

July 5, 2023

The Honorable Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave, NW
Washington, DC 20001

The Honorable Tae Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

Dear Director Jaddou and Acting Director Johnson:

I write on behalf of Business Roundtable, an association of more than 200 chief executive officers (CEOs) of America's leading companies, representing every sector of the U.S. economy. Business Roundtable CEOs lead U.S.-based companies that support one in four jobs and almost a quarter of GDP. Business Roundtable appreciates all the work the Department of Homeland Security (DHS) has done to provide flexibility to employers in complying with their Form I-9, Employment Eligibility Verification, obligations during the Covid-19 pandemic, including implementing the temporary flexible policy in March 2020, providing subsequent guidance on form completion and soliciting public feedback on the policy's efficacy and implementation.ⁱ

Business Roundtable is encouraged to see that the agency has submitted a final regulation, "Optional Alternative to the Physical Examination Associated With Employment Eligibility Verification (Form I-9)," for Office of Management and Budget (OMB) review. However, Business Roundtable has serious concerns about the government's approach to winding down the temporary policy and transitioning to the new regulation. The requirement for employers to meet with all employees whose documents they reviewed virtually in a short 30-day timeframe this summer is overly burdensome. The fact that DHS is in the process of finalizing this new I-9 regulation allowing certain employers to complete the entire process remotely makes this requirement unreasonable. It would be a waste of business resources to require companies to conduct physical inspections knowing that in a matter of months the government will deem many of those companies eligible to complete the entire process remotely.

Business Roundtable respectfully requests that DHS:

- (1) Provide employers more than 30 days to complete in-person document review;
- (2) Move quickly to finalize the "Optional Alternative" rule and implement a fully remote I-9 process for eligible employers; and
- (3) Clarify that employers that already meet the requirements of the new alternative review process do not need to complete a follow-up physical document inspection.

Providing a longer compliance timeline would help reduce the administrative burden on employers and their employees and give DHS sufficient time to facilitate an orderly transition to the new rule. Business Roundtable member companies are committed to fulfilling their legal obligations regarding employment eligibility verification. Furthermore, Business Roundtable believes the approach it is asking DHS to take

will allow companies to fulfill obligations most efficiently and will support the government's efforts to promote strong compliance programs.

DHS should provide employers more than 30 days to complete in-person document review.

Requiring employers to complete in-person review of all documents they examined under the "virtual" policy in just 30 days, particularly at a time of year when many employees take vacation, demands a significant administrative lift. U.S. employers have completed large volumes of initial Forms I-9 and reverifications under the temporary policy over the last three and a half years. Thousands of employees reporting to their employers for in-person review in this short window of time would create an operational bottleneck and overwhelm business operations.

In addition, while U.S. Citizenship and Immigration Services (USCIS) has provided helpful guidance and examples of how to annotate the form, numerous questions regarding the in-person review obligation remain unanswered. For example, many employers have completed both an initial Form I-9 and a Section 3 reverification for an employee. If an employer completed the initial Form I-9 virtually and the Section 3 reverification in person, there is no guidance clarifying whether the employer must go back and physically review the expired Section 2 document. Additionally, some employers have had difficulty documenting the follow-up review in electronic I-9 systems, especially when they are leveraging authorized representatives.

Coupled with the lack of any guidance from U.S. Immigration and Customs Enforcement (ICE) on how it will evaluate compliance with the temporary policy in future audits, this ambiguity is creating significant challenges for employers. Additional time to allow companies to complete this requirement would not only preserve business resources and continuity but would also enable companies to minimize potential errors in completing the requirement. An extension would give the agencies more time to issue guidance and clarifications to ensure companies are properly documenting the physical review.

DHS should move quickly to finalize the "Optional Alternative" rule and implement a fully remote I-9 process for eligible employers.

DHS is in the process of finalizing a regulation that would allow certain employers (e.g., those in good standing in E-Verify) to complete the entire Form I-9 process remotely. Business Roundtable strongly supports this effort and urges the agency to implement the final rule as soon as possible. As noted in previous comments to the government,ⁱⁱ Business Roundtable believes the follow-up physical review requirement under the temporary policy is already duplicative and unnecessary. Business Roundtable member companies that completed "virtual" verifications reported they were able to meet the legal standard for document review. In fact, they experienced more difficulties – including a higher likelihood of errors – working with authorized representatives to complete in-person review. The subsequent in-person review mandate also creates unnecessary hardship for employees who must locate documents they may have presented years ago and travel to meet with their employer.

DHS should clarify that employers that already meet the requirements of the new alternative review process do not need to complete a follow-up physical document inspection.

The physical review requirement is especially duplicative if the government might deem the employer eligible to complete the entire process remotely going forward, particularly given that E-Verify employers – which are expected to qualify for an alternative process under the "Optional Alternative"

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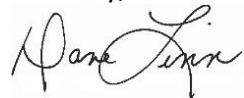
rule – have already received official confirmation from the government that their employees are work-authorized.

Requiring employers to devote significant resources to completing physical reviews this summerⁱⁱⁱ knowing that DHS will implement an entirely new policy in a matter of months, ignores the hundreds of comments DHS has received from the business community and will cause significant disruptions to business operations across the United States. Employers have already had to pivot and adapt multiple times over the last three years to maintain compliant Form I-9 and E-Verify programs.

Business Roundtable shares the government's goals of modernizing the I-9 process while protecting its integrity and ensuring all employers comply with their legal obligation to verify the identity and work authorization of employees in the United States. Business Roundtable encourages DHS to (1) provide employers more than 30 days to complete in-person document review; (2) move quickly to finalize the "Optional Alternative" rule and implement a fully remote I-9 process for eligible employers; and (3) clarify that employers who already meet the requirements of the new alternative review process do not need to complete a follow-up physical document inspection.

Business Roundtable looks forward to continuing the dialogue on these issues and stands ready to assist as needed. Thank you again, and please contact me at dlinn@brt.org or (202) 496-3267.

Sincerely,



Dane Linn
Senior Vice President
Business Roundtable

CC: Felicia Escobar Carrillo, Chief of Staff, USCIS
Sharon Hageman, Deputy Assistant Director, Office of Regulatory Affairs and Policy, U.S.
Immigration and Customs Enforcement

ⁱ Business Roundtable gathered feedback from our members' companies and submitted formal comments in response to the October 2021 USCIS Request for Public Input on employers' experiences with the temporary ICE policy (see Comment ID USCIS-2021-0022-0299; <https://www.regulations.gov/comment/USCIS-2021-0022-0299>) as well as the August 2022 ICE Notice of Proposed Rulemaking, "Optional Alternatives the Physical Document Examination Associated With Employment Eligibility Verification (Form I-9)" (see Comment ID ICEB-2021-0010-0500; <https://www.regulations.gov/comment/ICEB-2021-0010-0500>).

ⁱⁱ See Comment ID USCIS-2021-0022-0299, <https://www.regulations.gov/comment/USCIS-2021-0022-0299>; Comment ID ICEB-2021-0010-0500, <https://www.regulations.gov/comment/ICEB-2021-0010-0500>.

ⁱⁱⁱ Furthermore, in a survey of Business Roundtable members' companies, respondents indicated that their HR teams are already stretched too thin for this added burden.