



SHRM Regulatory Summary: Department of Homeland Security Announces Proposed Rulemaking for Virtual Form I-9 Verification

On Wednesday, August 17, the U.S. Department of Homeland Security (DHS) announced its first [proposed rule](#) on the Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification (Form I-9).

Key Takeaways:

1. The proposed rule does not include a detailed plan for virtual inspection of Form I-9. Instead, the proposed rule would “formalize the authority for the Secretary to extend flexibilities, provide alternative options, or conduct a pilot program to further evaluate an alternative procedure.”
2. DHS is seeking comments from the employer community about the potential costs and burdens associated with the proposed rule. Examples of potential new costs or burdens could include acquiring and setting up any new technology, enrolling in E-Verify, and training related to fraudulent document detection and/or anti-discrimination.
3. DHS is proposing changes to the Form I-9 and its accompanying instructions that would allow employers to indicate that alternative procedures were used should those procedures be authorized.
4. DHS welcomes comments about potential eligibility/ineligibility to participate in the alternative documentation review. For example, DHS could limit Virtual I-9 to employers that have enrolled, and are participants in good standing, in E-Verify and/or restrict employers with a history of wrongdoing associated with employment eligibility verification practices.
5. DHS anticipates the benefits of the added option would outweigh the costs associated with implementation. Some employers may have permanently adopted telework and remote work arrangements and made significant investments in technologies such as cloud-based solutions that enable employees to work remotely.
6. DHS is considering maintaining document retention flexibilities and requiring employers to retain copies of any documents presented remotely via video, fax, or email.
7. Finally, the alternative documentation verification process would *not* be mandatory. Employers could still elect to physically examine employee identification and employment authorization documents if they choose.