

United States Senate

WASHINGTON, DC 20510

August 14, 2022

Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave NW
Washington, DC 20001

Dear Director Jaddou:

We are writing with respect to U.S. Citizenship and Immigration Services' (USCIS's) efforts to modernize the I-9 document verification process. Companies in the States we represent have benefitted from flexibility to perform I-9 document verification remotely during the COVID-19 pandemic. Going forward, we would support the adoption of such practices in appropriate circumstances, including where the employers participate in the E-Verify system.

USCIS's temporary remote document examination policy has been particularly beneficial for companies in our states, as it has streamlined the onboarding process for both their businesses and their employees, in addition to alleviating increased costs associated with the traditional in-person procedure. The pandemic has significantly impacted business operations in our states, and we welcome any changes that help alleviate burdensome requirements for companies during this time. These temporary measures have played a critical role in ensuring that businesses avoid unnecessary workforce disruptions and continue to onboard new hires and reverify documents for existing employees whose documents had expired.

Flexible I-9 practices have notably eliminated the need for businesses to make arrangements for in-person meetings, resulting in increased cost savings that would have been associated with a number of factors under the traditional in-person procedure, including travel and physical space accommodations, in addition to the costs of obtaining the services of "authorized representatives" to perform the document review.

The remote document inspection policy has also been successful thus far in ensuring that security is not compromised throughout this process, as electronic communications and video conferencing technology have been able to replicate in-person inspection. Businesses in our state have been able to deploy their compliance teams to research any documents that may be in question as result of factors such as poor picture quality or reproduction issues in order to confirm authenticity or ownership.

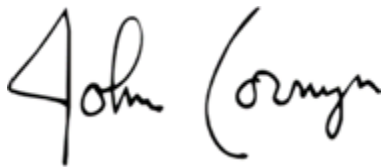
Given the immeasurable benefits of this temporary policy, we hope that the Department will consider permanent use of remote documentation in appropriate circumstances. In particular, we would support limiting the option to use remote document verification to employers who

participate in the E-Verify system. Such a condition would incentivize employer enrollment and acknowledge that E-Verify is a more effective means to verify an individual's employment eligibility. We also encourage USCIS to continue to refine the I-9 process to address concerns from stakeholders and explore alternative options to the traditional physical document examination rules that may produce more accurate results, as well as other rules that may prove to be burdensome for employers.

We encourage the Department to continue to modernize the I-9 employment verification process and provide flexible options for employers that adequately reflect the realities of new workplace environments, in addition to providing businesses with much-needed clarity so that they may ensure they fulfill all of their legal obligations under the Form I-9 process.

We look forward to working with you to modernize workplace regulations and meet the demands of the evolving workforce.

Sincerely,



JOHN CORNYN
United States Senator



JAMES LANKFORD
United States Senator



September 20, 2022

The Honorable John Cornyn
United States Senate
Washington, DC 20510

Dear Senator Cornyn:

Thank you for your August 14, 2022, letter regarding U.S. Citizenship and Immigration Services (USCIS) efforts to modernize the Form I-9, Employment Eligibility Verification, document verification process. USCIS is continually working to improve and modernize the Form I-9 and the E-Verify Program.

As your letter mentions, the Department of Homeland Security (DHS) announced on March 20, 2020, that it would defer physical presence requirements associated with examination of Form I-9 documentation, to allow employers who instituted physical proximity precautions due to COVID-19 more flexibility to examine their employees' identity and employment eligibility documents remotely. These flexibilities have been extended several times, currently through October 31, 2022.

USCIS recognizes the value and public interest in continuing to allow for electronic document examination flexibilities and sought public comment to help guide a potential rulemaking process to permanently modify document examination requirements. On October 26, 2021, USCIS published a notice in the Federal Register, *Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input*¹, seeking comments from the public regarding document examination practices associated with Form I-9. The 90-day comment period closed on December 27, 2021, with 315 comments received. Ninety seven percent of the respondents supported making the temporary remote document examination flexibilities permanent.

Over the past year, USCIS has been working closely with Immigration and Customs Enforcement (ICE) to develop a Notice of Proposed Rulemaking (NPRM), *Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification* (Form I-9)². The NPRM published in the Federal Register on August 18, 2022 with an initial 60-day comment period, which closes on October 17, 2022. This proposed rule would allow employers (or agents acting on an employer's behalf) optional alternatives for examining the documentation presented by individuals seeking to establish identity and employment authorization when completing the Form I-9. This proposed rule would create a framework

¹ Federal Register, *Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input* available is online at <https://www.govinfo.gov/content/pkg/FR-2021-10-26/pdf/2021-23260.pdf>.

² Federal Register, *Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification* (Form I-9) is available online at <https://www.federalregister.gov/documents/2022/08/18/2022-17737/optional-alternatives-to-the-physical-document-examination-associated-with-employment-eligibility>.

within which the Secretary of Homeland Security could authorize alternative options for document examination procedures with respect to some or all employers for Form I-9. Such procedures could be implemented as part of a pilot program, or upon the Secretary's determination that such procedures offer an equivalent level of security, as a temporary measure to address a public health emergency declared by the Secretary of Health and Human Services pursuant to Section 319 of the Public Health Service Act, or a national emergency declared by the President pursuant to Sections 201 and 301 of the National Emergencies Act.

In the NPRM, DHS is also considering potential requirements or limitations for employers who wish to use such an alternative procedure and is inviting public comments on the effects of potential requirements, including the associated burdens or benefits, the integrity of the alternative procedure(s), avoiding discrimination in the process, and protecting privacy interests. DHS is requesting comments on potential employer requirements to retain copies of documents or attend fraudulent document detection training or limiting participation to only employers who are E-Verify participants in good standing, or who have not been the subject of a fine, settlement, or conviction related to employment eligibility verification practices.

In addition to the Request for Public Input and NPRM, USCIS has been working to reduce the burden of and improve ease-of-use for Form I-9. The current Form I-9 is expiring in October 2022, and USCIS collaborated with ICE to develop revisions that would reduce public burden of form completion. These revisions are part of the renewal request of the Form I-9 information collection to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995, and will provide an estimated time burden savings of 1.25 million hours per year for the estimated 75.3 million respondents that complete Form I-9 each year through changes including:

- Reducing Form I-9 from two pages to one page, which reduces storage burdens;
- Relocating fields for reverification/rehire and certification of preparers/translators, which are only completed when necessary for certain employees, to new supplements. Once the new version goes into effect, these supplements will only need to be printed or stored if required, thus reducing paperwork and storage burdens; and
- Reducing the Form I-9 instructions from 15 pages to eight pages by organizing content more efficiently and using plain language.

Finally, USCIS is piloting significant improvements to E-Verify through the development of an upcoming demonstration project, E-Verify "NextGen." This project will streamline the verification process for employers and employees by reducing duplicate data entry and providing employees greater control and ownership of their employment eligibility verification. This product will ultimately provide a fully integrated Form I-9 and employment eligibility verification process that can be completed electronically remotely by employees and employers.

Thank you again for your letter and interest in this important issue. The cosigner of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a long horizontal line extending to the right.

Ur M. Jaddou
Director