



May 10, 2022

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
1880 2nd Street SW  
Washington, D.C. 20024

Dear Secretary Mayorkas:

On behalf of the undersigned organizations representing a broad spectrum of the business community, we thank the U.S. Department of Homeland Security (“DHS”) for its announcement on April 25, 2022, to extend the flexibilities on Form I-9 compliance requirements, permitting remote inspection of employee identity and employment authorization documents (the “I-9 Flexibility Policy”) through October 31, 2022.

The extension comes at a time when employers are seeking clarity on timelines as well as responsibilities. These stakeholders wish to understand how much time they have to inspect documents in person and update the I-9s accordingly. We believe any future timeline should take into consideration the number of employees hired by a company during the relevant time frame. That number can vary from dozens to tens of thousands.

Additionally, we ask DHS to provide employers with guidance on how to verify “newly remote” employees (workers initially hired for eventual in-person work who are still working from home) or those who are not back in an office regularly. This guidance could also remind employers of their option to utilize an authorized representative process and suggest safeguards to ensure identity and work eligibility are adequately verified.

We also want to thank you for the opportunity to provide Public Input on Remote Document Examination for Form I-9, Employment Eligibility Verification (“RFI”). As collectively mentioned in the undersigned organizations’ responses to the RFI, we are supportive of DHS’s willingness to seek “alternative options to physical document examination” and the agency’s recognition of the “unique insight” of members of the public, including the undersigned organizations.

#### *Permanent Virtual I-9 Document Verification*

We are encouraged to know that DHS is seriously considering our request to authorize “permanent virtual” verification. This is an important step in moving us into the next phase of the modern workforce. Over the past two years, the trend of enhanced remote work offerings, accelerated by COVID-19 necessities and now emphasized to promote the physical and mental well-being of employees, has greatly increased the amount of permanent remote positions and hybrid work arrangements.

We urge DHS to consider “grandfathering” certain Forms I-9 that were remotely verified under the flexible COVID-19 policy, provided that identity was verified at the time of hire<sup>1</sup>. Alternatively, if the government declines to pursue any “grandfathering” policy, then it is incumbent upon DHS to

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<sup>1</sup> A video call was conducted as opposed to the review of documents, via email or fax, without verifying the identity of the employee presented the documents.

issue specific guidance detailing the implications of the end of the policy and what the government will expect of employers to ensure their continued compliance with the law.

According to a May 2021 survey by SHRM, nearly 2 in 3 employers stated permanent revocation of the U.S. Citizenship and Immigration Services mandate to review documents in-person by changing the definition of “physical inspection” to include video conference would help their organization enhance compliance. Therefore, we strongly encourage DHS to issue its proposed regulation<sup>2</sup> in the immediate future and communicate more definitive guidelines accordingly.

Thank you for your consideration and commitment to an efficient immigration policy that balances the needs of employers and employees. Our organizations look forward to working with you on this critical issue.

Sincerely,

SHRM, the Society for Human Resource Management

AILA, The American Immigration Lawyers Association

U.S. Chamber of Commerce

Compete America

CC:

The Honorable Ur Jaddou  
Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security  
Washington, DC 20528

The Honorable Tae Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
Washington, DC 20528

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<sup>2</sup> The fall 2021 regulatory agenda included a proposed rule titled: “Optional Alternative to the Physical Examination Associated with Employment Eligibility Verification.”