



This fact sheet discusses what employers should keep in mind if they use private sector commercial or proprietary products to electronically complete, modify, or retain Forms I-9. Although this document refers to these products collectively as **Form I-9 software programs**, the information here also applies to employers who use these programs to participate in E-Verify.

- Employers may complete or retain Forms I-9 in an electronic generation or storage system if the system includes the following:
 - 1) Reasonable control to:
 - ✓ ensure the integrity, accuracy, and reliability of the electronic storage system; and
 - ✓ prevent and detect the unauthorized or accidental addition to, or creation, alteration, deletion, or deterioration of, an electronically completed or stored Forms I-9, including any electronic signature(s).
 - 2) An inspection and quality assurance program that regularly evaluates the electronic generation of storage system.
 - 3) In the case of electronically retained Forms I-9, an indexing system permitting the identification and retrieval of relevant documents and records maintained in the electronic storage system
 - 4) The ability to reproduce legible and readable paper copies of Forms I-9.
- An employer must implement an effective “records security program” that:
 - 1) limits access to only authorized personnel;
 - 2) provides a backup for recovery of records to protect against data loss;
 - 3) ensures that employees are trained to minimize the risk of unauthorized and accidental alteration of the data; and
 - 4) ensures the audit trail tracks dates and times of access, identification of the person who accessed the electronic record and the particular action taken.
- The regulations require that whenever an electronic Form I-9 is created, completed, updated, modified, altered, or corrected, an electronic Form I-9 system must create a secure and permanent record that establishes the date it was accessed, who accessed it, and what action was taken.
- The regulations also require that employers produce audit trails for each electronically generated/stored Form I-9. Employers must provide electronic Forms I-9 for review with associated audit trails that show who has accessed the system and the actions performed within or in the system during a specific period of time. 8 C.F.R. § 274a.2(e)(8)(i).
- 8 C.F.R § 274a.2(g)(iv) describes the contents of an audit trail: “...whenever the electronic record is created, completed, updated, modified, altered, or corrected, a secure and permanent record is created that establishes the date of access, the identity of the individual who accessed the record, and the particular action taken.”
- 8 C.F.R. § 274a.2(h) outlines the requirements for electronic signatures when using an electronic Form I-9 software program.



- During an audit, HSI will verify that the electronic system/application includes Form I-9 data indexing, secure access and logs, and audit controls to securely record when an authorized individual creates, completes, updates modifies, alters, or corrects the electronically completed/stored record.
 - ✓ “Audit trail security violations” may be charged under Section 274A(b)(3) of the INA, known as “failure to retain” violations; however, the inability to establish the “authenticity and integrity” of Forms I-9, including security violations, can be charged under 274A(a)(1)(B) for “failure to properly complete.”
- Fillable form provided by USCIS on I-9 Central
 - ✓ It is a fillable Form I-9, which means an employee and employer can type their answers directly into the form, except for the signature blocks.
 - ✓ Completing the designated sections of the Form I-9 cannot be delegated.
 - ✓ Specifically, employees must complete and sign Section 1 of the Form I-9, and employers must complete and sign Section 2 and/or Supplement B of the Form I-9.
 - ✓ After the form is filled out electronically, employers and employees must print and manually sign it rather than typing or electronically affixing a signature. This fillable form does not meet DHS guidelines for electronically generated, stored and/or retained Form I-9, which can be found at 8 CFR section 274a.2.
 - ✓ Failure to meet DHS standards for electronically generated, stored and/or retained Form I-9 may result in fines and other penalties.

PITFALLS TO BE AWARE OF

- Merely typing a name in a signature box (i.e., signing Forms I-9 electronically by using a “word processor” and providing a name in the attestation in Section 2) does not constitute a compliant electronic signature when the employer did not comply with the electronic Form I-9 regulations (highlighting the importance of security and audibility standards). Also, a pre-printed/typed company name in Section 2 does not meet the requirement for valid signature of a paper Form I-9.
- Completing Form I-9 by using “word processing” software does not result in an electronically generated Form I-9 that complies with the regulations.

Note: This information addresses commonly seen questions related to Form I-9 software programs, but is not exhaustive or dispositive of all issues, questions, or concerns employers and employees may encounter when using such products. Employers should follow all laws, rules, regulations, and agency guidance, and always do their own due diligence if they are considering using such programs.

Additional Resources

- **Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section:**
Call IER’s free employer hotline for information on how to avoid unlawful discrimination, including when using Form I-9 software programs: **1-800-255-8155** (1-800-237-2515 for the hearing-impaired), available from 9:00 a.m. – 5:00 p.m. ET, Monday-Friday. Calls can be anonymous and language services are available. Visit www.justice.gov/ier for videos, other educational materials, and frequently asked questions for employers and HR professionals. (Available in Spanish at www.justice.gov/crt-espanol/ier).
- **E-Verify, U.S. Citizenship and Immigration Services:**
1-888-464-4218
www.e-verify.gov | www.uscis.gov/i-9central