

111TH CONGRESS
1ST SESSION

H. R. 2028

To amend the Social Security Act to prevent unauthorized earnings from being credited toward benefits under title II of such Act and to make improvements in provisions governing totalization agreements, to amend the Social Security Act and the Immigration and Nationality Act to prevent unauthorized employment, and to improve coordination of the provisions of such Acts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 2009

Mr. SAM JOHNSON of Texas (for himself, Ms. GIFFORDS, Mr. BRADY of Texas, Mr. MOORE of Kansas, Mr. RYAN of Wisconsin, and Mr. MITCHELL) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and Labor, Rules, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Social Security Act to prevent unauthorized earnings from being credited toward benefits under title II of such Act and to make improvements in provisions governing totalization agreements, to amend the Social Security Act and the Immigration and Nationality Act to prevent unauthorized employment, and to improve coordination of the provisions of such Acts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “New Employee
 5 Verification Act of 2009”.

6 **TITLE I—ELECTRONIC**
 7 **EMPLOYMENT VERIFICATION**
 8 **Subtitle A—Implementation of New**
 9 **Systems**

10 **SEC. 101. EXTENSTION OF BASIC PILOT UNTIL NEW SYS-**
 11 **TEMS OPERATING.**

12 Section 401(b) of the Illegal Immigration Reform and
 13 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
 14 note) is amended—

15 (1) by striking “11-year period” and inserting
 16 “16-year period”; and

17 (2) by striking the period at the end and insert-
 18 ing the following: “, except that this subtitle is re-
 19 pealed effective on the date that is 36 months after
 20 the date of the enactment of the New Employee
 21 Verification Act of 2009.”.

22 **SEC. 102. AMENDMENTS TO IMMIGRATION LAWS TO IM-**
 23 **PROVE EMPLOYMENT AUTHORIZATION**
 24 **VERIFICATION.**

25 (a) IN GENERAL.—

1 (1) CHANGE IN EMPLOYMENT ELIGIBILITY
2 VERIFICATION PROCESS.—Section 274A of the Im-
3 migration and Nationality Act (8 U.S.C. 1324a) is
4 amended—

5 (A) in subsection (a)(1)(B)—

6 (i) in clause (i), by striking “sub-
7 section (b)” and inserting “(b), (c), or
8 (d)”; and

9 (ii) in clause (ii), by striking “sub-
10 section (b).” and inserting “subsection (b),
11 (c), or (d).”; and

12 (B) in subsection (b), in the matter pre-
13 ceding paragraph (1), by striking “United
14 States,” and inserting “United States who is
15 subject to compliance with this subsection,”.

16 (2) VERIFICATION VIA EEVS AND SEEVS SYS-
17 TEMS.—Subsections (c) and (d) of section 274A of
18 the Immigration and Nationality Act (8 U.S.C.
19 1324a) are amended to read as follows:

20 “(c) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
21 TEM.—

22 “(1) ENROLLMENT.—

23 “(A) IN GENERAL.—Every person or other
24 entity subject to subsection (a)(1)(B), and that
25 is not in compliance with such subsection by

1 reason of compliance with subsection (d), shall
2 participate in the Electronic Employment
3 Verification System established under section
4 235(a) of the Social Security Act (the ‘EEVS’)
5 on a schedule established in accordance with
6 section 235(a)(4) of the Social Security Act
7 with respect to all hiring, recruitment, and re-
8 ferral described in subsection (a)(1)(B) occur-
9 ring after the earlier of the date on which the
10 entity—

11 “(i) is required to register under this
12 paragraph; or

13 “(ii) voluntarily registers.

14 “(B) VOLUNTARY PARTICIPATION.—The
15 Secretary of Homeland Security, in consultation
16 with the Commissioner of Social Security, may
17 permit any person or other entity subject to
18 subsection (a)(1)(B), and that is not yet re-
19 quired to participate in the EEVS under section
20 235(a)(4) of the Social Security Act to partici-
21 pate in the EEVS on a voluntary basis.

22 “(C) EXPEDITED PARTICIPATION.—The
23 Secretary of Homeland Security, on a case-by-
24 case or classwide basis, may require any person
25 or other entity subject to subsection (a)(1)(B),

1 and that is not yet required to participate in
2 the EEVS under section 235(a)(4) of the Social
3 Security Act, to participate in the EEVS (or,
4 alternatively, the Secure Employment Eligibility
5 Verification System established under section
6 235(b) of the Social Security Act (the
7 ‘SEEVS’)) on an expedited basis if the Sec-
8 retary designates such person or entity as—

9 “(i) employing individuals having ac-
10 cess to locations or information that have
11 a direct impact on the security of the
12 United States; or

13 “(ii) having engaged in material viola-
14 tions of this section.

15 “(D) REQUIREMENT TO NOTIFY.—The
16 Secretary of Homeland Security shall notify
17 persons or entities required to register not less
18 than 60 days prior to the effective date of such
19 requirement through publication in the Federal
20 Register regarding the requirement for partici-
21 pation in the EEVS under subparagraphs (A)
22 and (C)(i) and by mail regarding the require-
23 ment for participation in the EEVS under sub-
24 paragraph (C)(ii). Such notice shall include the

1 training materials described in section
2 235(a)(5) of the Social Security Act.

3 “(E) REGISTRATION.—A person or other
4 entity shall register to participate in the EEVS
5 or the SEEVS in the manner prescribed by the
6 Commissioner of Social Security prior to the
7 date the person or entity is required or per-
8 mitted to submit information with respect to an
9 individual under this subsection.

10 “(F) CONSEQUENCE OF FAILURE TO PAR-
11 TICIPATE.—If a person or other entity is re-
12 quired or has elected to participate in the
13 EEVS or the SEEVS and fails to comply with
14 the requirements thereof, such failure—

15 “(i) shall be treated as a violation of
16 subsection (a)(1)(B) punishable under sub-
17 section (e)(5); and

18 “(ii) shall create a rebuttable pre-
19 sumption that the person or other entity
20 has violated subsection (a)(1)(A), except
21 that such presumption shall not apply to a
22 prosecution under subsection (f)(1).

23 “(G) PROTECTION FROM LIABILITY.—No
24 person or other entity that participates in the
25 EEVS or the SEEVS shall be liable under any

1 law for any employment-related action taken
2 with respect to an individual in reliance on in-
3 formation provided by the EEVS or the SEEVS
4 (as applicable) in connection with such partici-
5 pation, if such action is taken in accordance
6 with the requirements of this subsection, section
7 235 of the Social Security Act, and applicable
8 regulations prescribed thereunder.

9 “(H) EXCLUSIVE MEANS OF
10 VERIFICATION.—If a person or other entity is
11 required or has elected to participate in the
12 EEVS, subsections (b) and (d) shall not apply
13 to the person or other entity.

14 “(2) OBTAINING DOCUMENTS FOR EEVS.—

15 “(A) INFORMATION REQUIRED.—A person
16 or other entity registered to participate in the
17 EEVS shall, with respect to the hiring, or re-
18 cruiting or referring for a fee, any individual
19 for employment in the United States, obtain
20 from the individual—

21 “(i) the individual’s name and date of
22 birth;

23 “(ii) the individual’s social security
24 account number; and

1 “(iii) in the case of an individual who
2 does not claim to be a national of the
3 United States, such alien identification or
4 authorization number as the Secretary
5 shall require.

6 “(B) DOCUMENTS REQUIRED.—The person
7 or entity shall require that the individual
8 produce one of the following documents con-
9 sistent with the status claimed by the individual
10 and bearing identifying information consistent
11 with that obtained from the individual:

12 “(i) In the case of an individual who
13 is a national of the United States—

14 “(I) a United States passport; or

15 “(II) a driver’s license or identity
16 card, issued by a State, the Common-
17 wealth of the Northern Mariana Is-
18 lands, or an outlying possession of the
19 United States, that contains a photo-
20 graph of the individual, other identi-
21 fying information (including the indi-
22 vidual’s name, date of birth, gender,
23 and address) and security features to
24 make the license or card resistant to

1 tampering, counterfeiting, and fraudu-
2 lent use.

3 “(ii) In the case of an alien lawfully
4 admitted for permanent residence in the
5 United States, a permanent resident card,
6 as specified by the Secretary, that contains
7 a photograph of the individual, other iden-
8 tifying information (including name, date
9 of birth, gender, and address), and con-
10 tains security features to make the docu-
11 ment resistant to tampering, counter-
12 feiting, and fraudulent use.

13 “(iii) In the case of an alien who is
14 authorized under the Immigration and Na-
15 tionality Act or by the Secretary of Home-
16 land Security to be employed in the United
17 States, an employment authorization card,
18 issued by the Secretary that contains a
19 photograph of the individual, other identi-
20 fying information (including name, date of
21 birth, gender, and address), and security
22 features to make the document resistant to
23 tampering, counterfeiting, and fraudulent
24 use.

1 “(iv) In the case of an individual who
2 is unable to obtain a document described
3 in clause (i), (ii), or (iii), a document des-
4 ignated by the Secretary that contains a
5 photograph of the individual, other identi-
6 fying information (including name, date of
7 birth, gender, and address) and security
8 features to make the document resistant to
9 tampering, counterfeiting, and fraudulent
10 use.

11 “(C) UNACCEPTABLE DOCUMENTS.—If the
12 Secretary finds that a document or class of doc-
13 uments described in clause (ii) is not reliable to
14 establish identity or is being used fraudulently
15 to an unacceptable degree, the Secretary shall
16 prohibit, or impose conditions, on the use of
17 such documents or class of documents for pur-
18 poses of this subsection. The Secretary shall
19 publish notice of any findings under this clause
20 in the Federal Register.

21 “(3) ATTESTATION.—A person or other entity
22 registered to participate in the EEVS shall attest,
23 under penalty of perjury using an electronic signa-
24 ture or code approved by the Commissioner of Social
25 Security through an internet or telephonic connec-

1 tion prescribed by the Commissioner, that registrant
2 has obtained the information required by paragraph
3 (2)(A) and examined a consistent document required
4 by paragraph (2)(B).

5 “(4) CONSEQUENCES OF CERTAIN EEVS DETER-
6 MINATIONS.—

7 “(A) MANDATORY DISMISSAL IF NO CON-
8 TEST OF INITIAL DISAPPROVAL.—If an indi-
9 vidual does not contest the initial disapproval
10 notice described in section 235(a)(3)(C)(ii) of
11 the Social Security Act by the end of the 10-
12 day period beginning on the date on which the
13 notice is received from the employer, the dis-
14 approval shall become final, and the employer
15 shall, within 3 business days after the end of
16 such 10-day period, terminate the employment,
17 recruitment, or referral of the individual by the
18 employer.

19 “(B) MANDATORY DISMISSAL IF DIS-
20 APPROVAL NOTICE ISSUED AFTER CONTEST.—

21 In any case in which a disapproval notice de-
22 scribed in section 235(a)(3)(C)(v) of the Social
23 Security Act is issued, the employer shall, with-
24 in 3 business days after receipt of such notice,
25 terminate the employment, recruitment, or re-

1 ferral of the individual who is the subject of the
2 notice.

3 “(C) RULE ON DISMISSAL.—An employer
4 shall not terminate an employee until receiving
5 a final disapproval notice, unless there is good
6 cause for dismissal for a reason other than the
7 failure to obtain approval of employment eligi-
8 bility.

9 “(5) PRESUMPTION OF VIOLATION.—If a per-
10 son or other entity registered to participate in the
11 EEVS continues, in violation of this subparagraph,
12 to employ, recruit, or refer an individual, a rebutta-
13 ble presumption is created that the registrant has
14 violated subsections (a)(1)(A) and (a)(2) of this sec-
15 tion, except that such presumption shall not apply to
16 a prosecution under subsection (f)(1) of this section.

17 “(d) SECURE EMPLOYMENT ELIGIBILITY
18 VERIFICATION SYSTEM.—

19 “(1) IN GENERAL.—Beginning with the first
20 day of operation of the SEEVS a person or other
21 entity subject to subsection (a)(1)(B) of this section
22 may elect to comply with such subsection by partici-
23 pating in the SEEVS. Such participation shall be in
24 lieu of participation in the EEVS established under
25 section 235(a) of the Social Security Act. Such par-

1 participation shall be subject to the requirements of sec-
2 tion 235(b) of such Act and the regulations issued
3 under such section.

4 “(2) REQUIREMENT TO NOTIFY.—The Sec-
5 retary of Homeland Security shall notify persons or
6 entities subject to subsection (a)(1)(B) about the op-
7 portunity to participate in the SEEVS not less than
8 60 days prior to the first day of operation of the
9 system.

10 “(3) PRESUMPTION.—Participation in SEEVS
11 by an employer that follows the required procedures
12 of the system shall create a presumption that the
13 employer has not violated the requirements of this
14 Act with respect to its hiring decisions, which pre-
15 sumption shall only be overcome by clear and con-
16 vincing evidence of willful noncompliance resulting in
17 the hiring of an unauthorized employee.

18 “(4) EXCLUSIVE MEANS OF VERIFICATION.—If
19 a person or other entity is required or has elected
20 to participate in the SEEVS, subsections (b) and (c)
21 shall not apply to the person or other entity.

22 “(5) COMPLIANCE WITH EEVS REQUIREMENTS
23 UPON TERMINATION OF ELECTION.—If a person or
24 other entity terminates its election to participate in
25 the SEEVS, the person or entity shall be subject to

1 compliance with subsection (c) with respect to all
2 employment actions beginning on the date of such
3 termination.”.

4 (b) ENHANCEMENT OF FEDERAL PREEMPTION
5 STANDARDS.—Section 274A(h)(2) of the Immigration and
6 Nationality Act (8 U.S.C. 1324a(h)(2)) is amended to
7 read as follows:

8 “(2) PREEMPTION; NO NATIONAL IDENTIFICA-
9 TION CARD.—

10 “(A) PREEMPTION.—The provisions of this
11 section preempt any provision of any law of any
12 State or political subdivision thereof or any con-
13 tract entered into by any State or political sub-
14 division thereof which—

15 “(i) imposes civil or criminal sanctions
16 upon employers for actions governed by the
17 Act;

18 “(ii) requires, authorizes or permits a
19 system of verification of the immigration
20 status of employees or employment appli-
21 cants;

22 “(iii) requires, authorizes, or permits
23 the use of a federally mandated employ-
24 ment verification system for any purpose
25 other than that required by Federal law,

1 including verifying status of renters, deter-
2 mining eligibility for receipt of benefits, en-
3 rollment in school, obtaining or retaining a
4 business or other license provided by the
5 unit of government, or conducting a back-
6 ground check; or

7 “(iv) requires or prohibits the use of
8 an immigration status employment
9 verification system for any purpose, except
10 as required by Federal law, including with-
11 out limitation, such purposes as—

12 “(I) a condition of receiving a
13 government contract;

14 “(II) a condition of receiving a
15 business license; or

16 “(III) the basis of assessing a
17 penalty.

18 “(B) NO AUTHORIZATION OF NATIONAL
19 IDENTIFICATION CARD.—Nothing in this sec-
20 tion shall be construed to authorize, directly or
21 indirectly, the issuance or use of national iden-
22 tification cards or the establishment of a na-
23 tional identification card.”.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Secretary of

1 Homeland Security such sums as may be necessary to
 2 carry out the amendments made by this section.

3 **SEC. 103. AMENDMENTS TO SOCIAL SECURITY ACT TO IM-**
 4 **PROVE EMPLOYMENT AUTHORIZATION**
 5 **VERIFICATION.**

6 (a) AMENDMENT TO TITLE II.—

7 (1) IN GENERAL.—Title II of the Social Secu-
 8 rity Act (42 U.S.C. 401 et seq.) is amended by add-
 9 ing at the end the following new section:

10 “ELECTRONIC EMPLOYMENT VERIFICATION

11 “SEC. 235. (a) ELECTRONIC EMPLOYMENT
 12 VERIFICATION SYSTEM.—

13 “(1) IN GENERAL.—The Commissioner of So-
 14 cial Security, in cooperation and consultation with
 15 the Secretary of Health and Human Services, Sec-
 16 retary of Homeland Security, the States, and the
 17 Advisory Panel created in subsection (c) of this sec-
 18 tion, shall establish an Electronic Employment
 19 Verification System (the ‘EEVS’) using the em-
 20 ployer data entry infrastructure of the National Di-
 21 rectory of New Hires (established pursuant to sec-
 22 tion 453(i)). The EEVS—

23 “(A) shall, as is appropriate and effective,
 24 utilize elements of the employment eligibility
 25 confirmation system infrastructure established
 26 under section 404 of the Illegal Immigration

1 Reform and Immigrant Responsibility Act of
2 1996 (Public Law 104–208; 110 Stat. 3009–
3 664);

4 “(B) shall be accessible over the Internet
5 and a toll-free telephone line maintained by the
6 Commissioner; and

7 “(C) shall have the capacity to determine
8 whether—

9 “(i) identifying information with re-
10 spect to an individual, submitted by the
11 subject employer, is consistent with the in-
12 formation maintained by the Commissioner
13 (with respect to both citizens and nationals
14 of the United States) and by the Secretary
15 of Homeland Security (solely with respect
16 to aliens); and

17 “(ii) the individual is a citizen or na-
18 tional or is not an unauthorized alien (as
19 defined in section 274A(h)(3) of the Immi-
20 gration and Nationality Act (8 U.S.C.
21 1324a(h)(3))) with respect to the employ-
22 ment.

23 “(2) SUBJECT EMPLOYER.—For purposes of
24 this section, the term ‘subject employer’ means, in
25 connection with any individual, an employer (within

1 the meaning of section 453A(a)(2)(B)(i)) of such in-
2 dividual and includes any person who recruits or re-
3 fers for employment such individual for a fee.

4 “(3) VERIFICATION OF EMPLOYMENT AUTHOR-
5 IZATION.—

6 “(A) IN GENERAL.—The Commissioner
7 shall, through the EEVS—

8 “(i) respond to each inquiry regarding
9 an individual’s identifying information and
10 eligibility for employment in the United
11 States for the subject employer, as re-
12 corded in the information maintained by
13 the Commissioner or the Secretary of
14 Homeland Security as appropriate, and in-
15 clude in the response the time period
16 (which may be unlimited) for which the in-
17 dividual is authorized to be employed in
18 the United States by such employer, as so
19 recorded; and

20 “(ii) maintain a record of each such
21 inquiry and the information provided in re-
22 sponse to such inquiry.

23 “(B) SUBMISSION TO SYSTEM.—

24 “(i) IN GENERAL.—A subject em-
25 ployer shall submit an inquiry through the

1 EEVS to seek confirmation of an individ-
2 ual’s identifying information and eligibility
3 for employment in the United States—

4 “(I) in the case of hiring subject
5 to clause (i) of section 274A(a)(1)(B)
6 of the Immigration and Nationality
7 Act (8 U.S.C. 1324a(a)(1)(B)), dur-
8 ing the period beginning on the date
9 of hire and ending at the end of the
10 third business day after the employee
11 has reported for duty; and

12 “(II) in the case of recruitment
13 or referral for a fee subject to clause
14 (ii) of such section, not later than the
15 first day of such recruitment or refer-
16 ral.

17 “(ii) REQUIRED INFORMATION.—Such
18 inquiry shall include—

19 “(I) the individual’s name and
20 date of birth;

21 “(II) the individual’s social secu-
22 rity account number;

23 “(III) in the case of an individual
24 who does not claim to be a national of
25 the United States, such alien identi-

1 fication or authorization number as
2 the Secretary shall require.

3 “(C) EEVS SCREENING OF EMPLOYMENT
4 ELIGIBILITY.—

5 “(i) IN GENERAL.—As soon as pos-
6 sible, but not later than 3 business days
7 after a subject employer submits an in-
8 quiry to the EEVS regarding an indi-
9 vidual, the EEVS shall provide to the sub-
10 ject employer, through the EEVS, approval
11 or initial disapproval of the employment of
12 the individual in the United States.

13 “(ii) INITIAL DISAPPROVAL.—If a
14 subject employer receives an initial dis-
15 approval from the system for an individual,
16 the subject employer shall notify such indi-
17 vidual of the issuance of such disapproval
18 in writing, on the form described in para-
19 graph (5)(E), not later than 3 business
20 days after receiving such notice. Such indi-
21 vidual shall acknowledge receipt of such
22 notice in writing on a form prescribed by
23 the Commissioner. The Commissioner shall
24 provide the individual an opportunity to
25 contest the initial disapproval, and the no-

1 tification of the individual by the subject
2 employer shall include a description of the
3 individual’s right to contest such dis-
4 approval.

5 “(iii) CONTEST.—If the individual
6 contests the initial disapproval, the indi-
7 vidual shall submit appropriate information
8 to contest such notice under the proce-
9 dures established by the Commissioner, in
10 consultation with the Secretary of Home-
11 land Security, not later than 10 business
12 days after receiving the notice from the
13 subject employer.

14 “(iv) NO CONTEST.—If the individual
15 does not contest the initial disapproval no-
16 tice by the end of the 10-day period begin-
17 ning on the date on which the notice is re-
18 ceived from the subject employer, the dis-
19 approval shall become final, and the sub-
20 ject employer shall record on the system
21 the appropriate code, in accordance with
22 regulations of the Commissioner, to indi-
23 cate the individual did not contest the ini-
24 tial disapproval. An individual’s failure to
25 contest an initial disapproval shall not be

1 considered an admission of any fact with
2 respect to any violation of this title, the
3 Immigration and Nationality Act, or any
4 other provision of law.

5 “(v) APPROVAL OR DISAPPROVAL.—
6 The Commissioner, in consultation with
7 the Secretary of Homeland Security, shall
8 ensure prompt resolution of the individ-
9 ual’s contest of the initial disapproval and
10 issue either an approval or disapproval no-
11 tice to the subject employer through the
12 EEVS not later than 10 business days
13 after the date on which the individual con-
14 tests their initial disapproval.

15 “(D) ADMINISTRATIVE REVIEW OF DIS-
16 APPROVALS.—

17 “(i) IN GENERAL.—An individual who
18 is terminated from employment pursuant
19 to subparagraph (B) or (C) of section
20 274A(c)(4) of the Immigration and Na-
21 tionality Act may, not later than 30 busi-
22 ness days after the date of such termi-
23 nation, file an appeal of the disapproval
24 notice resulting in such termination.

1 “(ii) PROCEDURES.—The Commis-
2 sioner and the Secretary of Homeland Se-
3 curity shall jointly develop procedures to
4 review appeals filed under clause (i) and—

5 “(I) with respect to disapprovals
6 based on information maintained by
7 the Commissioner, the appeal shall be
8 filed with the Commissioner and the
9 Commissioner shall make the final de-
10 terminations; and

11 “(II) with respect to disapprovals
12 based on information maintained by
13 the Secretary of Homeland Security,
14 the appeal shall be filed with the Sec-
15 retary of Homeland Security and the
16 Secretary shall make the final deter-
17 minations on such appeals and pro-
18 vide certification of such final deter-
19 minations to the Commissioner.

20 “(iii) REVIEW FOR ERRORS.—If a
21 final determination on an appeal filed
22 under clause (i) results in approval of an
23 individual’s eligibility to work in the
24 United States, the Commissioner (in the
25 case of a final determination under clause

1 (ii)(I) or the Secretary of Homeland Secu-
2 rity (in the case of a final determination
3 under clause (ii)(II)) shall determine if the
4 final disapproval notice issued for the indi-
5 vidual was the result of an act or omission
6 that was the responsibility of the individual
7 or from another cause.

8 “(iv) COMPENSATION FOR ERRORS.—

9 “(I) IN GENERAL.—In any case
10 in which the Commissioner makes a
11 determination under this subpara-
12 graph that the disapproval notice
13 issued for an individual was caused by
14 a negligent, reckless, willful, or mali-
15 cious act of the Government and was
16 not caused by an act or omission that
17 was the responsibility of the indi-
18 vidual, or the Secretary of Homeland
19 Security provides to the Commissioner
20 certification of such a determination
21 pursuant to clause (ii)(II), the Com-
22 missioner shall certify to the Treasury
23 the amount of the lost wages and the
24 Secretary of the Treasury shall com-
25 pensate the individual for such lost

1 wages from the general fund of the
2 Treasury.

3 “(II) CALCULATION OF LOST
4 WAGES.—Lost wages shall be cal-
5 culated based on the wage rate and
6 work schedule that prevailed prior to
7 termination. The individual shall be
8 compensated for wages lost beginning
9 on the first scheduled work day after
10 employment was terminated and end-
11 ing 180 days after completion of the
12 administrative review process de-
13 scribed in this paragraph or the day
14 after the individual is reinstated or
15 obtains employment elsewhere, which-
16 ever occurs first.

17 “(III) LIMITATION ON COM-
18 PENSATION.—For purposes of deter-
19 mining an individual’s compensation
20 for the loss of employment, such com-
21 pensation shall be reduced by any
22 compensation earned from any em-
23 ployment during such period and shall
24 not include any period in which the

1 individual was ineligible for employ-
2 ment in the United States.

3 “(E) JUDICIAL REVIEW OF DIS-
4 APPROVALS.—

5 “(i) IN GENERAL.—An individual de-
6 scribed in subparagraph (D)(i) may obtain
7 judicial review of a final determination
8 under subparagraph (D) by a civil action
9 commenced not later than 30 days after
10 the date of such determination.

11 “(ii) JURISDICTION.—A civil action
12 for such judicial review shall be brought in
13 the district court of the United States for
14 the judicial district in which the plaintiff
15 resides, or has a principal place of busi-
16 ness, or, if the plaintiff does not reside or
17 have a principal place of business within
18 any such judicial district, in the District
19 Court of the United States for the District
20 of Columbia.

21 “(iii) ANSWER.—A certified copy of
22 the administrative record compiled during
23 the administrative review under subpara-
24 graph (D), including the evidence received
25 during such review, shall be filed in such

1 civil action. The court shall have power to
2 enter, upon the pleadings and administra-
3 tive record, a judgment affirming, modi-
4 fying or reversing such administrative deci-
5 sion, with or without remanding the matter
6 for further proceedings.

7 “(iv) COMPENSATION FOR ERROR.—

8 In cases in which such judicial review re-
9 sults in a determination that compensation
10 for lost wages is due, such compensation
11 shall be computed and paid in accordance
12 with subparagraph (D)(iv).

13 “(4) IMPLEMENTATION OF THE EEVS.—

14 “(A) IN GENERAL.—The Commissioner
15 shall establish a schedule for implementation of
16 the EEVS that is designed to assure that the
17 capacity of all aspects of the EEVS, including
18 the equipment and personnel required to com-
19 plete reviews of contested initial disapprovals
20 and corrections of erroneous records, within the
21 time limits established by subparagraphs (C)
22 and (D) of paragraph (3).

23 “(B) PRIORITIES.—The schedule estab-
24 lished pursuant to subparagraph (A) shall be
25 established based on the priority of maximizing

1 the deterrent effect on illegal migration and un-
2 authorized employment on the most expeditious
3 basis possible.

4 “(C) BASIC PILOT PARTICIPANTS.—The
5 schedule established pursuant to subparagraph
6 (A) shall assure that all participants in the
7 basic pilot program for employment eligibility
8 verification described in section 403(a) of the
9 Illegal Immigration Reform and Immigrant Re-
10 sponsibility Act of 1996 (8 U.S.C. 1324a note)
11 are registered in the EEVS as soon as feasible
12 after the date of the enactment of the New Em-
13 ployee Verification Act of 2009.

14 “(D) ALL OTHERS.—Every person that is
15 a subject employer with respect to one or more
16 individuals as of the date of enactment of the
17 New Employee Verification Act of 2009 shall be
18 required to register in the EEVS, or be compli-
19 ant under subsection (b) of this section, not
20 later than 36 months after such date.

21 “(5) STANDARDS FOR OPERATION.—

22 “(A) POLICIES AND PROCEDURES.—The
23 Commissioner, the Secretary of Homeland Se-
24 curity, and the Secretary of Health and Human
25 Services shall establish procedures for col-

1 lecting, updating, removing, and adding data to
2 the EEVS to ensure the accuracy and integrity
3 of the data and to limit access to the data to
4 authorized personnel.

5 “(B) PUBLIC EDUCATION.—Not later than
6 6 months before the first registration date, the
7 Commissioner, in cooperation with the Sec-
8 retary of Health and Human Services, the Sec-
9 retary of Homeland Security, and the States,
10 shall develop a public education campaign re-
11 garding the obligations imposed by this section,
12 as well as instructional materials provided with-
13 out cost to the public regarding how to use the
14 EEVS.

15 “(C) REGISTRANT TRAINING.—Not later
16 than 6 months before the first registration date,
17 the Commissioner, in cooperation with the Sec-
18 retary of Homeland Security, the Secretary of
19 Health and Human Services, and the States,
20 shall institute a comprehensive program of out-
21 reach and training for employers regarding the
22 operation and benefits of using the verification
23 systems described in this section and informing
24 them of ongoing assistance resources for the
25 implementation and use of such systems.

1 “(D) EEVS DESIGN AND TECHNOLOGY
2 STANDARDS.—The Commissioner and the Sec-
3 retary of Homeland Security shall ensure the
4 following with respect to the development and
5 operation of the EEVS:

6 “(i) The development and implemen-
7 tation of the system in accordance with
8 technology standards that are sufficiently
9 comprehensive and robust to verify the em-
10 ployment eligibility of all persons applying
11 for employment in the United States at all
12 times.

13 “(ii) The dependable operation of a
14 cross-agency, cross-platform electronic sys-
15 tem that is a cost-effective, efficient, fully
16 integrated means to share identifying in-
17 formation, immigration information, and
18 Social Security information necessary to
19 confirm the employment eligibility of all
20 persons seeking employment.

21 “(iii) The real-time data entry of em-
22 ployment eligibility with respect to all indi-
23 viduals that is accomplished on a contem-
24 poraneous basis with the establishment or
25 change of immigration, citizenship, work

1 authorization, or identifying information
2 maintained by the Commissioner, such that
3 this information is immediately available to
4 be accessed through the EEVS.

5 “(iv) The operation of EEVS on a
6 fully electronic basis that shall not require
7 the creation or maintenance of paper
8 records or electronic copies of documents
9 other than a log of inquiries and responses
10 for those employers that employ telephonic
11 access to the system.

12 “(v) The accessibility to all employers
13 via the Internet and telephone through a
14 system that permits a subject employer to
15 utilize any appropriate technology to access
16 the EEVS, including technology that is
17 maintained or operated by the private sec-
18 tor vendors.

19 “(vi) The provision of an expeditious
20 method exists for correcting errors regard-
21 ing immigration, citizenship, work author-
22 ization, and identifying information main-
23 tained by the Commissioner, or any other
24 relevant data in a timely and effective
25 manner, for determining the source of data

1 to ascertain its accuracy and correcting
2 procedures known to lead to errors in such
3 data.

4 “(vii) The enforcement of strict limi-
5 tations on agency and contractor personnel
6 authorized to input data into the EEVS,
7 and identify classes of prejudicial informa-
8 tion requiring authorization of supervisory
9 personnel before entry into the System.

10 “(viii) The operation of a centralized
11 system through which individuals who have
12 been notified of ineligibility for employ-
13 ment or benefits based on their immigra-
14 tion, citizenship, work authorization, or
15 identifying information maintained by the
16 Commissioner can seek to correct erro-
17 neous or inaccurate information within
18 specific time schedules for reviewing data
19 correction requests, rendering decisions on
20 such requests, and implementing appro-
21 priate corrective action in a timely manner.

22 “(ix) The provision of a 24-hour
23 Internet and telephonic help-desk available
24 to respond to questions about the use of

1 the system as well as to resolve questions
2 about employment status.

3 “(x) The Commissioner and the Sec-
4 retary of Homeland Security shall conduct
5 a study of the feasibility of a mechanism to
6 update all Social Security records on a
7 continuous basis with immigration and
8 work authorization status to permit the
9 Commissioner to respond to employer in-
10 quires pursuant to subparagraph (C) with-
11 out the necessity of accessing of other data
12 bases. Study findings shall be provided to
13 the Committees of jurisdiction in the Con-
14 gress not later than one year after the date
15 of the enactment of this section.

16 “(E) NOTICES TO EMPLOYEES.—The Com-
17 missioner, in consultation with the Secretary of
18 Homeland Security, shall develop a written
19 form for employers to provide to individuals for
20 whom they receive an initial disapproval and
21 disapproval notices that shall include—

22 “(i) in the case of an initial dis-
23 approval—

24 “(I) the right to contest such ini-
25 tial disapproval; and

1 “(II) contact information for ini-
2 tiating such contest, including the ap-
3 propriate agency to contact and the
4 procedures to follow in doing so; and

5 “(ii) in the case of a disapproval, the
6 right to appeal the disapproval, including
7 the appropriate agency to contact and the
8 procedures to follow in doing so.

9 “(F) ADDITIONAL RESPONSIBILITIES OF
10 COMMISSIONER IN SUPPORT OF THE EEVS.—

11 The Commissioner shall establish—

12 “(i) a reliable, secure method for de-
13 termining, through the EEVS—

14 “(I) whether the name, date of
15 birth, and social security account
16 number of an individual provided in
17 an inquiry made to the EEVS by an
18 employer is consistent with such infor-
19 mation maintained by the Commis-
20 sioner;

21 “(II) the citizenship status asso-
22 ciated with such name and social se-
23 curity account number, according to
24 the records maintained by the Com-
25 missioner;

1 “(III) whether the name and
2 number belongs to an individual who
3 is deceased or a child, according to
4 the records maintained by the Com-
5 missioner;

6 “(IV) whether the name belongs
7 to an individual whose record has a
8 fraud indicator; and

9 “(V) whether the name and num-
10 ber is blocked in accordance with
11 paragraph (7); and

12 “(ii) in consultation with the Sec-
13 retary of Homeland Security, a reliable, se-
14 cure method for an individual to verify
15 such individual’s own eligibility for employ-
16 ment in the United States.

17 “(G) ANNUAL REPORT AND CERTIFI-
18 CATION.—Not later than 24 months after the
19 date of the enactment of the New Employee
20 Verification Act of 2009, and annually there-
21 after, the Commissioner, in cooperation with
22 the Secretary of Homeland Security, shall sub-
23 mit to the Congress a report that includes—

24 “(i) a certified determination of the
25 percentage of inquiries to the EEVS and

1 SEEVS that result in a final approval or
2 disapproval notice, within the applicable
3 period described in paragraph (3)(C), that
4 are not overturned in a subsequent appeal,
5 and if that percentage is less than 99 per-
6 cent of the cases, the steps being taken to
7 bring the percentage to 99 percent or high-
8 er within specified time frames; and

9 “(ii) an assessment of the privacy and
10 security of the EEVS and SEEVS.

11 “(H) ENUMERATION.—The Commissioner
12 shall seek to assign social security account
13 numbers to all aliens who are authorized to
14 work in the United States, at the time of entry
15 to the United States or at the time of acquisi-
16 tion of work authorized status in accordance
17 with section 205(c)(2)(B)(i)(I) by employing
18 enumeration procedures administered jointly by
19 the Commissioner, the Secretary of State, and
20 the Secretary of Homeland Security.

21 “(6) LIMITATION ON COLLECTION AND USE OF
22 DATA.—

23 “(A) COLLECTION.—

24 “(i) IN GENERAL.—The EEVS shall
25 collect and maintain only the minimum

1 data necessary to facilitate the successful
2 operation of the EEVS, and in no case
3 shall the data be other than information
4 necessary—

5 “(I) to register subject employ-
6 ers;

7 “(II) to initiate and respond to
8 inquiries or contests;

9 “(III) to establish and enforce
10 compliance with paragraphs (3) and
11 (4); or

12 “(IV) to detect and prevent em-
13 ployment related identity fraud.

14 “(ii) PENALTIES.—Any officer, em-
15 ployee, or contractor who willfully and
16 knowingly collects and maintains data in
17 the EEVS other than data described in
18 clause (i) shall be, for each such violation,
19 guilty of a misdemeanor and, upon convic-
20 tion, fined as provided in title 18, United
21 States Code, imprisoned for not more than
22 1 year, or both.

23 “(B) USE.—Whoever willfully and know-
24 ingly accesses, discloses, or uses any informa-
25 tion obtained or maintained by the EEVS—

1 “(i) for the purpose of committing
2 identity fraud, or assisting another person
3 in committing identity fraud, as defined in
4 section 1028 of title 18, United States
5 Code;

6 “(ii) for the purpose of unlawfully ob-
7 taining employment in the United States
8 or unlawfully obtaining employment in the
9 United States for any other person; or

10 “(iii) for any purpose other than as
11 provided for under any provision of law,
12 shall be guilty of a felony and upon conviction
13 shall be fined under title 18, United States
14 Code, or be imprisoned for not more than 5
15 years, or both.

16 “(C) EXCEPTIONS.—Nothing in subpara-
17 graph (A) or (B) may be construed to limit the
18 collection, maintenance, or use of data by the
19 Commissioner of Internal Revenue or the Com-
20 missioner of Social Security as provided by law.

21 “(7) RIGHT TO BLOCK USE OF NUMBER.—The
22 Commissioner shall establish secure procedures
23 under which an individual who has been assigned a
24 social security account number may block the use of
25 such number under the EEVS and may remove any

1 such block. Such procedures shall ensure the authen-
2 tication of the identity of such individual.

3 “(b) SECURE EMPLOYMENT ELIGIBILITY
4 VERIFICATION SYSTEM.—

5 “(1) IN GENERAL.—Not later than 18 months
6 after the date of the enactment of the New Em-
7 ployee Verification Act of 2009, the Commissioner
8 shall, after consultation with the Secretary of Home-
9 land Security, the Director of the National Institute
10 of Standards and Technology, and the Employment
11 Verification Advisory Panel established under para-
12 graph (5), establish by regulation a Secure Employ-
13 ment Eligibility Verification System (referred to in
14 this subsection as the ‘SEEVS’). The purpose of the
15 SEEVS shall be to provide for identity authentica-
16 tion and employment eligibility verification with re-
17 spect to enrolled new employees which shall be avail-
18 able to subject employers who elect to participate in
19 the SEEVS in lieu of the EEVS. Any subject em-
20 ployer may cancel the employer’s participation in the
21 SEEVS after one year after electing to participate
22 without prejudice to future participation.

23 “(2) MINIMUM REQUIREMENTS.—In accordance
24 with the regulations prescribed by the Commissioner
25 pursuant to paragraph (1)—

1 “(A) IDENTITY AUTHENTICATION AND EM-
2 PLOYMENT ELIGIBILITY VERIFICATION BY EN-
3 ROLLMENT PROVIDERS.—The SEEVS shall uti-
4 lize the services of private sector entities (here-
5 inafter in this subsection referred to as ‘enroll-
6 ment providers’), with appropriate expertise,
7 which shall be subject to initial and periodic
8 certification by the Commissioner, to provide—

9 “(i) enrollment under the SEEVS of
10 new employees by means of identity au-
11 thentication in a manner that provides a
12 high level of certainty as to their true iden-
13 tities, using immigration and identifying
14 information maintained by the Social Secu-
15 rity Administration and the Department of
16 Homeland Security, review of identity doc-
17 uments, and background screening
18 verification techniques using publicly avail-
19 able information;

20 “(ii) protection of the authenticated
21 information through biometric technology;
22 and

23 “(iii) verification of employment eligi-
24 bility of such new employees.

1 “(B) DATABASE MANAGEMENT.—The
2 SEEVS shall provide for databases of identi-
3 fying information which may be retained by the
4 enrollment providers. Databases controlled by
5 the Commissioner and Secretary of Homeland
6 Security shall be maintained in a manner to
7 capture new entries and new status information
8 in a timely manner and to interact with the pri-
9 vate enrollment databases to keep employment
10 authorization status and identifying information
11 current on a daily basis. The information main-
12 tained in such databases shall be subject to the
13 requirements established pursuant to paragraph
14 (5), except that—

15 “(i) use of the data shall be limited to
16 obtaining employment eligibility
17 verification only, unless the new employee
18 consents to use the data for other pur-
19 poses, as provided in regulations prescribed
20 by the Commissioner, and

21 “(ii) other identifying traits of the
22 new employees shall be stored through an
23 encoding process that keeps their accurate
24 names, dates of birth, social security num-
25 bers, and immigration identification num-

1 bers (if any) separate, except during elec-
2 tronic verification.

3 “(C) ACCESSIBILITY TO EMPLOYERS.—
4 Availability of data maintained in the SEEVS
5 shall be managed so that any subject employer
6 who participates in the SEEVS can obtain
7 verification with respect to any new employee
8 enrolled with any enrollment provider serving in
9 the SEEVS.

10 “(D) LIMITATIONS RELATING TO BIOMET-
11 RIC DATA.—Any biometric data maintained in
12 the SEEVS relating to any new employee shall
13 be—

14 “(i) encrypted and segregated from
15 identifying information relating to the new
16 employee, and

17 “(ii) maintained and linked to identi-
18 fying information relating to the new em-
19 ployee only by consent of the new employee
20 for the purpose of verifying employment
21 eligibility or approved correction processes
22 or for other purposes specifically author-
23 ized by the employee as provided in regula-
24 tions prescribed by the Commissioner.

1 “(E) ACCURACY OF ASSOCIATION OF DATA
2 WITH ENROLLED NEW EMPLOYEES.—The en-
3 rollment process under the SEEVS shall be
4 managed, in the case of each new employee en-
5 rolled in the SEEVS, so as to result in the ac-
6 curate association of data consisting of name,
7 date of birth, Social Security number, and im-
8 migration identification number (if any) with
9 the established identity of the new employee.

10 “(F) LIMITATIONS ON ACCESSIBILITY OF
11 INFORMATION.—Data stored in SEEVS relat-
12 ing to any enrolled new employee shall not be
13 accessible to any person other than those oper-
14 ating the SEEVS and for the sole purpose of
15 identity authentication and employment eligi-
16 bility verification in connection with the new
17 employee, except—

18 “(i) by the written consent of the new
19 employee given specifically for each in-
20 stance or category of disclosure for any
21 other purpose as provided in regulations
22 prescribed by the Commissioner, or

23 “(ii) in response to a warrant issued
24 by a judicial authority of competent juris-
25 diction in a criminal proceeding.

1 “(G) PUBLIC EDUCATION.—The Commis-
2 sioner shall conduct a program of ongoing, com-
3 prehensive public education campaign relating
4 to the SEEVS.

5 “(3) EMPLOYER RESPONSIBILITIES.—Under
6 the regulations prescribed by the Commissioner pur-
7 suant to paragraph (1)—

8 “(A) USE LIMITED TO ENROLLED NEW
9 EMPLOYEES.—Use of the SEEVS by subject
10 employers participating in the SEEVS shall be
11 limited to use in connection with the hiring of
12 new employees occurring after their enrollment
13 in the SEEVS.

14 “(B) USE FOR LIMITED PERIOD.—Use of
15 the SEEVS by any subject employer partici-
16 pating in the SEEVS in connection with any
17 new employee may occur only during the period
18 beginning on the date of hire and ending at the
19 end of the third business day after the employee
20 has reported for duty. Use of the SEEVS with
21 respect to recruitment or referral for a fee may
22 occur only until the first day of such recruit-
23 ment or referral.

24 “(C) RESPONSIBILITY OF EMPLOYERS TO
25 ENROLL NEW EMPLOYEES.—In connection with

1 the hiring by any subject employer of a new
2 employee who has not been previously enrolled
3 in the SEEVS, enrollment of the new employee
4 shall occur only upon application by the subject
5 employer submitted to an enrollment provider,
6 together with payment of any costs associated
7 with the enrollment.

8 “(D) LIMITATIONS ON SELECTIVE USE.—

9 No subject employer may use the SEEVS selec-
10 tively to verify any class, level, or category of
11 new employees. Nothing in this subparagraph
12 shall be construed to preclude subject employers
13 from utilizing the SEEVS in connection with
14 hiring at selected employment locations without
15 implementing such usage at all locations of the
16 employer.

17 “(4) EMPLOYEE PROTECTIONS.—Under regula-
18 tions prescribed by the Commissioner pursuant to
19 paragraph (1)—

20 “(A) ACCESS FOR EMPLOYEES TO COR-
21 RECT AND UPDATE INFORMATION.—Employees
22 enrolled in the SEEVS shall be provided access
23 to the SEEVS to verify information relating to
24 their employment authorization and readily
25 available processes to correct and update their

1 enrollment information and information relating
2 to employment authorization.

3 “(B) SAME RIGHTS AND PROTECTIONS AS
4 THOSE PROVIDED UNDER THE EEVS.—Employ-
5 ees shall be provided the same rights and pro-
6 tections in connection with responses to inquir-
7 ies under the SEEVS relating to identity au-
8 thentication or employment eligibility
9 verification as are afforded under subsection
10 (a).

11 “(C) RIGHT TO CANCEL ENROLLMENT.—
12 Each employee enrolled in the SEEVS shall
13 have the right to cancel such employee’s enroll-
14 ment at any time after the identity authentica-
15 tion and employment eligibility verification
16 processes are completed by the subject employer
17 described in paragraph (3)(C). Such cancella-
18 tion shall remove from the SEEVS all identi-
19 fying information and biometrics in connection
20 with such employee without prejudice to future
21 enrollments.

22 “(5) MAINTENANCE OF SECURITY AND CON-
23 FIDENTIALITY OF INFORMATION.—

24 “(A) IN GENERAL.—Every person who is a
25 subject employer participating in the SEEVS or

1 an officer or contractor of such a subject em-
2 ployer and who has access to any information
3 obtained at any time from the Social Security
4 Administration shall maintain the security and
5 confidentiality of such information. No such
6 person may disclose any file, record, report,
7 paper, or other item containing information so
8 obtained at any time by any such person from
9 the Commissioner of Social Security or from
10 any officer or employee of the Social Security
11 Administration except as the Commissioner of
12 Social Security may by regulations prescribe or
13 as otherwise provided by Federal law.

14 “(B) PENALTY FOR DISCLOSURE IN VIOLA-
15 TION OF SUBPARAGRAPH (A).—Any person de-
16 scribed in subparagraph (A) who violates sub-
17 paragraph (A) shall be guilty of a felony and,
18 upon conviction thereof, shall be punished by a
19 fine not exceeding \$10,000 for each occurrence
20 of a violation, or by imprisonment not exceeding
21 5 years, or both.

22 “(C) PENALTY FOR KNOWING DISCLOSURE
23 OF FRAUDULENT INFORMATION.—Any person
24 who willfully and knowingly accesses, discloses,
25 or uses any information which such person pur-

1 ports to be information obtained as described in
2 subparagraph (A) knowing such information to
3 be false shall be guilty of a felony and, upon
4 conviction thereof, shall be punished by a fine
5 not exceeding \$10,000 for each occurrence of a
6 violation, or by imprisonment not exceeding 5
7 years, or both.

8 “(D) RESTITUTION.—

9 “(i) IN GENERAL.—Any Federal
10 court, when sentencing a defendant con-
11 victed of an offense under this paragraph,
12 may order, in addition to or in lieu of any
13 other penalty authorized by law, that the
14 defendant make restitution to the victims
15 of such offense specified in clause (ii). Sec-
16 tions 3612, 3663, and 3664 of title 18,
17 United States Code, shall apply with re-
18 spect to the issuance and enforcement of
19 orders of restitution to victims of such of-
20 fense under this subparagraph. If the court
21 does not order restitution, or orders only
22 partial restitution, under this subsection,
23 the court shall state on the record the rea-
24 sons therefor.

1 “(ii) VICTIMS SPECIFIED.—The vic-
2 tims specified in this clause are the fol-
3 lowing:

4 “(I) Any individual who suffers a
5 financial loss as a result of the disclo-
6 sure described in subparagraph (B) or
7 (C).

8 “(II) The Commissioner of Social
9 Security, to the extent that the disclo-
10 sure described in subparagraph (B) or
11 (C) results in the inappropriate pay-
12 ment of a benefit by the Commis-
13 sioner.

14 “(iii) DEPOSIT IN THE TRUST FUNDS
15 OF AMOUNTS PAID AS RESTITUTION TO
16 THE COMMISSIONER.—Funds paid to the
17 Commissioner as restitution pursuant to a
18 court order under this subparagraph shall
19 be deposited in the Federal Old-Age and
20 Survivors Insurance Trust Fund or the
21 Federal Disability Insurance Trust Fund,
22 as appropriate.

23 “(c) CREATION OF EMPLOYMENT VERIFICATION AD-
24 VISORY PANEL.—

1 “(1) IN GENERAL.—Not later than 180 days
2 after the date of the enactment of the New Em-
3 ployee Verification Act of 2009, the Commissioner
4 shall establish an Employment Verification Advisory
5 Panel (hereinafter in this subsection referred to as
6 the ‘Advisory Panel’).

7 “(2) MEMBERSHIP.—The Advisory Panel
8 should consist of members appointed by the Com-
9 missioner, after consulting with the Secretary of
10 Homeland Security, the Secretary of the Treasury,
11 the Director of National Institutes of Standards and
12 Technology, and other appropriate Federal agencies.
13 Such members should include representatives from
14 appropriate Federal agencies and private sector rep-
15 resentatives of affected industries and groups, in-
16 cluding immigration policy, human resource, em-
17 ployer and employee organizations, experts in fields
18 including database security, biometrics, and privacy.

19 “(3) FUNCTIONS.—The Advisory Panel shall
20 advise the Commissioner and the Secretary of
21 Homeland Security on the implementation and de-
22 ployment of the verification systems established
23 under this section, including—

24 “(A) the best means of promoting effi-
25 ciency, responsiveness, accuracy, public edu-

1 cation, user support, interoperability, and cost-
2 effectiveness of the systems established under
3 this section;

4 “(B) best practices and procedures in
5 order to protect the privacy and identities of in-
6 dividuals enrolled in the systems established
7 under this section;

8 “(C) standards of database accuracy, error
9 rates, privacy, and measurable compliance that
10 should be met before implementation begins
11 and before each additional phase of implemen-
12 tation; and

13 “(D) the best means by which data ob-
14 tained through the EEVS and the SEEVS may
15 be used to timely improve the accuracy of data-
16 bases maintained by the Commissioner and the
17 Secretary of Homeland Security.

18 “(4) TERMINATION.—The Advisory Panel shall
19 terminate 5 years after the date of the enactment of
20 this Act.”.

21 (2) AUTHORIZATION OF APPROPRIATIONS AND
22 LIMITATION OF RESPONSIBILITIES.—

23 (A) AUTHORIZATION.—There are author-
24 ized to be appropriated to the Commissioner of
25 Social Security such sums as may be necessary

1 to carry out the amendments made by this sec-
2 tion.

3 (B) LIMITATION.—The Commissioner of
4 Social Security may carry out the Commis-
5 sioner’s responsibilities under the amendment
6 made by paragraph (1) only to the extent that
7 funds are appropriated in advance to cover the
8 Commissioner’s full costs in carrying out such
9 responsibilities. In no case shall funds from the
10 Federal Old-Age and Survivors Insurance Trust
11 Fund or the Federal Disability Insurance Trust
12 Fund be used to carry out such responsibilities.

13 (b) AMENDMENTS RELATING TO PROVISION OF IN-
14 FORMATION BY EMPLOYERS TO THE STATE DIRECTORY
15 OF NEW HIRES.—Section 453A(b) of the Social Security
16 Act (42 U.S.C. 653a(b)) is amended—

17 (1) in paragraph (1)(A), by striking “and social
18 security number of the employee” and inserting
19 “date of birth, and social security number (or such
20 alien identification or authorization number as the
21 Secretary of Homeland Security shall require) of the
22 employee, the date the employee first reported for
23 duty”; and

24 (2) in paragraph (2), by striking “—” and all
25 that follows and inserting “not later than the 3rd

1 business day after the employee first reported for
2 duty.”.

3 **SEC. 104. ANTIDISCRIMINATION PROTECTIONS.**

4 (a) APPLICATION OF PROHIBITION OF DISCRIMINA-
5 TION TO VERIFICATION SYSTEM.—Section 274B(a) of the
6 Immigration and Nationality Act (8 U.S.C. 1324b(a)) is
7 amended—

8 (1) in paragraph (1)—

9 (A) in the matter preceding subparagraph
10 (A), by inserting “, the verification of the indi-
11 vidual’s work authorization through the Elec-
12 tronic Employment Verification System de-
13 scribed in section 235(a) of the Social Security
14 Act or the Secure Employment Eligibility
15 Verification System described in section 235(b)
16 of such Act,” after “the individual for employ-
17 ment”; and

18 (B) in subparagraph (B), by striking “in
19 the case of a protected individual (as defined in
20 paragraph (3)),”; and

21 (2) by amending paragraph (3) to read as fol-
22 lows:

23 “(3) ANTIDISCRIMINATION REQUIREMENTS OF
24 THE ELECTRONIC EMPLOYMENT VERIFICATION SYS-

1 TEM AND THE SECURE EMPLOYMENT ELIGIBILITY
2 VERIFICATION SYSTEM.—

3 “(A) IN GENERAL.—It is an unfair immi-
4 gration-related employment practice for a per-
5 son or other entity, in the course of partici-
6 pating in the Electronic Employment
7 Verification System described in section 235(a)
8 of the Social Security Act or the Secure Em-
9 ployment Eligibility Verification System de-
10 scribed in section 235(b) of such Act—

11 “(i) to terminate or undertake any ad-
12 verse employment action due to an initial
13 disapproval or disapproval unless author-
14 ized or required under such sections;

15 “(ii) to use the verification system for
16 screening of an applicant prior to an offer
17 of employment;

18 “(iii) except as described in sub-
19 sections (a)(3)(C) and (b)(4)(A) of section
20 235 of such Act, to use the verification
21 system for a current employee after the
22 first day of employment, or for the re-
23 verification of an employee after the em-
24 ployee has satisfied the process described

1 in subsection (a) or (b) of section 235 of
2 such Act; or

3 “(iv) to require an individual to make
4 an inquiry under the self-verification proce-
5 dures established under section
6 235(b)(5)(A) of such Act.

7 “(B) PREEMPLOYMENT SCREENING AND
8 BACKGROUND CHECK.—Nothing in subpara-
9 graph (A) shall be construed to preclude a pre-
10 employment screening or background check that
11 is required or permitted under any other provi-
12 sion of law.

13 “(C) RE-VERIFICATION.—A person or
14 other entity, in the course of participating in
15 the Electronic Employment Verification System
16 described in section 235(a) of the Social Secu-
17 rity Act, shall not repeat the verification proce-
18 ss established by such section unless—

19 “(i) the previously approved period of
20 employment provided by the system has ex-
21 pired, or

22 “(ii) if such person or other entity is
23 the most recent such person or other entity
24 in connection with the employee, the Com-
25 missioner of Social Security, in cooperation

1 with the Secretary of Homeland Security,
2 has provided specific notice to re-verify the
3 employee based on specific information
4 about the employee’s authorization to be
5 employed by such person or entity.”.

6 (b) INCREASE IN CIVIL MONEY PENALTIES.—Section
7 274B(g)(2)(B)(iv) of such Act (8 U.S.C.
8 1324b(g)(2)(B)(iv)) is amended—

9 (1) in subclause (I), by striking “\$250 and not
10 more than \$2,000” and inserting “\$1,000 and not
11 more than \$4,000”;

12 (2) in subclause (II), by striking “\$2,000 and
13 not more than \$5,000” and inserting “\$4,000 and
14 not more than \$10,000”;

15 (3) in subclause (III), by striking “\$3,000 and
16 not more than \$10,000” and inserting “\$6,000 and
17 not more than \$20,000”; and

18 (4) in subclause (IV), by striking “\$100 and
19 not more than \$1,000” and inserting “\$500 and not
20 more than \$5,000”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act and shall apply to violations occurring on or
24 after such date.

1 **SEC. 105. PENALTIES.**

2 Section 274A of the Immigration and Nationality Act
3 (8 U.S.C. 1324a) is amended—

4 (1) in subsection (e)(4)—

5 (A) in subparagraph (A), in the matter be-
6 fore clause (i), by inserting “, subject to para-
7 graphs (10) through (12),” after “in an
8 amount”;

9 (B) in subparagraph (A)(i), by striking
10 “not less than \$250 and not more than
11 \$2,000” and inserting “not less than \$5,000
12 and not more than \$7,500”;

13 (C) in subparagraph (A)(ii), by striking
14 “not less than \$2,000 and not more than
15 \$5,000” and inserting “not less than \$10,000
16 and not more than \$15,000”;

17 (D) in subparagraph (A)(iii), by striking
18 “not less than \$3,000 and not more than
19 \$10,000” and inserting “not less than \$25,000
20 and not more than \$40,000”; and

21 (E) by amending subparagraph (B) to read
22 as follows:

23 “(B) may require the person or entity to
24 take such other remedial action as is appro-
25 priate.”;

26 (2) in subsection (e)(5)—

1 (A) by inserting “, subject to paragraphs
2 (10) through (12),” after “in an amount”;

3 (B) by striking “\$100” and inserting
4 “\$1,000”;

5 (C) by striking “\$1,000” and inserting
6 “\$25,000”;

7 (D) by striking “the size of the business of
8 the employer being charged, the good faith of
9 the employer” and inserting “the good faith of
10 the employer being charged”; and

11 (E) by adding at the end the following sen-
12 tence: “Failure by a person or entity to utilize
13 the employment eligibility verification system as
14 required by law, or providing information to the
15 system that the person or entity knows or rea-
16 sonably believes to be false, shall be treated as
17 a violation of subsection (a)(1)(A).”;

18 (3) by adding at the end of subsection (e) the
19 following new paragraphs:

20 “(10) MITIGATION OF CIVIL MONEY PENALTIES
21 FOR SMALLER EMPLOYERS.—In the case of imposi-
22 tion of a civil penalty under paragraph (4)(A) with
23 respect to a violation of subsection (a)(1)(A) or
24 (a)(2) for hiring or continuation of employment by
25 an employer and in the case of imposition of a civil

1 penalty under paragraph (5) for a violation of sub-
2 section (a)(1)(B) for hiring by an employer, the dol-
3 lar amounts otherwise specified in the respective
4 paragraph shall be reduced as follows:

5 “(A) In the case of an employer with an
6 average of fewer than 26 full-time equivalent
7 employees (as defined by the Secretary of
8 Homeland Security), the amounts shall be re-
9 duced by 60 percent.

10 “(B) In the case of an employer with an
11 average of at least 26, but fewer than 101, full-
12 time equivalent employees (as so defined), the
13 amounts shall be reduced by 40 percent.

14 “(C) In the case of an employer with an
15 average of at least 101, but fewer than 251,
16 full-time equivalent employees (as so defined),
17 the amounts shall be reduced by 20 percent.

18 The last sentence of paragraph (4) shall apply under
19 this paragraph in the same manner as it applies
20 under such paragraph.

21 “(11) EXEMPTION FROM PENALTY FOR INITIAL
22 GOOD FAITH VIOLATION.—In the case of imposition
23 of a civil penalty under paragraph (4)(A) with re-
24 spect to a violation of subsection (a)(1)(A) or (a)(2)
25 for hiring or continuation of employment or recruit-

1 ment or referral by person or entity and in the case
2 of imposition of a civil penalty under paragraph (5)
3 for a violation of subsection (a)(1)(B) for hiring or
4 recruitment or referral by a person or entity, the
5 penalty otherwise imposed shall be waived if the vio-
6 lator establishes that it was the first such violation
7 of such provision by the violator and the violator
8 acted in good faith.

9 “(12) SAFE HARBOR FOR CONTRACTORS.—A
10 person or other entity shall not be liable for a pen-
11 alty under paragraph (4)(A) with respect to the vio-
12 lation of subsection (a)(1)(A), (a)(1)(B), or (a)(2)
13 with respect to the hiring or continuation of employ-
14 ment of an unauthorized alien by a subcontractor of
15 that person or entity unless the person or entity
16 knew that the subcontractor hired or continued to
17 employ such alien in violation of such subsection.”;

18 (4) by amending paragraph (1) of subsection (f)
19 to read as follows:

20 “(1) CRIMINAL PENALTY.—Any person or enti-
21 ty which engages in a pattern or practice of viola-
22 tions of subsection (a)(1) or (2) shall be fined not
23 more than \$50,000 for each unauthorized alien with
24 respect to which such a violation occurs, imprisoned
25 for not less than one year, or both, notwithstanding

1 the provisions of any other Federal law relating to
2 fine levels.”; and

3 (5) in subsection (f)(2), by striking “Attorney
4 General” each place it appears and inserting “Sec-
5 retary of Homeland Security”.

6 **SEC. 106. ANNUAL GAO STUDY AND REPORT.**

7 (a) REQUIREMENT.—The Comptroller General of the
8 United States shall conduct an annual study of the Em-
9 ployment Eligibility Verification System described in sec-
10 tion 235(a) of the Social Security Act as added by this
11 Act (hereinafter in the Act referred to as the “EEVS”)
12 and the Secure Employment Eligibility Verification Sys-
13 tem described in section 235(b) of such Act as added by
14 this Act (hereinafter in the Act referred to as the
15 “SEEVS”).

16 (b) PURPOSE.—The study shall evaluate the accu-
17 racy, efficiency, integrity, and impact of the EEVS and
18 the SEEVS.

19 (c) REPORT.—Not later than the date that is 15
20 months after the date of the enactment of this Act, and
21 annually thereafter, ending once the System has been fully
22 implemented for 5 years, the Comptroller General shall
23 submit to the Congress a report containing the findings
24 of the study carried out under this section. Each such re-
25 port shall include, at a minimum, the following:

1 (1) An assessment of the EEVS and SEEVS
2 performance with respect to the rate at which indi-
3 viduals who are eligible for employment in the
4 United States are correctly approved within the time
5 periods specified in section 235(a)(3)(B) of the So-
6 cial Security Act.

7 (2) An assessment of the privacy and security
8 of the EEVS and the SEEVS and its effects on
9 identity fraud or the misuse of personal data.

10 (3) An assessment of the effects of the EEVS
11 and SEEVS on the employment of unauthorized
12 aliens (as defined in section 274A(h)(3) of the Im-
13 migration and Nationality Act).

14 (4) An assessment of the effects of the EEVS
15 and the SEEVS, including the effects of initial dis-
16 approvals on unfair immigration-related employment
17 practices, and employment discrimination based on
18 national origin or citizenship status.

19 (5) An assessment of the effects of the EEVS
20 and SEEVS on employers.

21 (6) An assessment of whether the Secretary and
22 the Commissioner of Social Security have adequate
23 resources to carry out the duties and responsibilities
24 set forth in section 235 of the Social Security Act.

1 **SEC. 107. DISCLOSURE TO THE SECRETARY OF HOMELAND**
2 **SECURITY OF INFORMATION IN THE NA-**
3 **TIONAL DIRECTORY OF NEW HIRES ABOUT**
4 **EMPLOYERS WITH THE GREATEST NUMBER**
5 **OR PERCENTAGE OF EMPLOYEES WITH MIS-**
6 **MATCHED SOCIAL SECURITY INFORMATION.**

7 (a) IN GENERAL.—Section 453(j) of the Social Secu-
8 rity Act (42 U.S.C. 653(j)) is amended by adding at the
9 end the following:

10 “(11) DISCLOSURE TO SECRETARY OF HOME-
11 LAND SECURITY OF INFORMATION ABOUT EMPLOY-
12 ERS WITH THE GREATEST NUMBER OR PERCENTAGE
13 OF EMPLOYEES WITH MISMATCHED SOCIAL SECUR-
14 RITY INFORMATION.—

15 “(A) DISCLOSURE REQUIREMENT.—

16 “(i) IN GENERAL.—Within 4 months
17 after the Secretary receives from the Sec-
18 retary of Homeland Security, in accord-
19 ance with clause (ii) of this subparagraph,
20 a written request for the information de-
21 scribed in subparagraph (B), the Secretary
22 shall disclose the information to the Sec-
23 retary of Homeland Security, based on the
24 information available on new hires for the
25 12 months preceding compilation of infor-
26 mation in response to the request.

1 “(ii) SUNSET.—A request is received
2 in accordance with this clause if the re-
3 quest is received in the 3-year period that
4 begins with the date of the enactment of
5 this paragraph.

6 “(B) INFORMATION TO BE DISCLOSED.—
7 The information described in this subparagraph
8 is the following:

9 “(i) TOP 1,000 EMPLOYERS WITH
10 GREATEST NUMBER OF EMPLOYEES WITH
11 MISMATCHED SOCIAL SECURITY INFORMA-
12 TION.—The name, taxpayer identification
13 number, and address of each employer who
14 is among the 1,000 employers ranked high-
15 est under subparagraph (C)(i), and the
16 total number of mismatches with respect to
17 the employees of each such employer. If
18 there is more than 1 employer so ranked
19 1,000th, then such information with re-
20 spect to all employers so ranked shall be
21 included.

22 “(ii) TOP 1,000 EMPLOYERS WITH
23 GREATEST PERCENTAGE OF EMPLOYEES
24 WITH MISMATCHED SOCIAL SECURITY IN-
25 FORMATION.—The name, taxpayer identi-

1 fication number, and address of each em-
2 ployer who is among the 1,000 employers
3 ranked highest under subparagraph (C)(ii),
4 the total number of mismatches with re-
5 spect to the employees of each such em-
6 ployer, and the total percentage of the em-
7 ployees of each such employer with respect
8 to whom there is a mismatch. If there is
9 more than 1 employer so ranked 1,000th,
10 then such information with respect to all
11 employers so ranked shall be included.

12 “(iii) TOP 500 EMPLOYERS WITH
13 GREATEST NUMBER OF EMPLOYEES WITH
14 SAME REPORTED SOCIAL SECURITY NUM-
15 BERS.—The name, taxpayer identification
16 number, and address of each employer who
17 is among the 500 employers ranked high-
18 est under subparagraph (C)(iii), and the
19 total number of employees of each such
20 employer who have the same social security
21 account number as another employee of
22 the employer. If there is more than 1 em-
23 ployer so ranked 500th, then such informa-
24 tion with respect to all employers so
25 ranked shall be included.

1 “(C) RANKINGS OF EMPLOYERS.—

2 “(i) RANKING BY NUMBER OF MIS-
3 MATCHED EMPLOYEES.—The Secretary
4 shall assign a rank to each employer with
5 respect to whom there is new hire informa-
6 tion which has been submitted to the Na-
7 tional Directory of New Hires, based on
8 the number of employees of the employer
9 with respect to whom there is a mismatch,
10 as described in clause (iv). The Secretary
11 shall assign a rank of 1 to the employer
12 with the greatest number of such employ-
13 ees, and a lower rank to employers with
14 lesser numbers of such employees. The
15 Secretary shall assign the same rank to
16 employers with the same number of such
17 employees.

18 “(ii) RANKING BY PERCENTAGE OF
19 MISMATCHED EMPLOYEES.—The Secretary
20 shall assign a rank to each employer with
21 respect to whom there is new hire informa-
22 tion which has been submitted to the Na-
23 tional Directory of New Hires, based on
24 the percentage of employees of the em-
25 ployer with respect to whom there is a mis-

1 match, as described in clause (iv). The
2 Secretary shall assign a rank of 1 to the
3 employer with the greatest percentage of
4 such employees, and a lower rank to em-
5 ployers with lesser percentages of such em-
6 ployees. The Secretary shall assign the
7 same rank to employers with the same per-
8 centage of such employees.

9 “(iii) RANKING BY NUMBER OF EM-
10 PLOYEES WITH SAME SOCIAL SECURITY
11 ACCOUNT NUMBER.—The Secretary shall
12 assign a rank to each employer with re-
13 spect to whom there is new hire informa-
14 tion which has been submitted to the Na-
15 tional Directory of New Hires, based on
16 the number of employees of the employer
17 whose social security account number re-
18 ported to the National Directory of New
19 Hires is the same as the social security ac-
20 count number of another employee of the
21 employer, so reported. The Secretary shall
22 assign a rank of 1 to the employer with the
23 greatest number of such employees, and a
24 lower rank to employers with lesser num-
25 bers of such employees. The Secretary

1 shall assign the same rank to employers
2 with the same number of such employees.

3 “(iv) MISMATCHES.—For purposes of
4 this paragraph, there is a mismatch with
5 respect to an employee if the Secretary de-
6 termines that—

7 “(I) the social security account
8 number of the employee, as reported
9 to the National Directory of New
10 Hires (taking into account possible
11 correction by the Social Security Ad-
12 ministration), is invalid; or

13 “(II) the name and social secu-
14 rity account number of the employee,
15 as so reported (taking into account
16 such possible correction), do not
17 match the name and social security
18 account number of the employee in
19 the records of the Social Security Ad-
20 ministration.

21 “(D) LIMITATION ON USE OF DISCLOSED
22 INFORMATION.—The Secretary of Homeland
23 Security may use the information disclosed pur-
24 suant to subparagraph (A) of this paragraph
25 only for the purpose of establishing and enforce-

1 ing compliance with the Immigration and Na-
2 tionality Act.

3 “(E) CONDITION ON DISCLOSURE.—The
4 Secretary shall make a disclosure in accordance
5 with subparagraph (A) only to the extent that
6 the Secretary determines that the disclosure
7 would not interfere with the effective operation
8 of the program under this part.

9 “(F) REIMBURSEMENT OF HHS COSTS.—
10 The Secretary of Homeland Security shall reim-
11 burse the Secretary, in accordance with sub-
12 section (k)(3), for the costs incurred by the
13 Secretary in making the disclosures required by
14 subparagraph (A) of this paragraph.”.

15 (b) CONFORMING AMENDMENT TO IEVS.—

16 (1) IN GENERAL.—Section 1137(a)(3) of such
17 Act (42 U.S.C. 1320b–7(a)(3)) is amended by in-
18 serting “(including the full name and social security
19 account number of, and the aggregate wages paid to,
20 each employee during the reporting period, and the
21 name, address, and Federal employer identification
22 number of each employer reporting wages)” after
23 “quarterly wage reports”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect 180 days after the
3 date of the enactment of this Act.

4 **Subtitle B—Transition Provisions**

5 **SEC. 111. PROTECTION OF SOCIAL SECURITY ADMINISTRA-** 6 **TION PROGRAMS.**

7 (a) FUNDING UNDER AGREEMENT.—Effective for
8 fiscal years beginning on or after October 1, 2009, the
9 Commissioner of Social Security and the Secretary of
10 Homeland Security shall enter into and maintain an
11 agreement which shall—

12 (1) provide funds to the Commissioner for the
13 full costs of the responsibilities of the Commissioner
14 under section 404 of the Illegal Immigration Reform
15 and Immigrant Responsibility Act of 1996 (8 U.S.C.
16 1324a note), including (but not limited to)—

17 (A) acquiring, installing, and maintaining
18 technological equipment and systems necessary
19 for the fulfillment of the responsibilities of the
20 Commissioner under such section 404, but only
21 that portion of such costs that are attributable
22 exclusively to such responsibilities; and

23 (B) responding to individuals who contest
24 a tentative nonconfirmation provided by the

1 basic pilot confirmation system established
2 under such section;

3 (2) provide such funds quarterly in advance of
4 the applicable quarter based on estimating method-
5 ology agreed to by the Commissioner and the Sec-
6 retary (except in such instances where the delayed
7 enactment of an annual appropriation may preclude
8 such quarterly payments); and

9 (3) require an annual accounting and reconcili-
10 ation of the actual costs incurred and the funds pro-
11 vided under the agreement, which shall be reviewed
12 by the Office of Inspector General of the Social Se-
13 curity Administration and the Department of Home-
14 land Security.

15 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
16 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
17 which the agreement required under subsection (a) for any
18 fiscal year beginning on or after October 1, 2009, has not
19 been reached as of October 1 of such fiscal year, the latest
20 agreement between the Commissioner and the Secretary
21 of Homeland Security providing for funding to cover the
22 costs of the responsibilities of the Commissioner under
23 section 404 of the Illegal Immigration Reform and Immig-
24 grant Responsibility Act of 1996 (8 U.S.C. 1324a note)
25 shall be deemed in effect on an interim basis for such fis-

1 cal year until such time as an agreement required under
2 subsection (a) is subsequently reached, except that the
3 terms of such interim agreement shall be modified by the
4 Director of the Office of Management and Budget to ad-
5 just for inflation and any increase or decrease in the vol-
6 ume of requests under the basic pilot confirmation system.
7 In any case in which an interim agreement applies for any
8 fiscal year under this subsection, the Commissioner and
9 the Secretary shall, not later than October 1 of such fiscal
10 year, notify the Committee on Ways and Means, the Com-
11 mittee on the Judiciary, and the Committee on Appropria-
12 tions of the House of Representatives and the Committee
13 on Finance, the Committee on the Judiciary, and the
14 Committee on Appropriations of the Senate of the failure
15 to reach the agreement required under subsection (a) for
16 such fiscal year. Until such time as the agreement re-
17 quired under subsection (a) has been reached for such fis-
18 cal year, the Commissioner and the Secretary shall, not
19 later than the end of each 90-day period after October
20 1 of such fiscal year, notify such Committees of the status
21 of negotiations between the Commissioner and the Sec-
22 retary in order to reach such an agreement.

1 **SEC. 112. GAO STUDY OF BASIC PILOT CONFIRMATION SYS-**
2 **TEM.**

3 (a) IN GENERAL.—As soon as practicable after the
4 date of the enactment of this Act, the Comptroller General
5 of the United States shall conduct a study regarding erro-
6 neous tentative nonconfirmations under the basic pilot
7 confirmation system established under section 404(a) of
8 the Illegal Immigration Reform and Immigrant Responsi-
9 bility Act of 1996 (8 U.S.C. 1324a note). The results of
10 the study shall be taken into account in the implementa-
11 tion of the amendments made by subtitle A.

12 (b) MATTERS TO BE STUDIED.—In the study re-
13 quired under subsection (a), the Comptroller General shall
14 determine and analyze—

15 (1) the causes of erroneous tentative noncon-
16 firmations under the basic pilot confirmation system;

17 (2) the processes by which such erroneous ten-
18 tative nonconfirmations are remedied; and

19 (3) the effect of such erroneous tentative non-
20 confirmations on individuals, employers, and Federal
21 agencies.

22 (c) REPORT.—Not later than 2 years after the date
23 of the enactment of this Act, the Comptroller General shall
24 submit the results of the study required under subsection
25 (a) to the Committee on Ways and Means and the Com-
26 mittee on the Judiciary of the House of Representatives

1 and the Committee on Finance and the Committee on the
2 Judiciary of the Senate.

3 **SEC. 113. GAO STUDY OF EFFECTS OF BASIC PILOT PRO-**
4 **GRAM ON SMALL ENTITIES.**

5 (a) IN GENERAL.—Not later than 2 years after the
6 date of the enactment of this Act, the Comptroller General
7 of the United States shall submit to the Committees on
8 the Judiciary of the United States House of Representa-
9 tives and the Senate a report containing the Comptroller
10 General’s analysis of the effects of the basic pilot program
11 described in section 403(a) of the Illegal Immigration Re-
12 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
13 1324a note) on small entities (as defined in section 601
14 of title 5, United States Code). The analysis shall be taken
15 into account in the implementation of the amendments
16 made by subtitle A. The report shall detail—

17 (1) the costs of compliance with such program
18 on small entities;

19 (2) a description and an estimate of the number
20 of small entities enrolled and participating in such
21 program or an explanation of why no such estimate
22 is available;

23 (3) the projected reporting, recordkeeping and
24 other compliance requirements of such program on
25 small entities;

1 (4) factors that impact small entities' enroll-
2 ment and participation in such program, including
3 access to appropriate technology, geography, entity
4 size, and class of entity; and

5 (5) the steps, if any, the Secretary of Homeland
6 Security has taken to minimize the economic impact
7 of participating in such program on small entities.

8 (b) DIRECT AND INDIRECT EFFECTS.—The report
9 shall cover, and treat separately, direct effects (such as
10 wages, time, and fees spent on compliance) and indirect
11 effects (such as the effect on cash flow, sales, and competi-
12 tiveness).

13 (c) SPECIFIC CONTENTS.—The report shall provide
14 specific and separate details with respect to—

15 (1) small businesses (as defined in section 601
16 of title 5, United States Code) with fewer than 50
17 employees; and

18 (2) small entities operating in States that have
19 mandated use of the basic pilot program.

20 **TITLE II—OASDI BENEFITS**

21 **SEC. 201. DENIAL OF CREDIT TOWARD BENEFITS FOR** 22 **EARNINGS FROM UNAUTHORIZED WORK.**

23 (a) IN GENERAL.—Section 214 of the Social Security
24 Act (42 U.S.C. 414) is amended by adding at the end the
25 following:

1 “(d)(1) No quarters of coverage shall be credited for
2 purposes of this section or section 223(a)(1)(A) for any
3 calender year in the case of any individual if—

4 “(A) on the last day of such year, such indi-
5 vidual is not a citizen or national of the United
6 States, and

7 “(B) the Secretary of Homeland Security deter-
8 mines, pursuant to paragraph (2), that such indi-
9 vidual was not authorized to be employed in the
10 United States during any portion of such calender
11 year.

12 “(2)(A) The Secretary of Homeland Security shall
13 enter into an agreement with the Commissioner to provide,
14 in a form and manner specified by the Commissioner, such
15 information as the Commissioner determines necessary to
16 carry out the limitations on crediting quarters of coverage
17 for years under paragraph (1).

18 “(B) For the purpose of carrying out the Secretary’s
19 duties under subparagraph (A), the Secretary of Home-
20 land Security shall, in consultation with the Commis-
21 sioner, develop and maintain the following information:

22 “(i) The name, social security account number,
23 and date of birth of each individual who is author-
24 ized by the Secretary of Homeland Security or the

1 Secretary of State to be employed in the United
2 States.

3 “(ii) The date on which each such authorization
4 is granted.

5 “(iii) The date on which each such authoriza-
6 tion is revoked or terminated.

7 “(iv) The date of naturalization for each indi-
8 vidual who becomes a naturalized citizen of the
9 United States.

10 “(C) The information provided to the Commissioner
11 under subparagraph (A) relating to years in which an indi-
12 vidual was not authorized to be employed in the United
13 States during any portion of a year shall be the final de-
14 termination of the Secretary of Homeland Security after
15 an opportunity for review or appeal under procedures
16 which shall be established by the Secretary of Homeland
17 Security and shall not be reviewable by the Commissioner.

18 “(3) Paragraph (1) shall not apply with respect to
19 an individual who was assigned a social security account
20 number prior to the date of the enactment of the New
21 Employee Verification Act of 2009.”.

22 (b) DISREGARD OF EARNINGS FOR YEARS FOR
23 WHICH NO QUARTER OF COVERAGE MAY BE CRED-
24 ITED.—Section 215(e) of such Act (42 U.S.C. 415(e)) is
25 amended—

1 (1) by striking “and” at the end of paragraph
2 (1);

3 (2) by striking the period at the end of para-
4 graph (2) and inserting “; and”; and

5 (3) by adding at the end the following new
6 paragraph:

7 “(3) in computing the average indexed monthly
8 earnings of an individual, there shall not be counted
9 any annual wages or self-employment income for any
10 year for which no quarter of coverage may be cred-
11 ited to such individual as a result of the application
12 of section 214(d)(1).”.

13 (c) TRANSMISSION OF INFORMATION FROM COMMIS-
14 SIONER TO SECRETARY.—Section 205(c)(2) of such Act
15 (42 U.S.C. 405(c)(2)) is amended by adding at the end
16 the following new subparagraph:

17 “(I) The Commissioner and the Secretary of Home-
18 land Security shall enter into an agreement to establish
19 a system to transmit to the Secretary of Homeland Secu-
20 rity any social security account number assigned to an in-
21 dividual after the date of the enactment of the New Em-
22 ployee Verification Act of 2009, and other identifying in-
23 formation relating to such individual, in any case in which
24 such individual is not a citizen or national of the United
25 States at the time of the assignment of such number to

1 such individual. The Secretary of Homeland Security shall
2 incorporate such number and other identifying informa-
3 tion into all records of the Department of Homeland Secu-
4 rity maintained with respect to such individual.”.

5 (d) EFFECTIVE DATES.—

6 (1) Section 214(d)(1) of the Social Security Act
7 (added by subsection (a)) shall be effective with re-
8 spect to quarters of coverage credited for calendar
9 years commencing after the date on which the Sec-
10 retary of Homeland Security and the Commissioner
11 certify, by publication in the Federal Register, that
12 the system for developing and maintaining informa-
13 tion pursuant to section 214(d)(2)(B) of the Social
14 Security Act (added by subsection (a)) is oper-
15 ational.

16 (2) The Commissioner of Social Security and
17 the Secretary of Homeland Security shall enter into
18 the agreement described in section 205(c)(2) of the
19 Social Security Act (added by subsection (c)) not
20 later than 180 days after the date of the enactment
21 of this Act.

1 **SEC. 202. IMPROVEMENTS IN PROVISIONS GOVERNING TO-**
2 **TALIZATION AGREEMENTS.**

3 (a) ADDITIONAL INFORMATION REQUIRED IN DOCU-
4 MENT TRANSMITTING TOTALIZATION AGREEMENTS TO
5 THE CONGRESS.—

6 (1) IN GENERAL.—Section 233(e)(1) of the So-
7 cial Security Act (42 U.S.C. 433(e)(1)) is amended
8 to read as follows:

9 “(e)(1) Any agreement to establish a totalization ar-
10 rangement entered into pursuant to this section (and any
11 such agreement to amend a totalization arrangement)
12 shall be transmitted by the President to each House of
13 the Congress together with a report by the President in
14 support of such agreement. The President’s report shall
15 include the following:

16 “(A) an identification and assessment by the
17 Commissioner of Social Security of the major risks
18 associated with entering into such an agreement
19 with such other country, including an assessment
20 of—

21 “(i) the integrity of such other country’s
22 data and records on births, deaths, marriages,
23 divorces, earnings, and other information affect-
24 ing eligibility for benefits or benefit amounts,
25 and

1 “(ii) the potential for fraudulent receipt of
2 benefits under this title and how any such po-
3 tential fraud would be mitigated;

4 “(B) the number of individuals who are United
5 States citizens estimated by the Chief Actuary of the
6 Social Security Administration to be affected by the
7 agreement;

8 “(C) the number of individuals who are not
9 United States citizens estimated by the Chief Actu-
10 ary to be affected by the agreement;

11 “(D) the Chief Actuary’s estimate of any result-
12 ing reduction in liability for taxes or contributions
13 and increases in benefit payments, under the social
14 security system established by this title and the so-
15 cial security system of such other country, of—

16 “(i) individuals who are United States citi-
17 zens and their employers, and

18 “(ii) individuals who are not United States
19 citizens and their employers;

20 “(E) the Chief Actuary’s estimate of the effect
21 of the agreement, in the short-term and in the long-
22 term, on the receipts and disbursements under the
23 social security system established by this title; and

24 “(F) an analysis by the Chief Actuary of the
25 sensitivity of the estimates of the Chief Actuary to

1 alternative assumptions with respect to economic
2 and demographic variables.”.

3 (2) EFFECTIVE DATE.—The amendment made
4 by this subsection shall apply with respect to agree-
5 ments, establishing totalization arrangements pursu-
6 ant to section 233 of the Social Security Act, which
7 are transmitted to the Congress on or after the date
8 of the enactment of this Act.

9 (b) APPROVAL OF TOTALIZATION AGREEMENTS BY
10 JOINT RESOLUTION.—

11 (1) IN GENERAL.—Section 233(e) of such Act
12 (42 U.S.C. 433(e)) is amended by striking para-
13 graph (2) and inserting the following new para-
14 graphs:

15 “(2)(A) Except as provided in paragraph (4) or (5),
16 the agreement transmitted to the Congress pursuant to
17 paragraph (1) may enter into force according to its terms
18 or upon the expiration of the period of 60 calendar days
19 following the date of its transmittal to each House of the
20 Congress (excluding Saturdays, Sundays, holidays, and
21 days on which either House of Congress is not in session),
22 whichever is later.

23 “(B) Whenever a document setting forth an agree-
24 ment entered into under this section and the President’s
25 report in support of the agreement is transmitted to the

1 Congress pursuant to paragraph (1), copies of such docu-
2 ment shall be delivered to both Houses of Congress on
3 the same day and shall be delivered to the Clerk of the
4 House of Representatives if the House is not in session
5 and to the Secretary of the Senate if the Senate is not
6 in session.

7 “(3)(A) Any document setting forth an agreement en-
8 tered into under this section and transmitted to each
9 House of the Congress pursuant to paragraph (1) shall
10 set forth a determination of the Chief Actuary of the So-
11 cial Security Administration as to whether there is ex-
12 pected, over the 75-year period following the date of the
13 entry into force of the agreement, a net reduction in any
14 positive actuarial balance for such period of the social se-
15 curity system established by this title (or a net increase
16 in any negative actuarial balance for such period for such
17 system) attributable to the operation of such agreement
18 equal to at least 0.005 percent of the present value of tax-
19 able payroll for such period.

20 “(B) For purposes of this paragraph—

21 “(i) The term ‘actuarial balance’ means, with
22 respect to a period, the difference between the ad-
23 justed summarized income rate over such period and
24 the adjusted summarized cost rate over such period.

1 “(ii) The term ‘taxable payroll’ means, for a pe-
2 riod, the total wages (as defined in section 209) to
3 be paid, and self-employment income (as defined in
4 section 211(b)) to be derived, during such period.

5 “(iii) The term ‘adjusted summarized income
6 rate’ means, over a period, the ratio (expressed as
7 a percentage) of the sum of the trust fund balance
8 at the beginning of the period plus the present value
9 of the total income from taxes during such period,
10 to the present value of the taxable payroll for such
11 period.

12 “(iv) The term ‘adjusted summarized cost rate’
13 means, over a period, the ratio (expressed as a per-
14 centage) of the sum of the present value of the cost
15 during such period plus the present value of the tar-
16 geted trust fund balance, to the present value of the
17 taxable payroll for the years for such period.

18 “(v) The term ‘trust fund balance’ means the
19 combined balance of the Federal Old-Age and Sur-
20 vivors Insurance Trust Fund and the Federal Dis-
21 ability Insurance Trust Fund (hereinafter in this
22 subparagraph referred to as the ‘Trust Funds’).

23 “(vi) The term ‘income from taxes’ means, dur-
24 ing a period, the amounts deposited in the Trust
25 Funds as appropriations during the period based on

1 taxes under chapters 2 and 21 and section 86 of the
2 Internal Revenue Code of 1986.

3 “(vii) The term ‘cost’ means, during a period,
4 disbursements from the Trust Funds during such
5 period, including scheduled benefit payments, special
6 monthly payments to certain uninsured persons who
7 have 3 or more quarters of coverage (and whose pay-
8 ments are therefore not reimbursable from the gen-
9 eral fund of the Treasury), administrative expenses,
10 net transfers from the Trust Funds to the Railroad
11 Retirement program under financial-interchange
12 provisions, and payments for vocational rehabilita-
13 tion services for disabled beneficiaries, and excluding
14 special monthly payments to certain uninsured per-
15 sons whose payments are reimbursable from the gen-
16 eral fund of the Treasury, and transfers under the
17 interfund borrowing provisions of section 201(l).

18 “(viii) The term ‘target trust fund balance’
19 means the trust fund balance, as of the end of the
20 75-year period described in subparagraph (A), nec-
21 essary to support an OASDI trust fund ratio (as de-
22 fined in section 201(l)(3)(B)(iii)) of 100 percent for
23 the year following the last year of such period.

24 “(C) In making determinations under this paragraph,
25 the Chief Actuary shall employ the intermediate assump-

1 tions of the Board of Trustees of the Federal Old-Age and
2 Survivors Insurance Trust Fund and the Federal Dis-
3 ability Insurance Trust Fund in its most recent annual
4 report issued pursuant to section 201.

5 “(4) An agreement entered into under this section
6 shall not enter into force if there is enacted into law, dur-
7 ing the period of 60 calendar days specified in paragraph
8 (2)(A), a bill or joint resolution disapproving such agree-
9 ment.

10 “(5) In any case in which the determination of the
11 Chief Actuary described in subparagraph (A) of paragraph
12 (3) in connection with an agreement entered into under
13 this section is that, with respect to the 75-year period de-
14 scribed in such subparagraph, there is expected a net re-
15 duction, in the actuarial balance for such period of the
16 social security system established by this title, which—

17 “(A) is attributable to the operation of such
18 agreement, and

19 “(B) is equal to at least 0.005 percent of the
20 present value of taxable payroll for such period,

21 such agreement shall not enter into force unless, during
22 the period of 60 calendar days specified in paragraph
23 (2)(A), there is enacted into law a bill or joint resolution
24 approving such agreement.

1 “(6)(A) The provisions of this paragraph are enacted
2 by the Congress—

3 “(i) as an exercise of the rulemaking power of
4 the House of Representatives and the Senate, re-
5 spectively, and as such they are deemed a part of
6 the rules of each House, respectively, but applicable
7 only with respect to the procedure to be followed in
8 that House in the case of disapproval resolutions
9 and approval resolutions, and they supersede other
10 rules only to the extent that they are inconsistent
11 therewith; and

12 “(ii) with full recognition of the constitutional
13 right of either House to change the rules (so far as
14 relating to the procedure of that House) at any time,
15 in the same manner and to the same extent as in
16 the case of any other rule of that House.

17 “(B) During the period of 60 calendar days specified
18 in paragraph (2)(A), it shall be in order as a matter of
19 highest privilege in each House of the Congress to con-
20 sider a bill or joint resolution described in paragraph (4)
21 or (5) providing solely for the disapproval or approval of
22 an agreement entered into under this section, if offered
23 by the majority leader or minority leader of such House
24 (or a designee).

1 “(C) For purposes of consideration of a bill or joint
2 resolution described in paragraph (4) or (5) providing
3 solely for approval or disapproval of an agreement under
4 this section, the agreement shall not be subject to amend-
5 ment after the transmittal to each House of the Congress
6 pursuant to paragraph (1).”.

7 (2) EFFECTIVE DATE.—The amendment made
8 by this subsection shall apply with respect to agree-
9 ments, establishing totalization arrangements pursu-
10 ant to section 233 of the Social Security Act, which
11 are transmitted to the Congress on or after the date
12 of the enactment of this Act.

13 (3) SPECIAL RULE.—Notwithstanding sub-
14 section (e) of section 233 of the Social Security Act
15 (as in effect prior to the amendments made by this
16 section), any agreement entered into pursuant to
17 such section 233, establishing totalization arrange-
18 ments between the social security system established
19 by title II of such Act and the social security system
20 of another country, which—

21 (A) was signed by the Commissioner of So-
22 cial Security in June 2004, and

23 (B) was transmitted to the Congress pur-
24 suant to such subsection (e) on or after Sep-

1 tember 1, 2007, and before the date of the en-
2 actment of this Act,
3 shall be deemed not to have entered into force as of
4 the date of the enactment of this Act and shall be
5 deemed to enter into force after such date only as
6 provided in section 233(e) of such Act (as amended
7 by this section) as if such agreement had been trans-
8 mitted to the Congress on the date on which the
9 President transmits to the Congress on or after such
10 date, pursuant to section 233(e)(1) of such Act (as
11 amended by this section), a report in support of
12 such agreement meeting the requirements of such
13 section 233(e)(1) (as so amended).

14 (c) BIENNIAL REPORTS TO THE CONGRESS REGARD-
15 ING ONGOING OPERATION OF TOTALIZATION AGREE-
16 MENTS.—

17 (1) IN GENERAL.—Section 233 of such Act (42
18 U.S.C. 433) is amended by adding at the end the
19 following new subsection:

20 “Biennial Oversight Reports

21 “(f) The Commissioner of Social Security shall sub-
22 mit biennially to the Committee on Ways and Means of
23 the House of Representatives and the Committee on Fi-
24 nance of the Senate a report evaluating the operation, dur-
25 ing the preceding 2-year period covered by the report, of

1 each agreement entered into pursuant to this section.

2 Such report shall include—

3 “(1) if the report is submitted during the 10-
4 year period following the date on which the agree-
5 ment enters into force, the change in benefit costs
6 under the social security system established by this
7 title which is attributable to the agreement, as esti-
8 mated as of the date of the report, and the change
9 in contributions under such system which is attrib-
10 utable to such agreement, as so estimated,

11 “(2) information relating to actual, or perceived
12 potential, fraudulent receipt of benefits attributable
13 to the operation of the agreement under the social
14 security system established by this title,

15 “(3) information relating to perceived problems
16 with the integrity of the other country’s data and
17 records used in determining eligibility for benefits or
18 benefit amounts, and

19 “(4) if the report is submitted during the 10-
20 year period following the date on which the agree-
21 ment enters into force, information relating to demo-
22 graphic or other trends that may cause future devi-
23 ations from the original estimates of costs to each
24 social security system which are attributable to the
25 agreement.”.

1 (2) INITIAL REPORT.—The Commissioner of
2 Social Security shall submit the initial report pursu-
3 ant to section 233(f) of the Social Security Act
4 (added by this subsection) not later than December
5 31, 2009.

6 **SEC. 203. SUSPENSION OF BENEFITS FOR INDIVIDUALS RE-**
7 **MOVED FROM THE UNITED STATES.**

8 (a) IN GENERAL.—Section 202(n)(1) of the Social
9 Security Act (42 U.S.C. 402(n)(1)) is amended—

10 (1) in subparagraph (A), by striking “, on the
11 basis of his wages and self-employment income,”;

12 (2) in subparagraph (B), by striking “and” at
13 the end;

14 (3) in subparagraph (C), by striking the period
15 and inserting “, and”; and

16 (4) by adding at the end the following new sub-
17 paragraph:

18 “(D) no lump sum death payment shall be
19 made to such individual after the Commissioner of
20 Social Security is notified by the Attorney General
21 or the Secretary of Homeland Security that such in-
22 dividual has been so removed.”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to any individual with respect to
25 whose removal from the United States the Commissioner

1 of Social Security receives notification from the Attorney
2 General or the Secretary of Homeland Security after the
3 twelfth month that begins after the date of the enactment
4 of this Act.

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