

Department of Homeland Security

§ 274a.3

(ii) Modify and maintain the retained Forms I-9; and

(iii) Establish the authenticity and integrity of the Forms I-9, such as audit trails.

(2) Insufficient or incomplete documentation is a violation of section 274A(a)(1)(B) of the Act.

(3) Any officer listed in 8 CFR 287.4 may issue a subpoena to compel production of any documentation required by 8 CFR 274a.2. Nothing in this section is intended to limit the subpoena power of an agency of the United States under section 235(d)(4) of the Act.

(g) *Security.* (1) Any person or entity who elects to complete or retain Forms I-9 electronically must implement an effective records security program that:

(i) Ensures that only authorized personnel have access to electronic records;

(ii) Provides for backup and recovery of records to protect against information loss, such as power interruptions;

(iii) Ensures that employees are trained to minimize the risk of unauthorized or accidental alteration or erasure of electronic records; and

(iv) Ensure that whenever the electronic record is created, completed, updated, modified, altered, or corrected, a secure and permanent record is created that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

(2) An action or inaction resulting in the unauthorized alteration, loss, or erasure of electronic records, if it is known, or reasonably should be known, to be likely to have that effect, is a violation of section 274A(b)(3) of the Act.

(h) *Electronic signatures for employee.*(1) If a Form I-9 is completed electronically, the attestations in Form I-9 must be completed using a system for capturing an electronic signature that meets the standards set forth in this paragraph. The system used to capture the electronic signature must include a method to acknowledge that the attestation to be signed has been read by the signatory. The electronic signature must be attached to, or logically associated with,

an electronically completed Form I-9. In addition, the system must:

(i) Affix the electronic signature at the time of the transaction;

(ii) Create and preserve a record verifying the identity of the person producing the signature; and

(iii) Upon request of the employee, provide a printed confirmation of the transaction to the person providing the signature.

(2) Any person or entity who is required to ensure proper completion of a Form I-9 and who chooses electronic signature for a required attestation, but who has failed to comply with the standards set forth in this paragraph, is deemed to have not properly completed the Form I-9, in violation of section 274A(a)(1)(B) of the Act and 8 CFR 274a.2(b)(2).

(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

§ 274a.4

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 referer 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 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

8 CFR Ch. I (1–12 Edition)

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 employer within 21 business days of the date that the referred individual is hired. In no case shall the certification be transmitted to the employer from the state employment agency by the individual referred. During this period:

(i) The job order or other appropriate referral form issued by the state employment agency to the employer, on behalf of the individual who is referred and hired, shall serve as evidence, with respect to that individual, of the employer's compliance with the provisions of section 274A(a)(1)(B) of the Act and the regulations issued thereunder.

(ii) In the case of a telephonically authorized job referral by the state employment agency to the employer, an appropriate annotation by the employer shall be made and shall serve as evidence of the job order. The employer should retain the document containing the annotation where the employer retains Forms I-9.

(2) Job orders or other referrals, including telephonic authorizations, which are used as evidence of compliance pursuant to paragraph (c)(1)(i) of this section shall contain:

(i) The name of the referred individual;

(ii) The date of the referral;

(iii) The job order number or other applicable identifying number relating to the referral;