

ICE Seeks Permanent Remote I-9 Document Review

HR Dive | Kate Tornone | August 17, 2022



Photo illustration by Danielle Ternes/HR Dive; photograph by spainter_vfx via Getty Images

Dive Brief:

The federal government has moved to permanently allow employers to review Form I-9 identification documents remotely, according to a Notice of Proposed Rulemaking to be formally published Aug. 18.

If finalized, the rule would create a framework under which the U.S. Department of Homeland Security could “pilot various options, respond to emergencies similar to the COVID-19 pandemic, or implement permanent flexibilities upon a specific determination as to level of security, including, but not limited to, fraud risk.” Additionally, the agency proposed a change to Form I-9 that would have an employer indicate whether it inspected the documents remotely.

The agency has requested input on several questions, such as ways to reduce fraud risk, avoid discrimination in the process and protect privacy. For example, it asked whether employers should be required to retain copies of documents inspected remotely, and whether the remote-inspection option should be limited to employers that use E-Verify. Beginning tomorrow, stakeholders can review the proposed regulations and comment on them at [Regulations.gov](https://www.regulations.gov) for 60 days using code ICEB 2021-0010.

Dive Insight:

Until recently, DHS’ U.S. Immigration and Customs Enforcement required that all employers examine worker identification in person as part of completing Form I-9. For new hires far from

an employer's location, businesses often would contract with a third party to review these documents.

As the early weeks of the coronavirus pandemic drove worksite closures, however, employers struggled to comply with that mandate and ICE quickly acceded to requests to allow remote review for some employers. That allowance is still in place and requires employers to follow up with in-person inspection.

During the last two years, stakeholders have called on the government to make that temporary allowance permanent. The Society for Human Resource Management, for example, said such a move would alleviate employer challenges with the process.

ICE offered a similar prediction, noting that employers with more than one location could benefit greatly: "These employers may be able to allow their human resources staff to perform the examination and verification procedure for Form I-9 documents from a single location or remotely, rather than having the verification performed at each location or be required to use an authorized representative to perform physical document examination on the employers' behalf."

The federal rulemaking process requires time — such as the notice-and-comment period at hand — but it's likely ICE will follow through with its plan to permanently allow remote review, an employment law attorney told HR Dive in April.