

Calendar No. 596

110TH CONGRESS
2D SESSION**S. 2711**

To improve the enforcement of laws prohibiting the employment of unauthorized aliens and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2008

Mr. SESSIONS introduced the following bill; which was read the first time

MARCH 6, 2008

Read the second time and placed on the calendar

A BILL

To improve the enforcement of laws prohibiting the employment of unauthorized aliens and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Worksite Enforcement
5 Act of 2008”.

6 **SEC. 2. UNLAWFUL EMPLOYMENT OF ALIENS.**

7 Section 274A of the Immigration and Nationality Act
8 (8 U.S.C. 1324a) is amended to read as follows:

1 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

2 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
3 ALIENS UNLAWFUL.—

4 “(1) IN GENERAL.—It is unlawful for an em-
5 ployer—

6 “(A) to hire, or to recruit or refer for a
7 fee, an alien for employment in the United
8 States knowing or with reckless disregard that
9 the alien is an unauthorized alien with respect
10 to such employment; or

11 “(B) to hire, or to recruit or refer for a
12 fee, for employment in the United States an in-
13 dividual without complying with the require-
14 ments under subsections (c) and (d).

15 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
16 ful for an employer, after hiring an alien for employ-
17 ment, to continue to employ the alien in the United
18 States knowing or with reckless disregard that the
19 alien is (or has become) an unauthorized alien with
20 respect to such employment.

21 “(3) USE OF LABOR THROUGH CONTRACT.—

22 “(A) IN GENERAL.—For purposes of this
23 section, an employer who uses a contract, sub-
24 contract, or exchange to obtain the labor of an
25 alien in the United States knowing that the
26 alien is an unauthorized alien (as defined in

1 subsection (b)(3)) with respect to performing
2 such labor, shall be considered to have hired the
3 alien for employment in the United States in
4 violation of paragraph (1)(A).

5 “(B) RULEMAKING.—The Secretary may
6 promulgate regulations—

7 “(i) to require, for purposes of ensur-
8 ing compliance with the immigration laws
9 of the United States, that an employer in-
10 clude in a written contract, subcontract, or
11 exchange an effective and enforceable re-
12 quirement that the contractor or subcon-
13 tractor adhere to such immigration laws,
14 including use of EEVS;

15 “(ii) to establish procedures by which
16 an employer may obtain confirmation from
17 the Secretary that the contractor or sub-
18 contractor has registered with EEVS and
19 is utilizing EEVS to verify its employees;
20 and

21 “(iii) to establish such other require-
22 ments for employers using contractors or
23 subcontractors as the Secretary determines
24 to be necessary to prevent knowing viola-
25 tions of this paragraph after rulemaking

1 pursuant to section 553 of title 5, United
2 States Code.

3 “(C) GUIDELINES.—The Secretary may
4 issue guidelines to clarify and supplement the
5 regulations issued pursuant to subparagraph
6 (B)(iii) and broadly disseminate such guide-
7 lines, in coordination with the Private Sector
8 Office of the Department of Homeland Secu-
9 rity.

10 “(4) DEFENSE.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graphs (B) through (D), an employer that es-
13 tablishes that it has complied in good faith with
14 the requirements of paragraphs (1) through (4)
15 of subsection (c), pertaining to document
16 verification requirements, and subsection (d)
17 has established an affirmative defense that the
18 employer has not violated paragraph (1)(A)
19 with respect to hiring, recruiting, or referral.

20 “(B) LIMITED EXCEPTION.—A defense is
21 established without a showing of compliance
22 with subsection (d) until such time as the Sec-
23 retary has required an employer to participate
24 in EEVS or such participation is permitted on
25 a voluntary basis pursuant to subsection (d).

1 “(C) ADDITIONAL REQUIREMENTS.—The
2 employer may not establish a defense unless the
3 employer is in compliance with any additional
4 requirements that the Secretary may promul-
5 gate by regulation pursuant to subsections (c),
6 (d), and (k).

7 “(D) FAILURE TO COMPLY WITH STAND-
8 ARDS.—An employer is presumed to have acted
9 with knowledge or reckless disregard if the em-
10 ployer fails to comply with written standards,
11 procedures or instructions issued by the Sec-
12 retary. Such standards, procedures or instruc-
13 tions shall be objective and verifiable.

14 “(5) PREEMPTION.—This section preempts any
15 State or local law that—

16 “(A) requires the use of EEVS in a man-
17 ner that—

18 “(i) conflicts with any Federal policy,
19 procedure, or timetable;

20 “(ii) requires employers to verify
21 whether or not an individual is authorized
22 to work in the United States; or

23 “(iii) imposes a civil or criminal sanc-
24 tion (other than through licensing or other
25 similar laws) on a person that employs, or

1 recruits or refers for a fee for employment,
2 any unauthorized alien; and

3 “(B) requires, as a condition of con-
4 ducting, continuing, or expanding a business, a
5 business entity—

6 “(i) provide, build, fund, or maintain
7 a shelter, structure, or designated area at
8 or near the place of business of the entity
9 for use by—

10 “(I) any individual who is not an
11 employee of the business entity who
12 enters or seeks to enter the property
13 of the entity for the purpose of seek-
14 ing employment by the entity; or

15 “(II) any contractor, customer or
16 other person over which the business
17 entity has no authority; or

18 “(ii) carry out any other activity to
19 facilitate the employment by others of—

20 “(I) any individual who is not an
21 employee of the business entity who
22 enters or seeks to enter the property
23 of the entity for the purpose of seek-
24 ing employment by the entity; or

1 “(II) any contractor, customer,
2 or other person over which the busi-
3 ness entity has no authority.

4 “(b) DEFINITIONS.—In this section:

5 “(1) CRITICAL INFRASTRUCTURE.—The term
6 ‘critical infrastructure’ means agencies and depart-
7 ments of the United States, States, their suppliers
8 or contractors, and any other employer whose em-
9 ployees have access as part of their jobs to a govern-
10 ment building, military base, nuclear energy site,
11 weapon site, airport, or seaport.

12 “(2) EMPLOYER.—

13 “(A) IN GENERAL.—The term ‘em-
14 ployer’—

15 “(i) means any person or entity hir-
16 ing, recruiting, or referring for a fee an in-
17 dividual for employment in the United
18 States; and

19 “(ii) includes the Federal Government
20 and State, local, and tribal governments.

21 “(B) FRANCHISED BUSINESSES.—Fran-
22 chised businesses that operate independently do
23 not constitute a single employer solely on the
24 basis of sharing a common brand.

1 “(3) UNAUTHORIZED ALIEN.—The term ‘unau-
 2 thorized alien’ means, with respect to the employ-
 3 ment of an alien at a particular time, that the alien
 4 is not at that time either—

5 “(A) an alien lawfully admitted for perma-
 6 nent residence; or

7 “(B) authorized to be so employed by the
 8 Secretary of Homeland Security under this Act.

9 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—

10 “(1) IN GENERAL.—Any employer hiring, re-
 11 cruiting, or referring for a fee an individual for em-
 12 ployment in the United States shall take all reason-
 13 able steps to verify that the individual is authorized
 14 to work in the United States, including the require-
 15 ments under this subsection and under subsection
 16 (d).

17 “(2) ATTESTATION AFTER EXAMINATION OF
 18 DOCUMENTATION.—

19 “(A) IN GENERAL.—

20 “(i) REQUIREMENT.—The employer
 21 shall attest, under penalty of perjury and
 22 on a form prescribed by the Secretary, that
 23 the employer has verified the identity and
 24 work authorization status of the individual
 25 by examining—

1 “(I) a document described in
2 subparagraph (B); or

3 “(II) a document described in
4 subparagraph (C) and a document de-
5 scribed in subparagraph (D).

6 “(ii) FORM OF ATTESTATION.—An at-
7 testation under clause (i) may be mani-
8 fested by a handwritten or electronic signa-
9 ture. An employer has complied with the
10 requirement of this paragraph with respect
11 to examination of documentation if the em-
12 ployer has followed applicable regulations
13 and any written procedures or instructions
14 provided by the Secretary and if a reason-
15 able person would conclude that the docu-
16 mentation is genuine and establishes the
17 employee’s identity and authorization to
18 work, taking into account any information
19 provided to the employer by the Secretary,
20 including photographs.

21 “(B) DOCUMENTS ESTABLISHING BOTH
22 EMPLOYMENT AUTHORIZATION AND IDEN-
23 TITY.—A document described in this subpara-
24 graph is an individual’s—

1 “(i) United States passport, or pass-
2 port card issued pursuant to the Secretary
3 of State’s authority under the first section
4 of the Act of July 3, 1926 (22 U.S.C.
5 211a);

6 “(ii) permanent resident card or other
7 document issued by the Secretary or Sec-
8 retary of State to aliens authorized to work
9 in the United States, if the document—

10 “(I) contains a photograph of the
11 individual, biometric data, such as fin-
12 gerprints, or such other personal iden-
13 tifying information relating to the in-
14 dividual as the Secretary finds, by
15 regulation, sufficient for the purposes
16 of this subsection;

17 “(II) is evidence of authorization
18 for employment in the United States;
19 and

20 “(III) contains security features
21 to make it resistant to tampering,
22 counterfeiting, and fraudulent use; or

23 “(iii) social security card (other than
24 a card that specifies on its face that the
25 card is not valid for establishing employ-

1 ment authorization in the United States)
2 that bears a photograph and meets the
3 standards established under section 4 of
4 the Worksite Enforcement Act of 2008,
5 upon the recommendation of the Secretary
6 of Homeland Security, in consultation with
7 the Commissioner of Social Security.

8 “(C) DOCUMENTS ESTABLISHING IDEN-
9 TITY OF INDIVIDUAL.—A document described in
10 this subparagraph includes—

11 “(i) an individual’s driver’s license or
12 identity card issued by a State, the Com-
13 monwealth of the Northern Mariana Is-
14 lands, or an outlying possession of the
15 United States, provided that the issuing
16 State or entity has certified to the Sec-
17 retary of Homeland Security that it is in
18 compliance with the minimum standards
19 required under section 202 of the REAL
20 ID Act of 2005 (division B of Public Law
21 109–13; 49 U.S.C. 30301 note) and imple-
22 menting regulations issued by the Sec-
23 retary of Homeland Security once those re-
24 quirements become effective;

1 “(ii) an individual’s driver’s license or
2 identity card issued by a State, the Com-
3 monwealth of the Northern Mariana Is-
4 lands, or an outlying possession of the
5 United States which is not compliant
6 under section 202 of the REAL ID Act of
7 2005 if—

8 “(I) the driver’s license or iden-
9 tity card contains the individual’s pho-
10 tograph as well as the individual’s
11 name, date of birth, gender, height,
12 eye color and address;

13 “(II) the card has been approved
14 for this purpose by the Secretary in
15 accordance with timetables and proce-
16 dures established by the Secretary
17 pursuant to subsection (c)(1)(F); and

18 “(III) the card is presented by
19 the individual and examined by the
20 employer in combination with a U.S.
21 birth certificate, or a Certificate of
22 Naturalization, or a Certificate of
23 Citizenship, or such other documents
24 as may be prescribed by the Sec-
25 retary;

1 “(iii) for individuals under 16 years of
2 age who are unable to present a document
3 listed in clause (i) or (ii), documentation of
4 personal identity of such other type as the
5 Secretary finds provides a reliable means
6 of identification, provided it contains secu-
7 rity features to make it resistant to tam-
8 pering, counterfeiting, and fraudulent use;
9 or

10 “(iv) other documentation evidencing
11 identity as identified by the Secretary in
12 his discretion, with notice to the public
13 provided in the Federal Register, to be ac-
14 ceptable for purposes of this section, pro-
15 vided that the document, including any
16 electronic security measures linked to the
17 document, contains security features that
18 make the document as resistant to tam-
19 pering, counterfeiting, and fraudulent use
20 as a document described in clause (i) or
21 subparagraph (B)(i) or (B)(ii).

22 “(D) DOCUMENTS EVIDENCING EMPLOY-
23 MENT AUTHORIZATION.—The following docu-
24 ments shall be accepted as evidence of employ-
25 ment authorization:

1 “(i) A social security account number
2 card issued by the Commissioner of Social
3 Security (other than a card which specifies
4 on its face that the card is not valid for
5 employment in the United States). The
6 Secretary, in consultation with the Com-
7 missioner of Social Security, may require
8 by publication of a notice in the Federal
9 Register that only a social security account
10 number card described in section 4 of the
11 Worksite Enforcement Act of 2008 be ac-
12 cepted for this purpose.

13 “(ii) Any other documentation evi-
14 dencing authorization of employment in
15 the United States which the Secretary de-
16 clares, by publication in the Federal Reg-
17 ister, to be acceptable for purposes of this
18 section, provided that the document, in-
19 cluding any electronic security measures
20 linked to the document contains security
21 features to make it resistant to tampering,
22 counterfeiting, and fraudulent use.

23 “(E) AUTHORITY TO PROHIBIT USE OF
24 CERTAIN DOCUMENTS.—If the Secretary deter-
25 mines that any document or class of documents

1 described in subparagraph (B), (C), or (D) as
2 establishing employment authorization or iden-
3 tity does not reliably establish such authoriza-
4 tion or identity or is being used fraudulently to
5 an unacceptable degree, the Secretary shall,
6 with notice to the public provided in the Fed-
7 eral Register, prohibit or restrict the use of that
8 document or class of documents for purposes of
9 this subsection.

10 “(3) INDIVIDUAL ATTESTATION OF EMPLOY-
11 MENT AUTHORIZATION.—The individual shall attest,
12 under penalty of perjury on the form prescribed by
13 the Secretary, that the individual is a citizen or na-
14 tional of the United States, an alien lawfully admit-
15 ted for permanent residence, or an alien who is au-
16 thorized under this Act or by the Secretary to be
17 hired, recruited, or referred for such employment.
18 Such attestation may be manifested by either a
19 handwritten or electronic signature.

20 “(4) RETENTION OF VERIFICATION FORM.—
21 After completing a form under paragraphs (1) and
22 (2), the employer shall retain a paper, microfiche,
23 microfilm, or electronic version of the form and
24 make such version available for inspection by officers
25 of the Department of Homeland Security (or per-

sons designated by the Secretary), the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

“(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, 7 years after the date of the recruiting or referral; and

“(B) in the case of the hiring of an individual—

“(i) 7 years after the date of such hiring; or

“(ii) 2 years after the date the individual’s employment is terminated, whichever is earlier.

“(5) COPYING OF DOCUMENTATION AND RECORDKEEPING REQUIRED.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, the employer shall copy all documents presented by an individual pursuant to this subsection and shall retain a paper, microfiche, microfilm, or electronic copy as prescribed in paragraph (4), but only (except as otherwise permitted under law) for the purposes

1 of complying with the requirements of this sub-
2 section. Such copies shall reflect the signatures
3 of the employer and the employee and the date
4 of receipt.

5 “(B) SSA RECORDS.—The employer shall
6 also maintain records of Social Security Admin-
7 istration correspondence regarding name and
8 number mismatches or no-matches and the
9 steps taken to resolve such issues.

10 “(C) RESOLUTION OF IDENTITY.—The em-
11 ployer shall maintain records of all actions and
12 copies of any correspondence or action taken by
13 the employer to clarify or resolve any issue that
14 raises reasonable doubt as to the validity of the
15 alien’s identity or work authorization.

16 “(D) OTHER RECORDS.—The employer
17 shall maintain such records as prescribed in
18 this subsection. The Secretary may prescribe
19 the manner of recordkeeping and may require
20 that additional records be kept or that addi-
21 tional documents be copied and maintained.
22 The Secretary may require that these docu-
23 ments be transmitted electronically, and may
24 develop automated capabilities to request such
25 documents.

1 “(6) PENALTIES.—An employer that fails to
2 comply with any requirement under this subsection
3 shall be penalized under subsection (e)(4)(B).

4 “(7) NO AUTHORIZATION OF NATIONAL IDENTI-
5 FICATION CARDS.—Nothing in this section shall be
6 construed to authorize, directly or indirectly, the
7 issuance or use of national identification cards or
8 the establishment of a national identification card.

9 “(8) ALL EMPLOYEES.—The employer shall use
10 the procedures for document verification set forth in
11 this paragraph for all employees without regard to
12 national origin or citizenship status.

13 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
14 TEM.—

15 “(1) IN GENERAL.—The Secretary, in coopera-
16 tion and consultation with the Secretary of State,
17 the Commissioner of Social Security, and the States,
18 shall implement and specify the procedures for
19 EEVS. The participating employers shall timely reg-
20 ister with EEVS and shall use EEVS in accordance
21 with paragraph (5).

22 “(2) IMPLEMENTATION SCHEDULE.—

23 “(A) As of the date of enactment of this
24 section, the Secretary, with notice to the public
25 provided in the Federal Register, is authorized

1 to require any employer or industry which the
2 Secretary determines to be part of the critical
3 infrastructure, a Federal contractor, or directly
4 related to the national security or homeland se-
5 curity of the United States to participate in
6 EEVS. This requirement may be applied to
7 both newly hired and current employees. The
8 Secretary shall notify employers not later than
9 30 days before such employers are required to
10 participate in EEVS pursuant to this subpara-
11 graph.

12 “(B) Not later than 6 months after the
13 date of the enactment of this section, the Sec-
14 retary shall require additional employers or in-
15 dustries to participate in EEVS. This subpara-
16 graph shall apply to new employees hired, and
17 current employees subject to reverification be-
18 cause of expiring work authorization docu-
19 mentation or expiration of immigration status,
20 on or after the date on which the requirement
21 takes effect. The Secretary, by notice in the
22 Federal Register, shall designate these employ-
23 ers or industries, in the discretion of the Sec-
24 retary, based upon risks to critical infrastruc-

1 ture, national security, immigration enforce-
2 ment, or homeland security needs.

3 “(C) Not later than 18 months after the
4 date of the enactment of this section, the Sec-
5 retary shall require all employers to participate
6 in EEVS with respect to newly hired employees
7 and current employees subject to reverification
8 because of expiring work authorization docu-
9 mentation or expiration of immigration status.

10 “(D) Not later than 3 years after the date
11 of the enactment of this section, all employers
12 shall participate in EEVS with respect to new
13 employees, all employees whose identity and em-
14 ployment authorization have not been previously
15 verified through EEVS. The Secretary may
16 specify earlier dates for participation in EEVS,
17 in the discretion of the Secretary, for some or
18 all classes of employer or employee.

19 “(E) The Secretary shall create the nec-
20 essary systems and processes to monitor the
21 functioning of EEVS, including the volume of
22 the workflow, the speed of processing of que-
23 ries, and the speed and accuracy of responses.
24 The Comptroller General of the United States
25 shall audit these systems and processes not

1 later than 9 months after the date of the enact-
2 ment of this section and not later than 24
3 months after the date of the enactment of this
4 section. The Comptroller General shall report
5 the results of the audits conducted under this
6 subparagraph to Congress.

7 “(3) PARTICIPATION IN EEVS.—The Secretary
8 may—

9 “(A) permit any employer that is not re-
10 quired to participate in EEVS to participate on
11 a voluntary basis; and

12 “(B) require any employer that is required
13 to participate in EEVS with respect to its
14 newly hired employees also to do so with respect
15 to its current workforce if the Secretary has
16 reasonable cause to believe that the employer
17 has engaged in any violation of the immigration
18 laws.

19 “(4) CONSEQUENCE OF FAILURE TO PARTICI-
20 PATE.—If an employer fails to comply with the re-
21 quirements of EEVS with respect to an individual—

22 “(A) such failure shall be treated as a vio-
23 lation of subsection (a)(1)(B) with respect to
24 that individual; and

1 “(B) a rebuttable presumption is created
 2 that an employer has acted with knowledge or
 3 reckless disregard if the employer is shown by
 4 clear and convincing evidence to have materially
 5 failed to comply with written standards, proce-
 6 dures, or instructions issued by the Secretary,
 7 which shall be objective and verifiable.

8 “(5) PROCEDURES FOR PARTICIPANTS IN
 9 EEVS.—

10 “(A) IN GENERAL.—An employer partici-
 11 pating in EEVS shall register in EEVS and
 12 conform to the procedures under this paragraph
 13 in the event of hiring, recruiting, or referring
 14 any individual for employment in the United
 15 States.

16 “(B) REGISTRATION OF EMPLOYERS.—The
 17 Secretary of Homeland Security, through notice
 18 in the Federal Register, shall prescribe proce-
 19 dures that employers shall follow to register in
 20 EEVS. In prescribing these procedures, the
 21 Secretary may require employers to provide—

22 “(i) the name of the employer;

23 “(ii) the employer’s employment iden-
 24 tification number;

25 “(iii) the address of the employer;

1 “(iv) the name, position, and social
2 security number of the employees of the
3 employer for whom EEVS is being
4 accessed; and

5 “(v) such other information as the
6 Secretary deems necessary to ensure prop-
7 er use and security of EEVS.

8 “(C) TRAINING.—The Secretary shall re-
9 quire employers to undergo such training as the
10 Secretary determines to be necessary to ensure
11 proper use and security of EEVS. Such train-
12 ing shall be made available electronically, if
13 practicable.

14 “(D) PROVISION OF ADDITIONAL INFOR-
15 MATION.—Each prospective employee shall pro-
16 vide to the employer, and the employer shall
17 record in such manner as the Secretary may
18 specify—

19 “(i) the prospective employee’s social
20 security account number;

21 “(ii) if the prospective employee does
22 not attest to being a national of the United
23 States under subsection (c)(2), such identi-
24 fication or authorization number estab-
25 lished by the Department of Homeland Se-

1 curity as the Secretary of Homeland Secu-
2 rity shall specify; and

3 “(iii) such other information as the
4 Secretary may require to determine the
5 identity and work authorization of the pro-
6 spective employee.

7 “(E) PRESENTATION OF DOCUMENTA-
8 TION.—The employer and each prospective em-
9 ployee shall fulfill the requirements under sub-
10 section (c).

11 “(F) PRESENTATION OF BIOMETRICS.—
12 Employers who are enrolled in the Voluntary
13 Advanced Verification Program to Combat
14 Identity Theft established under section 6 of
15 the Worksite Enforcement Act of 2008 shall, in
16 addition to documentary evidence of identity
17 and work eligibility, electronically provide the
18 fingerprints of the prospective employee to the
19 Secretary of Homeland Security.

20 “(6) SEEKING CONFIRMATION.—

21 “(A) IN GENERAL.—The employer shall
22 use EEVS to provide the Secretary of Home-
23 land Security with all required information to
24 obtain confirmation of the identity and employ-
25 ment eligibility of any employee before the date

1 on which the individual is employed, recruited,
2 or referred. An employer may not make the
3 starting date of an individual's employment
4 contingent on the receipt of a confirmation of
5 the identity and employment eligibility.

6 “(B) LIMITED WORK AUTHORIZATION.—
7 For reverification of an employee with a limited
8 period of work authorization, all required
9 verification procedures shall be completed not
10 later than the date the employee's work author-
11 ization expires.

12 “(C) NOTIFICATION.—The Secretary shall
13 provide, and the employer shall utilize, as part
14 of EEVS, a method of communicating notices
15 and requests for information or action on the
16 part of the employer with respect to expiring
17 work authorization or status and other matters.
18 The Secretary shall provide a method of noti-
19 fying employers of a confirmation, nonconfirma-
20 tion or a notice that further action is required
21 (referred to in this subsection as the ‘further
22 action notice’). The employer shall communicate
23 to the prospective employee that is the subject
24 of the verification all information provided to

1 the employer by EEVS for communication to
2 such prospective employee.

3 “(7) CONFIRMATION OR NONCONFIRMATION.—

4 “(A) INITIAL RESPONSE.—EEVS shall
5 provide a confirmation, a nonconfirmation, or a
6 further action notice of an prospective employ-
7 ee’s identity and employment eligibility at the
8 time of the inquiry, unless for technological rea-
9 sons or due to unforeseen circumstances, EEVS
10 is unable to provide such confirmation or fur-
11 ther action notice. In such situations, the sys-
12 tem shall provide confirmation or further action
13 notice not later than 2 business days after the
14 initial inquiry. If providing confirmation or fur-
15 ther action notice, EEVS shall provide an ap-
16 propriate code indicating such confirmation or
17 such further action notice.

18 “(B) CONFIRMATION UPON INITIAL IN-
19 QUIRY.—If the employer receives an appro-
20 priate confirmation of an prospective employee’s
21 identity and work eligibility under EEVS, the
22 employer shall record the confirmation in such
23 manner as the Secretary may specify.

1 “(C) FURTHER ACTION NOTICE UPON INI-
2 TIAL INQUIRY AND SECONDARY
3 VERIFICATION.—

4 “(i) FURTHER ACTION NOTICE.—If
5 the employer receives a further action no-
6 tice of a prospective employee’s identity or
7 work eligibility under EEVS, the employer
8 shall immediately inform the prospective
9 employee of the further action notice and
10 any procedures specified by the Secretary
11 for addressing the further action notice.
12 The employee shall acknowledge in writing
13 the receipt of the further action notice
14 from the employer.

15 “(ii) CONTEST.—Not later than 5
16 business days after the date on which a
17 prospective employee is notified under this
18 subparagraph, the employee shall contact
19 the appropriate agency to contest the fur-
20 ther action notice and, if required by the
21 Secretary, appear in person at the appro-
22 priate Federal or State agency to verify
23 the employee’s identity and employment
24 authorization. The Secretary, in consulta-
25 tion with the Commissioner of Social Secu-

1 rity and other appropriate Federal and
2 State officials, shall specify an available
3 secondary verification procedure to confirm
4 the validity of information provided and to
5 provide a final confirmation or noncon-
6 firmation. An employee contesting a fur-
7 ther action notice shall attest under pen-
8 alty of perjury to the employee's identity
9 and employment authorization.

10 “(iii) NO CONTEST.—If the prospec-
11 tive employee does not contest the further
12 action notice within the period specified in
13 clause (ii), a final nonconfirmation shall be
14 issued and the employer shall record the
15 nonconfirmation in such manner as the
16 Secretary may specify.

17 “(iv) FINALITY.—EEVS shall provide
18 a final confirmation or nonconfirmation
19 not later than 10 business days after a
20 prospective employee contests the further
21 action notice. If the employee is taking the
22 steps required by the Secretary and the
23 agency that the employee has contacted to
24 resolve a further action notice, the Sec-
25 retary shall extend the period of investiga-

tion until the secondary verification procedure allows the Secretary to provide a final confirmation or nonconfirmation. If the employee fails to take the steps required by the Secretary and the appropriate agency, a final nonconfirmation may be issued to that employee.

“(v) REEXAMINATION.—Nothing in this section may be construed to prevent the Secretary from reexamining a case where a final confirmation has been provided if subsequently received information indicates that the individual may not be work authorized.

“(D) TERMINATION OF EMPLOYMENT.—An employer may not terminate the employment of an individual solely because of the failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

“(8) CONSEQUENCES OF NONCONFIRMATION.—

1 “(A) TERMINATION OF CONTINUED EM-
 2 PLOYMENT.—If the employer has received a
 3 final nonconfirmation regarding a prospective
 4 employee, the employer shall terminate employ-
 5 ment, recruitment, or referral of the employee.

6 “(B) CONTINUED EMPLOYMENT AFTER
 7 FINAL NONCONFIRMATION.—If the employer
 8 violates subparagraph (A), a rebuttable pre-
 9 sumption is created that the employer has vio-
 10 lated paragraphs (1)(A) and (2) of subsection
 11 (a).

12 “(C) EXCEPTION.—Subparagraph (B)
 13 shall not apply in any prosecution under section
 14 274A(e)(1).

15 “(9) OBLIGATION TO RESPOND TO QUERIES
 16 AND ADDITIONAL INFORMATION.—

17 “(A) IN GENERAL.—Employers shall com-
 18 ply with requests from the Secretary through
 19 EEVS for information, including queries con-
 20 cerning current and former employees that re-
 21 late to the functioning of EEVS, the accuracy
 22 of the responses provided by EEVS, and any
 23 suspected fraud or identity theft in the use of
 24 EEVS. Failure to comply with such a request
 25 is a violation of subsection (a)(1)(B).

1 “(B) FURTHER ACTION.—Individuals
2 being verified through EEVS may be required
3 to take further action to address irregularities
4 identified in the documents relied upon for pur-
5 poses of employment verification. The employer
6 shall communicate to the individual any such
7 requirement for further actions and shall record
8 the date and manner of such communication.
9 The individual shall acknowledge in writing the
10 receipt of this communication from the em-
11 ployer. Failure to communicate such a require-
12 ment is a violation of subsection (a)(1)(B).

13 “(C) ADDITIONAL REQUIREMENTS.—The
14 Secretary, with notice to the public provided in
15 the Federal Register, may implement, clarify,
16 and supplement the requirements of this para-
17 graph to facilitate the functioning of EEVS or
18 to prevent fraud or identity theft in the use of
19 EEVS.

20 “(10) IMPERMISSIBLE USE OF EEVS.—

21 “(A) An employer may not use EEVS to
22 verify an individual before extending to the in-
23 dividual an offer of employment.

24 “(B) An employer may not require an indi-
25 vidual to verify the individual’s employment eli-

1 gibility through EEVS as a condition of extend-
2 ing to that individual an offer of employment.
3 Nothing in this subparagraph may be construed
4 to prevent an employer from encouraging an
5 employee or a prospective employee from
6 verifying the employee's or a prospective em-
7 ployee's employment eligibility before obtaining
8 employment pursuant to paragraph (12).

9 “(C) An employer may not terminate an
10 individual's employment solely because that in-
11 dividual has been issued a further action notice.

12 “(D) An employer may not take the fol-
13 lowing actions solely because an individual has
14 been issued a further action notice:

15 “(i) Reduce the salary, bonuses, or
16 other compensation due to the employee.

17 “(ii) Suspend the employee without
18 pay.

19 “(iii) Reduce the hours that the em-
20 ployee is required to work if such reduction
21 is accompanied by a reduction in salary,
22 bonuses, or other compensation due to the
23 employee. An employer, with the agree-
24 ment of an employee, may provide the em-
25 ployee with reasonable time off without pay

1 in order to contest and resolve the further
2 action notice received by the employee.

3 “(iv) Deny the employee the training
4 necessary to perform the employment du-
5 ties for which the employee has been hired.

6 “(E) An employer may not, in the course
7 of utilizing the procedures for document
8 verification set forth in subsection (c), require
9 that a prospective employee present additional
10 documents or different documents than those
11 prescribed under that section.

12 “(F) The Secretary of Homeland Security
13 shall develop the necessary policies and proce-
14 dures to monitor the use of EEVS by employers
15 and their compliance with the requirements set
16 forth in this section. Employers shall comply
17 with requests from the Secretary for informa-
18 tion related to any monitoring, audit or inves-
19 tigation undertaken pursuant to this paragraph.

20 “(G) The Secretary of Homeland Security,
21 in consultation with the Secretary of Labor,
22 shall establish and maintain a process by which
23 any employee (or any prospective employee who
24 would otherwise have been hired) who has rea-
25 son to believe that an employer has violated any

1 of subparagraphs (A) through (E) may file a
2 complaint against the employer.

3 “(H) Any employer found to have violated
4 any of subparagraphs (A) through (E) shall pay
5 a civil penalty in an amount not to exceed
6 \$10,000 for each violation.

7 “(I) This paragraph is not intended to,
8 and does not, create any right, benefit, trust, or
9 responsibility, whether substantive or proce-
10 dural, enforceable at law or equity by a party
11 against the United States, its departments,
12 agencies, instrumentalities, entities, officers,
13 employees, or agents, or any person, nor does it
14 create any right of review in a judicial pro-
15 ceeding.

16 “(11) MODIFICATION OF REQUIREMENTS.—If,
17 based on a regular review of EEVS and the docu-
18 ment verification procedures to identify fraudulent
19 use and to assess the security of the documents
20 being used to establish identity or employment au-
21 thorization, the Secretary determines that modifica-
22 tions are necessary to ensure that EEVS accurately
23 and reliably determines the work authorization of
24 employees while providing protection against fraud
25 and identity theft, the Secretary, in consultation

1 with the Commissioner of Social Security and after
2 publishing a notice the Federal Register, may mod-
3 ify—

4 “(A) the documents required to be pre-
5 sented to the employer;

6 “(B) the information required to be pro-
7 vided to EEVS by the employer; and

8 “(C) the procedures required to be followed
9 by employers with respect to any aspect of
10 EEVS.

11 “(12) SECURE SELF-VERIFICATION PROCE-
12 DURES.—Subject to appropriate safeguards to pre-
13 vent misuse of EEVS, the Secretary, in consultation
14 with the Commissioner of Social Security, shall es-
15 tablish secure procedures to permit an individual,
16 seeking to verify the individual’s employment eligi-
17 bility before obtaining or changing employment, to
18 contact the appropriate agency and, in a timely
19 manner, correct or update the information used by
20 EEVS.

21 “(e) PROTECTION FROM LIABILITY FOR ACTIONS
22 TAKEN ON THE BASIS OF INFORMATION PROVIDED BY
23 EEVS.—No employer participating in EEVS may be held
24 liable under any law for any employment-related action

1 taken with respect to the employee in good faith reliance
2 on information provided through EEVS.

3 “(f) ADMINISTRATIVE REVIEW.—

4 “(1) FILING REQUIREMENT.—

5 “(A) IN GENERAL.—An individual who re-
6 ceives a final nonconfirmation notice may, not
7 later than 15 days after the date that such no-
8 tice is received, file an administrative appeal of
9 such final notice. An individual who did not
10 timely contest a further action notice may not
11 file an administrative appeal under this para-
12 graph. Unless the Secretary of Homeland Secu-
13 rity, in consultation with the Commissioner of
14 Social Security, specifies otherwise, all adminis-
15 trative appeals shall be filed in accordance with
16 this paragraph.

17 “(B) NATIONALS OF THE UNITED
18 STATES.—An individual claiming to be a na-
19 tional of the United States shall file the admin-
20 istrative appeal with the Commissioner.

21 “(C) ALIENS.—An individual claiming to
22 be an alien authorized to work in the United
23 States shall file the administrative appeal with
24 the Secretary.

1 “(2) REVIEW FOR ERROR.—The Secretary and
2 the Commissioner shall each develop procedures for
3 resolving administrative appeals regarding final non-
4 confirmations based upon the information that the
5 individual has provided, including any additional evi-
6 dence that was not previously considered. Appeals
7 shall be resolved not later than 30 days after the in-
8 dividual submits all evidence relevant to the appeal.
9 The Secretary and the Commissioner may, on a case
10 by case basis for good cause, extend this period in
11 order to ensure accurate resolution of the appeal.
12 Administrative review under this subsection shall be
13 limited to whether the final nonconfirmation notice
14 is supported by the weight of the evidence.

15 “(3) ADMINISTRATIVE RELIEF.—Relief avail-
16 able under this subsection is limited to an adminis-
17 trative order upholding, reversing, modifying,
18 amending, or setting aside the final nonconfirmation
19 notice.

20 “(4) DAMAGES, FEES AND COSTS.—Money
21 damages, fees, or costs may not be awarded in the
22 administrative review process, and no court shall
23 have jurisdiction to award any damages, fees or
24 costs relating to such administrative review under

1 the Equal Access to Justice Act (Public Law 96–
2 481) or under any other law.

3 “(g) JUDICIAL REVIEW.—

4 “(1) EXCLUSIVE PROCEDURE.—Notwith-
5 standing any other provision of law, including sec-
6 tions 1361 and 1651 of title 28, United States Code,
7 no court shall have jurisdiction to consider any claim
8 against the United States, or any of its agencies, of-
9 ficers, or employees, challenging or otherwise relat-
10 ing to a final nonconfirmation notice or to EEVS,
11 except as specifically provided under this subsection.

12 “(2) PETITION FOR REVIEW.—

13 “(A) IN GENERAL.—A petition for review
14 of a denial of a final administrative order up-
15 holding a final nonconfirmation notice shall be
16 filed with the United States Court of Appeals
17 for the judicial circuit in which the petitioner
18 resided when the final nonconfirmation notice
19 was issued.

20 “(B) SCOPE AND STANDARD FOR RE-
21 VIEW.—The court of appeals shall decide the
22 petition only on the administrative record on
23 which the final nonconfirmation order is based.
24 The burden shall be on the petitioner to show
25 that the administratively final nonconfirmation

1 decision was arbitrary, capricious, not sup-
 2 ported by substantial evidence, or otherwise not
 3 in accordance with law. Administrative findings
 4 of fact are conclusive unless any reasonable ad-
 5 judicator would be compelled to reach a con-
 6 trary conclusion.

7 “(3) EXHAUSTION OF ADMINISTRATIVE REM-
 8 EDIES.—A court may review an administratively
 9 final order of a nonconfirmation notice only if the
 10 petitioner has exhausted all administrative remedies
 11 available to the petitioner as of right.

12 “(4) LIMIT ON INJUNCTIVE RELIEF.—Regard-
 13 less of the nature of the action or claim or of the
 14 identity of the party or parties bringing the action,
 15 no court (other than the Supreme Court) shall have
 16 jurisdiction or authority to enjoin or restrain the op-
 17 eration of the provisions in this section.

18 “(h) MANAGEMENT OF EMPLOYMENT ELIGIBILITY
 19 VERIFICATION SYSTEM.—

20 “(1) IN GENERAL.—The Secretary shall estab-
 21 lish, manage, and modify EEVS to—

22 “(A) respond to inquiries made by partici-
 23 pating employers at any time through the Inter-
 24 net concerning an individual’s identity and

1 whether the individual is authorized to be em-
2 ployed;

3 “(B) maintain records of the inquiries that
4 were made, of confirmations provided (or not
5 provided), and of the codes provided to employ-
6 ers as evidence of their compliance with their
7 obligations under EEVS; and

8 “(C) provide information to, and request
9 action by, employers and individuals using the
10 system, including notifying employers of the ex-
11 piration or other relevant change in an employ-
12 ee’s employment authorization, and directing an
13 employer to convey to the employee a request to
14 contact the appropriate Federal or State agen-
15 cy.

16 “(2) DESIGN AND OPERATION OF SYSTEM.—
17 EEVS shall be designed and operated—

18 “(A) to maximize its reliability and ease of
19 use by employers consistent with insulating and
20 protecting the privacy and security of the un-
21 derlying information;

22 “(B) to respond accurately to all inquiries
23 made by employers on whether individuals are
24 authorized to be employed and to register any

1 times when the system is unable to receive in-
2 quiries;

3 “(C) to maintain appropriate administra-
4 tive, technical, and physical safeguards to pre-
5 vent unauthorized disclosure of personal infor-
6 mation;

7 “(D) to allow for auditing use of the sys-
8 tem to detect fraud and identify theft, and to
9 preserve the security of the information in
10 EEVS, including—

11 “(i) the development and use of algo-
12 rithms to detect potential identity theft,
13 such as multiple uses of the same identi-
14 fying information or documents;

15 “(ii) the development and use of algo-
16 rithms to detect misuse of EEVS by em-
17 ployers and employees;

18 “(iii) the development of capabilities
19 to detect anomalies in the use of EEVS
20 that may indicate potential fraud or mis-
21 use of EEVS; and

22 “(iv) auditing documents and infor-
23 mation submitted by potential employees to
24 employers, including authority to conduct
25 interviews with employers and employees;

1 “(E) to confirm identity and work author-
2 ization through verification of records main-
3 tained by the Secretary, other Federal depart-
4 ments, States, the Commonwealth of the North-
5 ern Mariana Islands, or an outlying possession
6 of the United States, as determined necessary
7 by the Secretary, including—

8 “(i) records maintained by the Social
9 Security Administration as specified in
10 paragraph (4), including photographs and
11 any other biometric information as may be
12 required;

13 “(ii) birth and death records main-
14 tained by vital statistics agencies of any
15 State or other United States jurisdiction;

16 “(iii) passport and visa records, in-
17 cluding photographs, maintained by the
18 United States Department of State; and

19 “(iv) State driver’s license or identity
20 card information, including photographs,
21 maintained by the department of motor ve-
22 hicles of a State;

23 “(F) to electronically confirm the issuance
24 of the employment authorization or identity
25 document and to display the digital photograph

1 that the issuer placed on the document so that
2 the employer can compare the photograph dis-
3 played to the photograph on the document pre-
4 sented by the employee; and

5 “(G) if in exceptional cases a photograph
6 is not available from the issuer, to implement
7 an alternative procedure, as specified by the
8 Secretary, for confirming the authenticity of a
9 document described in subparagraph (F).

10 “(3) RULEMAKING.—The Secretary is author-
11 ized, with notice to the public provided in the Fed-
12 eral Register, to issue regulations concerning oper-
13 ational and technical aspects of EEVS and the effi-
14 ciency, accuracy, and security of EEVS.

15 “(4) ACCESS TO INFORMATION.—

16 “(A) Notwithstanding any other provision
17 of law, the Secretary of Homeland Security
18 shall have access to relevant records described
19 in paragraph (2)(E), for the purposes of pre-
20 venting identity theft and fraud in the use of
21 EEVS and enforcing the provisions of this sec-
22 tion governing employment verification. A State
23 or other non-Federal jurisdiction that does not
24 provide such access shall not be eligible for any

1 grant or other program of financial assistance
2 administered by the Secretary.

3 “(B) The Secretary, in consultation with
4 the Commissioner of Social Security and other
5 appropriate Federal and State officials, shall
6 develop policies and procedures to ensure pro-
7 tection of the privacy and security of personally
8 identifiable information and identifiers con-
9 tained in the records accessed pursuant to this
10 subsection and subsection (e)(5)(A). The Sec-
11 retary, in consultation with the Commissioner
12 and other appropriate Federal and State agen-
13 cies, shall develop and deploy appropriate pri-
14 vacy and security training for the Federal and
15 State employees accessing the records pursuant
16 to this subsection and subsection (e)(5)(A).

17 “(C) The Chief Privacy Officer of the De-
18 partment of Homeland Security shall conduct
19 regular privacy audits of the policies and proce-
20 dures established under subparagraph (B), in-
21 cluding any collection, use, dissemination, and
22 maintenance of personally identifiable informa-
23 tion and any associated information technology
24 systems, as well as scope of requests for this in-
25 formation. The Chief Privacy Officer shall re-

1 view the results of the audits and recommend to
2 the Secretary and the Privacy and Civil Lib-
3 erties Oversight Board any changes necessary
4 to improve the privacy protections of the pro-
5 gram.

6 “(5) RESPONSIBILITIES OF THE SECRETARY OF
7 HOMELAND SECURITY.—

8 “(A) As part of EEVS, the Secretary shall
9 establish a reliable, secure method, that—

10 “(i) compares the name, alien identi-
11 fication or authorization number, or other
12 relevant information provided in an inquiry
13 against such information maintained or
14 accessed by the Secretary in order to con-
15 firm (or not confirm) the validity of the in-
16 formation provided, the correspondence of
17 the name and number, whether the alien is
18 authorized to be employed in the United
19 States (or, to the extent that the Secretary
20 determines to be feasible and appropriate,
21 whether the Secretary’s records verify
22 United States citizenship), and such other
23 information as the Secretary may pre-
24 scribe; and

1 “(ii) displays the digital photograph
2 described in paragraph (2)(F).

3 “(B) The Secretary shall have authority to
4 prescribe when a confirmation, nonconfirmation
5 or further action notice shall be issued.

6 “(C) The Secretary shall perform regular
7 audits under EEVS in accordance with para-
8 graph (2)(D) and shall utilize the information
9 obtained from such audits and any information
10 obtained from the Commissioner of Social Secu-
11 rity pursuant to section 4 of the Worksite En-
12 forcement Act of 2008, to improve immigration
13 enforcement.

14 “(D) The Secretary shall make appropriate
15 arrangements to allow employers who are other-
16 wise unable to access EEVS to use Federal
17 Government facilities or public facilities in
18 order to utilize EEVS.

19 “(6) RESPONSIBILITIES OF THE SECRETARY OF
20 STATE.—As part of EEVS, the Secretary of State
21 shall provide to the Secretary access to passport and
22 visa information as needed to confirm that a pass-
23 port or passport card presented under subsection
24 (c)(1)(B) belongs to the subject of EEVS check, or

1 that a passport or visa photograph matches an indi-
2 vidual;

3 “(7) UPDATING INFORMATION.—The Commis-
4 sioner of Social Security, the Secretary of Homeland
5 Security, and the Secretary of State shall update
6 their information in a manner that promotes max-
7 imum accuracy and shall provide a process for the
8 prompt correction of erroneous information.

9 “(i) LIMITATION ON USE OF EEVS.—Notwith-
10 standing any other provision of law, nothing in this section
11 may be construed to permit any agency of the United
12 States Government to utilize any information, database,
13 or other records assembled under this section for any pur-
14 pose other than for the enforcement and administration
15 of the immigration laws, antiterrorism laws, or for en-
16 forcement of Federal criminal law related to the functions
17 of EEVS, including prohibitions on forgery, fraud and
18 identity theft.

19 “(j) UNAUTHORIZED USE OR DISCLOSURE OF IN-
20 FORMATION.—Any employee of the Department of Home-
21 land Security or another Federal or State agency who
22 knowingly uses or discloses the information assembled
23 under this subsection for a purpose other than the purpose
24 authorized under this section shall pay a civil penalty for

1 each such violation in an amount not less than \$5,000 and
 2 not to exceed \$50,000.

3 “(k) FUNDS.—In addition to any funds otherwise ap-
 4 propriated, the Secretary of Homeland Security may use
 5 funds made available under subsections (m) and (n) of
 6 section 286, for the maintenance and operation of EEVS,
 7 which shall be considered an immigration adjudication
 8 service for purposes of such subsections.

9 “(l) SCOPE.—The employer shall use the procedures
 10 for EEVS specified in this section for all employees with-
 11 out regard to national origin or citizenship status.

12 “(m) CONFORMING AMENDMENT.—Title IV of the Il-
 13 legal Immigration Reform and Immigrant Responsibility
 14 Act of 1996 (8 U.S.C. 1324a note) is repealed.

15 “(n) COMPLIANCE.—

16 “(1) COMPLAINTS AND INVESTIGATIONS.—The
 17 Secretary of Homeland Security shall establish pro-
 18 cedures—

19 “(A) for individuals and entities to file
 20 complaints respecting potential violations of
 21 subsection (a) or (f)(1);

22 “(B) for the investigation of those com-
 23 plaints which the Secretary determines should
 24 be investigated; and

1 “(C) for the investigation of such other
2 violations of subsection (a) or (f)(1) as the Sec-
3 retary determines to be appropriate.

4 “(2) AUTHORITY IN INVESTIGATIONS.—

5 “(A) IN GENERAL.—In conducting inves-
6 tigations and hearings under this subsection—

7 “(i) immigration officers shall have
8 reasonable access to examine evidence of
9 any employer being investigated; and

10 “(ii) immigration officers designated
11 by the Secretary may compel by subpoena
12 the attendance of witnesses and the pro-
13 duction of evidence at any designated place
14 in an investigation or case under this sub-
15 section.

16 “(B) ENFORCEMENT OF SUBPOENAS.—In
17 case of contumacy or refusal to obey a sub-
18 poena lawfully issued under this paragraph, the
19 Secretary may request that the Attorney Gen-
20 eral apply in an appropriate district court of
21 the United States for an order requiring com-
22 pliance with such subpoena, and any failure to
23 obey such order may be punished by such court
24 as a contempt of such court. Failure to cooper-
25 ate with such subpoena shall be subject to fur-

ther penalties, including further fines and the voiding of any mitigation of penalties or termination of proceedings under paragraph (3)(B).

“(3) COMPLIANCE PROCEDURES.—

“(A) PRE-PENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a civil violation of this section and determines that further proceedings are warranted, the Secretary shall issue to the employer concerned a written notice of the Department’s intention to issue a claim for a monetary or other penalty. Such prepenalty notice shall—

“(i) describe the violation;

“(ii) specify the laws and regulations allegedly violated;

“(iii) disclose the material facts which establish the alleged violation; and

“(iv) inform such employer that he or she shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

“(B) REMISSION OR MITIGATION OF PENALTIES.—If any employer receives written prepenalty notice of a fine or other penalty in

1 accordance with subparagraph (A), the em-
2 ployer may, not later than 15 days after receiv-
3 ing such notice, file with the Secretary a peti-
4 tion for the remission or mitigation of such fine
5 or penalty, or a petition for termination of the
6 proceedings. The petition may include any rel-
7 evant evidence or proffer of evidence the em-
8 ployer wishes to present, and shall be filed and
9 considered in accordance with procedures to be
10 established by the Secretary. If the Secretary
11 determines that such fine, penalty, or forfeiture
12 was incurred erroneously, or that mitigating
13 circumstances as to justify the remission or
14 mitigation of such fine or penalty, the Secretary
15 may remit or mitigate the same upon such
16 terms and conditions as the Secretary considers
17 reasonable and just, or order termination of any
18 related proceedings. Such mitigating cir-
19 cumstances may include good faith compliance
20 and participation in, or agreement to partici-
21 pate in, EEVS, if not otherwise required. This
22 subparagraph shall not apply to an employer
23 that has or is engaged in a pattern or practice
24 of violating paragraph (1)(A), (1)(B), or (2) of

1 subsection (a) or of any other requirement
2 under this section.

3 “(C) PENALTY CLAIM.—After considering
4 any evidence and representations offered by the
5 employer pursuant to subparagraph (B), the
6 Secretary shall determine whether there was a
7 violation and promptly issue a written final de-
8 termination setting forth the findings of fact
9 and conclusions of law on which the determina-
10 tion is based. If the Secretary determines that
11 there was a violation, the Secretary shall issue
12 the final determination with a written penalty
13 claim. The penalty claim shall specify all
14 charges in the information provided under
15 clauses (i) through (iii) of subparagraph (A)
16 and any mitigation or remission of the penalty
17 that the Secretary determines to be appro-
18 priate.

19 “(4) CIVIL PENALTIES.—

20 “(A) HIRING OR CONTINUING TO EMPLOY
21 UNAUTHORIZED ALIENS.—Any employer that
22 violates any provision under paragraph (1)(A)
23 or (2) of subsection (a)—

1 “(i) shall pay a civil penalty of \$5,000
2 for each unauthorized alien with respect to
3 which such violation occurred;

4 “(ii) if an employer has previously
5 been fined under subsection (d)(4)(A),
6 shall pay a civil penalty of \$10,000 for
7 each unauthorized alien with respect to
8 which such violation occurred;

9 “(iii) if an employer has previously
10 been fined more than once under sub-
11 section (d)(4)(A), shall pay a civil penalty
12 of \$25,000 for each unauthorized alien
13 with respect to which such violation oc-
14 curred in addition to any penalties pre-
15 viously assessed if the employer failed to
16 comply with a previously issued and final
17 order under this section;

18 “(iv) if an employer has previously
19 been fined more than twice under sub-
20 section (d)(4)(A), shall pay a civil penalty
21 of \$75,000 for each alien with respect to
22 which such violation occurred; and

23 “(v) shall, in addition to any penalties
24 assessed under clauses (i) through (iv), be
25 fined \$75,000 for each violation if the em-

1 ployer failed to comply with a previously
2 issued and final order under this section.

3 “(B) RECORDKEEPING OR VERIFICATION
4 PRACTICES.—Any employer that violates or fails
5 to comply with any requirement under sub-
6 section (b), (c), or (d)—

7 “(i) shall pay a civil penalty of \$1,000
8 for each such violation;

9 “(ii) if an employer has previously
10 been fined under subsection (d)(4)(B),
11 shall pay a civil penalty of \$2,000 for each
12 such violation;

13 “(iii) if an employer has previously
14 been fined more than once under sub-
15 section (d)(4)(B), shall pay a civil penalty
16 of \$5,000 for each such violation in addi-
17 tion to any penalties previously assessed if
18 the employer failed to comply with a pre-
19 viously issued and final order under this
20 section;

21 “(iv) if an employer has previously
22 been fined more than twice under sub-
23 section (d)(4)(B), shall pay a civil penalty
24 of \$15,000 for each violation; and

1 “(v) shall, in addition to any penalties
2 previously assessed, be fined \$15,000 for
3 each such violation if the employer failed
4 to comply with a previously issued and
5 final order under this section.

6 “(C) OTHER PENALTIES.—The Secretary
7 may impose additional penalties for violations,
8 including cease and desist orders, specially de-
9 signed compliance plans to prevent further vio-
10 lations, suspended fines to take effect in the
11 event of a further violation, and in appropriate
12 cases, the remedy provided by subsection (f)(2).
13 All penalties in this section may be adjusted
14 every 4 years to account for inflation as pro-
15 vided by law.

16 “(D) REDUCTION OR MITIGATION OF PEN-
17 ALTIES.—The Secretary may reduce or mitigate
18 penalties imposed upon employers, based upon
19 factors including the employer’s hiring volume,
20 compliance history, good-faith implementation
21 of a compliance program, participation in a
22 temporary worker program, and voluntary dis-
23 closure of violations of this subsection to the
24 Secretary.

1 “(5) ORDER OF INTERNAL REVIEW AND CER-
2 TIFICATION OF COMPLIANCE.—If the Secretary has
3 reasonable cause to believe that an employer has
4 failed to comply with this section, the Secretary is
5 authorized, at any time, to require that the employer
6 certify that it is in compliance with this section, or
7 has instituted a program to come into compliance.
8 Not later than 60 days after receiving a notice from
9 the Secretary requiring such a certification, the em-
10 ployer’s chief executive officer or similar official with
11 responsibility for, and authority to bind the company
12 on, all hiring and immigration compliance notices
13 shall certify under penalty of perjury that the em-
14 ployer is in conformance with the requirements of
15 paragraphs (1) through (4) of subsection (c), per-
16 taining to document verification requirements, and
17 with any additional requirements that the Secretary
18 may promulgate by regulation pursuant to sub-
19 sections (c) and (k), or that the employer has insti-
20 tuted a program to come into compliance with these
21 requirements. At the request of the employer, the
22 Secretary may extend the 60-day deadline for good
23 cause. The Secretary may publish in the Federal
24 Register standards or methods for such certification,
25 require specific recordkeeping practices with respect

1 to such certifications, and audit such records at any
 2 time. The authority granted under this paragraph
 3 may not be construed to diminish or qualify any
 4 other penalty provided under this section.

5 “(6) JUDICIAL REVIEW.—

6 “(A) IN GENERAL.—Notwithstanding any
 7 other provision of law, including sections 1361
 8 and 1651 of title 28, United States Code, no
 9 court shall have jurisdiction to consider a final
 10 determination or penalty claim issued under
 11 paragraph (3)(C), except as specifically pro-
 12 vided under this paragraph. Except as specifi-
 13 cally provided in this paragraph, judicial review
 14 of a final determination under paragraph (4)
 15 shall be governed exclusively under chapter 158
 16 of such title 28. The filing of a petition under
 17 this paragraph shall stay the Secretary’s deter-
 18 mination until entry of judgment by the court.
 19 The Secretary may require that petitioner pro-
 20 vide, prior to filing for review, security for pay-
 21 ment of fines and penalties through bond or
 22 other guarantee of payment acceptable to the
 23 Secretary.

24 “(B) REQUIREMENTS FOR REVIEW OF A
 25 FINAL DETERMINATION.—With respect to judi-

1 cial review of a final determination or penalty
2 claim issued under paragraph (3)(C), the fol-
3 lowing requirements shall apply:

4 “(i) DEADLINE.—The petition for re-
5 view shall be filed not later than 30 days
6 after the date of the final determination or
7 penalty claim issued under paragraph
8 (3)(C).

9 “(ii) VENUE AND FORMS.—The peti-
10 tion for review shall be filed with the court
11 of appeals for the judicial circuit wherein
12 the employer resided when the final deter-
13 mination or penalty claim was issued. The
14 record and briefs do not have to be print-
15 ed. The court of appeals shall review the
16 proceeding on a typewritten record and on
17 typewritten briefs.

18 “(iii) SERVICE.—The respondent is ei-
19 ther the Secretary of Homeland Security
20 or the Commissioner of Social Security,
21 but not both, depending upon who issued
22 (or affirmed) the final nonconfirmation no-
23 tice. In addition to serving the respondent,
24 the petitioner must also serve the Attorney
25 General.

1 “(iv) PETITIONER’S BRIEF.—The pe-
2 titioner shall serve and file a brief in con-
3 nection with a petition for judicial review
4 not later than 40 days after the date on
5 which the administrative record is avail-
6 able, and may serve and file a reply brief
7 not later than 14 days after service of the
8 brief of the respondent, and the court may
9 not extend these deadlines, except for good
10 cause shown. If a petitioner fails to file a
11 brief within the time provided in this para-
12 graph, the court shall dismiss the appeal
13 unless a manifest injustice would result.

14 “(v) SCOPE AND STANDARD FOR RE-
15 VIEW.—The court of appeals shall decide
16 the petition only on the administrative
17 record on which the final determination is
18 based. The burden shall be on the peti-
19 tioner to show that the final determination
20 was arbitrary, capricious, not supported by
21 substantial evidence, or otherwise not in
22 accordance with law. Administrative find-
23 ings of fact are conclusive unless any rea-
24 sonable adjudicator would be compelled to
25 conclude to the contrary.

1 “(C) EXHAUSTION OF ADMINISTRATIVE
2 REMEDIES.—A court may review a final deter-
3 mination under paragraph (3)(C) only if—

4 “(i) the petitioner has exhausted all
5 administrative remedies available to the pe-
6 titioner as of right; and

7 “(ii) another court has not decided
8 the validity of the order, unless the review-
9 ing court finds that the petition presents
10 grounds that could not have been pre-
11 sented in the prior judicial proceeding or
12 that the remedy provided by the prior pro-
13 ceeding was inadequate or ineffective to
14 test the validity of the order.

15 “(D) LIMIT ON INJUNCTIVE RELIEF.—Re-
16 gardless of the nature of the action or claim or
17 of the identity of the party or parties bringing
18 the action, no court, except for the Supreme
19 Court, shall have jurisdiction or authority to en-
20 join or restrain the operation of the provisions
21 in this section, other than with respect to the
22 application of such provisions to an individual
23 petitioner.

24 “(7) ENFORCEMENT OF ORDERS.—If an em-
25 ployer fails to comply with a final determination

1 issued against such employer under this subsection,
2 and the final determination is not subject to review
3 under paragraph (6), the Attorney General may file
4 suit to enforce compliance with the final determina-
5 tion in any appropriate district court of the United
6 States. In any such suit, the validity and appro-
7 priateness of the final determination shall not be
8 subject to review.

9 “(8) LIENS.—

10 “(A) CREATION OF LIEN.—If any employer
11 is held liable for a fee or penalty under this sec-
12 tion, neglects or refuses to pay such liability,
13 and fails to file a petition for review under
14 paragraph (6), such liability is a lien in favor
15 of the United States on all property and rights
16 to property of such person as if the liability of
17 such person were a liability for a tax assessed
18 under the Internal Revenue Code of 1986. If a
19 petition for review is filed under paragraph (6),
20 the lien shall arise upon the entry of a final
21 judgment by the court and shall continue for 20
22 years or until the liability is satisfied, remitted,
23 set aside, or terminated.

24 “(B) EFFECT OF FILING NOTICE OF
25 LIEN.—Upon filing a notice of lien in the man-

ner in which a notice of tax lien would be filed under paragraphs (1) and (2) of section 6323(f) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lien or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of such section 6323 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of title 28, United States Code, shall apply to liens filed under this section.

“(C) ENFORCEMENT OF A LIEN.—A lien obtained through this process shall be consid-

1 ered a debt (as defined in section 3002 of title
2 28, United States Code) and enforceable pursu-
3 ant to subchapter C of chapter 176 of title 28,
4 United States Code (commonly known as the
5 Federal Debt Collection Procedures Act).

6 “(o) CRIMINAL PENALTIES AND INJUNCTIONS FOR
7 PATTERN OR PRACTICE VIOLATIONS.—

8 “(1) CRIMINAL PENALTY.—Any employer that
9 engages in a pattern or practice of knowing viola-
10 tions of paragraph (1)(A) or (2) of subsection (a)
11 shall be fined not more than \$75,000 for each unau-
12 thorized alien with respect to whom such a violation
13 occurs, imprisoned for not more than 6 months for
14 the entire pattern or practice, or both.

15 “(2) ENJOINING OF PATTERN OR PRACTICE
16 VIOLATIONS.—If the Secretary of Homeland Secu-
17 rity or the Attorney General has reasonable cause to
18 believe that an employer is engaged in a pattern or
19 practice of employment, recruitment, or referral in
20 violation of paragraph (1)(A) or (2) of subsection
21 (a), the Attorney General may bring a civil action in
22 the appropriate district court of the United States
23 requesting such relief, including a permanent or
24 temporary injunction, restraining order, or other

1 order against the employer, as the Secretary deter-
2 mines to be necessary.

3 “(p) PROHIBITION OF INDEMNITY BONDS.—

4 “(1) PROHIBITION.—It is unlawful for an em-
5 ployer, in the hiring, recruiting, or referring for em-
6 ployment of any individual, to require the individual
7 to post a bond or security, to pay or agree to pay
8 an amount, or otherwise to provide a financial guar-
9 antee or indemnity, against any potential liability
10 arising under this section relating to such hiring, re-
11 cruiting, or referring of the individual.

12 “(2) CIVIL PENALTY.—If the Secretary deter-
13 mines, after notice and opportunity for mitigation of
14 the monetary penalty under subsection (d), that an
15 employer has violated paragraph (1), the employer
16 shall be subject to a civil penalty of \$10,000 for
17 each violation and to an administrative order requir-
18 ing the return of any amounts received in violation
19 of such paragraph to the employee or, if the em-
20 ployee cannot be located, to the general fund of the
21 Treasury.

22 “(q) GOVERNMENT CONTRACTS.—

23 “(1) EMPLOYERS.—

24 “(A) IN GENERAL.—If the Secretary deter-
25 mines that an employer who does not hold Fed-

1 eral contracts, grants, or cooperative agree-
2 ments is a repeat violator of this section or is
3 convicted of a crime under this section, the em-
4 ployer shall be subject to debarment from the
5 receipt of Federal contracts, grants, or coopera-
6 tive agreements for a period not to exceed 2
7 years in accordance with the procedures and
8 standards prescribed by the Federal Acquisition
9 Regulations.

10 “(B) NOTIFICATION; LISTING.—The Sec-
11 retary or the Attorney General shall notify the
12 Administrator of General Services of any such
13 debarment, and the Administrator of General
14 Services shall list the employer on the List of
15 Parties Excluded from Federal Procurement
16 and Nonprocurement Programs for the period
17 of the debarment.

18 “(C) WAIVER; LIMITATION.—The Adminis-
19 trator of General Services, in consultation with
20 the Secretary and Attorney General, may waive
21 operation of this subsection or may limit the
22 duration or scope of the debarment.

23 “(D) RULEMAKING.—The Secretary shall
24 promulgate a regulation, in accordance with the
25 requirements under section 553 of title 5,

1 United States Code, that defines the term ‘re-
2 peat violator’ for purposes of this subsection.

3 “(2) CONTRACTORS AND RECIPIENTS.—

4 “(A) IN GENERAL.—If the Secretary deter-
5 mines that an employer who holds Federal con-
6 tracts, grants, or cooperative agreements is a
7 repeat violator of this section or is convicted of
8 a crime under this section, the employer shall
9 be subject to debarment from the receipt of
10 Federal contracts, grants, or cooperative agree-
11 ments for a period not to exceed 2 years in ac-
12 cordance with the procedures and standards
13 prescribed by the Federal Acquisition Regula-
14 tions.

15 “(B) NOTIFICATION.—Before such debar-
16 ment, the Secretary, in cooperation with the
17 Administrator of General Services, shall notify
18 all agencies holding contracts, grants, or coop-
19 erative agreements with the employer of the
20 proceedings to debar the employer from the re-
21 ceipt of new Federal contracts, grants, or coop-
22 erative agreements for a period not to exceed 2
23 years.

24 “(C) WAIVER; LIMITATION.—After consid-
25 eration of the views of agencies holding con-

1 tracts, grants or cooperative agreements with
2 the employer, the Secretary may, instead of de-
3 barring the employer from receiving new Fed-
4 eral contracts, grants, or cooperative agree-
5 ments for a period not to exceed 2 years, waive
6 operation of this subsection, limit the duration
7 or scope of the proposed debarment, or may
8 refer to an appropriate lead agency the decision
9 of whether to seek debarment of the employer,
10 for what duration, and under what scope in ac-
11 cordance with the procedures and standards
12 prescribed by the Federal Acquisition Regula-
13 tion.

14 “(D) REVIEW.—Any proposed debarment
15 predicated on an administrative determination
16 of liability for civil penalty by the Secretary or
17 the Attorney General shall not be reviewable in
18 any debarment proceeding.

19 “(3) SUSPENSION.—Indictments for violations
20 of this section or adequate evidence of actions that
21 could form the basis for debarment under this sub-
22 section shall be considered a cause for suspension
23 under the procedures and standards for suspension
24 prescribed by the Federal Acquisition Regulation.

1 “(4) INADVERTENT VIOLATIONS.—Inadvertent
 2 violations of recordkeeping or verification require-
 3 ments, in the absence of any other violations of this
 4 section, shall not be a basis for determining that an
 5 employer is a repeat violator for purposes of this
 6 subsection.

7 “(r) DOCUMENTATION.—In providing documentation
 8 or endorsement of authorization of aliens (other than
 9 aliens lawfully admitted for permanent residence) author-
 10 ized to be employed in the United States, the Secretary
 11 shall provide that any limitations with respect to the pe-
 12 riod or type of employment or employer shall be conspicu-
 13 ously stated on the documentation or endorsement.

14 “(s) DEPOSIT OF AMOUNTS RECEIVED.—Except as
 15 otherwise specified, civil penalties collected under this sec-
 16 tion shall be deposited by the Secretary into the general
 17 fund of the Treasury.

18 “(t) NO MATCH NOTICE.—

19 “(1) IN GENERAL.—For the purpose of this
 20 subsection, a no match notice is written notice from
 21 the Social Security Administration to an employer
 22 reporting earnings on a Form W-2 that employees’
 23 names or corresponding social security account num-
 24 bers fail to match SSA records. The Secretary, in
 25 consultation with the Commissioner of Social Secu-

1 rity, is authorized to establish by regulation require-
 2 ments for verifying the identity and work authoriza-
 3 tion of employees who are the subject of no-match
 4 notices.

5 “(2) RULEMAKING.—The Secretary shall estab-
 6 lish, by regulation, a reasonable period during which
 7 an employer shall allow an employee who is subject
 8 to a no match notice to resolve the no match notice
 9 with no adverse employment consequences to the
 10 employee. The Secretary may establish, by regula-
 11 tion, penalties for noncompliance.

12 “(u) CHALLENGES TO VALIDITY.—

13 “(1) IN GENERAL.—Any right, benefit, or claim
 14 not otherwise waived or limited under this section is
 15 available in an action instituted in the United States
 16 District Court for the District of Columbia. Such ac-
 17 tion shall be limited to determinations of—

18 “(A) whether this section, or any regula-
 19 tion issued to implement this section, violates
 20 the Constitution of the United States; or

21 “(B) whether such a regulation issued by
 22 or under the authority of the Secretary to im-
 23 plement this section, is contrary to applicable
 24 provisions of this section or was issued in viola-
 25 tion of chapter 5 of title 5, United States Code.

1 “(2) DEADLINES FOR BRINGING ACTIONS.—

2 Any action instituted under this paragraph shall be
3 filed not later than 90 days after the date the chal-
4 lenged section or regulation described in subpara-
5 graph (A) or (B) of paragraph (1) is first imple-
6 mented.

7 “(3) CLASS ACTIONS.—The court may not cer-
8 tify a class under Rule 23 of the Federal Rules of
9 Civil Procedure in any action under this section.

10 “(4) RULE OF CONSTRUCTION.—In determining
11 whether the Secretary’s interpretation regarding any
12 provision of this section is contrary to law, a court
13 shall accord to such interpretation the maximum
14 deference permissible under the Constitution.

15 “(5) NO ATTORNEYS’ FEES.—Notwithstanding
16 any other provision of law, the court shall not award
17 fees or other expenses to any person or entity based
18 upon any action relating to this section that is
19 brought under this subsection.

20 “(v) NOTIFICATION OF EXPIRATION OF ADMIS-
21 SION.—Notwithstanding any other provision of this Act,
22 an employer or educational institution shall notify an alien
23 in writing of the expiration of the alien’s period of author-
24 ized admission not later than 14 days before such eligi-
25 bility expires.”.

1 **SEC. 3. DISCLOSURE OF CERTAIN TAXPAYER INFORMATION**
2 **TO ASSIST IN IMMIGRATION ENFORCEMENT.**

3 (a) **DISCLOSURE OF CERTAIN TAXPAYER IDENTITY**
4 **INFORMATION.—**

5 (1) **IN GENERAL.**—Section 6103(l) of the Inter-
6 nal Revenue Code of 1986 is amended by adding at
7 the end the following new paragraph:

8 “(21) **DISCLOSURE OF CERTAIN TAXPAYER**
9 **IDENTITY INFORMATION BY SOCIAL SECURITY AD-**
10 **MINISTRATION TO DEPARTMENT OF HOMELAND SE-**
11 **CURITY.—**

12 “(A) **IN GENERAL.**—From taxpayer iden-
13 tity information or other information which has
14 been disclosed or otherwise made available to
15 the Social Security Administration and upon
16 written request by the Secretary of Homeland
17 Security (referred to in this paragraph as the
18 ‘Secretary’), the Commissioner of Social Secu-
19 rity shall disclose directly to officers, employees,
20 and contractors of the Department of Home-
21 land Security—

22 “(i) the taxpayer identity information
23 of each person who has filed an informa-
24 tion return required by reason of section
25 6051 after calendar year 2005 and before

1 the date specified in subparagraph (D)
2 which contains—

3 “(I) 1 (or any greater number
4 the Secretary shall request) taxpayer
5 identifying number, name, and ad-
6 dress of any employee (within the
7 meaning of such section) that did not
8 match the records maintained by the
9 Commissioner of Social Security, or

10 “(II) 2 (or any greater number
11 the Secretary shall request) names,
12 and addresses of employees (within
13 the meaning of such section), with the
14 same taxpayer identifying number,
15 and the taxpayer identity of each such em-
16 ployee, and

17 “(ii) the taxpayer identity of each per-
18 son who has filed an information return re-
19 quired by reason of section 6051 after cal-
20 endar year 2005 and before the date speci-
21 fied in subparagraph (D) which contains
22 the taxpayer identifying number (assigned
23 under section 6109) of an employee (within
24 the meaning of section 6051)—

1 “(I) who is under the age of 14
2 (or any lesser age the Secretary shall
3 request), according to the records
4 maintained by the Commissioner of
5 Social Security,

6 “(II) whose date of death, ac-
7 cording to the records so maintained,
8 occurred in a calendar year preceding
9 the calendar year for which the infor-
10 mation return was filed,

11 “(III) whose taxpayer identifying
12 number is contained in more than one
13 (or any greater number the Secretary
14 shall request) information return filed
15 in such calendar year, or

16 “(IV) who is not authorized to
17 work in the United States, according
18 to the records maintained by the
19 Commissioner of Social Security,

20 and the taxpayer identity and date of birth
21 of each such employee.

22 “(B) REIMBURSEMENT.—The Secretary
23 shall transfer to the Commissioner the funds
24 necessary to cover the additional cost directly
25 incurred by the Commissioner in carrying out

1 the searches or manipulations requested by the
2 Secretary.”

3 (2) COMPLIANCE BY DHS CONTRACTORS WITH
4 CONFIDENTIALITY SAFEGUARDS.—Section 6103(p)
5 of such Code is amended by adding at the end the
6 following new paragraph:

7 “(9) DISCLOSURE TO DHS CONTRACTORS.—
8 Notwithstanding any other provision of this section,
9 no return or return information shall be disclosed to
10 any contractor of the Department of Homeland Se-
11 curity unless such Department, to the satisfaction of
12 the Secretary—

13 “(A) has requirements in effect which re-
14 quire each such contractor which would have
15 access to returns or return information to pro-
16 vide safeguards (within the meaning of para-
17 graph (4)) to protect the confidentiality of such
18 returns or return information,

19 “(B) agrees to conduct an on-site review
20 every 3 years (mid-point review in the case of
21 contracts or agreements of less than 3 years in
22 duration) of each contractor to determine com-
23 pliance with such requirements,

24 “(C) submits the findings of the most re-
25 cent review conducted under subparagraph (B)

1 to the Secretary as part of the report required
2 by paragraph (4)(E), and

3 “(D) submits a certification to the Sec-
4 retary for the most recent annual period that
5 includes the name and address of each con-
6 tractor, a description of the contract or agree-
7 ment with such contractor, and the duration of
8 such contract or agreement, and certifies that
9 such contractor is in compliance with all such
10 requirements.”.

11 (3) CONFORMING AMENDMENTS.—

12 (A) Section 6103(a)(3) of such Code is
13 amended by striking “or (20)” and inserting
14 “(20), or (21)”.

15 (B) Section 6103(p)(3)(A) of such Code is
16 amended by adding at the end the following
17 new sentence: “The Commissioner of Social Se-
18 curity shall provide to the Secretary such infor-
19 mation as the Secretary may require in carrying
20 out this paragraph with respect to return infor-
21 mation inspected or disclosed under the author-
22 ity of subsection (l)(21).”.

23 (C) Section 6103(p)(4) of such Code is
24 amended—

1 (i) by striking “or (17)” both places it
 2 appears and inserting “(17), or (21)”; and

3 (ii) by striking “or (20)” each place it
 4 appears and inserting “(20), or (21)”.

5 (D) Section 6103(p)(8)(B) of such Code is
 6 amended by inserting “or paragraph (9)” after
 7 “subparagraph (A)”.

8 (E) Section 7213(a)(2) of such Code is
 9 amended by striking “or (20)” and inserting
 10 “(20), or (21)”.

11 (b) FALSELY CLAIMING CITIZENSHIP OR NATION-
 12 ALITY.—Section 212(a)(6)(C)(ii)(I) of the Immigration
 13 and Nationality Act (8 U.S.C. 1182(a)(6)(C)(ii)(I) is
 14 amended by inserting “or national” after “citizen”.

15 (c) REPEAL OF REPORTING REQUIREMENTS.—

16 (1) REPORT ON EARNINGS OF ALIENS NOT AU-
 17 THORIZED TO WORK.—Section 290(c) of the Immi-
 18 gration and Nationality Act (8 U.S.C. 1360) is re-
 19 pealed.

20 (2) REPORT ON FRAUDULENT USE OF SOCIAL
 21 SECURITY ACCOUNT NUMBERS.—Section 414(b) of
 22 the Illegal Immigration Reform and Immigrant Re-
 23 sponsibility Act of 1996 (division C of Public Law
 24 104–208; 8 U.S.C. 1360 note) is repealed.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated to the Secretary of
 3 Homeland Security such sums as are necessary to carry
 4 out the amendments made by this section.

5 (e) EFFECTIVE DATES.—

6 (1) IN GENERAL.—The amendments made by
 7 subsection (a) shall apply to disclosures made on or
 8 after the date of the enactment of this Act.

9 (2) CERTIFICATIONS.—The first certification
 10 under section 6103(p)(9)(D) of the Internal Revenue
 11 Code of 1986, as added by subsection (a)(2), shall
 12 be made with respect to calendar year 2007.

13 (3) REPEALS.—The repeals made by subsection
 14 (c) shall take effect on the date of the enactment of
 15 this Act.

16 **SEC. 4. INCREASING SECURITY AND INTEGRITY OF SOCIAL**
 17 **SECURITY CARDS.**

18 (a) FRAUD-RESISTANT, TAMPER-RESISTANT, AND
 19 WEAR-RESISTANT SOCIAL SECURITY CARDS.—

20 (1) ISSUANCE.—Not later than the first day of
 21 the second fiscal year in which amounts are appro-
 22 priated pursuant to subsection (e), the Commis-
 23 sioner of Social Security shall begin to administer
 24 and issue fraud-resistant, tamper-resistant, and

1 wear-resistant social security cards displaying a pho-
2 tograph.

3 (2) INTERIM.—Not later than the first day of
4 the seventh fiscal year in which amounts are appro-
5 priated pursuant to subsection (e), the Commis-
6 sioner of Social Security shall issue only fraud-re-
7 sistant, tamper-resistant, and wear-resistant social
8 security cards displaying a photograph.

9 (3) COMPLETION.—Not later than the first day
10 of the tenth fiscal year in which amounts are appro-
11 priated pursuant to subsection (e), all social security
12 cards that are not fraud-resistant, tamper-resistant,
13 and wear-resistant shall be invalid for establishing
14 employment authorization for any individual 16
15 years of age or older.

16 (4) EXEMPTION.—Nothing in this section may
17 be construed to—

18 (A) require an individual under the age of
19 16 years to be issued or to present for any pur-
20 pose a social security card described in this sub-
21 section, unless needed to establish employment
22 authorization; or

23 (B) prohibit the Commissioner of Social
24 Security from issuing a social security card that
25 does not meet the requirements under this sub-

1 section to an individual under the age of 16
2 years who otherwise meets the eligibility re-
3 quirements for a social security card.

4 (b) ADDITIONAL DUTIES OF THE SOCIAL SECURITY
5 ADMINISTRATION.—In accordance with the responsibil-
6 ities of the Commissioner of Social Security under section
7 205(c)(2)(I) of the Social Security Act, as added by sec-
8 tion 7 of this Act, the Commissioner—

9 (1) shall issue a social security card to an indi-
10 vidual at the time of the issuance of a social security
11 account number to such individual, which card
12 shall—

13 (A) contain such security and identification
14 features as determined by the Secretary of
15 Homeland Security, in consultation with the
16 Commissioner; and

17 (B) be fraud-resistant, tamper-resistant,
18 and wear-resistant;

19 (2) in consultation with the Secretary, shall
20 issue regulations specifying such particular security
21 and identification features, renewal requirements
22 (including updated photographs), and standards for
23 the social security card as necessary to be acceptable
24 for purposes of establishing identity and employment

1 authorization under the immigration laws of the
2 United States; and

3 (3) may not issue a replacement social security
4 card to any individual unless the Commissioner de-
5 termines that the purpose for requiring the issuance
6 of the replacement document is legitimate.

7 (c) REPORTING REQUIREMENTS.—

8 (1) REPORT ON THE USE OF IDENTIFICATION
9 DOCUMENTS.—Not later than the first day of the
10 tenth fiscal year in which amounts are appropriated
11 pursuant to subsection (e), the Secretary shall sub-
12 mit to Congress a report recommending which docu-
13 ments, if any, among those described in section
14 274A(c)(1) of the Immigration and Nationality Act,
15 should continue to be used to establish identity and
16 employment authorization in the United States.

17 (2) REPORT ON IMPLEMENTATION.—

18 (A) IN GENERAL.—Not later than 12
19 months after the date on which the Commis-
20 sioner begins to administer and issue fraud-re-
21 sistant, tamper-resistant, and wear-resistant
22 cards under subsection (d)(1), and annually
23 thereafter, the Commissioner shall submit to
24 Congress a report on the implementation of this
25 section.

1 (B) CONTENTS.—The report submitted
2 under subparagraph (A) shall include an anal-
3 ysis of—

4 (i) the amounts needed to be appro-
5 priated to implement this section; and

6 (ii) any measures taken to protect the
7 privacy of individuals who hold social secu-
8 rity cards described in this section.

9 (d) ACCESS TO SOCIAL SECURITY CARD INFORMA-
10 TION.—Section 205(c)(2)(I)(i) of the Social Security Act,
11 as added by section 7 of this Act, is further amended by
12 inserting at the end of the flush text at the end the fol-
13 lowing: “As part of the employment eligibility verification
14 system established under section 274A of the Immigration
15 and Nationality Act, the Commissioner of Social Security
16 shall provide to the Secretary of Homeland Security access
17 to any photograph, other feature, or information included
18 in the social security card.”.

19 (e) AUTHORIZATION OF APPROPRIATIONS.—There
20 are authorized to be appropriated such sums as may be
21 necessary to carry out this section and the amendments
22 made by this section.

1 **SEC. 5. INCREASING SECURITY AND INTEGRITY OF IDEN-**
2 **TITY DOCUMENTS.**

3 (a) PURPOSE.—The Secretary of Homeland Security,
4 shall establish the State Records Improvement Grant Pro-
5 gram (referred to in this section as the “Program”), under
6 which the Secretary may award grants to States for the
7 purpose of advancing the purposes of this Act and of
8 issuing or implementing plans to issue driver’s license and
9 identity cards that—

10 (1) can be used for purposes of verifying iden-
11 tity under section 274A of the Immigration and Na-
12 tionality Act, as added by section 2 of this Act; and

13 (2) comply with the State license requirements
14 under section 202 of the REAL ID Act of 2005 (di-
15 vision B of Public Law 109–13; 49 U.S.C. 30301
16 note).

17 (b) INELIGIBILITY.—States that do not certify their
18 intent to comply with the provisions of the REAL ID Act
19 of 2005 or do not submit a compliance plan acceptable
20 to the Secretary are not eligible to receive a grant under
21 the Program. Driver’s license or identification cards issued
22 by States that do not comply with the provisions of the
23 REAL ID Act of 2005 may not be used to verify identity
24 under section 274A of the Immigration and Nationality
25 Act, except under conditions approved by the Secretary.

26 (c) GRANTS AND CONTRACTS AUTHORIZED.—

1 (1) IN GENERAL.—The Secretary is authorized
2 to award grants, subject to the availability of appro-
3 priations, to a State to provide assistance to such
4 State agency to meet the deadlines for the issuance
5 of a driver’s license which meets the requirements of
6 section 202 of the REAL ID Act of 2005 (division
7 B of Public Law 109–13; 49 U.S.C. 30301 note).

8 (2) DURATION.—Grants may be awarded under
9 this subsection during fiscal years 2009 through
10 2013.

11 (3) COMPETITIVE BASIS.—The Secretary shall
12 give priority to States whose plan to implement the
13 provisions of the REAL ID Act of 2005 is compat-
14 ible with the employment verification systems, proc-
15 esses, and implementation schedules set forth in sec-
16 tion 274A of the Immigration and Nationality Act,
17 as determined by the Secretary. Minimum standards
18 for compatibility will include the ability of the State
19 to promptly verify the document and provide access
20 to the digital photograph displayed on the document.

21 (4) FUNDING OPTIONS.—If the Secretary of
22 Homeland Security determines that compliance with
23 the provisions of the REAL ID Act of 2005 and
24 with the requirements of the employment verification
25 system can best be met by awarding grants or con-

1 tracts to a State, a group of States, a government
2 agency, or a private entity, the Secretary may utilize
3 Program funds to award such a grant, grants, con-
4 tract or contracts.

5 (5) IMPROVING ACCURACY AND AVAILABILITY
6 OF RECORDS.—On an expedited basis, the Secretary
7 shall award grants or contracts for the purpose of
8 improving the accuracy and electronic availability of
9 states' records of births, deaths, driver's licenses,
10 and of other records necessary for implementation of
11 the Employment Eligibility Verification System and
12 as otherwise necessary to advance the purposes of
13 this Act.

14 (d) USE OF FUNDS.—Grants or contracts awarded
15 pursuant to the Program may be used to assist State com-
16 pliance with the requirements under the REAL ID Act
17 of 2005, including—

- 18 (1) upgrading and maintaining technology;
- 19 (2) obtaining equipment;
- 20 (3) hiring additional personnel;
- 21 (4) covering operational costs, including over-
- 22 time; and
- 23 (5) acquiring such other resources as are avail-
- 24 able to assist such grantee.

25 (e) APPLICATION.—

1 (1) IN GENERAL.—Each eligible state seeking a
2 grant under this section shall submit an application
3 to the Secretary at such time, in such manner, and
4 accompanied by such information as the Secretary
5 may reasonably require.

6 (2) CONTENTS.—Each application submitted
7 pursuant to paragraph (1) shall—

8 (A) describe the activities for which assist-
9 ance under this section is sought; and

10 (B) provide such additional assurances as
11 the Secretary determines to be essential to en-
12 sure compliance with the requirements of this
13 section.

14 (f) CONDITIONS.—All grants under the Program
15 shall be conditioned on the recipient—

16 (1) certifying compliance with the provisions
17 under the REAL ID Act of 2005 and providing im-
18 plementation plans that are acceptable to the Sec-
19 retary, including—

20 (A) the adoption of appropriate security
21 measures to protect against improper issuance
22 of driver's licenses and identity cards, tam-
23 pering with electronic issuance systems, and
24 identity theft as the Secretary may prescribe;

1 (B) ensuring introduction and maintenance
2 of such security features and other measures
3 necessary to make the documents issued by re-
4 cipient resistant to tampering, counterfeiting,
5 and fraudulent use as the Secretary may pre-
6 scribe; and

7 (C) ensuring implementation and mainte-
8 nance of such safeguards for the security of the
9 information contained on these documents as
10 the Secretary may prescribe;

11 (2) agreeing to adhere to the timetables and
12 procedures for issuing driver's licenses and identi-
13 fication cards that comply with the provisions of the
14 REAL ID Act of 2005, as required under section
15 274A(c)(1)(F) of the Immigration and Nationality
16 Act; and

17 (3) agreeing to implement the requirements of
18 this Act and any implementing regulations to the
19 satisfaction of the Secretary of Homeland Security.

20 (g) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated \$300,000,000 for each
22 of fiscal years 2009 through 2013 to carry out the provi-
23 sions of this section.

24 (h) SUPPLEMENT NOT SUPPLANT.—Amounts appro-
25 priated for grants under this section shall be used to sup-

1 plement and not supplant other State and local public
 2 funds obligated for the purposes provided under this title.

3 (i) **ADDITIONAL USES.**—Amounts authorized under
 4 this section may also be used to assist in sharing of law
 5 enforcement information between States and the Depart-
 6 ment of Homeland Security, at the discretion of the Sec-
 7 retary of Homeland Security.

8 **SEC. 6. VOLUNTARY ADVANCED VERIFICATION PROGRAM**
 9 **TO COMBAT IDENTITY THEFT.**

10 (a) **VOLUNTARY ADVANCED VERIFICATION PRO-**
 11 **GRAM.**—

12 (1) **IN GENERAL.**—Not later than 18 months
 13 after the date of the enactment of this Act, the Sec-
 14 retary shall establish and make available to willing
 15 employers a voluntary program, to be known as the
 16 Voluntary Advanced Verification Program, to allow
 17 employers to submit and verify an employee’s finger-
 18 prints for purposes of determining the identity and
 19 work authorization of the employee.

20 (2) **VOLUNTARY PARTICIPATION.**—Nothing in
 21 this section may be construed to require employers
 22 to participate in the Voluntary Advanced
 23 Verification Program.

24 (b) **LIMITED RETENTION PERIOD FOR FINGER-**
 25 **PRINTS.**—

1 (1) IN GENERAL.—The Secretary may only
2 maintain fingerprint records of any citizen of the
3 United States that were submitted by an employer
4 through the Employment Eligibility Verification Sys-
5 tem (referred to in this section as “EEVS”) for 10
6 business days. At the end of such period, such
7 records shall be purged from any EEVS-related sys-
8 tem unless the fingerprints have been ordered to be
9 retained for purposes of a fraud or similar investiga-
10 tion by a government agency with criminal or other
11 investigative authority.

12 (2) EXCEPTION.—For purposes of preventing
13 identity theft or other harm, an employee who is a
14 citizen of the United States may submit a written
15 request that the employee’s fingerprint records be
16 retained for employee verification purposes by the
17 Secretary. Upon receiving written consent, the Sec-
18 retary may retain such fingerprint records until the
19 employee notifies the Secretary in writing that such
20 consent has been withdrawn, at which time the Sec-
21 retary shall purge such fingerprint records within 10
22 business days unless the fingerprints have been or-
23 dered to be retained for purposes of a fraud or simi-
24 lar investigation by a government agency with an

1 independent criminal or other investigative author-
2 ity.

3 (c) LIMITED USE OF FINGERPRINTS SUBMITTED
4 FOR PROGRAM.—The Secretary and the employer may use
5 any fingerprints taken from the employee and transmitted
6 for querying EEVS solely for the purposes of verifying
7 identity and employment eligibility during the employee
8 verification process. Such transmitted fingerprints may
9 not be used for any other purpose. This provision does
10 not alter any other provisions regarding the use of non-
11 fingerprint information in EEVS.

12 (d) SAFEGUARDING OF FINGERPRINT INFORMA-
13 TION.—The Secretary, subject to specifications and limita-
14 tions set forth under this section and other relevant provi-
15 sions of this Act, shall be responsible for safely and se-
16 curely maintaining and storing all fingerprints submitted
17 under this program.

18 **SEC. 7. RESPONSIBILITIES OF THE SOCIAL SECURITY AD-**
19 **MINISTRATION.**

20 Section 205(c)(2) of the Social Security Act (42
21 U.S.C. 405(c)(2)), is amended by adding at the end the
22 following new subparagraphs:

23 “(I)(i) As part of the verification system estab-
24 lished under this paragraph, the Commissioner of
25 Social Security shall, subject to the provisions of sec-

tion 274A(d) of the Immigration and Nationality Act, establish a reliable, secure method that, operating through the Employment Eligibility Verification System—

“(I) compares the name, social security account number and available citizenship information 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;

“(II) analyzes the correspondence of the name, number, and any other identifying information;

“(III) determines whether the name and number belong to an individual who is deceased;

“(IV) determines whether an individual is a national of the United States (when available);

“(V) determines whether the individual has presented a social security account number that is not valid for employment; and

“(VI) does not disclose or release social security information to employers through the

1 confirmation system (other than such confirma-
2 tion or nonconfirmation).

3 “(ii) For purposes of preventing identity theft,
4 protecting employees, and reducing burden on em-
5 ployers, and notwithstanding section 6103 of the In-
6 ternal Revenue Code of 1986, the Commissioner of
7 Social Security, in consultation with the Secretary of
8 Homeland Security, shall—

9 “(I) review the Social Security Administra-
10 tion databases and information technology to
11 identify any deficiencies and discrepancies re-
12 lated to name, birth date, citizenship status, or
13 death records of the social security accounts
14 and social security account holders that are
15 likely to contribute to fraudulent use of docu-
16 ments, or identity theft, or to affect the proper
17 functioning of EEVS;

18 “(II) correct any errors identified under
19 subclause (I); and

20 “(III) ensure that a system for identifying
21 and correcting such deficiencies and discrep-
22 ancies is adopted to ensure the accuracy of the
23 Social Security Administration’s databases.

24 “(iii) The Commissioner of Social Security, in
25 consultation with the Secretary of Homeland Secu-

1 rity, shall establish a secure process whereby an in-
 2 dividual can request that the Commissioner preclude
 3 any confirmation under EEVS based on that individ-
 4 ual’s Social Security number until it is reactivated
 5 by that individual.”.

6 **SEC. 8. IMMIGRATION ENFORCEMENT SUPPORT BY THE IN-**
 7 **TERNAL REVENUE SERVICE AND THE SOCIAL**
 8 **SECURITY ADMINISTRATION.**

9 (a) TIGHTENING REQUIREMENTS FOR THE PROVI-
 10 SION OF SOCIAL SECURITY NUMBERS ON FORM W-2
 11 WAGE AND TAX STATEMENTS.—Section 6724 of the In-
 12 ternal Revenue Code of 1986 (relating to waiver; defini-
 13 tions and special rules) is amended by adding at the end
 14 the following new subsection:

15 “(f) SPECIAL RULES WITH RESPECT TO SOCIAL SE-
 16 CURITY NUMBERS ON WITHHOLDING EXEMPTION CER-
 17 TIFICATES.—

18 “(1) REASONABLE CAUSE WAIVER NOT TO
 19 APPLY.—Except as provided in paragraph (2), sub-
 20 section (a) shall not apply with respect to the social
 21 security account number of an employee furnished
 22 under section 6051(a)(2).

23 “(2) EXCEPTION.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), paragraph (1) shall not
3 apply in any case in which the employer—

4 “(i) receives confirmation that the dis-
5 crepancy described in section 205(c)(2)(I)
6 of the Social Security Act (42 U.S.C.
7 405(c)(2)(I)) has been resolved, or

8 “(ii) corrects a clerical error made by
9 the employer with respect to the social se-
10 curity account number of an employee not
11 later than 60 days after receiving notifica-
12 tion under section 205(c)(2)(I) of the So-
13 cial Security Act that the social security
14 account number contained in wage records
15 provided to the Social Security Administra-
16 tion by the employer with respect to the
17 employee does not match the social secu-
18 rity account number of the employee con-
19 tained in relevant records otherwise main-
20 tained by the Social Security Administra-
21 tion.

22 “(B) EXCEPTION NOT APPLICABLE TO
23 FREQUENT OFFENDERS.—Subparagraph (A)
24 shall not apply—

1 “(i) in any case in which not fewer
2 than 50 of the statements required to be
3 made by an employer pursuant to section
4 6051 either fail to include an employee’s
5 social security account number or include
6 an incorrect social security account num-
7 ber, or

8 “(ii) with respect to any employer who
9 has received written notification under sec-
10 tion 205(c)(2)(1) of the Social Security
11 Act during each of the 3 preceding taxable
12 years that the social security account num-
13 bers in the wage records provided to the
14 Social Security Administration by such em-
15 ployer with respect to 10 more employees
16 do not match relevant records otherwise
17 maintained by the Social Security Adminis-
18 tration.”.

19 (b) ENFORCEMENT.—

20 (1) IN GENERAL.—Not later than 90 days after
21 the date of the enactment of this Act, the Secretary
22 of the Treasury, in consultation with the Secretary,
23 shall establish a unit within the Criminal Investiga-
24 tion Office of the Internal Revenue Service to inves-
25 tigate violations of the Internal Revenue Code of

1 1986 related to the employment of individuals who
2 are not authorized to work in the United States.

3 (2) SPECIAL AGENTS; SUPPORT STAFF.—The
4 Secretary of the Treasury—

5 (A) shall assign to the unit established
6 pursuant to paragraph (1) not fewer than 10
7 full-time special agents and necessary support
8 staff; and

9 (B) may employ not more than 200 full
10 time special agents for this unit based on inves-
11 tigative requirements and work load.

12 (3) REPORTS.—During each of the first 5 cal-
13 endar years beginning after the date on which the
14 unit was established, and biennially thereafter, the
15 unit shall transmit to Congress a report that de-
16 scribes its activities and includes the number of in-
17 vestigations and cases referred for prosecution.

18 (c) INCREASE IN PENALTY ON EMPLOYER FAILING
19 TO FILE CORRECT INFORMATION RETURNS.—Section
20 6721 of such Code (relating to failure to file correct infor-
21 mation returns) is amended—

22 (1) in subsection (a)(1)—

23 (A) by striking “\$50” and inserting
24 “\$200”; and

- 1 (B) by striking “\$250,000” and inserting
- 2 “\$1,000,000”;
- 3 (2) in subsection (b)—
- 4 (A) in paragraph (1)—
- 5 (i) in subparagraph (A), by striking
- 6 “\$15 in lieu of \$50” and inserting “\$60
- 7 instead of \$200”; and
- 8 (ii) in subparagraph(B), by striking
- 9 “\$75,000” and inserting “\$300,000”; and
- 10 (B) in paragraph (2)—
- 11 (i) in subparagraph (A), by striking
- 12 “\$30 in lieu of \$50” and inserting “\$120
- 13 instead of \$200”; and
- 14 (ii) in subparagraph (B), by striking
- 15 “\$150,000” and inserting “\$600,000”;
- 16 and
- 17 (3) in subsection (d)—
- 18 (A) in the subsection heading, by striking
- 19 “\$5,000,000” and inserting “\$2,000,000”;
- 20 (B) in paragraph (1)—
- 21 (i) in subparagraph (A), by striking
- 22 “‘\$100,000’ for ‘\$250,000’” and inserting
- 23 “‘\$400,000’ for ‘\$1,000,000’”;

1 (ii) in subparagraph (B), by striking
 2 “‘\$25,000’ for ‘\$75,000’” and inserting
 3 “‘\$100,000’ for ‘\$300,000’”; and

4 (iii) in subparagraph (C), by striking
 5 “‘\$50,000’ for ‘\$150,000’” and inserting
 6 “‘\$200,000’ for ‘\$600,000’”;

7 (C) in paragraph (2)(A), by striking
 8 “\$5,000,000” and inserting “\$2,000,000”; and
 9 (4) in subsection (e)—

10 (A) in paragraph (2)—

11 (i) in subparagraph (A), by striking
 12 “\$100” and inserting “\$400”;

13 (ii) in subparagraph (C)(i), by strik-
 14 ing “\$25,000” and inserting “\$100,000”;
 15 and

16 (iii) in subparagraph (C)(ii), by strik-
 17 ing “\$100,000” and inserting “\$400,000”;
 18 and

19 (B) in paragraph (3)(A), by striking
 20 “\$250,000” and inserting “\$1,000,000”.

21 (d) EFFECTIVE DATE.—The amendments made by
 22 subsections (b) and (c) shall apply to failures occurring
 23 after December 31, 2006.

1 **SEC. 9. ADDITIONAL CRIMINAL PENALTIES FOR MISUSE OF**
2 **SOCIAL SECURITY ACCOUNT NUMBERS.**

3 (a) IN GENERAL.—Section 208(a) of the Social Secu-
4 rity Act (42 U.S.C. 408(a)) is amended—

5 (1) by amending paragraph (7) to read as fol-
6 lows:

7 “(7) for any purpose—

8 “(A) knowingly possesses or uses a social
9 security account number or social security card
10 knowing that such number or card was obtained
11 from the Commissioner of Social Security by
12 means of fraud or false statements;

13 “(B) knowingly and falsely represents a
14 number to be the social security account num-
15 ber assigned by the Commissioner of Social Se-
16 curity to the person or to another person, when
17 in fact such number is not the social security
18 account number assigned by the Commissioner
19 of Social Security to such person or to such
20 other person;

21 “(C) knowingly buys, sells, or possesses
22 with intent to buy or sell a social security ac-
23 count number or a social security card that is
24 or purports to be a number or card issued by
25 the Commissioner of Social Security;

1 “(D) knowingly alters, counterfeits, forges,
2 or falsely makes a social security account num-
3 ber or a social security card; or

4 “(E) knowingly possesses, uses, distrib-
5 utes, or transfers a social security account
6 number or a social security card knowing the
7 number or card to be altered, counterfeited,
8 forged, falsely made, or stolen; or”;

9 (2) in paragraph (8)—

10 (A) by inserting “knowingly” before “dis-
11 closes”;

12 (B) by inserting “account” after “secu-
13 rity”; and

14 (C) by inserting “or” after the semicolon
15 at the end;

16 (3) by inserting after paragraph (8) the fol-
17 lowing:

18 “(9) without lawful authority, knowingly pro-
19 duces or acquires for any person a social security ac-
20 count number, a social security card, or a number
21 or card that purports to be a social security account
22 number or social security card,”; and

23 (4) in the flush text at the end, by striking
24 “five” and inserting “10”.

1 (b) CONSPIRACY AND DISCLOSURE.—Section 208 of
2 such Act is further amended by adding at the end the fol-
3 lowing:

4 “(f) Whoever attempts or conspires to violate any
5 criminal provision under this section shall be punished in
6 the same manner as a person who completes a violation
7 of such provision.

8 “(g)(1) Subject to paragraph (3) and notwith-
9 standing any other provision of law, the Commissioner of
10 Social Security shall disclose to any Federal law enforce-
11 ment agency the records described in paragraph (2) if
12 such law enforcement agency requests such records for the
13 purpose of investigating a violation of this section or any
14 other felony offense.

15 “(2) The records described in this paragraph are
16 records of the Social Security Administration con-
17 cerning—

18 “(A) the identity, address, location, or financial
19 institution accounts of the holder of a social security
20 account number or social security card;

21 “(B) the application for and issuance of a social
22 security account number or social security card; and

23 “(C) the existence or nonexistence of a social
24 security account number or social security card.

1 “(3) The Commissioner of Social Security may not
2 disclose any tax return or tax return information pursuant
3 to this subsection except as authorized under section 6103
4 of the Internal Revenue Code of 1986.”.

5 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

6 (a) IN GENERAL.—There are authorized to be appro-
7 priated to the Secretary of Homeland Security such sums
8 as may be necessary to carry out the provisions of this
9 Act, and the amendments made by this Act, including—

10 (1) in each of the 2 fiscal years beginning on
11 the date of the enactment of this Act, the appropria-
12 tions necessary to hire not fewer than 2,500 new
13 personnel at the Department of Homeland Security
14 assigned exclusively or principally to an office or of-
15 fices dedicated to monitoring and enforcing compli-
16 ance with sections 274A and 274C of the Immigra-
17 tion and Nationality Act (8 U.S.C. 1324a and
18 1324c), including compliance with the requirements
19 of the Employment Eligibility Verification System,
20 which personnel shall monitor compliance by—

21 (A) verifying the Employment Identifica-
22 tion Numbers of employers participating in the
23 Employment Eligibility Verification System (re-
24 ferred to in this section as “EEVS”);

1 (B) verifying compliance of employers par-
2 ticipating in EEVS with the requirements for
3 participation that are prescribed by the Sec-
4 retary;

5 (C) monitoring EEVS for multiple uses of
6 Social Security numbers and any immigration
7 identification numbers for evidence that could
8 indicate identity theft or fraud;

9 (D) monitoring EEVS to identify discrimi-
10 natory practices;

11 (E) monitoring EEVS to identify employ-
12 ers who are not using the system properly, in-
13 cluding employers who fail to make appropriate
14 records with respect to their queries and any
15 notices of confirmation, nonconfirmation, or
16 further action;

17 (F) identifying instances in which employ-
18 ees allege that an employer violated their pri-
19 vacy rights;

20 (G) analyzing and auditing the use of
21 EEVS and the data obtained through EEVS
22 to—

23 (i) identify fraud trends, including
24 fraud trends across industries, geo-
25 graphical areas, or employer size; and

1 (ii) develop compliance tools as nec-
2 essary to respond to changing patterns of
3 fraud;

4 (H) providing employers with additional
5 training and other information on the proper
6 use of EEVS;

7 (I) performing threshold evaluation of
8 cases for referral to United States Immigration
9 and Customs Enforcement and to liaise with
10 such agency with respect to these referrals;

11 (J) any other compliance and monitoring
12 activities that, in the Secretary's judgment, are
13 necessary to ensure the functioning of EEVS;

14 (K) investigating identity theft and fraud
15 detected through EEVS and undertake the nec-
16 essary enforcement actions;

17 (L) investigating the use of fraudulent doc-
18 uments or access to fraudulent documents
19 through local facilitation and undertake the
20 necessary enforcement actions;

21 (M) providing support to United States
22 Citizenship and Immigration Services with re-
23 spect to the evaluation of cases for referral to
24 United States Immigration and Customs En-
25 forcement; and

1 (N) performing any other investigation
 2 that the Secretary determines to be necessary
 3 to ensure the functioning of EEVS, and under-
 4 take any enforcement actions necessary as a re-
 5 sult of these investigations; and

6 (2) the appropriations necessary to acquire, in-
 7 stall, and maintain technological equipment nec-
 8 essary to support the functioning of EEVS and the
 9 connectivity between United States Citizenship and
 10 Immigration Services and United States Immigra-
 11 tion and Customs Enforcement with respect to the
 12 sharing of information to support EEVS and related
 13 immigration enforcement actions.

14 (b) AUTHORIZATION OF APPROPRIATIONS.—

15 (1) COMMISSION OF SOCIAL SECURITY.—There
 16 are authorized to be appropriated to Commissioner
 17 of Social Security such sums as may be necessary to
 18 carry out the duties of the Commissioner under this
 19 subtitle and the amendments made by this subtitle.

20 (2) SECRETARY OF HOMELAND SECURITY.—In
 21 addition to any other amounts authorized to be ap-
 22 propriated in this Act, there are authorized to be ap-
 23 propriated to the Secretary, in each of the 2 fiscal
 24 years beginning after the date of the enactment of
 25 this Act, such sums as may be necessary to annually

1 hire not fewer than 2,500 personnel of the Depart-
2 ment of Homeland Security, who shall be assigned
3 exclusively or principally to an office or offices dedi-
4 cated to monitoring and enforcing compliance with
5 sections 274A and 274C of the Immigration and
6 Nationality Act (8 U.S.C. 1324a and 1324c), includ-
7 ing compliance with the requirements of EEVS.
8 These personnel shall perform the compliance and
9 monitoring activities described in subparagraphs (A)
10 through (N) of subsection (a)(1).

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110TH CONGRESS
2^D Session

S. 2711

A BILL

To improve the enforcement of laws prohibiting the employment of unauthorized aliens and for other purposes.

MARCH 6, 2008

Read the second time and placed on the calendar