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Changes to I-9 Documentation Review Procedure for Qualified Employers; Release of New Edition of Form I-9

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Alternative I-9 Documentation Review Procedure Available to Qualified Employers Registered With E-Verify

In the Federal Register published on July 25, U.S. Immigration and Customs Enforcement (ICE) and the Department of Homeland Security (DHS) stated that beginning on August 1, qualified employers will be permitted to use an alternative documentation review procedure during Form I-9 completion. They defined "qualified employers" as those who are participants in good standing in E-Verify (to provide an equivalent level of security that the physical document inspection procedure provides).

The steps required for the alternative review procedure include:

1. The employee must transmit a copy (front and back, if the document is two-sided) of the Form I–9 documents (or an acceptable receipt) to the employer who must then examine these copies to ensure the documentation reasonably appears to be genuine;

2. Conduct a *live video interaction* with the individual who must then present the same document(s) during the video interaction to ensure that the documentation reasonably appears to be genuine and related to the individual;

3. Indicate on the Form I–9, by completing the corresponding box, that an alternative procedure was used to examine documentation to complete Section 2, or for reverification, as applicable;

4. Retain, consistent with applicable regulations, a clear and legible copy of the documentation (front and back if the documentation is two-sided); and

5. In the event of a Form I–9 audit or investigation by a relevant federal government official, make available the clear and legible copies of the identity and employment authorization documentation presented by the employee.

In issuing this guidance on the alternative review procedures, DHS reminds employers that they must continue to comply with the nondiscrimination requirements. The alternative procedure does have additional detailed guidance

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regarding the requirements and process, so please see the information available at Federal Register : Optional Alternative 1 to the Physical Document Examination Associated With Employment Eligibility Verification (Form I-9) and contact the Troutman Pepper Immigration team with any questions.

New Version of Form I-9 to Be Released August 1

In the same Federal Register, the government also announced that it will release a new version of the Form I-9 (Edition: 08/01/2023) on August 1. Employers may continue using the prior version of the Form I-9 (Edition: 10/21/2019) through October 31. DHS stated the new version brings the following changes:

- Reduces Sections 1 and 2 to a single-sided sheet.
- Transforms into a fillable form on tablets and mobile devices.
- Moves the Section 1 Preparer/Translator Certification area to a separate, standalone supplement that employers can provide to employees when necessary.
- Moves Section 3, Reverification and Rehire, to a standalone supplement that employers can print if or when rehire occurs or reverification is required.
- Revises the Lists of Acceptable Documents page to include some acceptable receipts as well as guidance and links to information on automatic extensions of employment authorization documentation.
- Reduces Form instructions from 15 pages to 8 pages.
- Includes a checkbox allowing employers to indicate they examined Form I-9 documentation remotely under a DHS-authorized alternative procedure rather than via physical examination. Employers using the prior version, through October 31, must write “alternative procedure” in the Additional Information box in Section 2 instead

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