October 17, 2022

Sharon Hageman
Deputy Assistant Director
Office of Regulatory Affairs and Policy
U.S. Immigration & Customs Enforcement
Department of Homeland Security
500 12th Street SW
Washington, DC 20536

Submitted via: https://www.regulations.gov

Re: Notice of Proposed Rule Making: Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification (Form I-9) (Docket ID No. ICEB-2021-0010)

Dear Ms. Hageman:

The American Immigration Lawyers Association (AILA) submits the following comments in response to the above-referenced Notice of Proposed Rule Making (NPRM) requesting public comment on Optional Alternatives to the Physical Document Examination Associated with Form I-9.[1]

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 naturalization and the facilitation of justice in the field. AILA members 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. Many of AILA's members also regularly advise and represent American companies, both in developing I-9 compliance programs and in preparing for and defending against worksite enforcement investigations, as well as in compliance counseling and representation related to other workplace laws, including those that prohibit employment discrimination. Our members' collective expertise and experience make us particularly well-qualified to offer views with respect to this NPRM that we believe will benefit the public and the government.

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[1] 87 FR 50786 (Aug 18, 2022).

I. Overview

AILA welcomes the opportunity to provide input to the Department of Homeland Security (DHS) regarding alternatives to the physical document examination process associated with the completion of Form I-9. AILA has advocated for alternatives to this in-person requirement for some time. In April 2021, AILA expressed appreciation to DHS for providing remote Form I-9 document examination flexibilities during the COVID-19 pandemic and urged the agency to adopt several recommendations that would modernize the Form I-9 employment eligibility verification process, including the permanent virtual review of Form I-9 employment eligibility documentation.[2] In this comment, we reiterate our support of efforts by DHS to modernize the Form I-9 document examination process to permit a permanent alternative virtual review of employment verification documentation.

DHS's request for public comment provides the backdrop for why the change to an alternative virtual verification of documentation for Form I-9 is needed.[3] The start of the pandemic saw nationwide business shut-downs and many employees working from home because of the pandemic. By October, 2020, six months after the start of the pandemic, 71% of those working from home were doing so all or most of the time and 64% were doing so because the business was closed.[4] However, a year later, the Pew Research Center indicated that 61% were working from home as a matter of personal choice and only 38% were employed from home because the office was closed.[5] DHS concluded in the NPRM that "work patterns for many employees may be permanently affected."[6]

All indicators point to the conclusion that work from home is here to stay. More recent studies of remote work[7] are showing increased productivity while working from home, lower attrition rates and improved physical and mental health:

> Two studies in early 2022 validated the views of remote/hybrid work advocates. Research from Owl Labs that remote and hybrid employees were 22% happier than workers in an onsite office environment and stayed in their jobs longer. Plus, remote workers had less stress, more focus and were more productive than when they toiled in the office. Working from home led to better work/life balance and was more beneficial for the physical and mental well-being of employees.

Given the fundamental shift toward remote work that has affected every aspect of our economy, it is not surprising that the majority of commenters who responded to USCIS' request for input on document examination practices supported a remote document examination option as both

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[2] *AILA Sends Letter to DHS Urging Modernization of the Form I-9 Employment Eligibility Verification Process,* AM. IMMIGRATION LAWYERS ASS'N (Apr. 13, 2021), https://www.aila.org/advo-media/aila-correspondence/2021/letter-to-dhs-urginig-modernization-of-the-form-1-9.

[3] See 87 FR 50786 at 50789.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Forbes,* "Three New Studies End Debate over Remote and Hybrid Work" (Feb 4, 2022), https://www.forbes.com/sites/bryanrobinson/2022/02/04/3-new-studies-end-debate-over-effectiveness-of-hybrid-and-remote-work/?sh=1763552659b2.

practical and necessary.[8] AILA concurs with the many commenters who supported a remote document examination option and supports the proposed regulatory changes to provide a framework for implementing an optional alternative to in-person document examination. Recognizing that some commenters raised concerns about document fraud, AILA further provides a vision of how to structure alternative verification procedures to ensure that security and privacy are maximized and the integrity of the verification process is maintained.

II.   Format of Implementation

1.   ***Alternative Verification Procedures Can be Implemented Securely Without a Pilot Program***

The proposed rule envisions a pilot program as one alternative for implementation[9], and makes a permanent option[10] conditioned on the Secretary determining that the alternative method of verification "offer[s] an equivalent level of security."[11]

Although we recognize that concern for security in the verification process is paramount, we request consideration of the fact that a "pilot program" has effectively been in place since March 20, 2020, when remote verification was authorized on an emergency basis. Although it is acknowledged that we have yet to assess fully the results of that pilot in terms of compliance, we believe that compliance can be effectively measured by alternate means and we have learned many important lessons from the past two and one-half years that make a pilot program redundant.

a. Remote Technology is Widely Available

From a logistical perspective, the technology needed to accomplish remote inspection is widely available. Anyone with a smart phone and a Wi-Fi connection can access a myriad of video conferencing solutions. According to the U.S. Census Bureau, as of 2018, smartphones were present in 84% of households and 92% of all households had at least one type of computer and 85% had a broadband internet subscription.[12] According to the Pew Research Center, as of 2021, the percentage of smartphone ownership has increased to 85%, an increase of 35% since 2011.[13]

Similarly, there are video conferencing solutions that may be accessed at no cost.[14] Moreover, familiarity with this technology is widespread as 81% of Americans have used video calling and conferencing during the pandemic, according to Pew.[15]

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[8] 87 FR 50786, 50789 (Aug 18, 2022).
[9] *See* proposed 8 CFR §274a.2(b)(1)(ix)(A).
[10] *See* proposed 8 CFR §274a.2(b)(1)(ix)(B).
[11] *Id.*
[12] *See* https://www.census.gov/newsroom/press-releases/2021/computer-internet-use.html#:~:text=Smartphone%20ownership%20surpassed%20ownership%20of,owned%20a%20desktop%20or%20laptop.
[13] *See* https://www.pewresearch.org/internet/fact-sheet/mobile/.
[14] *See* https://resources.owllabs.com/blog/video-conferencing-tools.
[15] *See* https://www.pewresearch.org/internet/2021/09/01/how-the-internet-and-technology-shaped-americans-personal-experiences-amid-covid-19/

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b. *Remote Work and Remote Hiring is Commonplace*

While the pandemic may have accelerated the pace of transformation to remote work and remote hiring, these options had become increasingly viable, for both employers and employees, and have been embraced for many years. Research cited by the Bureau of Labor Statistics indicates that remote work accounted for approximately 50% of paid work hours between April and December 2020, compared with 5% before the pandemic.[16] More than two years later, the preference for remote work among many employees and employers remains strong.[17] In 2021, 27.6 million people reported primarily working from home, compared to 9 million in 2019.[18] In 2022, about 30% of days were worked from home, compared to less than 5% before 2020.[19] Even with some employers wanting to bring workers back to the office, the percentage of days worked from home has held steady in 2022.[20] As of September 2022, office occupancy in 10 major cities was 43.4% of March 2020 levels.[21]

c. *Alternate Verification Provides Improved Security and Compliance When Relying on Trained Human Resources Professionals*

Verifying employment authorization using remote technology is preferable in many ways to utilizing a designated agent to act on behalf of the employer. While the flexibility to allow an agent to complete a Form I-9 in a remote hire scenario is appreciated, and in some cases may be the only solution, the process is less secure and far more time consuming than having a trained Human Resources (HR) professional complete the task centrally. Finding a person with training in Form I-9 verification to act as an agent is difficult in a remote hiring scenario, and unless the employer is consistently hiring in the remote location, increases both the complexity of the process and the potential for error.

The economy's heavy reliance on work from home now and in the future will mean that remote hires are dispersed around the country. Identifying a person to act as the Designated Agent for the employer in different locations and living situations is an immense challenge. For example, employers are often forced to rely on a roommate, spouse or neighbor to review documents and complete the form. Also, individuals living by themselves or who have accessibility issues may struggle to find someone who is willing to complete the form on the employer's behalf. An employer wanting to comply with both the form technicalities and assure themselves of the identity of the employee must engage in significant instruction to the agent at the outset, and significant

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[16] *See* Jose Maria Barrero, Nicholas Bloom, and Steven J. Davis, "Why working from home will stick," Working Paper 28731 (Cambridge, MA: National Bureau of Economic Research, April 2021), http://www.nber.org/papers/w28731, cited in https://www.bls.gov/opub/mlr/2022/article/telework-during-the-covid-19-pandemic.htm#_edn2.

[17] *See* Guilford, Gwynn and Overberg, Paul. 2022. "New Data Show Broad Shift to Remote Work During Pandemic." The Wall Street Journal, Sept. 15, 2022. https://www.wsj.com/articles/new-data-show-broad-shift-to-remote-work-during-pandemic-11663214461?mod=Searchresults_pos1&page=1

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

AILA Doc. No. 22102404. (Posted 10/24/22)

time spent reviewing and remediating any issues found in completing the I-9 form by untrained agents.[22]

Alternatively, remote document review allows trained HR professionals to examine the documents with an experienced eye and carefully observe the employee to confirm that the documents are truly "related to the individual."

d. Requiring A Virtual Inspection Followed by Physical Inspection is Both Cumbersome and Impractical

At the beginning of the pandemic, DHS provided emergency guidance that allowed temporary remote verification in certain situations on the condition that in-person verification would follow when remote employment ended.[23] As discussed, we now know that remote employment may never end for many workers, that employers are no longer bound to hiring in proximity to their worksites and that some employees may never come to the employer's office in person.[24] Additionally, many employers have hired hundreds, if not thousands, of workers who have moved on to other jobs before they were required to complete in-person verification.[25]

2. For Alternative Verification to Be Most Effective, DHS Must Commit to a Long-Range Program

At the start of the pandemic, emergency measures permitting virtual verification were implemented in 60-day increments. Waiting for the announcement of whether the temporary flexibilities would be extended caused great anxiety in the workplace and made it even more challenging to complete basic onboarding functions in a timely and compliant way. With that experience in mind, employers will likely have similar concerns about a short-term pilot program and may be challenged to invest the necessary technical and human resources required to build optimal programs. AILA encourages DHS to commit to a permanent program, or at the very least a program to run for a minimum of five years, to gain sufficient traction and widespread employer acceptance.[26] It would also encourage employers to participate without the fear of a subsequent sunset of the program and a need to once again retool onboarding processes.

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[22] *See* https://www.uscis.gov/i-9-central/completing-form-i-9-for-remote-hire.

[23] *See* https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance.

[24] *See* generally American Immigration Lawyers Association letter to Oscar Lujan, Associate Chief for Policy and Guidance, Verification Division, Immigration Records and Identity Services Directorate, USCIS, December 27, 2021, Section II, Experiences with Pandemic-Related Document Examination Flexibilities.

[25] *Id.*

[26] The implementation and evolution of employer participation in E-Verify and its predecessor, Basic Pilot Program provide meaningful analysis. As of 2007, 10 years after the implementation of the Basic Pilot Program, the number of participating employers was less than 12,000. As of 2019, approximately 891,000 (less than 15% of all U.S. employers) participated in E-Verify. *See* E-Verify, History and Milestones, https://www.e-verify.gov/about-e-verify/history-and-milestones#y2021 (Last Updated Date: 07/11/2022); United States Census Bureau, *Statistics of U.S. Businesses (SUSB)*, https://www.census.gov/programs-surveys/susb/data/custom-tabulations.html (Page Last Revised - March 31, 2022).

III. Key Features of an Alternative Remote Document Examination Option

Our experience over the past two and a half years of administering temporary Form I-9 Requirement Flexibilities has taught us that virtual verification can work securely and effectively. However, as DHS considers making virtual verification a permanent alternative to in-person verification, AILA proposes that a number of protections be put in place to assure both government agencies and public stakeholders of the integrity of the virtual verification process.

a. A Critical Element of Alternate Verification is a Required Video Component

The Immigration and Nationality Act requires the employer to examine each verification document and ensure that "the document reasonably appears on its face to be genuine." (INA 274A(b)(1)(A)). In addition, current USCIS regulations explicitly extend the "genuine" determination to also require the employer to "ensure that the documents presented … *relate to the individual*." (8 CFR 274a(b)(1)(ii)(A)) (*Emphasis added.*)

The previously referenced temporary guidance of March 2020 allows for remote examination of documents through "video link, fax or email, etc.", but exposes a possibility that an employer could accept documents that appear genuine on their face, but were issued to a different person, given that the employer might not have the ability to see the employee to compare to the photo on the document(s).[27] To address the "relate to the individual" component, AILA recommends that, as USCIS implements a permanent virtual verification alternative, it should require that the virtual verification be conducted with a video link, rather than solely by transmitting the document through email, fax or another cloud-based medium. Video will allow the employer representative, in keeping with the spirit of the INA and the explicit language of the regulations, to see the face of the new employee and confirm that the documents presented not only appear to be genuine but also relate to the specific person presenting them.

A video requirement is not unduly burdensome on employers or employees as nearly all U.S. employers and employees in 2022 have access to video technology. In addition, AILA notes that the very employees who would rely on a virtual alternative are those who work remotely, likely using video technology daily. Those employees, who by definition communicate with their employers through the internet, are the ones most likely to be fully equipped to participate in a video verification process.

b. A Successful Alternate Verification System Requires Transmission of Documents to Employers Through Secure Means

AILA recognizes that while some video technology systems incorporate screen sharing or similar media that allow a new employee to present images of original documents to an employer representative, other video systems have more limited capacity in this regard. Commercial platforms and scanning technology already enable the employee to share images of verification documents though fax, email or other means in advance of, or simultaneous to, a video meeting. Thus, an employer can "toggle" between a copy of the verification documents received and the video screen, effectively approximating the in-person verification experience.

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[27] [DHS announces flexibility in requirements related to Form I-9 compliance | ICE](#)

In developing a rule that allows virtual transmission of personal verification documents, consideration must obviously be given to the security of the data included in these images. Along with the potential danger to the employees, employers could unwittingly open themselves to claims of liability for failing to properly prevent access to personal identifying information. To protect the privacy of the employee data and limit the employer's exposure for liability, AILA recommends that USCIS mandate certain minimum, readily available, security protocols when an employer receives copies of verification documents electronically. For example, USCIS may determine that an employer may only receive copies of documents through fax, encrypted email or uploads into secure portals. Unsecure email should not be used as a medium for transmission of employee personal data under any circumstances.

c. Enrollment in E-Verify May be Considered as a Prerequisite for Participation in an Alternate Verification System if Capacity Concerns are Addressed.

One potential way to enhance compliance in a virtual verification documentation process is to require the employer to enroll in E-Verify so that the information presented virtually in Section 2 can be verified against both the DHS and Social Security Administration's (SSA) databases. This requirement could mitigate any risk in allowing a virtual verification as opposed to physical verification of documents.

However, if DHS decided to pursue this requirement, AILA is concerned about the capacity of existing USCIS systems to handle a surge in E-Verify participants interested in taking advantage of virtual verification. In August 2021, an Office of Inspector General Report made it clear that USCIS needs to improve its employment verification technology, namely E-Verify.[28] The OIG notes that the current capacity of E-Verify is only 10,430 concurrent users with a projected goal of 29,515 concurrent users.[29] With 1,000,000 employers currently enrolled, there is already a significant concern about the ability of E-Verify to function properly at that increased capacity.[30] Before proposing any increase in potential E-Verify usage, DHS must test and confirm the capacity of E-Verify to scale up sufficiently to meet the demands of all existing and potential users. At a minimum, AILA encourages USCIS to allow a phase-in of any mandatory E-Verify usage based on the size of employers. This would give USCIS the time to build and supplement any technology modifications needed without risking the operation of the overall system. Larger employers could be implemented first as many large employers are already enrolled in E-Verify and would not add to capacity. Then, the requirement could be extended in six months to one-year increments to increasingly smaller employers, who are not as likely to be enrolled in E-Verify and would possibly add to the burden on the system.

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[28] USCIS NEEDS TO IMPROVE ITS ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS (OIG-21-56), OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY (Aug. 23, 2021), https://www.oig.dhs.gov/sites/default/files/assets/2021-08/OIG-21-56-Aug21.pdf
[29] Id. at 15.
[30] In just the last month, the E-Verify system was down from September 2 through September 15 due to "technical difficulties," preventing new employers from being able to enroll.

Therefore, until such time as DHS confirms that E-Verify can handle increased capacity, we believe that USCIS should not consider E-Verify participation as a prerequisite for using an alternate verification program.

d. A Document Retention Requirement is a Reasonable Component of an Alternate Verification Program

As part of the temporary COVID I-9 policy announced in March 2020, employers utilizing the temporary virtual verification option were required to retain copies of the documentation that the employee chose to present to complete Form I-9 virtually.[31] AILA supports the proposed requirement to maintain copies of supporting documents when the employer wishes to avail itself of the optional alternative to physical examination of documents. Continuing this practice would also be consistent for employers who desire to continue relying on a virtual verification option.

While a document retention requirement may occasionally present a burden to an employee without direct access to a means to electronically submit a copy, we believe that sufficient work-around options exist to address this issue. For example, if the virtual verification took place through a video call, the employee may not have immediate access to a fax machine or a way to create a digital image of the document to send to the employer. This potential burden may be resolved if the employee sends documentation in a secure format ahead of time at his or her convenience to the employer.[32]

e. Mandatory Training for Participation in an Alternate Verification Program is a Reasonable Requirement

AILA supports DHS consideration of adding a fraudulent document detection and/or anti-discrimination training requirement for employers. We support a proposition that training for both fraudulent document detection and anti-discrimination training is a critical component of any verification process and that it provides clear guidance to participants on how to ensure that documents are genuine while not crossing the line into immigration-related discrimination. We believe the training modules associated with E-Verify can be used as a baseline for any mandatory virtual verification training. Further, we recommend the training should be web-based and be no more than 60 minutes in length to minimize the cost and burden on the employer.

In connection with this mandatory training, we believe DHS should develop the training plan and track participation and completion, thus avoiding burdening employers with training plan development and monitoring participation. This would also ensure overall consistency and instruction of best practices across all employers, which would foster equity in accessing a virtual verification alternative. To this end, it is important that the training should not bear any financial cost. The benefit to employers is that their personnel would be well-trained in fraudulent document detection and in complying with anti-discrimination provisions. If the training is free and web-

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[31] See note 27, supra.

[32] We recognize, of course, that the employee still has the right to present different documentation at the time Section 2 is completed.

based, it should be accessible to almost every U.S. employer, certainly to any employer contemplating a virtual verification alternative, thus minimizing the overall burden of the employment verification process for employers.

IV. Eligibility Criteria for Employers to Avail Themselves of an Alternative Document Verification Process

DHS requests comments on options for employers to participate in alternative procedures for verification of the Form I-9. In the NPRM, DHS provides two possible considerations for participation in virtual verification of the Form I-9. They are: (1) limiting participation to those employers, who are enrolled and in good standing with E-Verify, and (2) disallowing employers who have been the "subject of a fine, settlement, or conviction related to employment eligibility verification practices."

As stated above, AILA feels that the use of E-Verify may be an appropriate prerequisite for using a virtual verification option, but there are concerns about limitations on the ability of USCIS' technology to enroll large numbers of employers at once. AILA refers to the discussion above on how such a requirement for employers could be phased in.

DHS has also proposed prohibiting participation by employers with a fine, settlement, or conviction related to Form I-9 practices.[33] AILA believes there should not be one all-encompassing rule on this matter. While AILA agrees in principle that, if an employer has been criminally convicted of knowingly employing undocumented workers, that employer should be precluded from participating in virtual verification for a reasonable and appropriate period of time (such as 3 years). But beyond that, any debarment process or restriction on participation needs to evaluate the totality of the circumstances, including the basis of the fine, the amount of fine, and how far back in time the fine or settlement occurred.

V. Discussion of the Costs and Benefits of Alternate Verification to Employers and Employees

The NPRM requests comment regarding the potential costs to employers who may avail themselves of the alternative remote verification procedures. Specifically, the Notice seeks comment regarding the kind of acquisition and set-up costs for any new information technology that may be needed for this purpose. AILA believes that such costs would be minimal for most employers if existing technologies are used in the verification process. Furthermore, AILA agrees with the premise of the NPRM that any proposed changes should not be mandated but provide employers with alternatives to the current employment verification process. As such, consideration of any cost calculation analysis should not be overstated.

During the COVID-19 pandemic, employers were able to quickly adapt and take advantage of employment verification flexibilities[34] by utilizing existing technologies such as facsimile, email, cloud-based electronic video applications (i.e., Zoom, Go To Meeting, Teams, etc.) or mobile

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[33] 87 FR 50786, 50790.
[34] *DHS Extends Form I-9 Requirement Flexibility* (Effective Mar. 31, 2021), U.S. CITIZENSHIP & IMMIGRATION SERV.(Mar. 31, 2021), https://www.uscis.gov/i-9-central/form-i-9-related-news/dhs-extends-form-i-9-requirement-flexibility-effective-mar-31-2021.

telephone video chat applications (i.e., FaceTime, Skype, WhatsApp). All of these technologies are readily available to employers and prospective employees and did not require significant expenditures to integrate into the employment verification process.

Nevertheless, employers implementing any technological changes may need to take measures, and possibly incur expenditures, to assure such technologies are secure. In addition, employers may also incur costs training personnel to utilize new procedures and/or operate new technologies. However, such costs would be minimal for those employers that utilized the remote employment verification flexibilities during the pandemic as well as for those already utilizing compliant electronic I-9 systems. Moreover, we continue to encourage DHS to adopt technologies and methodologies that reduce such burdens on employers.[35]

The U.S. workplace is in the midst of a historic transformation with regard to the nature and scope of remote work. Data scientists project that 25% of all professional jobs in North America will be remote by the end of 2022 and will continue to increase through 2023.[36] In fact, many employers are specifically hiring employees to work remotely from all over the United States and around the world. Therefore, adoption of remote verification alternatives will not only sync immigration law and procedure with the reality of the American workplace but will provide cost savings and additional benefits to employers and employees undergoing the employment verification process.

From the employer perspective, alternative remote verification procedures will provide opportunities to improve operational and administrative efficiencies as well as cost savings. As we articulated in our previous comment,[37] a remote verification process is arguably more secure and efficient than the alternative agent/representative process. Such virtual verification would allow companies to maintain a centralized employment verification process, in-house, staffed by well-trained and experienced employees who understand document discrimination issues and are versed in the complexities of the verification process and the myriad of documents that can be presented to establish identity and work authorization. Having a dedicated staff of well-trained individuals perform this work on a consistent and regular basis, with a high level of excellence, means employers will have fewer mistakes and a more compliant process.[38] Furthermore, employers will have greater flexibility in hiring and re-hiring remote employees who would otherwise have difficulty making the trip to a company location to physically present their identity and employment authorization documentation.

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[35] *See* AILA's comment to *Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input* (Docket ID No. USCIS-2021-0022) (10/27/2021) citing the DHS Office of Inspector General (OIG) Report, USCIS NEEDS TO IMPROVE ITS ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS (OIG-21-56), OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY (Aug. 23, 2021),
https://www.oig.dhs.gov/sites/default/files/assets/2021-08/OIG-21-56-Aug21.pdf.
[36] Forbes, *Remote Work Is Here To Stay And Will Increase Into 2023, Experts Say*, Bryan Robinson, PhD. (February 1, 2022) https://www.forbes.com/sites/bryanrobinson/2022/02/01/remote-work-is-here-to-stay-and-will-increase-into-2023-experts-say/?sh=4337440320a6
[37] *See* AILA's comment to *Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input.*
[38] Id.

An alternative verification program would also have financial benefits to small and large companies alike. Small companies would not need to expend funds to hire experienced agents or retain Form I-9 service providers to conduct the document examination process for remote employees. Larger companies will no longer need to train and maintain staff in multiple locations throughout the United States to personally verify and re-reverify employees. The time and cost savings from providing an alternative to in-person verification (e.g., employee travel to headquarters or hiring an agent, speed of presenting documents, etc.) would be realized by all employers, large and small.

Alternative remote verification procedures will also provide valuable benefits to employees and prospective candidates for employment. Employees, especially those in rural areas, will not have to travel long distances, be it to a company worksite or an agent's location, simply to complete the Forms I-9 "in person." Physically disabled employees and others for whom remote work is a necessity will no longer be disadvantaged by the hassle and expense to travel to complete the Form I-9 verification process.

VI.   An Important Corollary to Providing an Alternate Verification Program is Creating a Process to "Ease the LOAD."

In conjunction with the introduction of alternative remote verification procedures, DHS should adopt a more agile and user-friendly strategy for updating changes to the current List of Acceptable Documents (LOAD) included on Form I-9. There are over 40 documents that are not specifically listed on the LOAD but are acceptable documentation to confirm identity and authorization to work in the United States. These documents are listed in various sources including the *M-274, Handbook for Employers*, the USCIS website, I-9 Central, as well as outlined in USCIS memoranda published over the years.

AILA proposes that DHS update I-9 Central to include all the acceptable documents. Specifically, the listing of documents on I-9 Central should also include a separate list of all acceptable receipts, temporary documents, including temporary I-551 documents, auto-extensions, COVID-19 and other expired document exceptions. Such lists would require periodic updates.

Creating an easily updated and easily accessible supplement to the LOAD will ensure that all employers, whether they implement alternative remote verification or not, are provided the tools they need to quickly and efficiently onboard and reverify (when required) employees. In addition to aggregating the listing of new documents not found anywhere on the LOAD, USCIS could also provide an expanded array of live and online resources to assist employers with reviewing the more complicated document scenarios.[39]

VII.   Conclusion

AILA appreciates the opportunity to provide this comment to the agency regarding its NPRM on Optional Alternatives to the Physical Document Examination Associated with Form I-9. AILA looks forward to a continuing dialogue with DHS on this and related matters.

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[39] *Id*.

Please address any concerns or questions to AILA Director of Government Relations Sharvari Dalal-Dheini at SDalal-Dheini@aila.org.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION