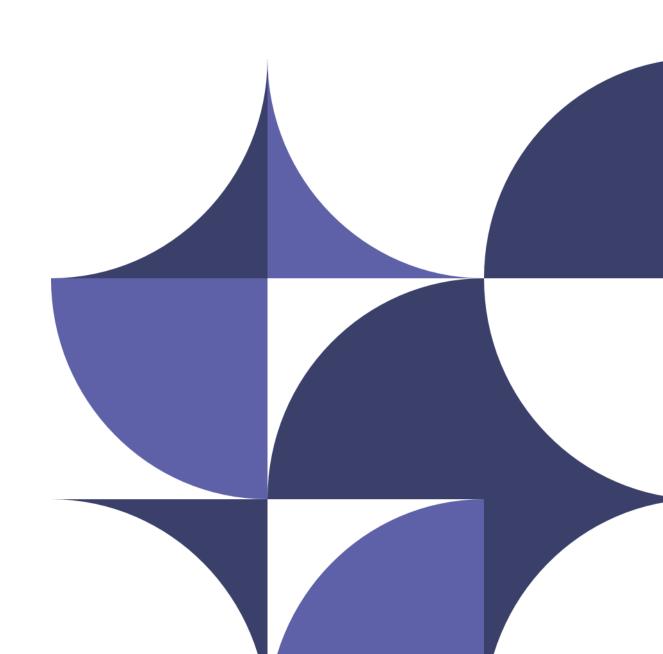
Return to Business

Virtual I-9 and other COVID-19 Compliance Concerns

June 29, 2020

Seyfarth Shaw LLP

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Speakers



Dawn LurieSenior Counsel
Washington D.C.

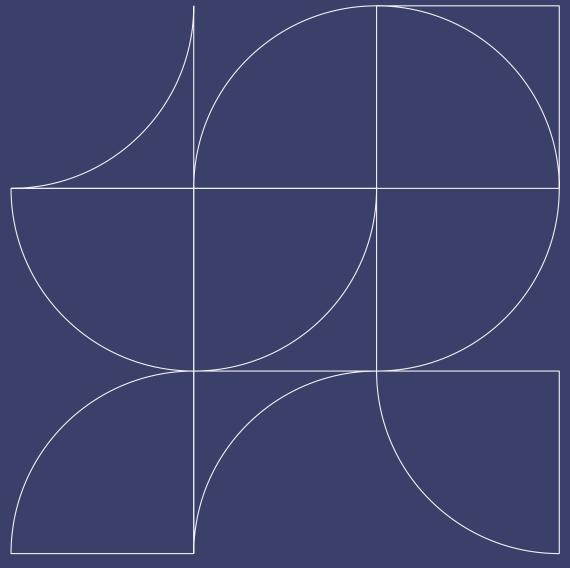


Angelo Paparelli Partner Los Angeles



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Washington D.C.

Relaxation of In-person I-9 Review





Overview of Normal I-9 Rules

- Section 1 must be completed by the employee
 - On or before first day of work for pay (aka Date of Hire)
 - After an offer and acceptance
- Section 2 must be completed by the employer, or authorized representative
 - On or before the third day of work for pay (same as Date of Hire)
 - Employee must present unexpired original documentation that verify his/her identity and his/her work authorization status in the U.S.
 - Employers must physically review the document(s) inperson
 - Employees may choose which documentation to present
- Section 3 must be completed by the employer, where necessary
 - On or before the expiration of work authorization

Relaxation of In-Person Requirement



- DHS Flexibility on Form I-9 Compliance
- Extended until July 18, 2020

"Due to precautions being implemented by employers and employees related to physical proximity associated with COVID-19, the Department of Homeland Security (DHS) announced today that it will exercise discretion to defer the physical presence requirements associated with Employment Eligibility Verification (Form I-9) under Section 274A of the Immigration and Nationality Act (INA)".

Fully Remote

- ICE notes that "DHS has decided to once again extend this policy for employers operating 100% remotely in light of COVID-19 for an additional 30 days"
- Certain businesses/sites were not be able to use virtual I-9 completion
- Authorized Representative, Friends & Family method

- Employers must ensure documents copies of the "virtually" reviewed List A or B &B documents are maintained
- Employers "must provide written documentation of their remote onboarding and telework policy for each employee.
- The burden rests solely with the employers."

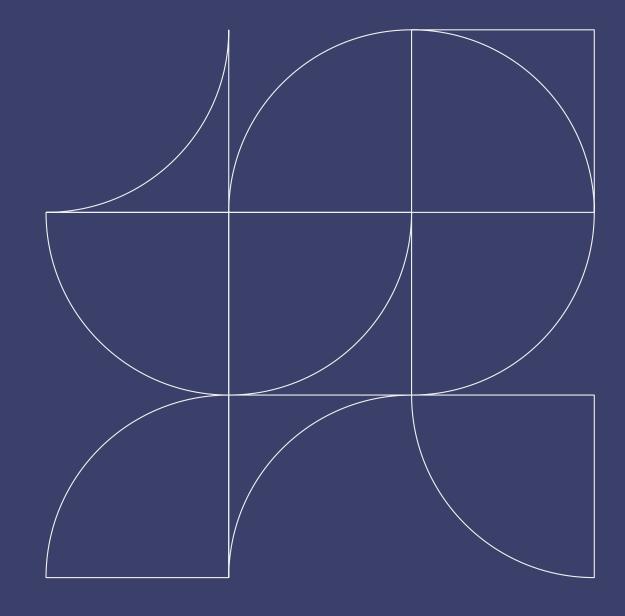
Mechanics of Remote Completion

- ICE Established Requirements in Announcing Flexibility Policy
- Employer Needs to Have a Remote Work Policy in place
 - necessary features of such a policy
 - documenting local restriction
- Attestation still needs to be completed by person inspecting documents
- Notations reflecting COVID-19 basis for remote completion

What Else Did the HSI Guidance Say?

- Guidance allows companies to review "Section 2 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2"
- Caveat is that virtual flexibility would only be a temporary reprieve; "after normal operations resume" – as stated in the March 20 announcement – the employee would be required to provide original documents in person for inspection by the employer

Q&As and Other Guidance, Kind Of...



A Thousand and One Questions

- Employers hoping for explanations on what ICE envisioned
 - when the agency stated that the duty to update Section 2 of the virtually initiated I-9s occur in person "after normal operations resume"
 - when exactly the three days starts for physically completing the Forms in-person
 - for other random scenarios
- USCIS in conjunction with ICE issued Q& As

List B Document Extensions- Receipt or Not a Receipt?

Beginning on May 1, identity documents found in List B set to expire on or after March 1, 2020, and not otherwise extended by the issuing authority, may be treated the same as if the employee presented a valid receipt for an acceptable document for Form I-9 purposes

List B Expired: NO issuing authority Extension

- Because many areas were under stay-at-home orders due to COVID-19 and online renewal services have restrictions, employees may experience challenges renewing a state driver's license, a state ID card, or other List B document
- Considering these circumstances, DHS is issuing a temporary policy regarding expired List B identity documents used to complete Form I-9, Employment Eligibility Verification
- If List B is expired on or after March 1 and extended then it is acceptable and should be recorded (without the need to reverify later)
- Increased work for employers to track state extensions
- Confirm the auto-extensions, consider attaching to the I-9
- Practice Note: Temporary Licenses are Acceptable Documents, not receipts

Entering a List B Document Extended by Issuing **Authority in Section 2**



Employment Eligibility Verification

Department of Homeland Security U.S. Citizenship and Immigration Services

USCIS Form I-9

OMB No. 1615-0047 Expires 10/31/2022

	Last Name <i>(Fa</i> Washington		First Name (Given N Martha	lame)	M.I. N/A	Citizenship/Immigration Statu 1
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employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): 05/04/2020 (See instructions for exemptions) Signature of Employer or Authorized Representative Today's Date (mm/dd/yyyy) Title of Employer or Authorized Representative Thomas Jefferson 05/04/2020

Last Name of Employer of Authorized Representative First Name of Employer or Authorized Representative Employer's Business or Organization Name Department of Agriculture ZIP Code Employer's Business or Organization Address (Street Number and Name) City or Town 123 Monticello Drive 22902 Charlottesville

Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.) A. New Name (if applicable) B. Date of Rehire (if applicable) Last Name (Family Name) Middle Initial Date (mm/dd/yyyy)

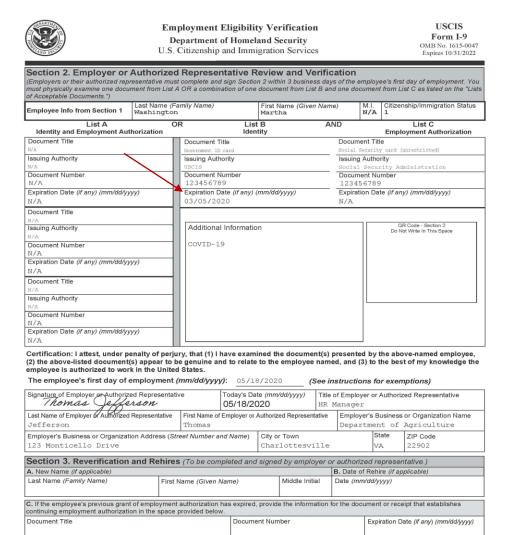
C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below. Document Title Document Number Expiration Date (if any) (mm/dd/yyyy)

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

		-
Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative

Entering an Expired List B Document in Section 2

Signature of Employer or Authorized Representative



Form I-9 10/21/2019 Page 2 of 3

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Today's Date (mm/dd/yyyy)

Updating Section 2 When Employee Presents Unexpired Document Once Normal Operations Resume

Page 2 of 3

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The employee's first day of employe	ment (mm	/dd/yyyy	0 5/18	9/2020	6	See in	structio	ns fo	rexen	nptions)
Signature of Employer or Authorized Repre-			Today's Da 05/18/20		dd/yyyy)		of Employ fanage:		Authori	zed Representative
Last Name of Employer of Authorized Represent	fative Fire	d Name of	Employer or	Authorize	d Represer	tative	Employ	rer's B	usiness	or Organization Name
Jefferson	Th	omas					Depar	tmen	t of	Agriculture
Employer's Business or Organization Addre	ss (Street /	Vumber a	nd Name)	City or Char	Town Lotteav	ille		St	ate	ZIP Code 22902
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Last Name (Family Name)	First Name	(Given I	Vame)					Date of Rehire (if applicable) te (mm/dd/yyyy)		
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continuing employment authorization in the Document Title	ahace brovi	ued belov	Docume	ent Num	ber			Expi	ration D	late (if any) (mm/did/yyyy)
I attest, under penalty of perjury, that t the employee presented document(s),	the docum	nent(s) I	have exam	ined ap	pear to b	e genu	uine and	to re	late to	the individual.
Signature of Employer or Authorized Repre	sentative	Today's	Date (mm/c	toryyy)	Name	e of Em	ployer or	Autho	rized R	epresentative

- If the same person performs both the remote and subsequent physical inspections, complete as shown
- Note that if a different person performs the physical inspection, that person should write their full name and title, instead of their initials

Form I-9 10/21/2019

The New Normal

- RTW will be complicated and will look difference for different companies, maybe even for different sites, same company
- Resumption of normal operations will vary widely among industries, business sectors, and the incidence of COVID-19 diagnoses.
- Definition of "normal operations" will surely vary as the new normal begins to take shape
- Questions from client companies
 - When skeleton crew arrives?
 - When HR returns to work?
 - What about employers who allow 100% work from home and never resume normal operations?
 - What about groups, such as summer interns, that will be 100 WFH?
- Critical to memorialize policies and guidance as part of a historical record
 - will be beneficial during any future audits

HR and I-9 Completer Concerns

- You're responsible for completing Form I-9s
 - You have a population return to work
 - Maybe you have 3 or maybe 300 people to I-9
- Effective planning is key
- Ensure a safe process is available including the logistics of viewing and handling documents.
- Ensure you are tracking those I-9s completed
- Also tracking RTW timelines
- Do you have an electronic system?
 - Do you need one?

USCIS & COVID-19

- "After document review, enter in the Additional Information field "COVID 19" as the reason for the physical inspection delay, "documents physically examined" and the date of physical inspection and who conducted it."
- There is likely difference in updating Section 2 depending on the individual who
 is physically reviewing the documents in-person
- If the same person who inspected the documents virtually is also inspecting the documents in-person, then they should update the Form I-9 as seen below in the mockup provided by USCIS

Completing Section 2 When Inspecting Documents Remotely

Employment Eligibility Verification USCIS



Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form I-9 OMB No. 1615-0047 Expires 10/31/2022

Employee Info from Section 1	Last Name (Family Name) on		First Name (Giver George	n Name)	N/		nship/Immigration Statu
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Form I-9 10/21/2019 Page 2 of 3

Performing Physical Inspection Once Normal Operations Resume

If the person who performed the remote inspection also performs the physical inspection, they should indicate the date they physically examined the documents then add their initials in the Additional Information field



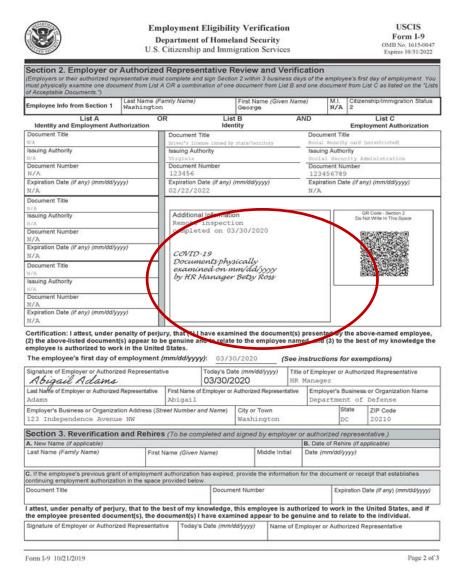
Employment Eligibility Verification Department of Homeland Security

USCIS Form I-9 OMB No. 1615-0047 Expires 10/31/2022

Department of Homeland Security U.S. Citizenship and Immigration Services

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Performing Physical Inspection by a Different Person Once Normal Operations Resume



Different Completer:

- the person who performs the physical inspection should indicate the date they physically examined the documents
- include full name and title in the Additional Information field

Notating Remote and Physical Inspection for Reverification



Employment Eligibility Verification Department of Homeland Security U.S. Citizenship and Immigration Services

USCIS Form I-9 OMB No. 1615-0047 Expires 10/31/2022

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Form I-9 10/21/2019 Page 2 of 3

Electronic I-9 Systems

The Good

- Ahead of the curve
- Tracks virtual I-9s
- Already rolled out a process to update S2
- Allows a remote/3rd party to complete S2 with no access into the system
- Process to upload and store documents
- Tracks Receipts (new List B type)

The Bad

- Working on all of it
- Partially rolled out

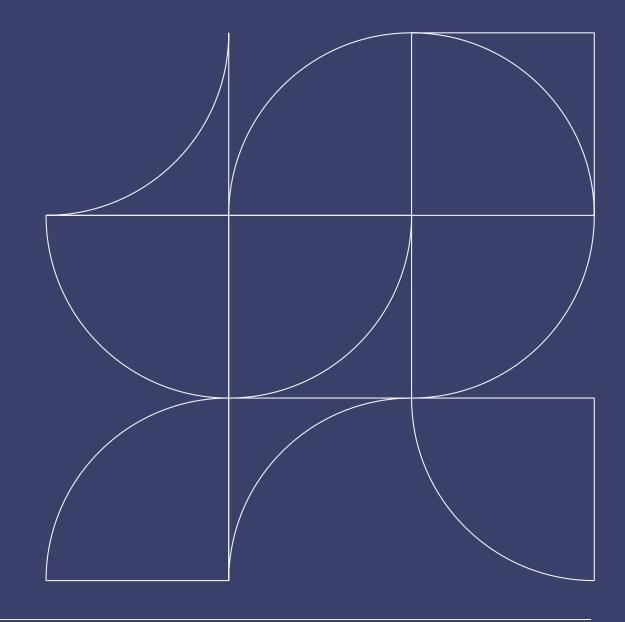
The Ugly

- Not working on it....
- Can't make changes to the Form I-9
 - must do a new Form I-9 to update
 - must do a new Form I-9 for everything
- No tracking

Authorized Representative Method

- Precautions to take for "friends and family" authorized representatives
 - Clear Written Instructions
 - Samples and Contact Information for HR
 - Safeguarding PII, outline a process for document copies (should be mandated)
 - Confirmation of responsibility
 - Exposure to perjury

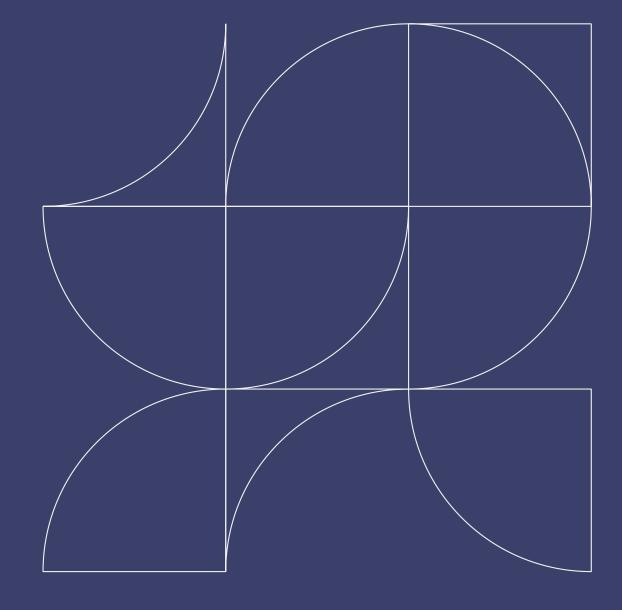
Increased Investigations



Existing and Increased Interest In Compliance

- Buy American, Hire American
 - Department of Justice, Immigrant and Employee Rights Office
- Presidential Proclamation
 - Increased Department of Labor Investigations
- Joint Task Force Actions

POLICY ADVOCACY



Historical View on In-Person Document Review

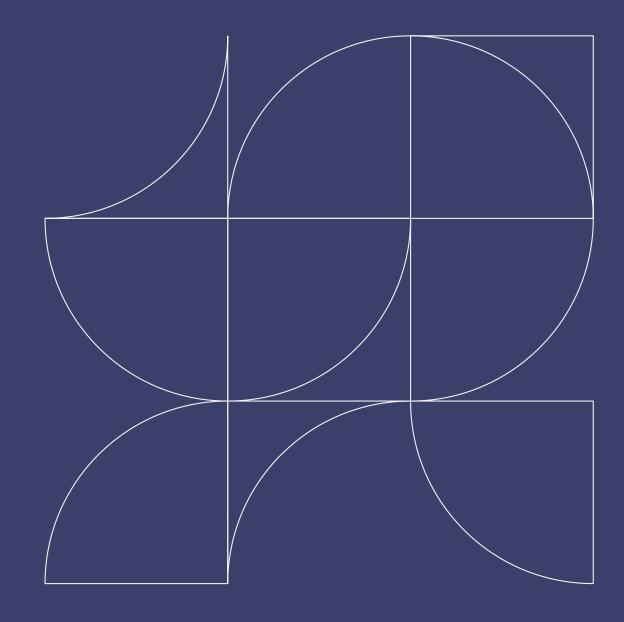
- Before the emergence of COVID-19, employers were asking for a relaxation of the in-person review
- DHS perspective
 - -Regulatory
 - -Criminal
- The Reality of 2020 should outweigh prior concerns
- Need regulatory change



Why Might 2020 Be Different?

- Slow Return to Work means many businesses will remain partially remote for a long time.
- Some employers are seeing this as an opening to relax the physical inspection
- Any relaxation needs to address ICE concerns about compliance
- What will this look like?
- Join us as we present proposals for I-9 transformation
- Avenues of Advocacy:
 - Department of Homeland Security USCIS, ICE, Private Sector Office
 - Congress
- Change in the Regulations

QUESTIONS & ANSWERS



thank you

For more information please contact your Seyfarth immigration attorney or any of the speakers.