Office of the
Citizenship and Immigration Services Ombudsman

U.S. Department of Homeland Security
Washington, DC 20528

RECOMMENDATION FROM THE CIS OMBUDSMAN TO THE DIRECTOR, USCIS

To:	Eduardo Aguirre, USCIS Director
	Cc: Admiral Jim Loy
From::	Prakash Khatri, CIS Ombudsman
Date:	08/16/04
Re:	Recommendation that employers be authorized to store Form I-9s electronically

This recommendation is submitted to the Director of USCIS in light of recent information received that indicated that the I-9 authority has not been transferred to ICE yet. If this recommendation is received by your office subsequent to transfer of authority to ICE, and you agree with the recommendation, please forward this recommendation as your recommendation to ICE to improve the current process. This recommendation, if implemented, will permit employers to store Employment Eligibility Verifications (Form I-9) via electronic storage media (e.g., .pdf, .jpg or other such electronic file) as are other comparable business files, in addition to those media currently authorized for Form I-9 storage.

I. BACKGROUND

8 C.F.R. 274a(b)(2)(B)(ii) requires employers to maintain Employment Eligibility Verifications (Form I-9) in original form, microfilm or microfiche. Additional subsections of the referenced cite detail legibility standards for microfilm and microfiche copied Forms I-9. At the time of publication of the referenced cite, the state-of-the-art for most business document storage was original form, photocopy, microfilm and microfiche.

II. JUSTIFICATION

The Employment Eligibility Verification (Form I-9) is unique, in that Forms I-9 are initiated and stored by employers rather than being forwarded and subsequently stored at a U.S. Government facility. As a result, the intention of 8 C.F.R. 274a(b)(2)(B)(ii) was to allow employers to utilize their existing business document storage media for Forms I-9 so that a separate, technology-inhibited, document storage practice was not levied on employers, forcing employers the additional cost of a government-mandated storage medium exclusive of an employer's reasonable and customary storage medium.

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Today, business information technology has progressed to where efficient document conversion and storage into electronic files is commonplace. Original form documents can now be electronically replicated in a cost effective manner with a high degree of accuracy and clarity. Many employers, as well as federal and state government agencies, rely on electronic data storage of business documents for reasons of cost efficiency and data security. Therefore, today's employers should be allowed to store this particular document (Form I-9) in a technologically competent manner which is cost effective to the employer and utilizes the same business information technology storage media as used to store other business documents and records.

III. BENEFITS

A. Customer Service:

Employers should not be required by government to store selective business records in a technologically-explicit manner exclusive of other competent storage media. Allowing an employer to make use of current business information technology for Form I-9 storage reduces the employer's document storage and overall overhead costs while simultaneously making that employer's human capital department more efficient. In the global market, any reduction in an American employer's costs of doing business is good for the American economy as a whole.

B. USCIS Efficiency:

At present, USCIS/ICE must rely on employers being able to provide on-site access to Forms I-9 whenever questions regarding individual employment eligibility arise. As USCIS/ICE also increases its reliance on today's business information technology for information/data transfer, being able to receive Form I-9 information directly from employers may prove to be an effective element in other adjudication actions and fraud prevention.

C. National Security:

Employers use business information technology systems for document and business record storage to protect the information being stored from unauthorized access, as well as to provide for less costly information storage. Electronic copies of Forms I-9 provide greater overall security by: 1) preventing access and subsequent destruction or data manipulation of the Form I-9; and 2) providing an efficient means for transfer of Form I-9 information from the employer to an authorized U.S. Government entity with need for reviewing Form I-9 entries.