

The following USCIS response was received as part of a collective response to several recommendations submitted by the CIS Ombudsman. The following response has been extracted from the original document received by the CIS Ombudsman for display and readability purposes.

Recommendation that employers be allowed to store Form I-9s electronically

The jurisdiction for review of I-9 data in conjunction with employer sanction investigations rests with the Bureau of Immigration and Customs Enforcement (ICE). USCIS provides the form on its website as a service to the employer community.

USCIS agrees with the recommendation. In fact, virtually simultaneously with the Ombudsman's recommendation, USCIS received a DHS-wide request for legislative comment on H.R. 4306, a bill introduced on May 6, 2004 that would require implementation of exactly what the Ombudsman recommended in August. In response to that request, USCIS recommended supporting the bill and played an instrumental role in developing the Department's legislative position on H.R. 4306, working cooperatively with the DHS Office of General Counsel, BTS and ICE to reach consensus on the position reflected in comments to OMB on August 27 and later in a letter to the House Judiciary Committee on October 6. (See H. Rep. 108-731)

DHS supported enactment of H.R. 4306, as long as an implementation period of 180 days was provided in order to revise the regulations to set appropriate standards for electronic storage that would meet employers' needs while ensuring that worksite, employer sanction, and antidiscrimination enforcement interests will continue to have full access to accurate I-9s in order to fulfill their missions. H.R. 4306 was enacted by Congress consistent with the DHS recommendation, and became Public Law 108-390 on October 30, 2004.

I-9 enforcement issues relating to ensuring access by investigators are within the particular jurisdiction of ICE, but USCIS is working closely with ICE in the working group responsible for the implementing regulations within the 180-day time frame. USCIS wants to ensure that its interests relating to the form itself and work authorization documentation, and those interests of its customers, are fully taken into consideration in the rulemaking process.

The Ombudsman may wish to communicate with the BTS Policy group to express thoughts and concerns about the manner in which the statute will be implemented. We anticipate that BTS will afford the opportunity for notice and comment in the rulemaking process.