

Virtual Verification Guidance

Updating the Form I-9 after conducting a physical inspection

Background

On March 20, 2020, the Department of Homeland Security (DHS) announced a temporary relaxation of the Form I-9 verification rules in a [special memorandum](#) posted to the Immigration and Customs Enforcement (ICE) website. Pursuant to this policy, DHS will defer the physical presence requirements associated with the Form I-9 document inspection process for employers and workplaces that are operating remotely due to COVID-19. This policy is currently in effect until May 31, 2021 (and is likely to be extended further while the pandemic persists).

Employers taking advantage of this policy must inspect Section 2 or Section 3 documents remotely (e.g., over video, email, secure upload, etc.) and complete the Form I-9 within the required timeframe. Thereafter, employers must conduct a physical inspection of the documents once the virtual verification policy ends OR an employee commences non-remote employment on a regular, consistent, or predictable basis (whichever is earlier).

DHS Guidance on Updating the Form I-9 After Physical Inspection

Same individual conducts the verification

If the physical inspection is conducted by the same individual who examined the documents remotely and signed Section 2, the individual can simply write the date they physically examined the documents and then add their initials in the Additional Information box in Section 2 of the virtually completed I-9.

Different individual conducts the verification

If the physical inspection is conducted by someone else (including an authorized representative), the employer has a choice to make.

1. According to [the USCIS guidance](#), the individual should write the date they physically examined the documents as well as their full name and title in the Additional Information box in Section 2 of the I-9.
2. However, [according to ICE guidance](#), the individual should complete a new second page (Section 2) of the Form I-9 and attach that to the (complete) remote inspection Form I-9.

While ICE did not provide any reasoning for this contradictory instruction, one highly plausible theory is that the agency wants the new verifier to read and sign the Section 2 attestation under penalty of perjury, rather than merely enter their name and title in the Additional Information box.

Employers may also choose to complete an entirely new Form I-9 for the physical inspection to ensure consistency of the data between Sections 1 and 2. Although not mentioned in the ICE guidance, completing a new I-9 in this scenario should be permissible so long as the employer follows this process without regard to an employee's citizenship status, immigration status, or national origin. The employer will also want to add a short note explaining why the additional I-9 was created – namely, to record the physical inspection.

Disclaimer: Please note that any information provided in this document is for educational purposes only, and should not be construed as legal advice or as a substitute for legal counsel. If you have questions concerning how I-9 and E-Verify rules apply to your specific situation, please seek legal advice from a licensed professional attorney who is familiar with all of the facts.