



**College and University Professional
Association for Human Resources**

December 22, 2021

The Honorable Ur Mendoza Jaddou
Director
United States Citizenship and Immigration Services
United States Department of Homeland Security
Washington, DC 20528

Submitted via www.regulations.gov

Re: Docket USCIS-2021-0022 Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input

Dear Director Jaddou:

I write on behalf of the College and University Professional Association for Human Resources ("CUPA-HR") and the undersigned organizations in response to the Request for Public Input ("RPI") published October 26, 2021, in the Federal Register by the U.S. Citizenship and Immigration Services ("USCIS"), *Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input*.¹

CUPA-HR serves as the voice of human resources in higher education, representing more than 31,000 human resources professionals and other campus leaders at over 2,000 colleges and universities across the country, including 93 percent of all United States doctoral institutions, 79 percent of all master's institutions, 57 percent of all bachelor's institutions, and nearly 600 two-year and specialized institutions.

The following associations join CUPA-HR in these comments:
American Council on Education
Association of American Universities

¹ 86 Federal Register 59183 (October 26, 2021), pp. 59183-59185

The members of these higher education associations include approximately 4,300 two- and four-year public and private nonprofit colleges and universities and the professionals that work at those institutions.

STATEMENT OF INTEREST

Colleges and universities employ approximately 3.9 million workers nationwide, and there are institutions of higher education located in all 50 states.² Many universities are the largest employer in the state in which they operate while serving as economic, civic, and cultural centers for their communities. At the start of the COVID-19 pandemic, recognizing the urgent need to prioritize the health and safety of students, faculty, staff, and their surrounding communities, thousands of colleges and universities shifted entirely to remote instruction and closed all but the most essential components of their campuses—shifting as many of their millions of employees to remote work as possible.

In the ensuing months and over the Summer, colleges and universities established innovative policies, hired staff, and built and reimaged existing structures to ensure the effective and safe reopening of campuses for the Fall Semester. This included establishing remote work environments for staff and faculty that did not need to return to campus as well as for employees during quarantine. The need to remain nimble in the face of uncertainties posed by the ever-changing direction of the COVID-19 pandemic required many institutions to implement new workplace flexibilities, including the use of remote document examination for Form I-9. For many institutions, the pandemic has also demonstrated how outdated regulations often run counter to an ever-evolving workforce and its demands and needs for flexibility. Based on higher education’s experience on the frontlines of the pandemic, we encourage USCIS to continue full tilt with its modernization programs and to ensure that a remote review process remains available for all employers.

BACKGROUND

For more than thirty years, federal law has required employers to examine documentation from each newly hired employee to prove their identity and work authorization in the United States. The Form I-9 is used to verify the employee’s identity and employment eligibility and requires the employer to “physically examine” documentation provided by the employee to ensure that it is genuine.

On March 20, 2020, the Department of Homeland Security (“DHS”) [announced](#) guidance (“I-9 Flexibility Guidance” or “I-9 flexibilities”) providing flexibility in the Form I-9 verification process to defer the physical presence requirements associated with Form I-9 for 60 days. The guidance allows for remote inspection of Form I-9 documents in situations where employees work exclusively in a remote setting due to COVID-19-related precautions. For employees who physically report to work at a company location on any regular, consistent, or predictable basis, employers are required to use standard I-9 procedures.

² See [Higher ed workforce shrank by 4% in fall 2020 \(insidehighered.com\)](#)

The guidance has been extended continuously throughout the pandemic. On December 15, 2021, DHS announced that the document examination flexibilities established on March 20, 2020, were extended until April 30, 2022.

RESPONSE TO RPI QUESTIONS

CUPA-HR’s research team conducted a study from December 10, 2021, through December 15, 2021, to gather institutions’ input for the RPI. The responses to the survey were completed by 579 human resources professionals from 409 higher education institutions or affiliates (e.g., research centers) in the United States.³ See Table 1 for institutional characteristics. Below we provide the data and analysis we obtained in the survey.

Table 1. Number of Responding Institutions by Classification and Affiliation

		Affiliation			Total
		Private Independent	Private Religious	Public	
Classification	Doctoral	32	19	95	146
	Master's	23	27	37	87
	Baccalaureate	32	19	12	63
	Associate’s	1	1	59	61
	Special Focus/Other	35	6	11	52
Total Institutions		123	72	214	409

A. Experiences With Pandemic-Related Document Examination Flexibilities

Institutions Using Form I-9 Flexibilities Largely Did Not Run into Challenges and Had Positive Experiences with the Changes

Of the 579 respondents to CUPA-HR’s survey, 89% said their institution used the provided flexibilities for remote document examination for any Form I-9 since March 20, 2020. For the institutions that chose to use the provided flexibilities, the majority used video conference (66.7%) and/or email (56.9%) to remotely examine documents. Video link was used by 25.3%, while 16% used fax and 8.6% used applications.

³ Special focus/other institutions include medical/law institutions, tribal colleges, research foundations, international institutions, higher ed affiliates, and unclassified institutions.

Of these respondents, only 8% experienced technical difficulties in performing remote document examination. The vast majority of these respondents (89%) did not experience issues with employees' remote completion or submission of Section 1 of the Form I-9. Only 10% experienced issues with employee-provided digital images or copies of documents for retention, while 79% said they did not experience such issues. A full 97% of respondents who used the provided flexibilities were not forced to immediately reject remotely examined documents because they didn't relate to the individual presenting them or did not appear to be genuine. Additionally, only 2% of these respondents were rejected documents upon subsequent physical inspection after initially accepting the documents during remote examination.

When asked to provide additional detail on their institutions' use of the Form I-9 flexibilities for remote document examination, people generally reported positive experiences. They listed faster processing, safety, cost-effectiveness, the ability to offer both in-person and remote inspection, and hiring out-of-state employees as the top benefits of the changes. Many institutions that utilized the flexibilities had employees upload the required documents and identification into digital applications (e.g., Dropbox) or folders where human resources staff could then find and verify the information. Others had employees email the required documents and identification and then held videoconference calls with the candidate to verify their information and identity. Many institutions reported using third-party tracker applications or companies to help them track the verification process (e.g., I-9 Tracker Tool, I-9 Consortium, Avature).

On the other hand, some institutions reported issues with the procedures to utilize the Form I-9 remote verification guidance. Institutions reported issues with employees not understanding the remote procedures, image quality via email or videocalls, and monitoring the verification process once the guidance was lifted and employees returned from remote work.

Institutions that Did Not Use Form I-9 Flexibilities Had Various Reasons for Not Doing So

Of the 65 respondents whose institutions did not take advantage of the provided flexibilities, over one-third (36.9%) said they did not use them simply because their institution was ineligible. The majority of respondents (41.5%), however, said they did not because they relied on the use of an authorized representative. Over a quarter (26.2%) said the three-day period to inspect documents after the guidance expired was too short, while 15.4% said it was too burdensome to change the I-9 process. An additional 13.8% said they did not have issues with I-9 compliance during the time period, making use of the flexibilities unnecessary. The remaining 21.5% provided other reasons for not using the provided flexibilities. Some institutions reported that their main reason for not participating was the requirement to physically inspect original documents after the guidance was lifted, while others said the remote process was inefficient for short-term employees and for campuses with many employees and significant turnover.

I-9 Flexibilities Did Not Result in Challenges in Using E-Verify

Out of the institutions who did use the provided flexibilities in examining Form I-9 documentation, nearly two-thirds (64%) are enrolled in E-Verify, while 36% are not. Almost all of the institutions enrolled in E-Verify (99%) reported that no documents that returned an Employment Authorized result through E-Verify were determined by the employer to not be genuine or relate to the individual presenting them. These institutions also almost unanimously (91%) reported not having any challenges in interpreting and following the requirements of participation in the E-Verify program during the period of remote document examination.

B. Considerations for Future Remote Document Examination Procedures

Institutions Strongly Support a Permanent Option for Remote Document Examination

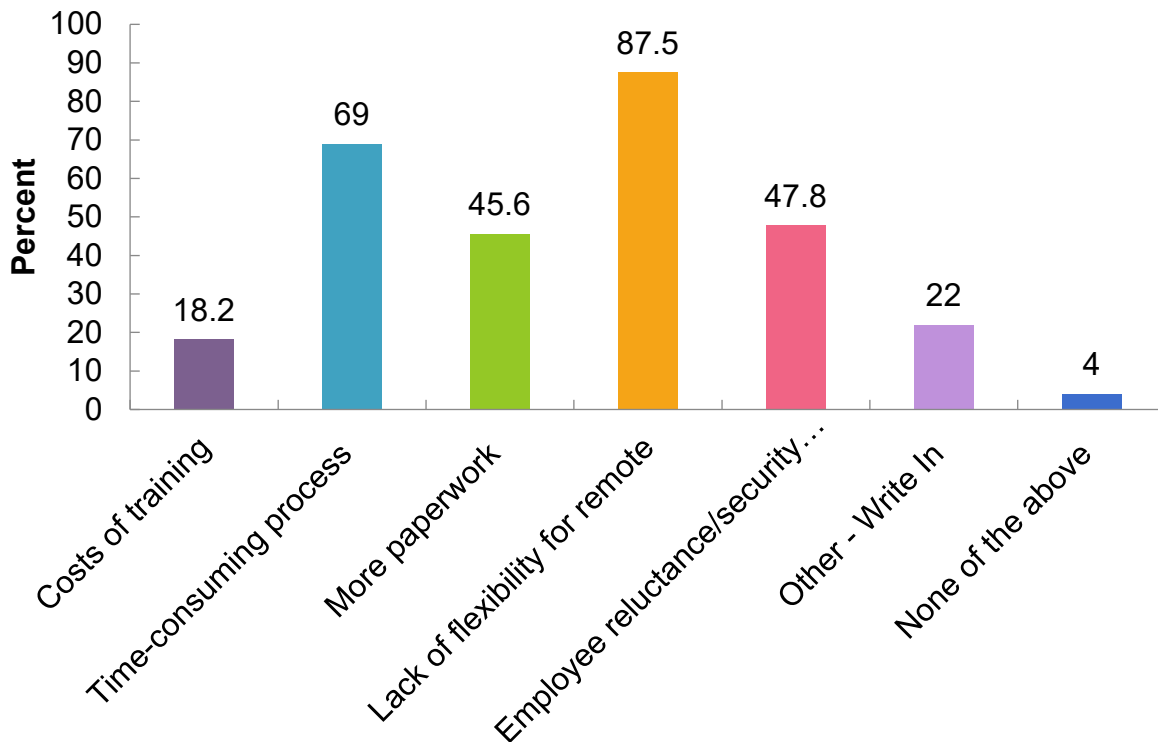
As discussed above, many colleges and universities have utilized the I-9 flexibility guidance throughout the pandemic and will continue to do so as it has proven a critical tool to manage the onboarding process for institutions grappling with the ever-changing uncertainties COVID-19 poses to workforces across the country. For those institutions who have been unable to utilize the current I-9 flexibility guidance, there is still a strong desire for DHS to develop permanent remote document examination procedures worthy of the modern workplace that will last beyond the current national emergency.

When institutions responding to CUPA-HR's survey were asked whether their institution would be interested in participating in a remote verification process for Form I-9 if it were allowed on a permanent basis, 98% of respondents stated they would, demonstrating the strong desire among higher education human resources professionals for flexible workplace options beyond the duration of the COVID-19 pandemic. Importantly, this percentage indicates that many of the institutions that have been unable to avail themselves of the current I-9 flexibility guidance would like for DHS to pursue a permanent option that would allow for its use in the future.

The Physical Document Examination Requirement for Form I-9 Is Overly Burdensome

The overwhelming enthusiasm for a permanent option for remote document examination can be attributed to the burdens associated with physically reviewing original documents in the employee's presence. For instance, 87% of respondents indicated that the in-person requirement posed a burden for institutions hiring remote workers. Additionally, 69% of respondents indicated such a requirement increases the overall time it takes to complete the Form I-9 process, while 46% of respondents indicated the requirement increased their institution's paperwork burden (Figure 1).

Figure 1- Burdens



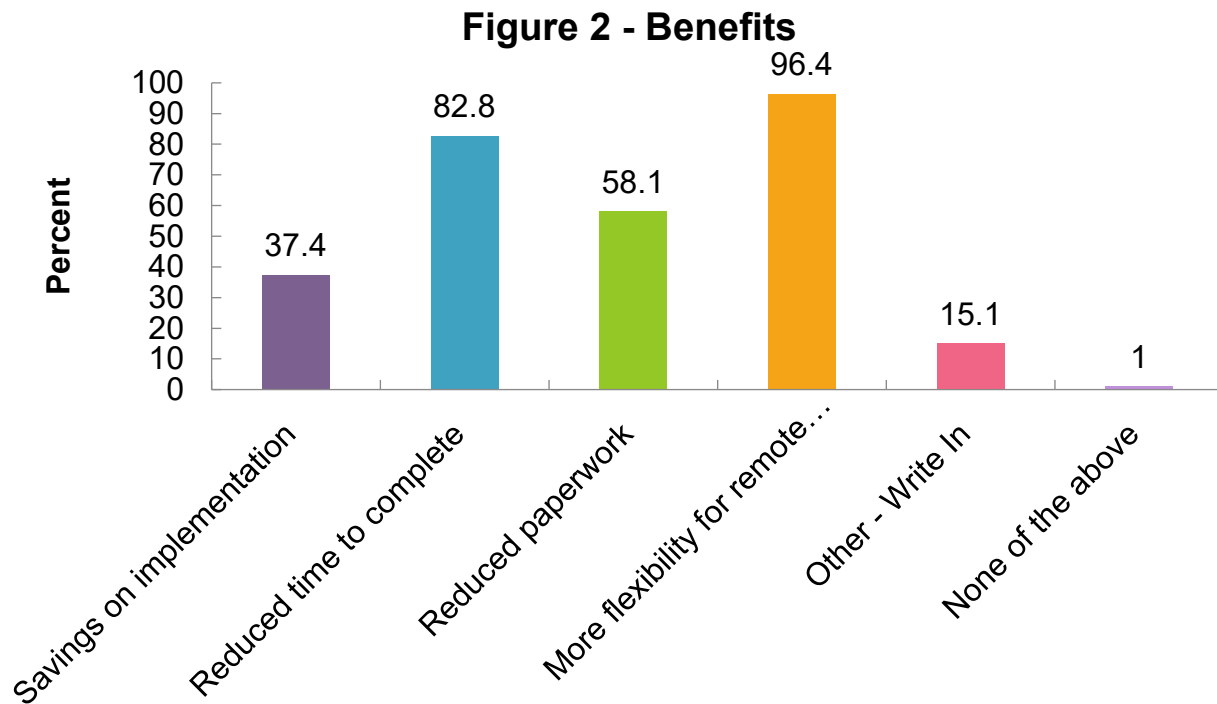
Many respondents also indicated the following burdens associated with the in-person requirements:

- Many institutions listed timing issues, such as scheduling conflicts, delays in document completion, and the time burden of being in-person, as a major burden. Additionally, institutions listed the 3-day inspection period as burdensome.
- Many institutions listed student hires' difficulty in presenting necessary documents as an issue. Many respondents explained that students often don't have the necessary identification materials and often need to receive help from home (sometimes out-of-state) to send the required documents in a timely manner.
- Some institutions stated that physical examination is a burden on remote staff and employees. They said their institutions may have HR staff that are remote themselves and that they have staffing challenges to actually verify the documents in person, on campus, or locally.
- Some institutions stated that there were compliance issues for off campus employees, specifically with respect to finding an authorized representative. They said that it can be difficult to find people to act as the authorized representative and that authorized representatives are sometimes untrained and unreliable with respect to verifying the documents.

- The costs of needing a physical location for campuses with mostly remote operations and the cost to travel to an office for both HR staff and potential candidates were also listed as major concerns.

Offering a Permanent Remote Document Examination Option for Form I-9 Provides Many Benefits for Institutions of Higher Education

Modernizing the Form I-9 process to allow institutions to conduct verifications remotely will provide many benefits. As an example, 96% of survey respondents indicated that a permanent option would allow colleges and universities more flexibility with respect to remote workers. Another 83% of survey participants indicated a remote option would reduce the time it takes to complete the Form I-9, while 58% indicated a remote option would reduce institutions paperwork burdens.



Many respondents highlighted the following specific benefits associated with a permanent remote document examination option:

- Many institutions commented that remote verification increases the security associated with completion of Form I-9 as employees do not need to remove sensitive documentation from the secure location inside of their residence. In the case of the thousands of student employees who arrive on campus without appropriate documentation, a remote option would relieve their parents from the need to mail those documents to the institution—eliminating the possibility such documents could get lost.

- Many institutions indicated that a remote option would permit greater compliance with Form I-9, including with the requirement to meet the one- and three-day regulatory deadlines. Furthermore, many respondents indicated that a remote option would reduce both employee and employer errors in completing the forms, thus limiting liability for the institution.
- Many institutions explained that the changing talent landscape, which requires institutions to increasingly adopt and embrace remote and/or hybrid hiring in order to compete for talent, necessitates a remote verification process that provides flexibility to employers beyond COVID-19.

Participation Requirements as a Condition of These Flexibilities

Respondents to CUPA-HR's survey were asked a series of questions to determine whether an institution's desire or ability to use a permanent option for remote document examination of Form I-9 identity and work eligibility documents would be impacted if such use was conditioned on the institution's use of the following factors: required enrollment in E-Verify, document or image quality or retention requirements, and required completion of training offered by DHS.

A majority of respondents indicated that their institution's desire or ability to use a permanent option would not be impacted by any of the aforementioned participation requirements. That said, a greater share of respondents indicated that required enrollment in E-Verify would make it less likely (16%) or impossible (5%) for their institution to participate in a permanent option compared with requirements for document or image quality retention—(9%) and (1%), respectively—and required completion of training offered by DHS—(6%) and (1%), respectively.

Certain respondents further explained their responses to these questions with one respondent noting that requirement to enroll in E-Verify could be problematic for institutions that rely heavily on student employees for the onboarding process as students are not able to be granted access to E-Verify. Another respondent indicated that any training required by DHS would need to be offered at a minimal cost to the institution and that it would need to be able to be completed virtually for the requirement to make sense.

Lastly, over thirty respondents made clear that any permanent remote verification process should remove the requirement that employers inspect virtually reviewed documents in-person at a later date. As is noted earlier in these comments, many of those institutions that have been unable to utilize the I-9 flexibilities have cited the prohibitive burden of the requirement to view documents in-person within 3 days of opening a physical work location. This is especially difficult for large-volume employers. One respondent noted that despite using the I-9 flexibilities through August 2021, their institution no longer is taking advantage of remote verification as the stress associated with requiring all remotely completed Form I-9s to present their documents in-person was too much.

Remote Document Verification Solutions

As was discussed in Section A of these comments, most respondents whose institutions have been able to utilize the I-9 flexibility guidance did not find any issues verifying the genuineness

of documents that were examined remotely. To gauge the effectiveness of certain verification solutions, respondents were asked to rate three solutions—E-Verify, Electronic I-9 Verification, and Software/mobile app—on a sliding scale from one to five, with one indicating it is a poor solution and five indicating it is a great solution.

While a majority of respondents rated each solution with a four or five—E-Verify (68.9%), Electronic I-9 Verification (85.8%), Software/mobile app (71.9%), Electronic I-9 Verification was rated the best solution. Conversely, while a small minority of respondents rated each solution with a one or two—E-Verify (14.1%), Electronic I-9 Verification (3.1%), Software/mobile app (9.9%), E-Verify received the greatest percentage of poor ratings (Table 2).

Table 2. Verification Solutions Ratings

	Percentage of Respondents				
	1 (Poor Solution)	2	3	4	5 (Great Solution)
E-Verify	8.8%	5.3%	16.9%	15.8%	53.1%
Electronic I-9 Verification	1.3%	1.8%	11.1%	23.8%	62.0%
Software/mobile phone app	4.6%	5.3%	18.3%	20.0%	51.9%

Acceptable Documents

Respondents to CUPA-HR’s survey were asked if changes should be made to the Lists of Acceptable Documents and, if so, what those changes should be. While respondents provided a wide range of answers, many institutions suggested that DHS should update its Lists of Acceptable Documents to accept electronic documents or document copies instead of the original hard copy. Furthermore, several institutions recommended the addition of a REAL ID to the Lists of Acceptable Documents as the process to obtain a REAL ID requires the individual to provide documentation establishing identity and employment authorization. Lastly, institutions would like DHS to provide additional clarity to employers and employees, such as clarifying acceptable documentation for foreign workers that may be negatively impacted by USCIS processing delays and/or postal delays, and provide easy-to-follow examples of what are acceptable documents.

C. Conclusion

CUPA-HR and the undersigned associations greatly appreciate USCIS’s issuance of this Request for Public Input, and we appreciate the agency’s consideration of our feedback. We also welcome DHS’ plans for a proposed regulation titled, “Optional Alternative to the Physical Examination Associated With Employment Eligibility Verification (Form I-9)”. According to its recently released regulatory agenda, DHS plans to issue this proposal in June 2022. We encourage DHS to utilize this rulemaking process to modernize the Form I-9 process and provide flexible options for employers that recognize the realities of the new workplace environments COVID-19 has ushered in and that are here to stay beyond the end of the

pandemic. We look forward to working with you to modernize workplace regulations to meet the demands of today's workforce.

Sincerely,

Basil Thomson

Basil Thomson
Government Relations
CUPA-HR

On Behalf Of:
American Council on Education
Association of American Universities
College and University Professional Association for Human Resources