

AMERICAN PAYROLL ASSOCIATION

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Oscar Lujan
Associate Chief for Policy and Guidance, Verification Division
Immigration Records and Identity Services Directorate
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746
www.regulations.gov

Re: Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input; Docket No. USCIS-2021-0022

Dear Associate Chief Lujan:

Thank you for the opportunity to comment on the management of documents associated with the Form I-9, Employment Eligibility Verification. The American Payroll Association¹ (APA) supports a permanent change to allow for document examination virtually.

At issue is whether an employer can examine employees' presented documents virtually to determine if they are genuine and reasonably associated with the individual (employee). There are historical assumptions in the question that APA believes are not accurate or are no longer true and should be reviewed, including:

- The physical touching of documents is necessary to determine if they are genuine.
- Seeing documents within arms-reach is more likely to determine if they are genuine and reasonably associated with the individual as opposed to seeing the documents from a distance.

¹ The APA is a nonprofit professional association representing more than 20,000 payroll professionals in the United States. APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws and regulations. In addition, APA's Government Relations Task Force (GRTF) works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and workers. APA members are directly involved with employee onboarding and Form I-9 employment verification.

- The appearance of an individual in the presence of the document examiner is necessary to determine identity and whether documents are associated with the individual.
- All virtual environments distort documents and human faces to prevent reasonable examination.
- The use of authorized representatives, such as notaries, is the best alternative for document examination in a remote environment.

In-Person Document Examination

Employers and agents responsible for viewing documents are not required to be intimately familiar with them. For example, an employee could present a listed document that the employer has not seen before. Employers are not required to sample and test the ink on a document, determine whether the paper was manufactured by the document date, or contact the issuing authority to authenticate the document.

Even if a document is not in good condition, it does not mean that it is not genuine. For example, an official birth certificate may appear worn or a document's edges may be torn and the document may still be genuine and reasonably relate to the individual. Employers are not required to maintain original or copies of listed documents.

The physical condition of a document may raise questions about whether a document is genuine. For example, if pages are torn from a passport or the ink has faded or is otherwise unreadable. The names, dates, and other information on a document may not match. None of these conditions require an employer to handle a document or view a document in-person. They can be easily identified through virtual communication technology.

Use of Authorized Representatives

Because employers are liable for document examination, virtual examination would be as good as or better than using authorized representatives for remote employees. The USCIS allows employers to authorize a representative to examine documents presented by employees. These representatives are not required to be qualified for Form I-9 document examination. In fact, APA members have found that many individuals claiming expertise are unqualified. The USCIS does not certify, authorize, or approve agents. The USCIS does not have a training requirement or protocol.

While individuals who are notaries are state licensed, states have different requirements and USCIS says that these individuals are acting as representatives and not notaries. The licensing requirements for notaries does not include proficiency in the legal requirements of Form I-9 document examination.

Appropriate Limitations on Virtual Document Examination

The APA recommends that USCIS review communication technologies and allow appropriate technology use for document examination. The APA also recommends that USCIS establish instructions regarding virtual document examination, including not allowing the faxing of documents for compliance with Form I-9 requirements.

Some virtual communication technologies are not conducive to compliance with Form I-9 document examination. These technologies have limitations that could prevent an employer from determining whether a document is genuine. For example, a document faxed to an employer does not allow for the employer to view an original document. Faxed copies also create a problem of consistency in which hybrid home/office arrangements could result in maintaining copies of documents for remote workers and not those employees working in an employer's physical office. At best, a faxed copy could show that a document does not reasonably relate to the individual.

These same problems can exist if virtual communication technology is not operating or used correctly. If an Internet connection is not secure, examining a document will be more difficult. If using a virtual platform such as Zoom, Webex, or Facetime, the employee and employer representative should have their cameras open and working. Screen sharing is not an effective way to examine documents. Instead, the employee should hold the documents in front of the camera lens.

Interim and Temporary Requirements

Pending a decision by USCIS regarding permanent use of virtual communication technology and as employers make determinations on remote work locations, APA requests that the USCIS retain the current COVID-19 relief measures for document examination. Many employers, public and private, are still operating with COVID-19 precautions and extended "stay home" decisions.

The APA believes that Form I-9 document review can be performed effectively through virtual environments with certain restrictions. To discuss these comments, please contact me by phone at 202-669-4001 or by email at ajacobsohn@americanpayroll.org.

Sincerely,



Alice P. Jacobsohn, Esq.
Director, Government Relations

For the APA Government Relations Task Force Federal Issues Subcommittee:
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