

## **§ 274a.2 Verification of identity and employment authorization.**

**(a) General.** This section establishes requirements and procedures for compliance by persons or entities when hiring, or when recruiting or referring for a fee, or when continuing to employ individuals in the [United States](#).

**(1) Recruiters and referrers for a fee.** For purposes of complying with section 274A(b) of the [Act](#) and this section, all references to recruiters and referrers for a fee are limited to a person or [entity](#) who is either an agricultural association, agricultural [employer](#), or farm labor contractor (as defined in section 3 of the [Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. 97-470 \(29 U.S.C. 1802\)](#)).

**(2) Verification form.** [Form I-9, Employment Eligibility Verification Form](#), is used in complying with the requirements of this [8 CFR 274a.1-274a.11](#). [Form I-9](#) can be in paper or electronic format. A fillable electronic [Form I-9](#) as well as a paper format [Form I-9](#) may be obtained and downloaded from <http://www.uscis.gov>. Paper [forms](#) may also be ordered at <https://www.uscis.gov/forms/forms-by-mail> or by contacting the [USCIS](#) Contact Center at 1-800-375-5283 or 1-800-767-1833 (TTY). Alternatively, [Form I-9](#) can be electronically generated or retained, provided that the resulting [form](#) is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the standards specified under [8 CFR 274a.2\(e\), \(f\), \(g\), \(h\), and \(i\)](#), as applicable, are met. When copying or printing the paper [Form I-9](#), the text of the two-sided [form](#) may be reproduced by making either double-sided or single-sided copies.

**(3) Attestation Under Penalty and Perjury.** In conjunction with completing the [Form I-9](#), an [employer](#) or recruiter or referrer for a fee must examine documents that evidence the identity and [employment](#) authorization of the individual. The [employer](#) or recruiter or referrer for a fee and the individual must each complete an attestation on the [Form I-9](#) under penalty of perjury.

### **(b) Employment verification requirements -**

#### **(1) Examination of documents and completion of Form I-9.**

**(i)** A person or [entity](#) that [hires](#) or recruits or refers for a fee an individual for [employment](#) must ensure that the individual properly:

**(A)** Completes section 1 - "Employee Information and Verification" - on the [Form I-9](#) at the time of [hire](#) and signs the attestation with a handwritten or electronic signature in accordance with [paragraph](#)

(h) of this section; or if an individual is unable to complete the Form I-9 or needs it translated, someone may assist him or her. The preparer or translator must read the Form I-9 to the individual, assist him or her in completing Section 1 - "Employee Information and Verification," and have the individual sign or mark the Form I-9 by a handwritten signature, or an electronic signature in accordance with paragraph (h) of this section, in the appropriate place; and

(B) Present to the employer or the recruiter or referrer for a fee documentation as set forth in paragraph (b)(1)(v) of this section establishing his or her identity and employment authorization within the time limits set forth in paragraphs (b)(1)(ii) through (b)(1)(v) of this section.

(ii) Except as provided in paragraph (b)(1)(viii) of this section, an employer, his or her agent, or anyone acting directly or indirectly in the interest thereof, must within three business days of the hire:

(A) Physically examine the documentation presented by the individual establishing identity and employment authorization as set forth in paragraph (b)(1)(v) of this section and ensure that the documents presented appear to be genuine and to relate to the individual; and

(B) Complete section 2 - "Employer Review and Verification" - on the Form I-9 within three business days of the hire and sign the attestation with a handwritten signature or electronic signature in accordance with paragraph (i) of this section.

(iii) An employer who hires an individual for employment for a duration of less than three business days must comply with paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section at the time of the hire. An employer may not accept a receipt, as described in paragraph (b)(1)(vi) of this section, in lieu of the required document if the employment is for less than three business days.

(iv) A recruiter or referrer for a fee for employment must comply with paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section within three business days of the date the referred individual is hired by the employer. Recruiters and referrers may designate agents to complete the employment verification procedures on their behalf including but not limited to notaries, national associations, or employers. If a recruiter or referrer designates an employer to complete the employment verification procedures, the employer need only provide the recruiter or referrer with a photocopy or printed electronic image of the Form I-9, electronic Form I-9, or a Form I-9 on microfilm or microfiche.

**(v)** The individual may present either an original document which establishes both **employment** authorization and identity, or an original document which establishes **employment** authorization and a separate original document which establishes identity. Only unexpired documents are acceptable. The identification number and expiration date (if any) of all documents must be noted in the appropriate space provided on the **Form I-9**.

**(A)** The following documents, so long as they appear to relate to the individual presenting the document, are acceptable to evidence both identity and **employment** authorization:

**(1)** A **United States** passport;

**(2)** An **Alien** Registration Receipt Card or Permanent Resident Card (Form I-551);

**(3)** A foreign passport that contains a temporary I-551 stamp, or temporary I-551 printed notation on a machine-readable immigrant visa;

**(4)** An **Employment** Authorization Document which contains a photograph (Form I-766);

**(5)** In the case of an individual who is **employment**-authorized incident to status or parole with a specific **employer**, a foreign passport with an Arrival/Departure Record, **Form I-94** (as defined in **8 CFR 1.4**) or **Form I-94A**, bearing the same name as the passport and containing an endorsement by DHS indicating such **employment**-authorized status or parole, as long as the period of endorsement has not yet expired and the **employment** is not in conflict with the individual's **employment**-authorized status or parole;

**(6)** A passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with **Form I-94** or **Form I-94A** indicating nonimmigrant admission under the Compact of Free Association Between the **United States** and the FSM or RMI;

**(7)** In the case of an individual lawfully enlisted for military **service** in the Armed Forces under **10 U.S.C. 504**, a military identification card issued to such individual may be accepted only by the Armed Forces.

**(B)** The following documents are acceptable to establish identity only:

**(1)** For individuals 16 years of age or older:

**(i)** A driver's license or identification card containing a photograph, issued by a state (as defined in section 101(a)(36) of

the Act) or an outlying possession of the [United States](#) (as defined by section 101(a)(29) of the Act). If the driver's license or identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address;

**(ii)** School identification card with a photograph;

**(iii)** Voter's registration card;

**(vi)** U.S. military card or draft record;

**(v)** Identification card issued by federal, state, or local government agencies or entities. If the identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address;

**(vi)** Military dependent's identification card;

**(vii)** Native American tribal documents;

**(viii)** United States Coast Guard Merchant Mariner Card;

**(ix)** Driver's license issued by a Canadian government authority;

**(2)** For individuals under age 18 who are unable to produce a document listed in paragraph (b)(1)(v)(B)(1) of this section, the following documents are acceptable to establish identity only:

**(i)** School record or report card;

**(ii)** Clinic doctor or hospital record;

**(iii)** Daycare or nursery school record.

**(3)** Minors under the age of 18 who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B) (1) or (2) of this section are exempt from producing one of the enumerated identity documents if:

**(i)** The minor's parent or legal guardian completes on the [Form I-9](#) Section 1 - "Employee Information and Verification" and in the space for the minor's signature, the parent or legal guardian writes the words, "minor under age 18."

**(ii)** The minor's parent or legal guardian completes on the [Form I-9](#) the "Preparer/Translator certification."

**(iii)** The [employer](#) or the recruiter or referrer for a fee writes in Section 2 - "Employer Review and Verification" under List B in the

space after the words "Document Identification #" the words, "minor under age 18."

**(4)** Individuals with handicaps, who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B) (1) or (2) of this section, who are being placed into **employment** by a nonprofit organization, association or as part of a rehabilitation program, may follow the procedures for establishing identity provided in this section for minors under the age of 18, substituting where appropriate, the term "special placement" for "minor under age 18", and permitting, in addition to a parent or legal guardian, a **representative** from the nonprofit organization, association or rehabilitation program placing the individual into a position of **employment**, to fill out and sign in the appropriate section, the **Form I-9**. For purposes of this section the term *individual with handicaps* means any person who

**(i)** Has a physical or mental impairment which substantially limits one or more of such person's major life activities,

**(ii)** Has a record of such impairment, or

**(iii)** Is regarded as having such impairment.

**(C)** The following are acceptable documents to establish **employment** authorization only:

**(1)** A Social Security account number card other than one that specifies on the face that the issuance of the card does not authorize **employment** in the **United States**;

**(2)** Certification or report of birth issued by the Department of State, including **Forms** FS-545, DS-1350, FS-240;

**(3)** An original or certified copy of a birth certificate issued by a State, county, municipal authority or outlying possession of the **United States** bearing an official seal;

**(4)** Native American tribal document;

**(5)** **United States** Citizen Identification Card, **Form I-197**;

**(6)** Identification card for use of resident citizen in the **United States**, **Form I-179**;

**(7)** An **employment** authorization document issued by the Department of Homeland Security.

**(D)** The following are acceptable documents to establish both identity and **employment** authorization in the Commonwealth of the Northern

Mariana Islands only, for a two-year period starting from the transition program effective date (as defined in [8 CFR 1.1](#)), in addition to those documents listed in [paragraph \(b\)\(1\)\(v\)\(A\)](#) of this section:

**(1)** In the case of an [alien](#) with [employment](#) authorization in the Commonwealth of the Northern Mariana Islands incident to status for a period of up to two years following the transition program effective date that is unrestricted or otherwise authorizes a change of employer:

**(i)** The unexpired foreign passport and an [Alien](#) Entry Permit with red band issued to the [alien](#) by the Office of the [Attorney](#) General, Division of Immigration of the Commonwealth of the Northern Mariana Islands before the transition program effective date, as long as the period of [employment](#) authorization has not yet expired, or

**(ii)** An unexpired foreign passport and temporary work authorization letter issued by the Department of Labor of the Commonwealth of the Northern Mariana Islands before the transition program effective date, and containing the name and photograph of the individual, as long as the period of [employment](#) authorization has not yet expired and the proposed [employment](#) is not in conflict with any restrictions or limitations identified on the Temporary Work Authorization letter;

**(iii)** An unexpired foreign passport and a permanent resident card issued by the Commonwealth of the Northern Mariana Islands.

**(2)** [Reserved]

**(vi) *Special rules for receipts.*** Except as provided in [paragraph \(b\)\(1\)\(iii\)](#) of this section, unless the individual indicates or the [employer](#) or recruiter or referrer for a fee has actual or constructive knowledge that the individual is not authorized to work, an [employer](#) or recruiter or referrer for a fee must accept a receipt for the [application](#) for a replacement document or a document described in paragraphs [\(b\)\(1\)\(vi\)\(B\)\(1\)](#) and [\(b\)\(1\)\(vi\)\(C\)\(1\)](#) of this section in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

**(A) *Application for a replacement document.*** The individual:

**(1)** Is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged;

**(2)** Presents a receipt for the [application](#) for the replacement document within the time specified in this section; and

(3) Presents the replacement document within 90 days of the hire or, in the case of reverification, the date employment authorization expires; or

**(B) Form I-94 or I-94A indicating temporary evidence of permanent resident status.** The individual indicates in section 1 of the Form I-9 that he or she is a lawful permanent resident and the individual:

(1) Presents the arrival portion of Form I-94 or Form I-94A containing an unexpired "Temporary I-551" stamp and a photograph of the individual, which is designated for purposes of this section as a receipt for Form I-551; and

(2) Presents the Form I-551 by the expiration date of the "Temporary I-551" stamp or, if the stamp has no expiration date, within one year from the issuance date of the arrival portion of the Form I-94 or Form I-94A; or

**(C) Form I-94 or I-94A indicating refugee status.** The individual indicates in section 1 of the Form I-9 that he or she is an alien authorized to work and the individual:

(1) Presents the departure portion of Form I-94 or I-94A containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I-766, or a social security account number card that contains no employment restrictions; and

(2) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I-766, or a social security account number card that contains no employment restrictions and a document described under paragraph (b)(1)(v)(B) of this section.

(vii) If an individual's employment authorization expires, the employer, recruiter or referrer for a fee must reverify on the Form I-9 to reflect that the individual is still authorized to work in the United States; otherwise, the individual may no longer be employed, recruited, or referred. Reverification on the Form I-9 must occur not later than the date work authorization expires. If an Employment Authorization Document (Form I-766) as described in § 274a.13(d) was presented for completion of the Form I-9 in combination with a Notice of Action (Form I-797C), stating that the original Employment Authorization Document has been automatically extended for up to 180 days, reverification applies upon the expiration of the automatically extended validity period under § 274a.13(d) and not upon the expiration date indicated on the

face of the individual's **Employment** Authorization Document. In order to reverify on the **Form I-9**, the **employee** or referred individual must present a document that either shows continuing **employment** eligibility or is a new grant of work authorization. The **employer** or the recruiter or referrer for a fee must review this document, and if it appears to be genuine and relate to the individual, reverify by noting the document's identification number and expiration date, if any, on the **Form I-9** and signing the attestation by a handwritten signature or electronic signature in accordance with **paragraph (i)** of this section.

**(viii)** An **employer** will not be deemed to have **hired** an individual for **employment** if the individual is continuing in his or her **employment** and has a reasonable expectation of **employment** at all times.

**(A)** An individual is continuing in his or her **employment** in one of the following situations:

**(1)** An individual takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the **employer**;

**(2)** An individual is promoted, demoted, or gets a pay raise;

**(3)** An individual is temporarily laid off for lack of work;

**(4)** An individual is on strike or in a labor dispute;

**(5)** An individual is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

**(6)** An individual transfers from one distinct unit of an **employer** to another distinct unit of the same **employer**; the **employer** may transfer the individual's **Form I-9** to the receiving unit;

**(7)** An individual continues his or her **employment** with a related, successor, or reorganized **employer**, provided that the **employer** obtains and maintains from the previous **employer** records and **Forms I-9** where applicable. For this purpose, a related, successor, or reorganized **employer** includes:

**(i)** The same **employer** at another location;

**(ii)** An **employer** who continues to employ some or all of a previous **employer's** workforce in cases involving a corporate reorganization, merger, or sale of stock or assets;

**(iii)** An **employer** who continues to employ any **employee** of another **employer's** workforce where both **employers** belong to the same multi-employer association and the **employee** continues to work in the same bargaining unit under the same collective bargaining agreement. For purposes of this subsection, any agent designated to complete and maintain the **Form I-9** must record the **employee's** date of **hire** and/or termination each time the **employee** is **hired** and/or terminated by an **employer** of the multi-employer association; or

**(8)** An individual is engaged in seasonal **employment**.

**(B)** The **employer** who is claiming that an individual is continuing in his or her **employment** must also establish that the individual expected to resume **employment** at all times and that the individual's expectation is reasonable. Whether an individual's expectation is reasonable will be determined on a case-by-case basis taking into consideration several factors. Factors which would indicate that an individual has a reasonable expectation of **employment** include, but are not limited to, the following:

**(1)** The individual in question was employed by the **employer** on a regular and substantial basis. A determination of a regular and substantial basis is established by a comparison of other workers who are similarly employed by the **employer**;

**(2)** The individual in question complied with the **employer's** established and published policy regarding his or her absence;

**(3)** The **employer's** past history of recalling absent **employees** for **employment** indicates a likelihood that the individual in question will resume **employment** with the **employer** within a reasonable time in the future;

**(4)** The former position held by the individual in question has not been taken permanently by another worker;

**(5)** The individual in question has not sought or obtained benefits during his or her absence from **employment** with the **employer** that are inconsistent with an expectation of resuming **employment** with the **employer** within a reasonable time in the future. Such benefits include, but are not limited to, severance and retirement benefits;

**(6)** The financial condition of the **employer** indicates the ability of the **employer** to permit the individual in question to resume **employment** within a reasonable time in the future; or

**(7)** The oral and/or written communication between **employer**, the **employer's** supervisory **employees** and the individual in question indicates that it is reasonably likely that the individual in question will resume **employment** with the **employer** within a reasonable time in the future.

**(2) Retention and Inspection of Form I-9.**

**(i)** A paper (with original handwritten signatures), electronic (with acceptable electronic signatures that meet the requirements of paragraphs (h) and (i) of this section or original paper scanned into an electronic format, or a combination of paper and electronic formats that meet the requirements of paragraphs (e), (f), and (g) of this section), or microfilm or microfiche copy of the original signed version of **Form I-9** must be retained by an **employer** or a recruiter or referrer for a fee for the following time periods:

**(A)** In the case of an **employer**, three years after the date of the **hire** or one year after the date the individual's **employment** is terminated, whichever is later; or

**(B)** In the case of a recruiter or referrer for a fee, three years after the date of the **hire**.

**(ii)** Any person or **entity** required to retain **Forms I-9** in accordance with this section shall be provided with at least three business **days** notice prior to an inspection of **Forms I-9** by officers of an authorized agency of the **United States**. At the time of inspection, **Forms I-9** must be made available in their original paper, electronic **form**, a paper copy of the electronic **form**, or on microfilm or microfiche at the location where the request for production was made. If **Forms I-9** are kept at another location, the person or **entity** must inform the officer of the authorized agency of the **United States** of the location where the **forms** are kept and make arrangements for the inspection. Inspections may be **per formed** at an office of an authorized agency of the **United States**. A recruiter or referrer for a fee who has designated an **employer** to complete the **employment** verification procedures may present a photocopy or printed electronic image of the **Form I-9** in lieu of presenting the **Form I-9** in its original paper or electronic **form** or on microfilm or microfiche, as set forth in **paragraph (b)(1)(iv)** of this section. Any refusal or delay in presentation of the **Forms I-9** for inspection is a violation of the retention requirements as set forth in section 274A(b)(3) of the **Act**. No Subpoena or warrant shall be required for such inspection, but the use of such enforcement tools is not precluded. In addition, if the person or **entity** has not complied with a request to present the **Forms I-9**, any officer listed in **8 CFR 287.4** may

compel production of the [Forms I-9](#) and any other relevant documents by issuing a subpoena. Nothing in this section is intended to limit the subpoena power under section 235(d)(4) of the [Act](#).

**(iii)** The following standards shall apply to [Forms I-9](#) presented on microfilm or microfiche submitted to an officer of the [Service](#), the Special Counsel for Immigration-Related Unfair [Employment](#) Practices, or the Department of Labor: Microfilm, when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify it to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or whole numbers. A detailed index of all microfilmed data shall be maintained and arranged in such a manner as to permit the immediate location of any particular record. It is the responsibility of the [employer](#), recruiter or referrer for a fee:

**(A)** To provide for the processing, storage and maintenance of all microfilm, and

**(B)** To be able to make the contents thereof available as required by law. The person or [entity](#) presenting the microfilm will make available a reader-printer at the examination site for the ready reading, location and reproduction of any record or records being maintained on microfilm. Reader-printers made available to an officer of the [Service](#), the Special Counsel for Immigration-Related Unfair [Employment](#) Practices, or the Department of Labor shall provide safety features and be in clean condition, properly maintained and in good working order. The reader-printers must have the capacity to display and print a complete page of information. A person or [entity](#) who is determined to have failed to comply with the criteria established by this regulation for the presentation of microfilm or microfiche to the [Service](#), the Special Counsel for Immigration-Related Unfair [Employment](#) Practices, or the Department of Labor, and at the time of the inspection does not present a properly completed [Form I-9](#) for the [employee](#), is in violation of section 274A(a)(1)(B) of the [Act](#) and § 274a.2(b)(2).

**(iv)** Paragraphs (e), (f), (g), (h), and (i) of this section specify the standards for electronic [Forms I-9](#).

**(3) Copying of documentation.** An [employer](#), or a recruiter or referrer for a fee may, but is not required to, copy or make an electronic image of a document presented by an individual solely for the purpose of complying with the verification requirements of this section. If such a copy or

electronic image is made, it must either be retained with the [Form I-9](#) or stored with the [employee's](#) records and be retrievable consistent with paragraphs (e), (f), (g), (h), and (i) of this section. The copying or electronic imaging of any such document and retention of the copy or electronic image does not relieve the [employer](#) from the requirement to fully complete section 2 of the [Form I-9](#). An [employer](#), recruiter or referrer for a fee should not, however, copy or electronically image only the documents of individuals of certain national origins or citizenship statuses. To do so may violate section 274B of the [Act](#).

**(4) *Limitation on use of Form I-9.*** Any information contained in or appended to the [Form I-9](#), including copies or electronic images of documents listed in [paragraph \(c\)](#) of this section used to verify an individual's identity or [employment](#) eligibility, may be used only for enforcement of the [Act](#) and sections [1001](#), [1028](#), [1546](#), or [1621](#) of title [18](#), United States Code.

***(c) Employment verification requirements in the case of hiring an individual who was previously employed.***

**(1)** When an [employer hires](#) an individual whom that person or [entity](#) has previously employed, if the [employer](#) has previously completed the [Form I-9](#) and complied with the verification requirements set forth in [paragraph \(b\)](#) of this section with regard to the individual, the [employer](#) may (in lieu of completing a new [Form I-9](#)) inspect the previously completed [Form I-9](#) and:

**(i)** If upon inspection of the [Form I-9](#), the [employer](#) determines that the [Form I-9](#) relates to the individual and that the individual is still eligible to work, that previously executed [Form I-9](#) is sufficient for purposes of section 274A(b) of the [Act](#) if the individual is [hired](#) within three years of the date of the initial execution of the [Form I-9](#) and the [employer](#) updates the [Form I-9](#) to reflect the date of rehire; or

**(ii)** If upon inspection of the [Form I-9](#), the [employer](#) determines that the individual's [employment](#) authorization has expired, the [employer](#) must reverify on the [Form I-9](#) in accordance with [paragraph \(b\)\(1\)\(vii\)](#); otherwise the individual may no longer be employed.

**(2)** For purposes of retention of the [Form I-9](#) by an [employer](#) for a previously employed individual [hired](#) pursuant to [paragraph \(c\)\(1\)](#) of this section, the [employer](#) shall retain the [Form I-9](#) for a period of three years commencing from the date of the initial execution of the [Form I-9](#) or one year after the individual's [employment](#) is terminated, whichever is later.

**(d) *Employment verification requirements in the case of recruiting or referring for a fee an individual who was previously recruited or referred.***

**(1)** When a recruiter or referrer for a fee refers an individual for whom that recruiter or referrer for a fee has previously completed a [Form I-9](#) and complied with the verification requirements set forth in [paragraph \(b\)](#) of this section with regard to the individual, the recruiter or referrer may (in lieu of completing a new [Form I-9](#)) inspect the previously completed [Form I-9](#) and:

**(i)** If upon inspection of the [Form I-9](#), the recruiter or referrer for a fee determines that the [Form I-9](#) relates to the individual and that the individual is still eligible to work, that previously executed [Form I-9](#) is sufficient for purposes of section 274A(b) of the [Act](#) if the individual is referred within three years of the date of the initial execution of the [Form I-9](#) and the recruiter or referrer for a fee updates the [Form I-9](#) to reflect the date of rehire; or

**(ii)** If upon inspection of the [Form I-9](#), the recruiter or referrer determines that the individual's [employment](#) authorization has expired, the recruiter or referrer for a fee must reverify on the [Form I-9](#) in accordance with [paragraph \(b\)\(1\)\(vii\)](#) of this section; otherwise the individual may no longer be recruited or referred.

**(2)** For purposes of retention of the [Form I-9](#) by a recruiter or referrer for a previously recruited or referred individual pursuant to [paragraph \(d\)\(1\)](#) of this section, the recruiter or referrer shall retain the [Form I-9](#) for a period of three years from the date of the rehire.

**(e) *Standards for electronic retention of Form I-9.***

**(1)** Any person or [entity](#) who is required by this section to complete and retain [Forms I-9](#) may complete or retain electronically only those pages of the [Form I-9](#) on which [employers](#) and [employees](#) enter data in an electronic generation or storage system that includes:

**(i)** Reasonable controls to ensure the integrity, accuracy and reliability of the electronic generation or storage system;

**(ii)** Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored [Form I-9](#), including the electronic signature if used;

**(iii)** An inspection and quality assurance program evidenced by regular evaluations of the electronic generation or storage system, including

periodic checks of the electronically stored [Form I-9](#), including the electronic signature if used;

**(iv)** In the case of electronically retained [Forms I-9](#), a retrieval system that includes an indexing system that permits searches consistent with the requirements of [paragraph \(e\)\(6\)](#) of this section; and

**(v)** The ability to reproduce legible and readable hardcopies.

**(2)** All documents reproduced by the electronic retention system must exhibit a high degree of legibility and readability when displayed on a video display terminal or when printed on paper, microfilm, or microfiche. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly, to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize any group of letters or numerals that [form](#) words or numbers as those words or complete numbers. The [employer](#), or recruiter or referrer for a fee, must ensure that the reproduction process maintains the legibility and readability of the electronically stored document.

**(3)** An electronic generation or storage system must not be subject, in whole or in part, to any agreement (such as a contract or license) that would limit or restrict access to and use of the electronic generation or storage system by an agency of the [United States](#), on the premises of the [employer](#), recruiter or referrer for a fee (or at any other place where the electronic generation or storage system is maintained), including personnel, hardware, software, files, indexes, and software documentation.

**(4)** A person or [entity](#) who chooses to complete or retain [Forms I-9](#) electronically may use one or more electronic generation or storage systems. Each electronic generation or storage system must meet the requirements of this paragraph, and remain available as long as required by the [Act](#) and these regulations. [Employers](#) may implement new electronic storage systems provided:

**(i)** All systems meet the requirements of paragraphs (e), (f), (g), (h) and (i) of this section; and

**(ii)** Existing [Forms I-9](#) are retained in a system that remains fully accessible.

**(5)** For each electronic generation or storage system used, the person or [entity](#) retaining the [Form I-9](#) must maintain, and make available upon request, complete descriptions of:

**(i)** The electronic generation and storage system, including all procedures relating to its use; and

**(ii)** The indexing system.

**(6)** An “indexing system” for the purposes of paragraphs (e)(1)(iv) and (e)(5) of this section is a system that permits the identification and retrieval for viewing or reproducing of relevant documents and records maintained in an electronic storage system. For example, an indexing system might consist of assigning each electronically stored document a unique identification number and maintaining a separate database that contains descriptions of all electronically stored books and records along with their identification numbers. In addition, any system used to maintain, organize, or coordinate multiple electronic storage systems is treated as an indexing system. The requirement to maintain an indexing system will be satisfied if the indexing system is functionally comparable to a reasonable hardcopy filing system. The requirement to maintain an indexing system does not require that a separate electronically stored documents and records description database be maintained if comparable results can be achieved without a separate description database.

**(7)** Any person or [entity](#) choosing to retain completed [Forms I-9](#) electronically may use reasonable data compression or formatting technologies as part of the electronic storage system as long as the requirements of [8 CFR 274a.2](#) are satisfied.

**(8)** At the time of an inspection, the person or [entity](#) required to retain completed [Forms I-9](#) must:

**(i)** Retrieve and reproduce (including printing copies on paper, if requested) only the [Forms I-9](#) electronically retained in the electronic storage system and supporting documentation specifically requested by an agency of the [United States](#), along with associated audit trails. Generally, an audit trail is a record showing who has accessed a computer system and the actions performed within or on the computer system during a given period of time;

**(ii)** Provide a requesting agency of the [United States](#) with the resources (e.g., appropriate hardware and software, personnel and documentation) necessary to locate, retrieve, read, and reproduce (including paper copies) any electronically stored [Forms I-9](#), any supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the records; and

**(iii)** Provide, if requested, any reasonably available or obtainable electronic summary file(s), such as a spreadsheet, containing all of the information fields on all of the electronically stored [Forms I-9](#) requested by a requesting agency of the [United States](#).

**(f) Documentation.**

**(1)** A person or [entity](#) who chooses to complete and/or retain [Forms I-9](#) electronically must maintain and make available to an agency of the [United States](#) upon request documentation of the business processes that:

- (i)** Create the retained [Forms I-9](#);
- (ii)** Modify and maintain the retained [Forms I-9](#); and
- (iii)** Establish the authenticity and integrity of the [Forms I-9](#), such as audit trails.

**(2)** Insufficient or incomplete documentation is a violation of section 274A(a)(1)(B) of the [Act](#).

**(3)** Any officer listed in [8 CFR 287.4](#) may issue a subpoena to compel production of any documentation required by [8 CFR 274a.2](#). Nothing in this section is intended to limit the subpoena power of an agency of the [United States](#) under section 235(d)(4) of the [Act](#).

**(g) *Security.***

**(1)** Any person or [entity](#) who elects to complete or retain [Forms I-9](#) electronically must implement an effective records security program that:

- (i)** Ensures that only authorized personnel have access to electronic records;
- (ii)** Provides for backup and recovery of records to protect against information loss, such as power interruptions;
- (iii)** Ensures that [employees](#) are trained to minimize the risk of unauthorized or accidental alteration or erasure of electronic records; and
- (iv)** Ensure that whenever the electronic record is created, completed, updated, modified, altered, or corrected, a secure and permanent record is created that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

**(2)** An action or inaction resulting in the unauthorized alteration, loss, or erasure of electronic records, if it is known, or reasonably should be known, to be likely to have that effect, is a violation of section 274A(b)(3) of the [Act](#).

**(h) *Electronic signatures for employee.***

**(1)** If a [Form I-9](#) is completed electronically, the attestations in [Form I-9](#) must be completed using a system for capturing an electronic signature that meets the standards set forth in this paragraph. The system used to

capture the electronic signature must include a method to acknowledge that the attestation to be signed has been read by the signatory. The electronic signature must be attached to, or logically associated with, an electronically completed [Form I-9](#). In addition, the system must:

- (i) Affix the electronic signature at the time of the transaction;
- (ii) Create and preserve a record verifying the identity of the person producing the signature; and
- (iii) Upon request of the [employee](#), provide a printed confirmation of the transaction to the person providing the signature.

(2) Any person or [entity](#) who is required to ensure proper completion of a [Form I-9](#) and who chooses electronic signature for a required attestation, but who has failed to comply with the standards set forth in this paragraph, is deemed to have not properly completed the [Form I-9](#), in violation of section 274A(a)(1)(B) of the [Act](#) and [8 CFR 274a.2\(b\)\(2\)](#).

**(i) *Electronic signatures for employer, recruiter or referrer, or representative.*** If a [Form I-9](#) is completed electronically, the [employer](#), the recruiter or referrer for a fee, or the [representative](#) of the [employer](#) or the recruiter or referrer, must attest to the required information in [Form I-9](#). The system used to capture the electronic signature should include a method to acknowledge that the attestation to be signed has been read by the signatory. Any person or [entity](#) who has failed to comply with the criteria established by this regulation for electronic signatures, if used, and at the time of inspection does not present a properly completed [Form I-9](#) for the [employee](#), is in violation of section 274A(a)(1)(B) of the [Act](#) and [8 CFR 274a.2\(b\)\(2\)](#).

[[52 FR 16221](#), May 1, 1987, as amended at [53 FR 8612](#), Mar. 16, 1988; [55 FR 25932](#), June 25, 1990; [56 FR 41784](#), Aug. 23, 1991; [58 FR 48780](#), Sept. 20, 1993; [61 FR 46537](#), Sept. 4, 1996; [61 FR 52236](#), Oct. 7, 1996; [62 FR 51005](#), Sept. 30, 1997; [64 FR 6189](#), Feb. 9, 1999; [64 FR 11533](#), Mar. 9, 1999; [71 FR 34514](#), June 15, 2006; [73 FR 76511](#), Dec. 17, 2008; [74 FR 2838](#), Jan. 16, 2009; [74 FR 7995](#), Feb. 23, 2009; [74 FR 10455](#), Mar. 11, 2009; [74 FR 55739](#), Oct. 28, 2009; [74 FR 62207](#), Nov. 27, 2009; [75 FR 42578](#), July 22, 2010; [78 FR 18472](#), Mar. 27, 2013; [81 FR 82491](#), Nov. 18, 2016; [82 FR 5289](#), Jan. 17, 2017; [85 FR 29317](#), May 14, 2020]