

§ 274a.3

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

[52 FR 16221, May 1, 1987, as amended at 53 FR 8612, Mar. 16, 1988; 55 FR 25932, June 25, 1990; 56 FR 41784-41786, Aug. 23, 1991; 58 FR 48780, Sept. 20, 1993; 61 FR 46537, Sept. 4, 1996; 61 FR 52236, Oct. 7, 1996; 62 FR 51005, Sept. 30, 1997; 64 FR 6189, Feb. 9, 1999; 64 FR 11533, Mar. 9, 1999; 71 FR 34514, June 15, 2006; 73 FR 76511, Dec. 17, 2008; 74 FR 2838, Jan. 16, 2009; 74 FR 7995, Feb. 23, 2009; 74 FR 10455, Mar. 11, 2009; 74 FR 55739, Oct. 28, 2009; 74 FR 62207, Nov. 27, 2009; 75 FR 42578, July 22, 2010]

§ 274a.3 Continuing employment of unauthorized aliens.

An employer who continues the employment of an employee hired after November 6, 1986, knowing that the employee is or has become an unauthorized alien with respect to that employment, is in violation of section 274A(a)(2) of the Act.

[52 FR 16221, May 1, 1987, as amended at 53 FR 8613, Mar. 16, 1988]

§ 274a.4 Good faith defense.

An employer or a recruiter or referrer for a fee for employment who shows good faith compliance with the employment verification requirements of § 274a.2(b) of this part shall have established a rebuttable affirmative defense that the person or entity has not violated section 274A(a)(1)(A) of the Act with respect to such hiring, recruiting, or referral.

§ 274a.5 Use of labor through contract.

Any person or entity who uses a contract, subcontract, or exchange entered

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into, renegotiated, or extended after November 6, 1986 (or, with respect to the Commonwealth of the Northern Mariana Islands, after the transition program effective date as defined in 8 CFR 1.1), to obtain the labor or services of an alien in the United States knowing that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

[74 FR 55739, Oct. 28, 2009]

§ 274a.6 State employment agencies.

(a) *General.* Pursuant to sections 274A(a)(5) and 274A(b) of the Act, a state employment agency as defined in § 274a.1 of this part may, but is not required to, verify identity and employment eligibility of individuals referred for employment by the agency. However, should a state employment agency choose to do so, it must:

(1) Complete the verification process in accordance with the requirements of § 274a.2(b) of this part *provided* that the individual may not present receipts in lieu of documents in order to complete the verification process as otherwise permitted by § 274a.2(b)(1)(vi) of this part; and

(2) Complete the verification process prior to referral for all individuals for whom a certification is required to be issued pursuant to paragraph (c) of this section.

(b) *Compliance with the provisions of section 274A of the Act.* A state employment agency which chooses to verify employment eligibility of individuals pursuant to § 274a.2(b) of this part shall comply with all provisions of section 274A of the Act and the regulations issued thereunder.

(c) *State employment agency certification.* (1) A state employment agency which chooses to verify employment eligibility pursuant to paragraph (a) of this section shall issue to an employer who hires an individual referred for employment by the agency, a certification as set forth in paragraph (d) of this section. The certification shall be transmitted by the state employment agency directly to the employer, personally by an agency official, or by mail, so that it will be received by the