

Could permanent remote I-9 inspection be coming?

Since the onset of the pandemic, employers have been allowed to inspect employees' Form I-9 documents remotely, provided in-person inspection occurs within three days of everyone or *almost* everyone getting back to the office.

This flexibility, which is slated to expire Oct. 31, isn't anywhere in the I-9 regulations, however. Immigration and Customs Enforcement would like to change this. Proposed regulations landed at the Office of Information and Regulatory Affairs in [June](#), and after an apparent lengthy delay, [proposed regulations](#) of a sort were published in the Federal Register last Thursday.

A little less here than meets the eye

These proposed regs wouldn't establish rules for remote inspection of employees' I-9 documents. Instead, the regs, while recognizing the rise in remote work, would only create a framework under which the Secretary of Homeland Security could authorize alternative document inspection procedures. Any changes to the I-9 inspection process would be subject to yet another set of proposed regulations.

The alternative procedures could apply to some or all employers, regardless of whether their employees physically report to work at a company location.

The regs list three circumstances under which the secretary could act:

1. Remote inspection could be implemented as part of a pilot program
2. The secretary could determine that remote inspection offers an equivalent level of security
3. Remote inspection could occur as a temporary measure to address a public health emergency.

ICE proposes adding boxes to Sections 2 and 3 of the I-9 and the instructions explaining any alternative procedure. If you use an electronic I-9, you would have to make corresponding changes.

Details

This wouldn't be a free ride for all employers. It's clear ICE is worried about security and the integrity of the I-9 process.

- The regs note, for example, that ICE could limit eligibility for an alternative inspection procedure to employers already participating in E-Verify, or it could exclude employers with bad track records (i.e., they've been subject to fines, settlements or convictions related to the I-9 verification practices).
- ICE suggests it may create separate document retention requirements related to remote inspection.
- ICE is also thinking about adding a fraudulent document detection and/or an anti-discrimination training requirement for employers using an alternative procedure. Employers or their authorized representatives, for example, could be required to take a 30-60-minute online training course on detecting fraudulent

documents remotely and avoiding discrimination in the process.

Care to comment?

ICE is taking comments through Oct. 17. Comments may be submitted electronically through the [Federal eRulemaking Portal](#). Identify your comments with Docket No. ICEB-2021-0010.

Remember, be nice. Comments are open to public inspection.