

111TH CONGRESS
1ST SESSION

H. R. 142

To amend the Internal Revenue Code of 1986 to require the Secretary of the Treasury to notify the Secretary of Homeland Security of employer returns showing the employment of individuals not authorized to be employed in the United States, to notify the employers that they must terminate the employment of those employees, to provide an opportunity for those employees to contest the information, and to establish a procedure for determining whether individuals who are not authorized to be employed in the United States are so employed.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. GALLEGLY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and Labor and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to require the Secretary of the Treasury to notify the Secretary of Homeland Security of employer returns showing the employment of individuals not authorized to be employed in the United States, to notify the employers that they must terminate the employment of those employees, to provide an opportunity for those employees to contest the information, and to establish a procedure for determining whether individuals who are not authorized to be employed in the United States are so employed.

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 “Enforce Immigration
 5 Law Act of 2009”.

6 **SEC. 2. NOTIFICATION OF EMPLOYMENT STATUS OF INDIVIDUALS NOT AUTHORIZED TO WORK IN THE UNITED STATES.**

9 (a) IN GENERAL.—Subsection (i) of section 6103 of
 10 the Internal Revenue Code of 1986 (relating to confiden-
 11 tiality and disclosure of returns and return information)
 12 is amended by adding at the end the following new para-
 13 graph:

14 “(9) DISCLOSURE TO SECRETARY OF HOME-
 15 LAND SECURITY OF EMPLOYMENT INFORMATION OF
 16 EMPLOYEES NOT AUTHORIZED TO BE EMPLOYED IN
 17 UNITED STATES.—

18 “(A) IN GENERAL.—If—

19 “(i) the Secretary receives a return
 20 from any person or entity (hereafter in this
 21 paragraph referred to as the ‘employer’)
 22 showing wages (as defined in section
 23 3121(a)) paid to any employee, and

24 “(ii) the TIN of such employee, as
 25 shown on such return, indicates that such

1 employee is not authorized to be employed
2 in the United States,
3 the Secretary shall provide electronically to the
4 Secretary of Homeland Security the following
5 information as shown on such return: the name,
6 address, and TIN of such employee and the
7 name, address, and employer identification
8 number of the employer.

9 “(B) NOTICE TO EMPLOYER AND EM-
10 PLOYEE.—Whenever the Secretary sends a no-
11 tice under subparagraph (A) with respect to
12 any employer and employee, the Secretary also
13 shall notify the employer and the employee in
14 writing that such employee is not authorized to
15 be employed in the United States and that the
16 employee’s employment with the employer
17 should be terminated not later than the 30th
18 day after the date of the notice. Such notice
19 shall also describe—

20 “(i) the employer’s obligations under
21 this paragraph,

22 “(ii) the employee’s right under this
23 paragraph to contest the determination
24 that the employee is not authorized to be
25 employed in the United States, and

1 “(iii) the procedure under this para-
2 graph for contesting such determination.

3 “(C) EMPLOYEE’S RIGHT TO CONTEST.—

4 “(i) NOTICE TO EMPLOYEE.—If any
5 employer receives such a notice from the
6 Secretary with respect to an employee, the
7 employer shall, within 3 business days
8 after the date the employer received such
9 notice, provide a copy of such notice to the
10 employee.

11 “(ii) RIGHT TO CONTEST.—An em-
12 ployee may contest the accuracy of such
13 notice during the 30-day period beginning
14 on the date that the employer provided the
15 notice under clause (i) to the employee.

16 “(iii) CONTEST PROCEDURE.—If, dur-
17 ing such 30-day period, the employee pro-
18 vides the employer with information sub-
19 stantiating such employee’s claimed au-
20 thorization to be employed in the United
21 States, the employer shall, in such form
22 and manner as the Secretary shall pre-
23 scribe, provide to the Secretary—

1 “(I) the employee’s name, ad-
2 dress, and taxpayer identification
3 number,

4 “(II) the employer’s name, ad-
5 dress, telephone number, and em-
6 ployer identification number, and

7 “(III) the information provided
8 by the employee to the employer sub-
9 stantiating such employee’s authoriza-
10 tion to be employed in the United
11 States.

12 “(D) VERIFICATION FROM DEPARTMENT
13 OF HOMELAND SECURITY.—

14 “(i) TRANSMITTAL OF INQUIRY.—
15 Within 3 business days after receiving the
16 information described in subparagraph
17 (C)(iii), the Secretary shall provide such
18 information electronically to the Secretary
19 of Homeland Security.

20 “(ii) RESPONSE.—Within 7 business
21 days after receiving such information, the
22 Secretary of Homeland Security shall elec-
23 tronically notify the Secretary, and shall
24 notify the employer and employee in writ-

1 ing, as to whether the employee is author-
2 ized to be employed in the United States.

3 “(E) SUSPENSION OF OBLIGATION TO TER-
4 MINATE EMPLOYMENT UNTIL RESPONSE RE-
5 CEIVED.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clause (ii), if the employee meets
8 the requirement of subparagraph (C)(iii),
9 the employer’s obligation to terminate the
10 employment of such employee shall be sus-
11 pended until the employer receives the no-
12 tice described in subparagraph (D)(ii).

13 “(ii) TIMELY RESPONSE NOT RE-
14 CEIVED.—If the employer does not receive
15 such notice before the 30th day after the
16 close such 30-day period, the employer
17 shall so notify the Secretary.

18 “(F) REBUTTABLE PRESUMPTION OF VIO-
19 LATION OF THE IMMIGRATION AND NATION-
20 ALITY ACT.—

21 “(i) IN GENERAL.—A rebuttable pre-
22 sumption is created that the employer has
23 violated section 274A(a)(1)(A) of the Im-
24 migration and Nationality Act if—

1 “(I) the employer employs an in-
2 dividual with respect to whom a notice
3 is received under subparagraph (B)
4 after the 30 days described in such
5 subparagraph,

6 “(II) the employer fails to notify
7 the Secretary as required by subpara-
8 graph (E)(ii) and employs such indi-
9 vidual, or

10 “(III) the employer refers the in-
11 dividual for employment after receiv-
12 ing a notice under subparagraph (B)
13 with respect to such individual.

14 “(ii) EXCEPTIONS.—

15 “(I) SUSPENSION PERIOD.—
16 Clause (i)(I) shall not apply during
17 the suspension period described in
18 subparagraph (E)(i).

19 “(II) NOTICE FROM SECRETARY
20 OF HOMELAND SECURITY.—Clause (i)
21 shall cease to apply with respect to an
22 individual after the date that the em-
23 ployer is notified by the Secretary of
24 Homeland Security that such indi-

1 vidual is authorized to be employed in
2 the United States.

3 “(G) REFUNDS DENIED.—No refund of
4 any tax imposed by this title shall be made to
5 any individual for any taxable year during any
6 portion of which such individual is employed in
7 the United States without being authorized to
8 be so employed.

9 “(H) SPECIAL RULES.—

10 “(i) PROTECTION FROM LIABILITY.—
11 No employer shall be civilly or criminally
12 liable under any law for any action taken
13 in good faith reliance on information pro-
14 vided by the Secretary or the Secretary of
15 Homeland Security with respect to any in-
16 dividual’s eligibility to be employed in the
17 United States.

18 “(ii) TIMELY MAILING TREATED AS
19 TIMELY NOTICE.—Rules similar to the
20 rules of section 7502 shall apply for pur-
21 poses of this section.

22 “(iii) LAST KNOWN ADDRESS OF EM-
23 PLOYEE.—Any notice required to be pro-
24 vided to an employee under this section
25 shall be sufficient if mailed to the employee

1 at the last known address of the em-
 2 ployee.”.

3 (b) CONFORMING AMENDMENT.—Paragraph (4) of
 4 section 6103(p) of such Code is amended by striking “(5)
 5 or (7)” each place it appears and inserting “(5), (7), or
 6 (9)”.

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to returns received more than 180
 9 days after the date of the enactment of this Act.

10 **SEC. 3. PROCEDURE FOR DETERMINING WHETHER INDIVIDUALS WHO ARE NOT AUTHORIZED TO BE**
 11 **EMPLOYED IN THE UNITED STATES ARE SO**
 12 **EMPLOYED.**

14 (a) IN GENERAL.—Subsection (i) of section 6103 of
 15 the Internal Revenue Code of 1986 (relating to confiden-
 16 tiality and disclosure of returns and return information),
 17 as amended by section 2, is amended by adding at the
 18 end the following new paragraph:

19 “(10) DISCLOSURE OF EMPLOYMENT INFORMA-
 20 TION TO SECRETARY OF HOMELAND SECURITY.—

21 “(A) IN GENERAL.—During December of
 22 each calendar year, the Secretary of Homeland
 23 Security shall submit electronically a request to
 24 the Secretary for the information described in
 25 subparagraph (B)(ii) with respect to each indi-

1 vidual who had been authorized to be employed
2 in the United States during any prior calendar
3 year but who was not so authorized as of De-
4 cember 31 of the immediately preceding cal-
5 endar year. Such request shall specify—

6 “(i) the name and TIN of the indi-
7 vidual, and

8 “(ii) the taxable period or periods for
9 which the information is requested.

10 “(B) DISCLOSURE OF EMPLOYMENT IN-
11 FORMATION.—

12 “(i) IN GENERAL.—Not later than the
13 first March 5 following the receipt by the
14 Secretary of such request, the Secretary
15 shall electronically disclose return informa-
16 tion described in clause (ii) to officers and
17 employees of the Department of Homeland
18 Security who are personally and directly
19 engaged in the enforcement of the Immi-
20 gration and Nationality Act.

21 “(ii) INFORMATION TO BE DIS-
22 CLOSED.—The information described in
23 this clause with respect to any individual
24 is—

1 “(I) such individual’s mailing ad-
2 dress,

3 “(II) the total amount of wages
4 (as defined in section 3121(a)) paid to
5 such individual during the period or
6 periods specified in subparagraph
7 (A)(ii), and

8 “(III) the name, address, and
9 employer identification number of
10 each employer paying such wages dur-
11 ing such period or periods.

12 “(C) REFUNDS, ETC. WITHHELD.—No re-
13 fund of any tax imposed by this title shall be
14 made, and no credit under section 32 (relating
15 to earned income credit) shall be allowed, to
16 any individual for any taxable year during any
17 portion of which such individual is employed in
18 the United States without being authorized to
19 be so employed.

20 “(D) NOTICE TO EMPLOYER AND EM-
21 PLOYEE.—If the Secretary of Homeland Secu-
22 rity receives information under this paragraph
23 indicating that an individual was employed in
24 the United States after the expiration of the in-
25 dividual’s authority to be so employed, such

1 Secretary shall (within 7 business days after re-
2 ceiving such information) notify in writing such
3 individual and each person or entity who was
4 an employer of such individual after such expi-
5 ration that such individual is not authorized to
6 be employed in the United States and that the
7 individual's employment with the employer
8 should be terminated not later than the 30th
9 day after the date of the notice. Such notice
10 shall also describe—

11 “(i) the employer's obligations under
12 this paragraph,

13 “(ii) the employee's right under this
14 paragraph to contest the determination
15 that the employee is not authorized to be
16 employed in the United States, and

17 “(iii) the procedure under this para-
18 graph for contesting such determination.

19 “(E) EMPLOYEE'S RIGHT TO CONTEST.—

20 “(i) NOTICE TO EMPLOYEE.—If any
21 employer receives such a notice from the
22 Secretary of Homeland Security with re-
23 spect to an employee, the employer shall,
24 within 3 business days after the date the

1 employer received such notice, provide a
2 copy of such notice to the employee.

3 “(ii) RIGHT TO CONTEST.—An em-
4 ployee may contest the accuracy of such
5 notice during the 30-day period beginning
6 on the date that the employer provided the
7 notice under clause (i) to the employee.

8 “(iii) CONTEST PROCEDURE.—If, dur-
9 ing such 30-day period, the employee pro-
10 vides the employer with information sub-
11 stantiating such employee’s claimed au-
12 thorization to be employed in the United
13 States, the employer shall, in such form
14 and manner as the Secretary of Homeland
15 Security shall prescribe, provide to such
16 Secretary—

17 “(I) the employee’s name, ad-
18 dress, and taxpayer identification
19 number,

20 “(II) the employer’s name, ad-
21 dress, telephone number, and em-
22 ployer identification number, and

23 “(III) the information provided
24 by the employee to the employer sub-
25 stantiating such employee’s authoriza-

1 tion to be employed in the United
2 States.

3 “(F) VERIFICATION FROM DEPARTMENT
4 OF HOMELAND SECURITY.—Within 7 business
5 days after receiving such information, the Sec-
6 retary of Homeland Security shall electronically
7 notify the Secretary, and shall notify the em-
8 ployer and employee in writing, as to whether
9 the employee is authorized to be employed in
10 the United States.

11 “(G) SUSPENSION OF OBLIGATION TO TER-
12 MINATE EMPLOYMENT UNTIL RESPONSE RE-
13 CEIVED.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clause (ii), if the employee meets
16 the requirement of subparagraph (E)(iii),
17 the employer’s obligation to terminate the
18 employment of such employee shall be sus-
19 pended until the employer receives the no-
20 tice described in subparagraph (F).

21 “(ii) TIMELY RESPONSE NOT RE-
22 CEIVED.—If the employer does not receive
23 such notice before the 30th day after the
24 close such 30-day period, the employer

1 shall so notify the Secretary of Homeland
2 Security.

3 “(H) REBUTTABLE PRESUMPTION OF VIO-
4 LATION OF THE IMMIGRATION AND NATION-
5 ALITY ACT.—

6 “(i) IN GENERAL.—A rebuttable pre-
7 sumption is created that the employer has
8 violated section 274A(a)(1)(A) of the Im-
9 migration and Nationality Act if—

10 “(I) the employer employs an in-
11 dividual with respect to whom a notice
12 is received under subparagraph (D)
13 after the 30 days described in such
14 subparagraph,

15 “(II) the employer fails to notify
16 the Secretary as required by subpara-
17 graph (G)(ii) and employs such indi-
18 vidual, or

19 “(III) the employer refers the in-
20 dividual for employment after receiv-
21 ing a notice under subparagraph (D)
22 with respect to such individual.

23 “(ii) EXCEPTIONS.—

24 “(I) SUSPENSION PERIOD.—
25 Clause (i)(I) shall not apply during

1 the suspension period described in
2 subparagraph (G)(i).

3 “(II) NOTICE FROM SECRETARY
4 OF HOMELAND SECURITY.—Clause (i)
5 shall cease to apply with respect to an
6 individual after the date that the em-
7 ployer is notified by the Secretary of
8 Homeland Security that such indi-
9 vidual is authorized to be employed in
10 the United States.

11 “(I) SPECIAL RULES.—

12 “(i) PROTECTION FROM LIABILITY.—
13 No employer shall be civilly or criminally
14 liable under any law for any action taken
15 in good faith reliance on information pro-
16 vided by the Secretary or the Secretary of
17 Homeland Security with respect to any in-
18 dividual’s eligibility to be employed in the
19 United States.

20 “(ii) TIMELY MAILING TREATED AS
21 TIMELY NOTICE.—Rules similar to the
22 rules of section 7502 shall apply for pur-
23 poses of this section.

24 “(iii) LAST KNOWN ADDRESS OF EM-
25 PLOYEE.—Any notice required to be pro-

1 vided to an employee under this section
2 shall be sufficient if mailed to the employee
3 at the last known address of the employee.

4 “(iv) EMPLOYMENT-BASED VISAS.—
5 For purposes of this section, the deter-
6 mination of whether an individual is au-
7 thorized to be employed in the United
8 States includes whether the individual has
9 an immigrant visa issued pursuant to the
10 numerical limitation under section 203(b)
11 of the Immigration and Nationality Act (8
12 U.S.C. 1153(b)) (relating to employment-
13 based visas).”.

14 (b) CONFORMING AMENDMENT.—Paragraph (4) of
15 section 6103(p) of such Code, as amended by subsection
16 (a), is amended by striking “(7), or (7)” each place it ap-
17 pears and inserting “(7), (9), or (10)”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to requests made in calendar years
20 beginning after the date of the enactment of this Act.

○