

Form I-9 Remote Flexibilities to End on July 31, 2023

May 17, 2023

On May 4, 2023, the US Immigration and Customs Enforcement (ICE) and Department of Homeland Security (DHS) [announced that the temporary COVID-19 flexibilities](#) permitting remote Form I-9 identification inspections will expire on July 31, 2023. Under a 30-day grace period provided by the agencies, employers will be required to conduct **in-person verification** of Form I-9 documents by August 30, 2023, **for all employees who were virtually verified** since March 2020.

Form I-9 flexibilities during COVID-19

In March 2020, the DHS announced that it would temporarily permit employers operating remotely due to COVID-19 to inspect Form I-9 Section 2 documents on a virtual basis, including via video link, fax or email. The flexibilities eventually were extended to employees operating remotely until they undertook nonremote employment on a “regular, consistent, or predictable basis,” or until the extension of the flexibilities was terminated, whichever happened earlier.

The end of these Form I-9 flexibilities coincides with the end of the COVID-19 national emergency. Employers have until August 30, 2023, to complete any remaining in-person inspections for employees who were hired on or after March 20, 2020, and for whom the employer has previously only conducted a remote inspection. This requirement applies even to companies that continue to operate remotely and do not plan to return to work in office.

Next compliance steps

Employers should prepare for the sunset of the Form I-9 flexibilities by performing all the steps below as applicable.

Update Form I-9

After physically inspecting identification documents, employers should enter the following information into the Form I-9 Section 2 “Additional Information” field:

1. “COVID-19”
2. “Documents physically examined”
3. The date of the physical inspection
4. The name of the person who conducted the physical inspection

Employers may refer to [ICE’s sample mockups](#) of how the physical inspection should be annotated. If the person who performed the remote inspection also performs the in-person inspection, they should enter their initials in the “Additional Information” field. However, if a different person performs the in-person inspection, that person should write their full name and title, instead of their initials.

Consider using an authorized representative

Employers continuing to operate remotely may want to designate an authorized representative to complete Section 2 (or 3) of Form I-9 on behalf of the company. Authorized representatives do not need to be employees of the employer and may be anyone, including agents or notaries public, but cannot include employees attesting to their own documentation. Employers using authorized representatives should note, however, that employers are still liable for any violations in connection with the form or the verification process.

Manage differing documents appropriately

If an employee presents documents for in-person inspection that are different from the ones presented for remote inspection, the employer should do one of the following:

- Complete Section 2 on a new Form I-9 and attach it to the Form I-9 used for remote inspection.
- Provide the document title, document number, issuing authority and expiration date (if any) of the new document in the "Additional Information" field, and notate that the employee presented this document at physical inspection.

The DHS notes, however, that the first option is a better "best practice."

Confirm now-expired documents were unexpired during remote inspection

Expired documents are permissible for in-person verification, as long as the employee's document was unexpired at the time of remote inspection.

Explain employee separation

If an employee has since separated from employment, the employer should include an explanation in the "Additional Information" field and note the date of the employee's separation.

Verify employees acquired through corporate transactions

Employers who have acquired employees through a corporate transaction and accepted the Form I-9s from the former employer will need to conduct an in-person verification as described above for any employees previously checked remotely.

Maintain written documentation of onboarding and telework policy

Employers who took advantage of the remote flexibilities must ensure they maintain written documentation of their remote onboarding and telework policy for each employee, [per the DHS's original announcement](#).

Although the COVID-19 related flexibilities will sunset soon, the DHS published a proposed rule last year that would authorize alternative options for document examination procedures and enable the DHS to respond to emergencies similar to COVID-19. The comment period on the proposed rule closed on October 17, 2022, and the DHS plans to issue a final rule later this year.

The Cooley employment team will continue to monitor developments in this area.

This content is provided for general informational purposes only, and your access or use of the content does not create an

attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as “Cooley”). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may be considered **Attorney Advertising** and is subject to our [legal notices](#).

Key Contacts

Helenanne Connolly Reston	hconnolly@cooley.com +1 703 456 8685
Anna Matsuo New York	amatsuo@cooley.com +1 212 479 6827
MaryBeth Shreiner Reston	mshreiner@cooley.com +1 703 456 8169

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.