



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

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Timothy R. Meadows
Division Chief – Cyber and Operational Technology
ICE/HSI
500 12th St SW
Washington, DC 20536

Amy Wheelock Chief, Verification Division
IRIS Directorate, USCIS
5900 Capital Gateway Dr.
Camp Springs, MD 20746

Re: Request to Align ICE and USCIS’s Policies on Forms I-9 Created Using the Fillable .pdf Format hosted on USCIS’ Website

Dear Ms. Wheelock and Mr. Meadows:

The American Immigration Lawyers Association (AILA) respectfully requests that U.S. Citizenship and Immigration Services (USCIS) and Immigration and Customs Enforcement (ICE) develop and publish joint guidance on the use and acceptance of Forms I-9 created using the fillable .pdf hosted on USCIS’s website.

Established in 1946, AILA is a voluntary bar association of more than 16,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. Our members’ collective expertise and experience makes us particularly well-qualified to offer views that will benefit the public and the government.

AILA commends both ICE and USCIS for their joint collaboration in issuing the Optional Alternatives to Physical Inspection (API) final rule.¹ This new rule will enable businesses to implement more efficient and better managed onboarding processes, resulting in Forms I-9 being completed by individuals with a deeper and more substantial knowledge of the employment

¹ 88 FR 47990, July 25, 2023.

verification process and its numerous (listed and unlisted) document combinations, resulting in more accurate and compliant Forms I-9.

The opportunity to complete document review virtually comes at a time when there is widespread use of electronic Form I-9 systems by employers, and it is common practice for individuals to sign documents electronically in various aspects of their personal and professional transactions using DocuSign, Adobe, and other commercially available and widely adopted e-signature options. As employers are now implementing virtual document review protocols, it is essential that they have clear guidance on the issue of what is acceptable signature completion for the Form I-9.

Accordingly, AILA requests that USCIS and ICE review the guidance pertaining to fillable Form I-9 .pdfs and issue new, unified guidance with respect to acceptable signatures.² By way of background, the relevant USCIS instructions state:

Form I-9 is a fillable form, which means you can type your answers directly on the form instead of printing a blank form and writing your answers by hand. Form I-9 may be generated, signed, and retained electronically, in compliance with Department of Homeland Security regulations at 8 CFR section 274a.2. Both employers and employees will still need to print the completed sections of the form to sign them manually, unless the employer chooses to upload the form to an electronic signature solution that complies with these regulations, to have all parties sign electronically.³

The USCIS publicly available guidance quoted above fails to clarify whether a Form I-9 completed using the fillable .pdf is considered an electronic Form I-9 subject to the requirements of 8 C.F.R. § 274a.2(h) for electronic Form I-9 preparation, signature and retention. This information is crucial because of the enhanced recordkeeping requirements concomitant with an electronic Form I-9 system.

The guidance clearly states that the fillable form can be used in lieu of printing the form and writing out each data field by hand and that employers may print the completed form and “wet sign” it. Alternatively, employers are invited to upload the form to an electronic signature solution “that complies with these regulations, to have all parties sign electronically.” A plain reading of this guidance presents many questions and concerns, addressed below, that can lead the untrained reader to a path of inadvertent noncompliance.

First, it is unclear what is meant by “electronic signature solution.” Does USCIS mean “electronic I-9 solution,” which would then make the entire Form I-9 subject to the electronic Form I-9 audit trail and recordkeeping requirements (of which the .pdf version cannot support) or does USCIS

² The fillable .pdf is available [here](#), and the instructions are hosted [here](#) (under the “Special Instructions” tab).

³ USCIS, *I-9, Employment Eligibility Verification*, Employment Eligibility Verification | USCIS (last updated Nov. 3, 2023)

simply mean “electronic signature solution” insofar as it relates to affixing a credentialed signature to the document? As written, the guidance does not make it clear what is allowed or expected of employers.

If USCIS simply means “electronic signature solution,” then does that solution have to comply with 8 C.F.R. § 274a.2(h)(2)(i)’s attestation requirement?⁴ If so, we do not believe a vague reference to 274a.2 adequately communicates this heightened requirement, as many other industries have adopted electronic signature procedures, but very few include an additional attestation. If USCIS believes that the electronic signature solution used to complete the signatures on a Form I-9 completed using the fillable .pdf must include an attestation for the employee and completer to independently acknowledge the veracity of the information on the form, then it should state so.

It is unclear what authority USCIS is relying on for the proposition that, if the fillable form is used and signed manually, sections 274a.2(e)-(h) do not apply and if an electronic signature system is used, *only* section 274a.2(h) applies when section 274a.2(h) specifically states that it only applies “[i]f a Form I-9 is completed electronically.” If USCIS believes that Forms I-9 completed using the fillable .pdf are “completed electronically,” then it should make clear that any Form I-9 completed using the fillable .pdf is considered an electronic Form I-9 and subject to the concomitant recordkeeping requirements, which it currently does not do. By interpreting the regulations in the current manner, USCIS has created a “Frankenform,” subject to some electronic Form I-9 regulations but not others, which is confusing and contrary to the rule itself.⁵

In response to the above, AILA encourages USCIS and ICE to take the following measures:

1. Determine whether a Form I-9 completed using the USCIS fillable .pdf form constitutes an electronic form subject to the audit trail requirements of section 274a.2(g)(8), regardless of signature method (electronic or wet signature) used. If the signature method matters, which, under the clear terms of the regulations, we believe it should not, USCIS should state so publicly.⁶
2. USCIS should retract and amend its publicly-available guidance as necessary.
3. USCIS and ICE should issue joint, prospective guidance stating the recordkeeping requirements for Forms I-9 completed using the fillable .pdf.

⁴ “If a Form I-9 is completed electronically, the employer, the recruiter or referrer for a fee, or the representative of the employer or the recruiter or referrer, must attest to the required information in Form I-9. The system used to capture the electronic signature should include a method to acknowledge that the attestation to be signed has been read by the signatory. Any person or entity who has failed to comply with the criteria established by this regulation for electronic signatures, if used, and at the time of inspection does not present a properly completed Form I-9 for the employee, is in violation of section 274A(a)(1)(B) of the Act.”

⁵ The fact that practitioners who advise some of the nation’s largest organizations on Form I-9 issues and procedures must go through the intellectual gymnastics described above to even come to a slight conclusion is evidence that USCIS must promptly clarify this guidance.

⁶ This is increasingly urgent given USCIS’s continual promotion of the existence of the “fillable” form which could induce the untrained businessperson into thinking that the using the fillable form and signing it electronically is an acceptable practice. The existence of the fillable form was further advertised by the recent joint HSI-IER guidance issued in December 2023 and available [here](#).

4. ICE, given our concerns with USCIS guidance described above, should “grandfather” any Forms I-9 completed using the fillable .pdf and signed electronically and refrain from issuing fines for those Forms I-9 determined to be deficient due to reliance on USCIS’s guidance.

The issuance of the API rule, and the end of the COVID-19 flexibilities generally, have generated unprecedented interest in Form I-9 compliance. Organizations are devoting more resources to ensuring proper Form I-9 completion and management than ever before and developing programs and resources based on the guidance issued by USCIS and ICE. Issuing guidance on this important matter can – and will – fulfill the government’s goals of providing easily understood employment verification policies and verifying employer compliance with them.

Thank you for considering this request and AILA looks forward to continuing to engage with the government on this important matter. Please feel free to contact Sharvari (Shev) Dalal-Dheini at sdalal-dheini@aila.org or Michael Turansick at mturansick@aila.org.

Sincerely,
American Immigration Lawyers Association

CC: Tammy Meckley, Associate Director IRIS USCIS
Avideh Moussavian, Chief Office of Policy & Strategy USCIS