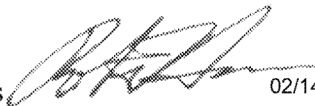


This document has been updated, as of 4/8/2025, to be in compliance with Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," signed 1/20/2025; Executive Order 14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing," signed 1/20/2025; the ICE Office of the Director Memo, titled "Terminology for Communications Materials and Internal and External Communications," dated 1/20/2025, and the ICE Office of the Director Memo, titled "Updated Terminology for Communications Materials and Internal and External Communications," dated 3/31/2025. (Note: This document is also being reviewed for alignment with other Presidential issuances.)

MEMORANDUM FOR: Assistant Directors
Deputy Assistant Directors
Special Agents in Charge
Homeland Security Investigations

FROM: Executive Associate Director
Homeland Security Investigations  02/14/2025

SUBJECT:

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Summary

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(b)(7)(E)**Background**

The Immigration Reform and Control Act of 1986 (IRCA) amended the INA to create an employment authorization verification system and establish employer sanctions for failing to comply with statutory employment eligibility verification requirements or knowingly hiring individuals who were unauthorized to work in the United States. Under the INA, as amended by IRCA, an employer is required to verify the identity and employment authorization of employees hired after November 6, 1986, by reviewing documentation evidencing the identity and U.S. employment eligibility of each individual hired for employment. The employer must also attest, under penalty of perjury, on a form designated by regulation, that “it has verified that the individual is not an unauthorized alien” via the document examination procedures set forth in the statute. *See* Section 274(A)(b)(1)(A) of the INA. DHS regulations at Title 8, Code of Federal Regulations (C.F.R.), Section (§) 274a.2 designate the Form I-9 as the verification form employers must use to document compliance with the above-described employment eligibility verification requirements.

The good faith compliance provision of Section 411 of IIRIRA, enacted on September 30, 1996, amended Section 274A(b) of the INA to permit employers to demonstrate compliance with the employment verification requirements discussed above by showing that they had made a good faith effort to correct technical or procedural failures on the Form I-9. This amendment to section 274A(b) of the INA provides that, when a person or entity makes a good faith attempt to comply with an employment verification requirement of Section 274A(b), the person or entity will be considered to have complied with that requirement, notwithstanding a technical or procedural failure to meet the requirement. (b)(7)(E)

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Alternative Examination and Verification Procedures

Employers or their authorized representatives must physically examine each original document from the employee (unless alternative procedures under 8 C.F.R. § 274a.2(b)(1)(ix) apply) to determine that the documents reasonably appear to be authentic and establish the identity of the bearer. *See* 8 C.F.R. § 274a.2(b)(1)(ii)(A). On July 25, 2023, DHS published the final rule effective on August 1, 2023, *Optional Alternative to the Physical Document Examination Associated With Employment Eligibility Verification (Form I-9)*. The final rule requires that employers must be enrolled and be in good standing in E-Verify to utilize the alternative procedure for examining supporting documents. Within three days of an employee's first day of employment, a qualified employer who chooses this alternative procedure must complete the following steps:

1. Examine copies (front and back if the document is two-sided) of Form I-9 documents or an acceptable receipt² to ensure that the document(s) presented reasonably appear to be genuine;
2. Conduct a live video interaction with the individual (hired employee) presenting the document(s) to ensure that the document(s) reasonably appear to be genuine and related to the individual. The employee must first transmit a copy of the document(s) to the employer (per Step 1 above) and then present the same document(s) during the live video interaction;
3. Indicate on the Form I-9, by completing the corresponding box, that an alternative procedure was used to examine documents to complete Section 2 or for reverification in Supplement B,³ as applicable;

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4. Retain⁴ clear and legible copies (physical or digital) of all documents submitted as part of the Form I-9 identification and employment authorization process (front and back if the documents are two-sided)⁵; and
5. In the event of a Form I-9 audit by a federal government official, make available the clear and legible copies of the identity and employment authorization document(s) presented by the employee for document examination in connection with the employment eligibility verification process.⁶

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HSI is responsible for Form I-9 enforcement actions and the investigation of employment eligibility verification violations. The employment eligibility verification administrative inspection process is initiated by the service of a NOI from HSI to an employer, compelling the production of the employer's retained Forms I-9. HSI special agents and auditors then conduct an inspection of the Forms I-9 for compliance. HSI will notify the employer of the results of the inspection.

Employers are liable for Form I-9 paperwork requirements (regardless of the form's method of creation, retention, or storage) that are substantive in nature. Pursuant to 8 C.F.R. § 274a.10(b), an employer will be subject to civil monetary penalties for substantive violations of Section 274A(b) of the INA.

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⁴ See 8 C.F.R. § 274a.2(b)(3), (e), (f), (g).

⁵ Employers must retain and store the Form I-9 for three years after the date of hire, or for one year after employment ends, whichever is later. See Title 8, United States Code (U.S.C.) Section (§) 1324a(b)(3); 8 C.F.R. § 274a.2(b)(2). Additional information for employers and employees about the Form I-9 is available at <https://www.uscis.gov/i-9>.

⁶ 8 U.S.C. §§ 1324a, 1324b; 8 C.F.R. Part 274a.; 28 C.F.R. Part 44.

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Technical or Procedural Verification Failures

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HSI considers a “technical or procedural failure” to be any violation that does not substantially interfere with the effectiveness or efficiency of enforcing the employment verification system.

An employer will not be subject to civil monetary penalties under 8 C.F.R. § 274a.10(b) for a technical or procedural failure to meet a requirement of Section 274A(b) of the INA if the employer made a good faith attempt to meet the requirement and corrected the failure within 10 business days of being notified of the deficiency. A technical or procedural failure that is not corrected within the period provided by HSI becomes a substantive violation. This period cannot be less than 10 business days.

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APPENDIX A

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¹² An unauthorized alien as that term is defined under 8 U.S.C. § 1324a(h)(3).

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