ing this section and enacting provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996].”


Effective Date of 1988 Amendment

Effective Date of 1981 Amendment

Abolition of Immigration and Naturalization Service and Transfer of Functions
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

§ 1324a. Unlawful employment of aliens

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity—(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).

(2) Continuing employment

It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

(3) Defense

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract

For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or ex-
tended after November 6, 1986, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) Use of State employment agency documentation

For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual’s referral.

(6) Treatment of documentation for certain employees

(A) In general

For purposes of this section, if—(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and (ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual, the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) Period

The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) Liability

(i) In general

If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) Rebuttal of presumption

The presumption established by clause (i) may be rebutted by the employer only
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through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) Exception

Clause (i) shall not apply in any prosecution under subsection (f)(1).

(7) Application to Federal Government

For purposes of this section, the term “entity” includes an entity in any branch of the Federal Government.

(b) Employment verification system

The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) Attestation after examination of documentation

(A) In general

The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

Such attestation may be manifested by either a hand-written or an electronic signature. A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) Documents establishing both employment authorization and identity

A document described in this subparagraph is an individual’s—

(i) United States passport; 1

(ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document—

(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

(II) is evidence of authorization of employment in the United States, and

(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(C) Documents evidencing employment authorization

A document described in this subparagraph is an individual’s—

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or

(ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) Documents establishing identity of individual

A document described in this subparagraph is an individual’s—

(i) driver’s license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver’s license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(E) Authority to prohibit use of certain documents

If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

(2) Individual attestation of employment authorization

The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this chapter or by the Attorney General to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or an electronic signature.

(3) Retention of verification form

After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Re-

1So in original. Probably should be followed by “or”.
lishment of a national identification card.

use of national identification cards or the establish-
authorize, directly or indirectly, the issuance or
section (a)(1)(A) or (a)(2).

(A) in the case of the recruiting or referral
for a fee (without hiring) of an individual,
three years after the date of the recruiting
or referral, and
(B) in the case of the hiring of an individual—
(i) three years after the date of such hir-
ing, or
(ii) one year after the date the individ-
ual’s employment is terminated,
whichever is later.

(4) Copying of documentation permitted
Notwithstanding any other provision of law,
the person or entity may copy a document pre-
presented by an individual pursuant to this sub-
section and may retain the copy, but only (ex-
cept as otherwise permitted under law) for the
purpose of complying with the requirements of
this subsection.

(5) Limitation on use of attestation form
A form designated or established by the At-
torney General under this subsection and any
information contained in or appended to such
form, may not be used for purposes other than
for enforcement of this chapter and sections
1001, 1028, 1546, and 1621 of title 18.

(6) Good faith compliance
(A) In general
Except as provided in subparagraphs (B)
and (C), a person or entity is considered to
have complied with a requirement of this
subsection notwithstanding a technical or
procedural failure to meet such requirement
if there was a good faith attempt to comply
with the requirement.

(B) Exception if failure to correct after no-
tice
Subparagraph (A) shall not apply if—
(i) the Service (or another enforcement
agency) has explained to the person or en-
tity the basis for the failure,
(ii) the person or entity has been pro-
vided a period of not less than 10 business
days (beginning after the date of the expla-
nation) within which to correct the fail-
ure, and
(iii) the person or entity has not cor-
rected the failure voluntarily within such
period.

(C) Exception for pattern or practice viola-
tors
Subparagraph (A) shall not apply to a per-
son or entity that has or is engaging in a pat-
tern or practice of violations of sub-
section (a)(1)(A) or (a)(2).

(c) No authorization of national identification
cards
Nothing in this section shall be construed to
authorize, directly or indirectly, the issuance or
use of national identification cards or the estab-
ishment of a national identification card.

(d) Evaluation and changes in employment
verification system
(1) Presidential monitoring and improvements
in system
(A) Monitoring
The President shall provide for the moni-
toring and evaluation of the degree to which
the employment verification system estab-
lished under subsection (b) provides a secure
system to determine employment eligibility
in the United States and shall examine the
suitability of existing Federal and State
identification systems for use for this pur-
pose.

(B) Improvements to establish secure system
To the extent that the system established
under subsection (b) is found not to be a se-
cure system to determine employment eligi-
bility in the United States, the President
shall, subject to paragraph (3) and taking
into account the results of any demonstra-
tion projects conducted under paragraph (4),
implement such changes in (including addi-
tions to) the requirements of subsection (b)
as may be necessary to establish a secure
system to determine employment eligibility
in the United States. Such changes in the
system may be implemented only if the
changes conform to the requirements of
paragraph (2).

(2) Restrictions on changes in system
Any change the President proposes to imple-
ment under paragraph (1) in the verification
system must be designed in a manner so the
verification system, as so changed, meets the
following requirements:

(A) Reliable determination of identity
The system must be capable of reliably de-
termining whether—
(i) a person with the identity claimed by
an employee or prospective employee is el-
igible to work, and
(ii) the employee or prospective em-
ployee is claiming the identity of another
individual.

(B) Using of counterfeit-resistant documents
If the system requires that a document be
presented to or examined by an employer,
the document must be in a form which is re-
sistant to counterfeiting and tampering.

(C) Limited use of system
Any personal information utilized by the
system may not be made available to Gov-
ernment agencies, employers, and other per-
sons except to the extent necessary to verify
that an individual is not an unauthorized
alien.

(D) Privacy of information
The system must protect the privacy and
security of personal information and identi-
fiers utilized in the system.

(E) Limited denial of verification
A verification that an employee or pro-
spective employee is eligible to be employed
in the United States may not be withheld or
revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes

The system may not be used for law enforcement purposes, other than for enforcement of this chapter or sections 1001, 1028, 1546, and 1621 of title 18.

(G) Restriction on use of new documents

If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this chapter (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18) nor to be carried on one's person.

(3) Notice to Congress before implementing changes

(A) In general

The President may not implement any change under paragraph (1) unless at least—

(i) 60 days,

(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) Contents of report

In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

(C) Congressional review of major changes

(i) Hearings and review

The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) Congressional action

No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) Major changes defined

As used in this paragraph, the term “major change” means a change which would—

(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

(iii) require any change in any card used for accounting purposes under the Social Security Act [42 U.S.C. 301 et seq.], including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act [42 U.S.C. 405(c)(2)(D)].

(E) General revenue funding of social security card changes

Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act [42 U.S.C. 301 et seq.].

(4) Demonstration projects

(A) Authority

The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than five years.

(B) Reports on projects

The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) Compliance

(1) Complaints and investigations

The Attorney General shall establish procedures—

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) or (g)(1),

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) as the At-
(2) Authority in investigations

In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated.

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) Hearing

(A) In general

Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under this subsection for a violation of subsection (a) or (g)(1), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General’s imposition of the order shall constitute a final and unappealable order.

(C) Issuance of orders

If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) Cease and desist order with civil money penalty for hiring, recruiting, and referral violations

With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(i) not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than $2,000 and not more than $5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) not less than $3,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity—

(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) Order for civil money penalty for paperwork violations

With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) Order for prohibited indemnity bonds

With respect to a violation of subsection (g)(1), the order under this subsection may provide for the remedy described in subsection (g)(2).

(7) Administrative appellate review

The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or va-
iates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(8) Judicial review

A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) Enforcement of orders

If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) Criminal penalties and injunctions for pattern or practice violations

(1) Criminal penalty

Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) Enjoining of pattern or practice violations

Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) Prohibition of indemnity bonds

(1) Prohibition

It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty

Any person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e), to have violated paragraph (1) shall be subject to a civil penalty of $1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) Miscellaneous provisions

(1) Documentation

In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) Preemption

The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) Definition of unauthorized alien

As used in this section, the term “unauthorized alien” means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General.

Editorial Notes

References in Text

This chapter, referred to in subsecs. (b)(2), (5), (d)(2)(F), (G), and (h)(3), was in the original, “this Act,” meaning act June 27, 1952, ch. 477, title II, ch. 531, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of this title and Tables.


Amendments

2004—Subsec. (b)(1)(A). Pub. L. 108–390, §1(a)(1), inserted “Such attestation may be manifested by either a hand-written or an electronic signature.’’ before “A person or entity has complied’’ in concluding provi-
Subsec. (b)(2). Pub. L. 108–390, §1(a)(2), inserted at end ‘‘Such attestation may be manifested by either a handwritten or an electronic signature.’’


Subsec. (b)(1)(A). Pub. L. 104–208, §412(a)(1)(A), redesignated cl. (v) as (ii), substituted ‘‘alien registration card, or other document designated by the Attorney General, if the document’’ for ‘‘or other alien registration card, if the card’’ in introductory provisions of that cl., and struck out former cls. (ii) to (iv) which read as follows: ‘‘(ii) certificate of United States citizenship;’’ ‘‘(iii) certificate of naturalization;’’ ‘‘(iv) unexpired foreign passport, if the passport has been translated as ‘‘November 6, 1986,’’ and struck out ‘‘of the United States’’ after ‘‘Comptroller General’’.

Subsec. (a)(1)(A) of this section. Pub. L. 104–208, §413, substituted ‘‘an order’’ for ‘‘a order’’ and ‘‘subsection (b)’’ for ‘‘paragraph (1)(A)’’.

Subsec. (i)(3)(B)(iii). Pub. L. 100–525, §2(a)(1)(F), substituted ‘‘defined’’ for ‘‘requiring two years no less’’.

Subsec. (b)(1)(A). Pub. L. 100–525, §2(a)(1)(A), inserted ‘‘to hire for employment in the United States an individual without’’ after ‘‘(A)’’ in subpar. (A), and inserted ‘‘(i) to hire for employment in the United States’’ after ‘‘(A)’’ in subpar. (B).


1991 Amendment note below.


1990—Subsec. (a)(1). Pub. L. 101–649, §521(a), struck out ‘‘to hire, or to recruit or refer for a fee, for employment in the United States’’ after ‘‘or other entity’’ in introductory provisions, inserted ‘‘to hire, or to recruit or refer for a fee, for employment in the United States’’ after ‘‘(A)’’ in subpar. (A), and inserted ‘‘(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 1802 of title 29), to hire, or to recruit or refer for a fee, for employment in the United States’’ after ‘‘(B)’’ in subpar. (B).

Subsec. (b)(3). Pub. L. 100–525, §2(a)(1)(A), substituted ‘‘the first sentence of this paragraph’’ for ‘‘such sentence’’ and ‘‘such another document’’ for ‘‘such a document’’.

Subsec. (d)(3)(D). Pub. L. 100–525, §2(a)(1)(B), in heading substituted ‘‘defined’’ for ‘‘requiring two years notice and congressional review’’.


Subsec. (e)(4)(A)(ii), (iii). Pub. L. 100–525, §2(a)(1)(D), substituted ‘‘paragraph (e)’’ for ‘‘paragraph (b)’’.

Subsec. (e)(6) to (9). Pub. L. 100–525, §2(a)(1)(C)(iii), (iv), added par. (6) and redesignated former pars. (6) to (8) as (7) to (9), respectively.

Subsec. (g)(2). Pub. L. 100–525, §2(a)(1)(E), inserted reference to subsec. (e) of this section.


Subsec. (j)(1). Pub. L. 100–525, §2(a)(1)(G), made technical amendment to provision of original act which was translated as ‘‘November 6, 1986,’’ and struck out ‘‘of the United States’’ after ‘‘Comptroller General’’.

Subsec. (j)(2). Pub. L. 100–525, §2(a)(1)(H), substituted ‘‘this section’’ for ‘‘that section’’.

Statutory Notes and Related Subsidiaries

Effective Date of 2004 Amendment

Pub. L. 108–390, §1(b), Oct. 30, 2004, 118 Stat. 2242, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall take effect on the earlier of—

(1) the date on which final regulations implementing such amendments take effect; or

(2) 180 days after the date of the enactment of this Act [Oct. 30, 2004].’’

Effective Date of 1996 Amendment

Pub. L. 104–208, div. C, title III, §379(b), Sept. 30, 1996, 110 Stat. 3009–650, provided that: ‘‘The amendments made by subsection (a) [amending this section] shall apply to orders issued on or after the date of the enactment of this Act [Sept. 30, 1996].’’

Pub. L. 104–208, div. C, title IV, §411(b), Sept. 30, 1996, 110 Stat. 3009–666, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to orders occurring on or after the date of the enactment of this Act [Sept. 30, 1996].’’
after 60 days after the date of the enactment of this Act.

“(3) The amendment made by subsection (c) (amending this section) shall take effect on the date of the enactment of this Act.

“(4) The amendment made by subsection (d) (amending this section) applies to hiring occurring before, on, or after the date of the enactment of this Act, but no penalty shall be imposed under subsection (e) or (f) of section 274A of the Immigration and Nationality Act (subsecs. (e) and (f) of this section) for such hiring occurring before such date.”

[Pub. L. 103-418, §3(b), Oct. 25, 1994, 108 Stat. 4318, provided that: “The amendment made by subsection (a) (amending section 42(e) of div. C of Pub. L. 104-208, set out above) applies to hiring occurring before, on, or after the date of the enactment of this Act [Sept. 29, 1994].”]

EFFECTIVE DATE OF 1994 AMENDMENT

EFFECTIVE DATE OF 1991 AMENDMENT

EFFECTIVE DATE OF 1990 AMENDMENT
Pub. L. 102-232, title V, §521(b), Nov. 29, 1990, 104 Stat. 4527, provided that: “The amendments made by subsection (a) (amending this section) shall apply to recruiting and referring occurring on or after the date of the enactment of this Act [Nov. 29, 1990].”

Pub. L. 101-169, title V, §538(b), Nov. 29, 1990, 104 Stat. 4527, provided that: “The amendment made by subsection (a) (amending this section) shall take effect on the date of the enactment of this Act [Nov. 29, 1990].”

EFFECTIVE DATE OF 1988 AMENDMENT
Amendment by Pub. L. 100-525 effective as if included in enactment of Immigration Reform and Control Act of 1986, Pub. L. 99-603, see section 2(e) of Pub. L. 100-525, set out as a note under section 1101 of this title.

DATE OF ENACTMENT OF THIS SECTION FOR ALIENS EMPLOYED UNDER SECTION 8704 OF TITLE 46, SHIPPING
Date of enactment of this section with respect to aliens deemed employed under section 8704 of Title 46, Shipping, as the date 180 days after Jan. 11, 1988, see section 5(f)(3) of Pub. L. 100-239, set out as a Construction note under section 8704 of Title 46.

ABOLITION OF IMMIGRATION AND NATIONALIZATION SERVICE AND TRANSFER OF FUNCTIONS
For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under section 1551 of this title.

DELEGATION OF AUTHORITY
Authority of President under subsec. (d)(4) of this section to undertake demonstration projects of different changes in requirements of employment verification system delegated to Attorney General by section 2 of Exec. Ord. No. 12781, Nov. 20, 1991, 56 F.R. 59203, set out as a note under section 301 of Title 3, The President.

PILOT PROGRAMS FOR EMPLOYMENT ELIGIBILITY CONFIRMATION

“SEC. 401. ESTABLISHMENT OF PROGRAMS.

“(a) IN GENERAL.—The Secretary of Homeland Security shall conduct 3 pilot programs of employment eligibility confirmation under this subtitle.

“(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Secretary of Homeland Security shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act [Sept. 30, 2015]. Unless the Congress otherwise provides, the Secretary of Homeland Security shall terminate a pilot program on September 30, 2015.

“(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The Secretary of Homeland Security shall provide for the operation—

“(1) of the E-Verify Program (described in section 403(a) of this division) in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States, and the Secretary of Homeland Security shall expand the operation of the program to all 50 States no later than December 1, 2004;

“(2) of the citizen attestation pilot program (described in section 403(b) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(b)(2) of this division;

“(3) of the machine-readable-document pilot program (described in section 403(c) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(c)(2) of this division.

“(d) REFERENCES IN SUBTITLE.—In this subtitle—

“(1) PILOT PROGRAM REFERENCES.—The terms ‘program’ or ‘pilot program’ refer to any of the 3 pilot programs provided for under this subtitle.

“(2) CONFIRMATION SYSTEM.—The term ‘confirmation system’ means the confirmation system established under section 404 of this division.

“(3) REFERENCES TO SECTION 274A.—Any reference in this subtitle to section 274A (or a subdivision of such section) is deemed a reference to such section (or subdivision thereof) of the Immigration and Nationality Act [8 U.S.C. 1324a].

“(4) I-9 OR SIMILAR FORM.—The term ‘I-9 or similar form’ means the form used for purposes of section 274A(d)(1)(A) or such other form as the Secretary of Homeland Security determines to be appropriate.

“(5) LIMITED APPLICATION TO RECRUITERS AND REFERREES.—Any reference to recruitment or referral (or a recruiter or referrer) in relation to employment is deemed a reference only to such recruitment or referral (or recruiter or referrer) that is subject to section 274A(d)(1)(A).

“(6) UNITED STATES CITIZENSHIP.—The term ‘United States citizenship’ includes United States nationality.

“(7) STATE.—The term ‘State’ has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act [8 U.S.C. 1101(a)(36)].

“SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

“(a) VOLUNTARY ELECTION.—Subject to subsection (c)(3)(B), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which a pilot program is operating may elect to participate in that pilot program. Except as specifically provided in subsection (c), the Secretary of Homeland Security may not require any person or other entity to participate in a pilot program.

“(b) BENEFIT OF RESEMBLABLE PRESUMPTION.—

“(1) IN GENERAL.—If a person or other entity is participating in a pilot program and obtains confirmation of identity and employment eligibility in com-
pliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable pres-
sumption that the person or entity has not violated section 274A(a)(1)(A) with respect to such hiring (or such recruitment or referral).

(2) CONSTRUCTION.—Paragraph (1) shall not be con-
strued as preventing a person or other entity that has an election in effect under subsection (a) from establish-
ing an affirmative defense under section 274A(a)(3) if the person or entity complies with the
requirements of section 274A(a)(1)(B) but fails to ob-
tain confirmation under paragraph (1).

(G) GENERAL TERMS OF ELECTIONS.

(1) IN GENERAL.—An election under subsection (a) shall be in such form and manner, under such terms and conditions, and shall take effect, as the Sec-
retary of Homeland Security shall specify. The Sec-
retary of Homeland Security may not impose any fee as a condition of making an election or participating in a pilot program.

(2) SCOPE OF ELECTION.—

(A) IN GENERAL.—Subject to paragraph (3), any electing person or other entity may provide that the election under subsection (a) shall apply (dur-
ing the period in which the election is in effect)—

(i) to all its hiring (and all recruitment or refer-
ferral) in the State (or States) in which the pilot program is operating, or

(ii) to its hiring (or recruitment or referral) in one or more pilot program States or one or more places of hiring (or recruitment or referral, as the case may be) in the pilot program States.

(B) APPLICATION OF PROGRAMS IN NON-PILOT PRO-
GRAM STATES.—In addition, the Secretary of Home-
land Security may permit a person or entity elect-
ing the citizen attestation pilot program (described in section 403(b) of this divi-
sion) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not other-
wise operating but only if such States meet the re-
quirements of 403(b)(2)(A) and 403(c)(2) of this divi-
sion, respectively.

(3) TERMINATION OF ELECTIONS.—The Secretary of Homeland Security may terminate an election by a person or other entity under this section because the person or entity has substantially failed to comply with its obligations under the pilot program. A per-
son or other entity may terminate an election in such form and manner as the Secretary of Homeland Security shall specify.

(4) CONSULTATION, EDUCATION, AND PUBLICITY.—

(A) CONSULTATION.—The Secretary of Homeland Security shall closely consult with representatives of employers (and recruiters and referrers) in the develop-
ment and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs.

(B) PUBLICITY.—The Secretary of Homeland Security shall widely publicize the election process and pilot programs, including the voluntary nature of the pilot programs and the advantages to employers (and recruiters and referrers) of making an election under this section.

(5) ASSISTANCE THROUGH DISTRICT OFFICES.—The Sec-
retary of Homeland Security shall designate one or more individuals in each District office of the Im-
migration and Naturalization Service for a Service District in which a pilot program is being imple-
mented—

(A) to inform persons and other entities that seek information about pilot programs of the voluntary nature of such programs, and

(B) to assist persons and other entities in electing and participating in any pilot programs in effect in the District, in complying with the require-
ments of section 274A, and in facilitating confirmation of the identity and employment eligibility of individuals consistent with such section.

(E) SELECT ENTITIES REQUIRED TO PARTICIPATE IN A PILOT PROGRAM.—

(1) FEDERAL GOVERNMENT.—

(A) EXECUTIVE DEPARTMENTS.—

(i) IN GENERAL.—Each Department of the Fed-
eral Government shall elect to participate in a pilot program and shall comply with the terms and conditions of such an election.

(ii) ELECTION.—Subject to clause (iii), the Sec-
etary of each such Department—

(I) shall elect to participate in a pilot program (or pro-
gams) in which the Department shall partici-
pate, and

(II) may limit the election to hiring occurring in certain States or geographic areas covered by the program (or programs) and in speci-
fied divisions within the Department, so long as all hiring by such divisions and in such locations is covered.

(iii) ROLE OF SECRETARY OF HOMELAND SECUI-
RITY.—The Secretary of Homeland Security shall assist and coordinate elections under this sub-
paragraph in such manner as assures that—

(I) a significant portion of the total hiring within each Department within States covered by a pilot program is covered under such a pro-
gram, and

(II) there is significant participation by the Federal Executive branch in each of the pilot programs.

(B) LEGISLATIVE BRANCH.—Each Member of Con-
gress, each officer of Congress, and the head of each agency of the legislative branch, that conducts hir-
ing in a State in which a pilot program is operating shall elect to participate in a pilot program, may specify which pilot program or programs (if there is more than one) in which this Member, officer, or agency will participate, and shall comply with the terms and conditions of such an election.

(2) APPLICATION TO CERTAIN VIOLATORS.—An order under section 274A(e)(4)(A) or section 274B(g) of the Im-
migration and Nationality Act (8 U.S.C. 1324a(e)(4), 1324b(g)) may require the subject of the order to par-
ticipate in, and comply with the terms of, a pilot pro-
gram with respect to the subject’s hiring (or recruit-
ment or referral) of individuals in a State covered by such a program.

(3) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If a person or other entity is required under this sub-
section to participate in a pilot program and fails to comply with the requirements of such program with respect to an individual—

(A) such failure shall be treated as a violation of section 274A(a)(1)(B) with respect to that individual, and

(B) a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A).

Subparagraph (B) shall not apply in any prosecution under section 274A(d).

(4) CONSTRUCTION.—This subtitle shall not affect the au-
thority of the Secretary of Homeland Security under any other law (including section 274A(d)) to conduct demonstration projects in relation to section 274A.

SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.

(a) E-VERIFY PROGRAM.—A person or other entity that elects to participate in the E-Verify Program de-
scribed in this subsection agrees to conform to the fol-
lowing procedures in the case of the hiring (or recruit-
ment or referral) for employment in the United States of each individual covered by the election:

(1) PROVISION OF ADDITIONAL INFORMATION.—The person or entity shall obtain from the individual (and the individual shall provide) and shall record on the I-9 or similar form—

(A) the individual’s social security account num-
ber, if the individual has been issued such a num-
ber, and
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(B) If the individual does not attest to United States citizenship under section 274a(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Secretary of Homeland Security shall specify, and shall retain the original form and make it available for inspection for the period and in the manner required of I-9 forms under section 274a(b)(3).

(2) Presentation of documentation.—

(A) In general.—The person or other entity, and the individual whose identity and employment eligibility are being confirmed, shall, subject to subparagraph (B), fulfill the requirements of section 274A(b) with the following modifications:

(i) A document referred to in subsection 274A(b)(1)(B)(i) (as redesignated by section 412(a) of this division) must be designated by the Secretary of Homeland Security as suitable for the purpose of identification in a pilot program.

(ii) A document referred to in section 274A(b)(1)(D) must contain a photograph of the individual.

(iii) The person or other entity has complied with the requirements of section 274A(b)(1) with respect to examination of a document if the document reasonably appears on its face to be genuine and it reasonably appears to pertain to the individual whose identity and work eligibility is being confirmed.

(B) Limitation of requirement to examine documentation.—If the Secretary of Homeland Security finds that a pilot program would reliably determine with respect to an individual whether—

(i) the person with the identity claimed by the individual is authorized to work in the United States, and

(ii) the individual is claiming the identity of another person, if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B) or (D) of that section, the Secretary of Homeland Security may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1)(A) to a verification that an individual is not an unauthorized alien shall be deemed to be a verification of the individual’s identity.

(3) Seeking confirmation.—

(A) In general.—The person or other entity shall make an inquiry, as provided in section 404(a)(1) of this division, using the confirmation system to seek confirmation of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring (or recruitment or referral, as the case may be).

(B) Extension of time period.—If the person or other entity in good faith attempts to make an inquiry during such 3 working days and the confirmation system has registered that not all inquiries were received during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation system registers that it has received all inquiries. If the confirmation system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

(4) Confirmation or nonconfirmation.—

(A) Confirmation upon initial inquiry.—If the person or other entity receives an appropriate confirmation of an individual’s identity and work eligibility under the confirmation system within the time period specified under section 404(b) of this division, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

(B) Nonconfirmation upon initial inquiry and secondary verification.—

(i) Nonconfirmation.—If the person or other entity receives a tentative nonconfirmation of an individual’s identity or work eligibility under the confirmation system within the time period specified under 404(b) of this division, the person or entity shall so inform the individual for whom the confirmation is sought.

(ii) No contest.—If the individual does not contest the nonconfirmation within the time period specified in section 404(c) of this division, the nonconfirmation shall be considered final. The person or entity shall then record on the I-9 or similar form an appropriate code which has been provided under the system to indicate a tentative nonconfirmation.

(iii) Contest.—If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under section 404(c) of this division. The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the confirmation system within the time period specified in such section. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

(iv) Recording of conclusion on form.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 404(c) of this division regarding an individual, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

(C) Consequences of nonconfirmation.—

(i) Termination or notification of continued employment.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

(ii) Failure to notify.—If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the amounts specified in such section) no less than $500 and no more than $1,000 for each individual with respect to whom such violation occurred.

(iii) Continued employment after final nonconfirmation.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

(iv) Citizen attestation of program.—

(A) In general.—Except as provided in paragraphs (3) through (5), the procedures applicable under the
citizen attestation pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

"(2) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the machine-readable-document pilot program in a State unless driver's license or similar identification documents described in section 274A(b)(1)(D)(i) issued by the State include a machine-readable social security account number.

"(3) USE OF MACHINE-READABLE DOCUMENTS.—If the individual whose identity and employment eligibility must be confirmed presents to the person or entity hiring (or recruiting or referring) the individual a license or other document described in paragraph (3) that includes a machine-readable social security account number, the person or entity must make an inquiry through the confirmation system by using a machine-readable feature of such document. If the individual does not attest to United States citizenship under section 274A(b)(2), the individual's identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

"(d) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE CONFIRMATION SYSTEM.—No person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

"SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

"(a) IN GENERAL.—The Secretary of Homeland Security shall establish a pilot program confirmation system through which the Secretary of Homeland Security or a designee of the Secretary of Homeland Security, which may be a nongovernmental entity—

"(1) responds to inquiries made by employers and other entities (including those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) at any time through a toll-free telephone line or other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed, and

"(2) maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under the pilot programs.

To the extent practicable, the Secretary of Homeland Security shall seek to establish such a system using one or more nongovernmental entities.

"(b) INITIAL RESPONSE.—The confirmation system shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the confirmation system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

"(c) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—In cases of tentative nonconfirmation, the Secretary of Homeland Security shall specify, in consultation with the Commissioner of Social Security and the Commissioner of the Immigration and Naturalization Service, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation within 10 working days after the date of the tentative nonconfirmation. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

"(d) DESIGN AND OPERATION OF SYSTEM.—The confirmation system shall be designed and operated—

"(1) to maximize its reliability and ease of use by persons and other entities making elections under
section 402(a) of this division consistent with insulating and protecting the privacy and security of the underlying information;

(3) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

(4) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

(5) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

(A) the selective or unauthorized use of the system to verify eligibility;

(B) the use of the system prior to an offer of employment; or

(C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

(e) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the confirmation system, the Commissioner of Social Security, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation).

(f) RESPONSIBILITIES OF THE COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE.—As part of the confirmation system, the Commissioner of the Immigration and Naturalization Service, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 402(a)(1)(B) of this division which are provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation).

(g) UPDATING INFORMATION.—The Commissioners of Social Security and the Immigration and Naturalization Service shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subsection (c).

(h) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subtitle for any other purpose other than as provided for under this subtitle.

(2) NO NATIONAL IDENTIFICATION CARD.—Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

SEC. 405. REPORTS.

(a) IN GENERAL.—The Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate reports on the pilot programs within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall—

(1) assess the degree of fraudulent attesting of United States citizenship;

(2) include recommendations on whether or not the pilot programs should be continued or modified, and

(3) assess the benefits of the pilot programs to employers and the degree to which they assist in the enforcement of section 274A.

(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the E-Verify Program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a)."


take effect on the date of the enactment of this Act [Jan. 16, 2002]."

REPORT ON ADDITIONAL AUTHORITY OR RESOURCES NEEDED FOR ENFORCEMENT OF EMPLOYER SANCTIONS PROVISIONS

Pub. L. 104–208, div. C, title IV, §413(a), Sept. 30, 1996, 110 Stat. 3009–668, as amended by Pub. L. 106–156, §3(d), Dec. 3, 2003, 117 Stat. 1945, provided that not later than 1 year after Sept. 30, 1996, the Secretary of Homeland Security was to submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on any additional authority or resources needed by the Immigration and Naturalization Service in order to enforce section 1324a of this title, or by Federal agencies in order to carry out Ex. Ord. No. 12989, set out below, and to expand the restrictions in such order to cover agricultural subsidies, grants, job training programs, and other Federally subsidized assistance programs.

PILOT PROJECTS FOR SECURE DOCUMENTS

Pub. L. 101–236, §5, Dec. 18, 1989, 103 Stat. 2194, provided that:

"(a) CONSULTATION.—Before June 1, 1991, the Attorney General shall consult with State governments on any proper State initiative to improve the security of State or local documents which would satisfy the requirements of section 274a(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a). The result of such consultations shall be reported, before September 1, 1991, to the Committees on the Judiciary of the Senate and House of Representatives of the United States.

"(b) ASSISTANCE FOR STATE INITIATIVES.—After such consultation described in subsection (a), the Attorney General shall make grants to, and enter into contracts with (to such extent or in such amounts as are provided in an appropriation Act), the State of California and at least 2 other States with large immigrant populations to promote any State initiatives to improve the security of State or local documents which would satisfy the requirements of section 274a(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)).

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General $10,000,000 for fiscal year 1992 to carry out subsection (b).

"(d) REPORT REQUIRED.—The Attorney General shall report to the Committees on the Judiciary of the Senate and House of Representatives not later than August 1, 1993, on the security of State or local documents which would satisfy the requirements of section 274a(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a), and any improvements in such documents that have occurred as a result of this section."

INTERIM REGULATIONS

Pub. L. 99–603, title I, §101(a)(2), Nov. 6, 1986, 100 Stat. 3372, provided that: "The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986], issue, on an interim or other basis, such regulations as may be necessary in order to implement this section (enacting this section, amending sections 1802, 1813, 1816, and 1851 of Title 29, Labor, and enacting provisions set out as notes under this section, section 1802 of Title 29, and section 465 of Title 42, The Public Health and Welfare)."

GRANDFATHER PROVISION FOR CURRENT EMPLOYERS

Pub. L. 99–603, title I, §101(a)(3), Nov. 6, 1986, 100 Stat. 3372, provided that:

"(A) Section 274a(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)) shall not apply to the hiring, or recruiting or referring of an individual for employment which has occurred before the date of the enactment of this Act [Nov. 6, 1986].

"(B) Section 274a(a)(2) of the Immigration and Nationality Act shall not apply to continuing employ-

ment of an alien who was hired before the date of the enactment of this Act."

STUDY OF USE OF TELEPHONE VERIFICATION SYSTEM FOR DETERMINING EMPLOYMENT ELIGIBILITY OF ALIENS

Pub. L. 99–603, title I, §101(d), Nov. 6, 1986, 100 Stat. 3373, provided that:

"(1) The Attorney General, in consultation with the Secretary of Labor and the Secretary of Health and Human Services, shall conduct a study for use by the Department of Justice in determining employment eligibility of aliens in the United States. Such study shall concentrate on those data bases that are currently available to the Federal Government which through the use of a telephone and computation capability could be used to verify instantly the employment eligibility status of job applicants who are aliens.

"(2) Such study shall be conducted in conjunction with any existing Federal program which is designed for the purpose of providing information on the resident or employment status of aliens for employers. The study shall include an analysis of costs and benefits which shows the differences in costs and efficiency of having the Federal Government or a contractor perform this service. Such comparisons should include reference to such technical capabilities as processing techniques and time, verification techniques and time, back up safeguards, and audit trail performance.

"(3) Such study shall also concentrate on methods of phone verification which demonstrate the best safety and service standards, the least burden for the employer, the best capability for effective enforcement, and procedures which are within the boundaries of the Privacy Act of 1974 [5 U.S.C. 552a, 552a note].

"(4) Such study shall be conducted within twelve months of the date of enactment of this Act [Nov. 6, 1986].

"(5) The Attorney General shall prepare and transmit to the Congress a report—

"(A) not later than six months after the date of enactment of this Act, describing the status of such study; and

"(B) not later than twelve months after such date, setting forth the findings of such study."

FEASIBILITY STUDY OF SOCIAL SECURITY NUMBER VALIDATION SYSTEM

Pub. L. 99–603, title I, §101(e), Nov. 6, 1986, 100 Stat. 3373, provided that: "The Secretary of Health and Human Services, acting through the Social Security Administration and in cooperation with the Attorney General and the Secretary of Labor, shall conduct a study of the feasibility and costs of establishing a social security number validation system to assist in carrying out the purposes of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a], and of the privacy concerns that would be raised by the establishment of such a system. The Secretary shall submit to the Committees on Ways and Means and Judiciary of the House of Representatives and to the Committees on Finance and Judiciary of the Senate, within 2 years after the date of the enactment of this Act [Nov. 6, 1986], a full and complete report on the results of the study together with such recommendations as may be appropriate."

REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT

Pub. L. 99–603, title IV, §402, Nov. 6, 1986, 100 Stat. 3441, provided that: "The President shall transmit to Congress annual reports on the implementation of section 274A of the Immigration and Nationality Act [8 U.S.C. 1324a] (relating to unlawful employment of aliens) during the first three years after its implementation. Each report shall include—

"(1) an analysis of the adequacy of the employment verification system provided under subsection (b) of that section;

"(2) a description of the status of the development and implementation of changes in that system under
subsection (d) of that section, including the results of any demonstration projects conducted under para-

graph (4) of such subsection; and

the analysis of the impact of the enforcement of that section on—

(A) the employment, wages, and working condi-
tions of United States workers and on the economy of the United States;

(B) the number of aliens entering the United States illegally or who fail to maintain legal status after entry, and

the duration of terms and conditions of non-
immigrant visas by foreign visitors.”

[Functions of President under section 402 of Pub. L. 99–683 delegated to Secretary of Homeland Security, ex-
cception in section 3(a) in which was delegated to Secretary of Labor, by sections 1(b) and 2(a) of Ex.
Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, as amended, set out as a note under section 1396 of this title.]

Executive Documents

EX. ORD. NO. 12989. ECONOMY AND EFFICIENCY IN GOV-
ERNMENT PROCUREMENT THROUGH COMPLIANCE WITH CERTAIN IMMIGRATION AND NATIONALITY ACT PROVI-
SIONS AND USE OF AN ELECTRONIC EMPLOYMENT ELIGI-
BILITY VERIFICATION SYSTEM

10625; Ex. Ord. No. 13465, §§1–6, June 6, 2008, 73 F.R.
33283–33287, provided:

This order is designed to promote economy and efficiency in Federal Government procurement. Stability
and dependability are important elements of economy and efficiency. A contractor whose workforce is less
stable will be less likely to produce goods and services economically and efficiently than a contractor whose
workforce is more stable. It is the policy of the executive branch to enforce fully the immigration laws of
the United States, including the detection and removal of aliens and the imposition of legal sanctions
against employers that hire illegal aliens. Because of the worksite enforcement policy of the United States
and the underlying obligation of the executive branch to enforce the immigration laws, contractors that em-
ploy illegal aliens cannot rely on the continuing avail-
ability and service of those illegal workers, and such contractors inevitably will have a less stable and less
dependable workforce than contractors that do not em-
ploy such persons. Where a contractor assigns illegal
aliens to work on Federal contracts, the enforcement of Federal immigration laws imposes a direct risk of dis-
ruption, delay, and increased expense in Federal con-
tracting. Private employers that choose to contract with the Federal Government should meet the same
standard.

I find, therefore, that adherence to the general policy of contracting only with providers that do not know-
ingly employ unauthorized alien workers and that have
agreed to utilize an electronic employment verification system designated by the Secretary of Homeland Secu-
rity that the employment of such workers will promote economy and efficiency in Federal
procurement.

NOW, THEREFORE, to ensure the economical and ef-

cient administration and completion of Federal Gov-

erment contracts, and by the authority vested in me

as President by the Constitution and the laws of the
United States of America, including subsection 121(a)
of title 40 and section 301 of title 3, United States Code,
it is hereby ordered as follows:

SECTION 1. (a) It is the policy of the executive branch in
procuring goods and services that, to ensure the eco-

nomical and efficient administration and completion of Federal Government contracts, contracting agencies
should not contract with employers that have not com-
plied with section 274A(a)(1)(A) and 274A(a)(2) of the
Immigration and Nationality Act (8 U.S.C.
1324a(a)(1)A), 1324a(a)(2)(B) (the “INA employment provi-
sions”) prohibiting the unlawful employment of aliens.

(b) It is the policy of the executive branch in procuring
goods and services that, to ensure the economical and efficient administration and completion of Fed-
eral Government contracts, contracting agencies may
not enter into contracts with employers that do not use
the best available means to confirm the work author-
ization of their workforce.

(c) It is the policy of the executive branch to enforce
fully the antidiscrimination provisions of the INA.

Nothing in this order relieves employers of anti-
discrimination obligations under section 274B of the
INA (8 U.S.C. 1324b) or any other law.

(d) All discretion under this order shall be exercised
consistent with the policies set forth in this section.

SIC 2. Contractor, as used in this Executive order,
shall have the same meaning as defined in subpart 9.4
of the Federal Acquisition Regulation.

SIC 3. Using the procedures established pursuant to 8 U.S.C. 1324a(e): (a) the Secretary of Homeland Secu-
rity may investigate to determine whether a con-
tractor or an organizational unit thereof is not in com-
pliance with the INA employment provisions;

(b) the Secretary of Homeland Security shall receive
and may investigate complaints by employees of any
entity covered under section 3(a) of this order where
such complaints allege noncompliance with the INA
employment provisions; and

(c) the Attorney General shall hold such hearings as
are required under 8 U.S.C. 1324a(e) to determine
whether an entity covered under section 3(a) is not in
compliance with the INA employment provisions.

SIC 4. (a) Whenever the Secretary of Homeland Secu-
rity or the Attorney General determines that a con-
tractor or an organizational unit thereof is not in com-
pliance with the INA employment provisions, the Sec-
retary of Homeland Security or the Attorney General
shall transmit that determination to the appropriate
contracting agency and such other Federal agencies as
the Secretary of Homeland Security or the Attorney
General may determine. Upon receipt of such deter-
mination from the Secretary of Homeland Security or
the Attorney General, the appropriate contracting
agency shall consider the contractor or an orga-
nizational unit thereof for debarment as well as for
such other action as may be appropriate in accordance
with the procedures and standards prescribed by the
Federal Acquisition Regulation.

(b) The head of the contracting agency may debar the
contractor or an organizational unit thereof based on
the determination of the Secretary of Homeland Secu-
rity or the Attorney General that it is not in compli-
ance with the INA employment provisions. Such deter-
mination shall not be reviewable in the debarment pro-
cedings.

(c) The scope of the debarment generally should be
limited to those organizational units of a Federal con-
tractor that the Secretary of Homeland Security or the
Attorney General finds are not in compliance with the
INA employment provisions.

(d) The period of the debarment shall be for 1 year
and may be extended for additional periods of 1 year if,
using the procedures established pursuant to 8 U.S.C.
1324a(e), the Secretary of Homeland Security or the At-

torney General determines that the organizational unit

§ 1324aa  TITLE 8—ALIENS AND NATIONALITY
of the Federal contractor continues to be in violation of the INA employment provisions.
(e) The Administrator of General Services shall list a debarred contractor or an organizational unit thereof on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs and the contractor or an organizational unit thereof shall be ineligible to participate in any procurement or nonprocurement activities.

SISC. 5. (a) Executive departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of: (i) all persons hired during the contract term by the contractor to perform employment duties within the United States; and (ii) all persons assigned by the contractor to perform work within the United States on the Federal contract.
(b) The Secretary of Homeland Security:
(i) shall administer, maintain, and modify as necessary and appropriate the electronic employment eligibility verification system; and
(ii) may establish with respect to such electronic employment verification system:
(A) terms and conditions for use of the system; and
(B) procedures for monitoring the use, failure to use, or improper use of the system.
(c) The Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the department responsibility, the employment eligibility verification responsibility, and other related responsibilities assigned to heads of departments and agencies under this order.
(d) Except to the extent otherwise specified by law or this order, the Secretary of Homeland Security and the Attorney General:
(i) shall administer and enforce this order; and
(ii) may, after consultation to the extent appropriate with the Secretary of Defense, the Secretary of Labor, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Administrator for Federal Procurement Policy, and the heads of such other departments or agencies as may be appropriate, issue such rules, regulations, orders, or establish such requirements, as may be necessary and appropriate to implement this order.
(e) The Administrator shall list a debarred contractor or an organizational unit thereof on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs and the contractor or an organizational unit thereof shall be ineligible to participate in any procurement or nonprocurement activities.

DELEGATION OF AUTHORITY TO REPORT TO THE CONGRESS AND TO PUBLISH IN THE FEDERAL REGISTER PROPOSED CHANGES IN THE SOCIAL SECURITY NUMBER CARD
Memorandum of President of the United States, Feb. 10, 1992, 57 F.R. 23435, provided:
Memorandum for the Secretary of Health and Human Services
Section 265(c)(2)(F) of the Social Security Act (section 405(c)(2)(F) of title 42 of the United States Code) directs the Secretary of Health and Human Services to issue Social Security number cards to individuals who are assigned Social Security numbers.
By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 274A(d)(3)(A) of the Immigration and Nationality Act (the "Act") (section 1324a(d)(3)(A) of title 8 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [8 U.S.C. 1101 et seq.], I hereby:
(1) Authorize you to prepare and transmit, to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate, a written report regarding the substance of any proposed change in Social Security number cards, to the extent required by section 274A(d)(3)(A) of the Act,
(2) Authorize you to cause to have printed in the Federal Register the substance of any change in the Social Security number card so proposed and reported to the designated congressional committees, to the extent required by section 274A(d)(3)(A) of the Act.

George Bush.

§ 1324b. Unfair immigration-related employment practices
(a) Prohibition of discrimination based on national origin or citizenship status
(1) General rule
It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 1324a(h)(3) of this title) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—
(A) because of such individual’s national origin, or
(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual’s citizenship status.
(2) Exceptions
Paragraph (1) shall not apply to—
(A) a person or other entity that employs three or fewer employees,
(B) a person’s or entity’s discrimination because of an individual’s national origin if the discrimination with respect to that per-