DHS Proposes Rule Updating I-9 Verification Requirements

Article By

Derek J. Maka
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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On August 18, 2022, the Department of Homeland Security (DHS) published a proposed rule in the Federal Register that would grant it broader authority to permit alternative document inspection procedures for I-9 document verification in lieu of the physical inspection requirement.

In response to the COVID-19 pandemic, DHS implemented temporary accommodations for remote I-9 document inspection in order to encourage social distancing and remote work. These accommodations have been extended several times, and currently remain in effect until October 31, 2022. While the proposed
rule does not directly make these accommodations permanent, it does codify into the regulations the agency’s authority to set forth either temporary or permanent alternative document inspection procedures.

The proposed rule provides significant flexibility to DHS in determining whether, when, and how to implement alternative examination procedures. According to the proposed rule, DHS may implement new examination options as part of a limited pilot program, upon the agency’s determination that such alternative procedures would not diminish the security of the I-9 verification process, or as a temporary measure in response to a public health emergency.

The proposed rule also includes details about how DHS may implement future document inspection changes, including:

- limiting implementation only to employers enrolled in E-Verify
- updating document retention requirements
- changing the Form I-9 to allow employers to clearly note the use of alternative examination procedures

Now that the proposed rule has been published in the Federal Register, the public will have a 60-day comment period to provide feedback on the proposal as well as comments on how DHS may use this additional authority to make I-9 document inspection easier for employers. After the public comment period closes, DHS will have the opportunity to review and analyze all comments provided and, should the agency decide to move forward with the regulation, proceed with publishing the final rule.


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