transports, or moves, or attempts to transport or move, within the United States by means of transportation or otherwise, in furtherance of such violation of law;

''(3) willfully or knowingly conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, in any place, including any building or any means of transportation; or

''(4) willfully or knowingly encourages or induces, or attempts to encourage or induce, either directly or indirectly, the entry into the United States of—

any alien, including an alien crewman, not duly admitted by an immigration officer or not lawfully entitled to enter or reside within the United States under the terms of this chapter or any other law relating to the immigration or expulsion of aliens, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however*, That for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.''

Subsec. (b)(1). Pub. L. 99–603, §112(b)(1), (2), substituted ''has been or is being used'' for ''is used'' and ''seized and subject to'' for ''subject to seizure and'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 99–603, §112(b)(3), inserted ''or is being'' after ''has been''.

Subsec. (b)(3). Pub. L. 99–603, §112(b)(4), substituted ''property'' for ''conveyances''.

Subsec. (b)(4)(C). Pub. L. 99–603, §112(b)(5), as amended by Pub. L. 100–525, §2(d)(2)(A), inserted '', or the Maritime Administration if appropriate under section 484(i) of title 40,''.

Subsec. (b)(4)(D). Pub. L. 99–603, §112(b)(6), added subpar. (D).

Subsec. (b)(5). Pub. L. 99–603, §112(b)(7)–(9), as amended by Pub. L. 100–525, §2(d)(2)(B), substituted '', except that'' for '': *Provided*, That'' in provisions preceding subpar. (A), substituted ''had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law'' for ''was not lawfully entitled to enter, or reside within, the United States'' wherever appearing, inserted ''or of the Department of State'' in subpar. (B), and substituted ''had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law'' for ''was not entitled to enter, or reside within, the United States'' in subpar. (C).

1981—Subsec. (b). Pub. L. 97–116 strengthened the seizure and forfeiture authority by striking out the ''innocent owner'' exemption and merely requiring the Government to show probable cause that the conveyance seized has been used to illegally transport aliens, which when demonstrated, shifts the burden of proof to the owner or claimant to show by a preponderance of the evidence that the conveyance was not illegally used, by relieving the Government of the obligation to pay any administrative and incidental costs incurred by a successful claimant provided probable cause for the original seizure was demonstrated, and by striking out the requirement that the Government satisfy any valid lien or third party interest in the conveyance without expense to the interest holder by providing the lienholders interest be satisfied only after costs associated with the seizure have been deducted.

1978—Subsecs. (b), (c). Pub. L. 95–582 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–185, §21, Apr. 25, 2000, 114 Stat. 225, provided that: ''Except as provided in section 14(c) [set out as an Effective Date note under section 2466 of title 28, Judiciary and Judicial Procedure], this Act [see Short Title of 2000 Amendment note set out under section 981 of Title 18, Crimes and Criminal Procedure] and the amendments made by this Act shall apply to any forfeiture proceeding commenced on or after the date that is 120 days after the date of the enactment of this Act [Apr. 25, 2000].''

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. C, title II, §203(f), Sept. 30, 1996, 110 Stat. 3009–567, provided that: ''This section [amending this section and enacting provisions set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] and the amendments made by this section shall apply with respect to offenses occurring on or after the date of the enactment of this Act [Sept. 30, 1996].''

Amendment by section 671(a)(1) of Pub. L. 104–208 effective as if included in the enactment of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103–322, see section 671(a)(7) of Pub. L. 104–208, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

§ 1324a. Unlawful employment of aliens

(a) Making employment of unauthorized aliens unlawful

(1) In general

It is unlawful for a person or other entity—

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

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

(2) Continuing employment

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

(3) Defense

A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has estab-

lished an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) Use of labor through contract

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

(5) Use of State employment agency documentation

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

(6) Treatment of documentation for certain employees

(A) In general

For purposes of this section, if—

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual,

the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) Period

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

(C) Liability

(i) In general

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

(ii) Rebuttal of presumption

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

(iii) Exception

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

(7) Application to Federal Government

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

(b) Employment verification system

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

(1) Attestation after examination of documentation

(A) In general

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

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

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

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

(B) Documents establishing both employment authorization and identity

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

(i) United States passport;[1]

[1] So in original. Probably should be followed by ''or''.

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

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

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

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

(C) Documents evidencing employment authorization

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

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

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

(D) Documents establishing identity of individual

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

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

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

(E) Authority to prohibit use of certain documents

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

(2) Individual attestation of employment authorization

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

(3) Retention of verification form

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

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

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated,

whichever is later.

(4) Copying of documentation permitted

Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) Limitation on use of attestation form

A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter and sections 1001, 1028, 1546, and 1621 of title 18.

(6) Good faith compliance

(A) In general

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

(B) Exception if failure to correct after notice

Subparagraph (A) shall not apply if—

(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

(iii) the person or entity has not corrected the failure voluntarily within such period.

(C) Exception for pattern or practice violators

Subparagraph (A) shall not apply to a person or entity that has or is engaging in a

pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

(c) No authorization of national identification cards

Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) Evaluation and changes in employment verification system

(1) Presidential monitoring and improvements in system

(A) Monitoring

The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

(B) Improvements to establish secure system

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

(2) Restrictions on changes in system

Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) Reliable determination of identity

The system must be capable of reliably determining whether—

(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

(ii) the employee or prospective employee is claiming the identity of another individual.

(B) Using of counterfeit-resistant documents

If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) Limited use of system

Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) Privacy of information

The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) Limited denial of verification

A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) Limited use for law enforcement purposes

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

(G) Restriction on use of new documents

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

(3) Notice to Congress before implementing changes

(A) In general

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

(i) 60 days,

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

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

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

(B) Contents of report

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

(C) Congressional review of major changes

(i) Hearings and review

The Committees on the Judiciary of the House of Representatives and of the Sen-

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

(ii) Congressional action

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

(D) Major changes defined

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

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

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

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

(E) General revenue funding of social security card changes

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

(4) Demonstration projects

(A) Authority

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

(B) Reports on projects

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

(e) Compliance

(1) Complaints and investigations

The Attorney General shall establish procedures—

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

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

(C) for the investigation of such other violations of subsection (a) or (g)(1) as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) under this subsection.

(2) Authority in investigations

In conducting investigations and hearings under this subsection—

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

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

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

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

(3) Hearing

(A) In general

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

(B) Conduct of hearing

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

(C) Issuance of orders

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

or entity an order described in paragraph (4), (5), or (6).

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

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

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

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

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

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

(B) may require the person or entity—

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

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

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

(5) Order for civil money penalty for paperwork violations

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

(6) Order for prohibited indemnity bonds

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

(7) Administrative appellate review

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

(8) Judicial review

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

(9) Enforcement of orders

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

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

(1) Criminal penalty

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

(2) Enjoining of pattern or practice violations

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

(g) Prohibition of indemnity bonds

(1) Prohibition

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

relating to such hiring, recruiting, or referring of the individual.

(2) Civil penalty

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

(h) Miscellaneous provisions

(1) Documentation

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

(2) Preemption

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

(3) Definition of unauthorized alien

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

(June 27, 1952, ch. 477, title II, ch. 8, § 274A, as added Pub. L. 99–603, title I, § 101(a)(1), Nov. 6, 1986, 100 Stat. 3360; amended Pub. L. 100–525, § 2(a)(1), Oct. 24, 1988, 102 Stat. 2609; Pub. L. 101–649, title V, §§ 521(a), 538(a), Nov. 29, 1990, 104 Stat. 5053, 5056; Pub. L. 102–232, title III, §§ 306(b)(2), 309(b)(11), Dec. 12, 1991, 105 Stat. 1752, 1759; Pub. L. 103–416, title II, §§ 213, 219(z)(4), Oct. 25, 1994, 108 Stat. 4314, 4318; Pub. L. 104–208, div. C, title III, § 379(a), title IV, §§ 411(a), 412(a)–(d), 416, Sept. 30, 1996, 110 Stat. 3009–649, 3009–666 to 3009–669; Pub. L. 108–390, § 1(a), Oct. 30, 2004, 118 Stat. 2242.)

REFERENCES IN TEXT

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

The Social Security Act, referred to in subsec. (d)(3)(D)(iii), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108–390, § 1(a)(1), inserted ''Such attestation may be manifested by either a hand-written or an electronic signature.'' before ''A person or entity has complied'' in concluding provisions.

Subsec. (b)(2). Pub. L. 108–390, § 1(a)(2), inserted at end ''Such attestation may be manifested by either a hand-written or an electronic signature.''

Subsec. (b)(3). Pub. L. 108–390, § 1(a)(3), inserted ''a paper, microfiche, microfilm, or electronic version of'' after ''must retain'' in introductory provisions.

1996—Subsec. (a)(6). Pub. L. 104–208, § 412(b), added par. (6).

Subsec. (a)(7). Pub. L. 104–208, § 412(d), added par. (7).

Subsec. (b)(1)(B). Pub. L. 104–208, § 412(a)(1)(A), (B), redesignated cl. (v) as (ii), substituted '', alien registration card, or other document designated by the Attorney General, if the document'' for ''or other alien registration card, if the card'' in introductory provisions of that cl., and struck out former cls. (ii) to (iv) which read as follows:

''(ii) certificate of United States citizenship;

''(iii) certificate of naturalization;

''(iv) unexpired foreign passport, if the passport has an appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States; or''.

Subsec. (b)(1)(B)(ii). Pub. L. 104–208, § 412(a)(1)(C), in subcl. (I), substituted ''and'' for ''or'' before ''such other personal'' and struck out ''and'' at end, in subcl. (II), substituted '', and'' for the period at end, and added subcl. (III).

Subsec. (b)(1)(C). Pub. L. 104–208, § 412(a)(2), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section; or''.

Subsec. (b)(1)(E). Pub. L. 104–208, § 412(a)(3), added subpar. (E).

Subsec. (b)(6). Pub. L. 104–208, § 411(a), added par. (6).

Subsec. (e)(2)(C). Pub. L. 104–208, § 416, added subpar. (C).

Subsec. (e)(7). Pub. L. 104–208, § 379(a)(2), substituted ''the final agency decision and order under this subsection'' for ''a final order under this subsection''.

Pub. L. 104–208, § 379(a)(1), substituted ''unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations'' for ''unless, within 30 days, the Attorney General modifies or vacates the decision and order''.

Subsecs. (i) to (n). Pub. L. 104–208, § 412(c), struck out subsec. (i) which provided effective dates for implementation of this section, subsec. (j) which required General Accounting Office reports on implementation of this section, subsec. (k) which established a taskforce to review reports, subsec. (*l*) which provided a termination date for employer sanctions under this section upon finding of widespread discrimination in implementing this section, and subsecs. (m) and (n) which provided for expedited procedures in House of Representatives and Senate for considering resolutions to approve findings in the reports.

1994—Subsec. (b)(3). Pub. L. 103–416, § 219(z)(4), made technical correction to Pub. L. 102–232, § 306(b)(2). See 1991 Amendment note below.

Subsec. (d)(4)(A). Pub. L. 103–416, § 213, substituted ''five'' for ''three'' in second sentence.

1991—Subsec. (b)(1)(D)(ii). Pub. L. 102–232, § 309(b)(11), substituted ''clause (i)'' for ''clause (ii)''.

Subsec. (b)(3). Pub. L. 102–232, § 306(b)(2), as amended by Pub. L. 103–416, § 219(z)(4), made technical correction to Pub. L. 101–649, § 538(a). See 1990 Amendment note below.

1990—Subsec. (a)(1). Pub. L. 101–649, § 521(a), struck out ''to hire, or to recruit or refer for a fee, for employ-

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

Subsec. (b)(3). Pub. L. 101–649, §538(a), as amended by Pub. L. 102–232, §306(b)(2), as amended by Pub. L. 103–416, §219(z)(4), inserted '', the Special Counsel for Immigration-Related Unfair Employment Practices,'' after ''officers of the Service''.

1988—Subsec. (b)(1)(A). Pub. L. 100–525, §2(a)(1)(A), substituted ''the first sentence of this paragraph'' for ''such sentence'' and ''such another document'' for ''such a document''.

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

Subsec. (e)(1). Pub. L. 100–525, §2(a)(1)(C)(i), inserted reference to subsec. (g)(1) in three places.

Subsec. (e)(3). Pub. L. 100–525, §2(a)(1)(C)(i), (ii), inserted reference to subsec. (g)(1) in two places and reference to par. (6) in two places.

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

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

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

Subsec. (i)(3)(B)(iii). Pub. L. 100–525, §2(a)(1)(F), substituted ''an order'' for ''a order'' and ''subsection (a)(1)(A) of this section'' for ''paragraph (1)(A)''.

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

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

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

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

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–208, div. C, title III, §379(b), Sept. 30, 1996, 110 Stat. 3009–650, provided that: ''The amendments made by subsection (a) [amending this section and section 1324c of this title] shall apply to orders issued on or after the date of the enactment of this Act [Sept. 30, 1996].''

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

Pub. L. 104–208, div. C, title IV, §412(e), Sept. 30, 1996, 110 Stat. 3009–668, as amended by Pub. L. 105–54, §3(a), Oct. 6, 1997, 111 Stat. 1175; Pub. L. 108–156, §3(d), Dec. 3, 2003, 117 Stat. 1945, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 18 months after the date of the enactment of this Act [Sept. 30, 1996]) as the Secretary of Homeland Security shall designate.

''(2) The amendment made by subsection (b) [amending this section] shall apply to individuals hired on or after 60 days after the date of the enactment of this Act.

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

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

[Pub. L. 105–54, §3(b), Oct. 6, 1997, 111 Stat. 1176, provided that: ''The amendment made by subsection (a) [amending section 412(e) of div. C of Pub. L. 104–208, set out above] shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [div. C of Pub. L. 104–208].'']

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–416, title II, §219(z), Oct. 25, 1994, 108 Stat. 4318, provided that the amendment made by section 219(z)(4) is effective as if included in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 306(b)(2) of Pub. L. 102–232 effective as if included in the enactment of the Immigration Act of 1990, Pub. L. 101–649, see section 310(1) of Pub. L. 102–232, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–649, title V, §521(b), Nov. 29, 1990, 104 Stat. 5053, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to recruiting and referring occurring on or after the date of the enactment of this Act [Nov. 29, 1990].''

Pub. L. 101–649, title V, §538(b), Nov. 29, 1990, 104 Stat. 5056, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 29, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

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

DATE OF ENACTMENT OF THIS SECTION FOR ALIENS EMPLOYED UNDER SECTION 8704 OF TITLE 46, SHIPPING

Date of enactment of this section with respect to aliens deemed employed under section 8704 of Title 46, Shipping, as the date 180 days after Jan. 11, 1988, see section 5(f)(3) of Pub. L. 100–239, set out as a Construction note under section 8704 of Title 46.

ABOLITION OF IMMIGRATION AND NATURALIZATION SERVICE AND TRANSFER OF FUNCTIONS

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

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Feb. 10, 1992, 57 F.R. 24345, provided:

Memorandum for the Secretary of Health and Human Services

Section 205(c)(2)(F) of the Social Security Act (section 405(c)(2)(F) of title 42 of the United States Code) directs the Secretary of Health and Human Services to issue Social Security number cards to individuals who are assigned Social Security numbers.

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 274A(d)(3)(A) of the Immi-

gration and Nationality Act (the ''Act'') (section 1324a(d)(3)(A) of title 8 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [8 U.S.C. 1101 et seq.], I hereby:

(1) Authorize you to prepare and transmit, to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and to the Committee on the Judiciary and the Committee on Finance of the Senate, a written report regarding the substance of any proposed change in Social Security number cards, to the extent required by section 274A(d)(3)(A) of the Act, and

(2) Authorize you to cause to have printed in the Federal Register the substance of any change in the Social Security number card so proposed and reported to the designated congressional committees, to the extent required by section 274A(d)(3)(A) of the Act.

The authority delegated by this memorandum may be further redelegated within the Department of Health and Human Services.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

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

PILOT PROGRAMS FOR EMPLOYMENT ELIGIBILITY CONFIRMATION

Pub. L. 104–208, div. C, title IV, subtitle A, Sept. 30, 1996, 110 Stat. 3009–655, as amended by Pub. L. 107–128, § 2, Jan. 16, 2002, 115 Stat. 2407; Pub. L. 108–156, §§ 2, 3, Dec. 3, 2003, 117 Stat. 1944; Pub. L. 111–83, title V, §§ 547, 551, Oct. 28, 2009, 123 Stat. 2177; Pub. L. 112–176, § 2, Sept. 28, 2012, 126 Stat. 1325, provided that:

''SEC. 401. ESTABLISHMENT OF PROGRAMS.

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

''(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Secretary of Homeland Security shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act [Sept. 30, 1996]. Unless the Congress otherwise provides, the Secretary of Homeland Security shall terminate a pilot program on September 30, 2015.

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

''(1) of the E-Verify Program (described in section 403(a) of this division) in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States, and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004;

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

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

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

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

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

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

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

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

''(6) UNITED STATES CITIZENSHIP.—The term 'United States citizenship' includes United States nationality.

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

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

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

''(b) BENEFIT OF REBUTTABLE PRESUMPTION.—

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

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

''(c) GENERAL TERMS OF ELECTIONS.—

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

''(2) SCOPE OF ELECTION.—

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

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

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

''(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES.—In addition, the Secretary of Homeland Security may permit a person or entity electing the citizen attestation pilot program (described in 403(b) of this division) or the machine-readable-document pilot program (described in section 403(c) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not other-

wise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2) of this division, respectively.

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

''(d) CONSULTATION, EDUCATION, AND PUBLICITY.—

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

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

''(3) ASSISTANCE THROUGH DISTRICT OFFICES.—The Secretary of Homeland Security shall designate one or more individuals in each District office of the Immigration and Naturalization Service for a Service District in which a pilot program is being implemented—

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

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

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

''(1) FEDERAL GOVERNMENT.—

''(A) EXECUTIVE DEPARTMENTS.—

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

''(ii) ELECTION.—Subject to clause (iii), the Secretary of each such Department—

''(I) shall elect the pilot program (or programs) in which the Department shall participate, and

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

''(iii) ROLE OF SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall assist and coordinate elections under this subparagraph in such manner as assures that—

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

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

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

''(2) APPLICATION TO CERTAIN VIOLATORS.—An order under section 274A(e)(4) or section 274B(g) of the Immigration and Nationality Act [8 U.S.C. 1324a(e)(4), 1324b(g)] may require the subject of the order to participate in, and comply with the terms of, a pilot program with respect to the subject's hiring (or recruitment or referral) of individuals in a State covered by such a program.

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

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

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

Subparagraph (B) shall not apply in any prosecution under section 274A(f)(1).

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

''SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.

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

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

''(A) the individual's social security account number, if the individual has been issued such a number, and

''(B) if the individual does not attest to United States citizenship under section 274A(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Secretary of Homeland Security shall specify,

and shall retain the original form and make it available for inspection for the period and in the manner required of I–9 forms under section 274A(b)(3).

''(2) PRESENTATION OF DOCUMENTATION.—

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

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

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

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

''(B) LIMITATION OF REQUIREMENT TO EXAMINE DOCUMENTATION.—If the Secretary of Homeland Security finds that a pilot program would reliably determine with respect to an individual whether—

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

''(ii) the individual is claiming the identity of another person,

if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document

specified in either subparagraph (B) or (D) of such section, the Secretary of Homeland Security may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1)(A) to a verification that an individual is not an unauthorized alien shall be deemed to be a verification of the individual's identity.

''(3) SEEKING CONFIRMATION.—

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

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

''(4) CONFIRMATION OR NONCONFIRMATION.—

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

''(B) NONCONFIRMATION UPON INITIAL INQUIRY AND SECONDARY VERIFICATION.—

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

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

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

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

''(C) CONSEQUENCES OF NONCONFIRMATION.—

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

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

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

''(b) CITIZEN ATTESTATION PILOT PROGRAM.—

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

''(2) RESTRICTIONS.—

''(A) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the citizen attestation pilot program in a State unless each driver's license or similar identification document described in section 274A(b)(1)(D)(i) issued by the State—

''(i) contains a photograph of the individual involved, and

''(ii) has been determined by the Secretary of Homeland Security to have security features, and to have been issued through application and issuance procedures, which make such document sufficiently resistant to counterfeiting, tampering, and fraudulent use that it is a reliable means of identification for purposes of this section.

''(B) AUTHORIZATION TO LIMIT EMPLOYER PARTICIPATION.—The Secretary of Homeland Security may restrict the number of persons or other entities that may elect to participate in the citizen attestation pilot program under this subsection as the Secretary of Homeland Security determines to be necessary to produce a representative sample of employers and to reduce the potential impact of fraud.

''(3) NO CONFIRMATION REQUIRED FOR CERTAIN INDIVIDUALS ATTESTING TO U.S. CITIZENSHIP.—In the case of a person or other entity hiring (or recruiting or referring) an individual under the citizen attestation pilot program, if the individual attests to United States citizenship (under penalty of perjury on an I–9 or similar form which form states on its face the criminal and other penalties provided under law for a false representation of United States citizenship)—

''(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B)(i) or (D) of such section; and

''(B) the person or other entity is not required to comply with respect to such individual with the procedures described in paragraphs (3) and (4) of subsection (a), but only if the person or entity retains the form and makes it available for inspection in the same manner as in the case of an I–9 form under section 274A(b)(3).

''(4) WAIVER OF DOCUMENT PRESENTATION REQUIREMENT IN CERTAIN CASES.—

''(A) IN GENERAL.—In the case of a person or entity that elects, in a manner specified by the Secretary of Homeland Security consistent with subparagraph (B), to participate in the pilot program under this paragraph, if an individual being hired (or recruited or referred) attests (in the manner described in paragraph (3)) to United States citizenship and the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I–9 form under section 274A(b)(3), the person or entity is not required to comply with the procedures described in section 274A(b).

''(B) RESTRICTION.—The Secretary of Homeland Security shall restrict the election under this paragraph to no more than 1,000 employers and, to the extent practicable, shall select among employers seeking to make such election in a manner that provides for such an election by a representative sample of employers.

''(5) NONREVIEWABLE DETERMINATIONS.—The determinations of the Secretary of Homeland Security under paragraphs (2) and (4) are within the discretion of the Secretary of Homeland Security and are not subject to judicial or administrative review.

''(c) MACHINE-READABLE-DOCUMENT PILOT PROGRAM.—

''(1) IN GENERAL.—Except as provided in paragraph (3), the procedures applicable under the machine-readable-document pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

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

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

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

''SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(f) RESPONSIBILITIES OF THE COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE.—As part of the confirmation system, the Commissioner of the Im-

migration and Naturalization Service, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 403(a)(1)(B) of this division which are provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

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

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

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

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

''SEC. 405. REPORTS.

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

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

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

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

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

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

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

[Pub. L. 115–31, div. F, title V, §539, May 5, 2017, 131 Stat. 432, provided that: ''Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208] (8 U.S.C. 1324a note) [set out above] shall be applied by substituting 'September 30, 2017' for 'September 30, 2015'.''']

[Pub. L. 114–113, div. F, title V, §572, Dec. 18, 2015, 129 Stat. 2525, provided that: ''Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208] (8 U.S.C. 1324a note) [set out above] shall be applied by substituting 'September 30, 2016' for the date specified in section 106(3) of the Continuing Appropriations Act, 2016 (Public Law 114–53) [Dec. 11, 2015, which had been substituted as applied by Pub. L. 114–53, div. B, §130, Sept. 30, 2015, 129 Stat. 509].''']

[Pub. L. 110–329, div. A, §143, Sept. 30, 2008, 122 Stat. 3580, as amended by Pub. L. 111–8, div. J, §101, Mar. 11, 2009, 123 Stat. 988, provided that: ''Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [Pub. L. 104–208] (8 U.S.C. 1324a note) [set out above] shall be applied by substituting [']September 30, 2009[*] for 'the 11-year period beginning on the first day the pilot program is in effect'.''']

[Pub. L. 107–128, §3, Jan. 16, 2002, 115 Stat. 2407, provided that: ''The amendment made by this Act [amending section 401(b) of Pub. L. 104–208, set out above] shall take effect on the date of the enactment of this Act [Jan. 16, 2002].''']

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

Pub. L. 104–208, div. C, title IV, §413(a), Sept. 30, 1996, 110 Stat. 3009–668, as amended by Pub. L. 108–156, §3(d), Dec. 3, 2003, 117 Stat. 1945, provided that not later than 1 year after Sept. 30, 1996, the Secretary of Homeland Security was to submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report on any additional authority or resources needed by the Immigration and Naturalization Service in order to enforce section 1324a of this title, or by Federal agencies in order to carry out Ex. Ord. No. 12989, set out below, and to expand the restrictions in such order to cover agricultural subsidies, grants, job training programs, and other Federally subsidized assistance programs.

PILOT PROJECTS FOR SECURE DOCUMENTS

Pub. L. 101–238, §5, Dec. 18, 1989, 103 Stat. 2104, provided that:

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

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

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

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

INTERIM REGULATIONS

Pub. L. 99–603, title I, §101(a)(2), Nov. 6, 1986, 100 Stat. 3372, provided that: ''The Attorney General shall, not later than the first day of the seventh month beginning after the date of the enactment of this Act [Nov. 6, 1986], first issue, on an interim or other basis, such regulations as may be necessary in order to implement this section [enacting this section, amending sections 1802, 1813, 1816, and 1851 of Title 29, Labor, and enacting provisions set out as notes under this section, section 1802 of Title 29, and section 405 of Title 42, The Public Health and Welfare].''

GRANDFATHER PROVISION FOR CURRENT EMPLOYEES

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

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

''(B) Section 274A(a)(2) of the Immigration and Nationality Act shall not apply to continuing employment of an alien who was hired before the date of the enactment of this Act.''

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

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

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

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

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

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

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

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

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

FEASIBILITY STUDY OF SOCIAL SECURITY NUMBER VALIDATION SYSTEM

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

REPORTS ON UNAUTHORIZED ALIEN EMPLOYMENT

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

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

''(2) a description of the status of the development and implementation of changes in that system under subsection (d) of that section, including the results of any demonstration projects conducted under paragraph (4) of such subsection; and

''(3) an analysis of the impact of the enforcement of that section on—

''(A) the employment, wages, and working conditions of United States workers and on the economy of the United States,

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

''(C) the violation of terms and conditions of nonimmigrant visas by foreign visitors.''

[Functions of President under section 402 of Pub. L. 99–603 delegated to Secretary of Homeland Security, except functions in section 402(3)(A) which were delegated to Secretary of Labor, by sections 1(b) and 2(a) of Ex. Ord. No. 12789, Feb. 10, 1992, 57 F.R. 5225, as amended, set out as a note under section 1364 of this title.]

EX. ORD. NO. 12989. ECONOMY AND EFFICIENCY IN GOVERNMENT PROCUREMENT THROUGH COMPLIANCE WITH CERTAIN IMMIGRATION AND NATIONALITY ACT PROVISIONS AND USE OF AN ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM

Ex. Ord. No. 12989, Feb. 13, 1996, 61 F.R. 6091, as amended by Ex. Ord. No. 13286, §19, Feb. 28, 2003, 68 F.R. 10623; Ex. Ord. No. 13465, §§1–6, June 6, 2008, 73 F.R. 33285–33287, provided:

This order is designed to promote economy and efficiency in Federal Government procurement. Stability and dependability are important elements of economy and efficiency. A contractor whose workforce is less stable will be less likely to produce goods and services economically and efficiently than a contractor whose workforce is more stable. It is the policy of the executive branch to enforce fully the immigration laws of the United States, including the detection and removal of illegal aliens and the imposition of legal sanctions against employers that hire illegal aliens. Because of the worksite enforcement policy of the United States and the underlying obligation of the executive branch to enforce the immigration laws, contractors that employ illegal aliens cannot rely on the continuing availability and service of those illegal workers, and such contractors inevitably will have a less stable and less dependable workforce than contractors that do not employ such persons. Where a contractor assigns illegal aliens to work on Federal contracts, the enforcement of Federal immigration laws imposes a direct risk of disruption, delay, and increased expense in Federal contracting. Such contractors are less dependable procurement sources, even if they do not knowingly hire or knowingly continue to employ unauthorized workers.

Contractors that adopt rigorous employment eligibility confirmation policies are much less likely to face immigration enforcement actions, because they are less likely to employ unauthorized workers, and they are therefore generally more efficient and dependable procurement sources than contractors that do not employ the best available measures to verify the work eligibility of their workforce. It is the policy of the executive branch to use an electronic employment verification system because, among other reasons, it provides the best available means to confirm the identity and work eligibility of all employees that join the Federal workforce. Private employers that choose to contract with the Federal Government should meet the same standard.

I find, therefore, that adherence to the general policy of contracting only with providers that do not knowingly employ unauthorized alien workers and that have agreed to utilize an electronic employment verification

system designated by the Secretary of Homeland Security to confirm the employment eligibility of their workforce will promote economy and efficiency in Federal procurement.

NOW, THEREFORE, to ensure the economical and efficient administration and completion of Federal Government contracts, and by the authority vested in me as President by the Constitution and the laws of the United States of America, including subsection 121(a) of title 40 and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. (a) It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies should not contract with employers that have not complied with section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(A), 1324a(a)(2)) (the ''INA employment provisions'') prohibiting the unlawful employment of aliens.

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

(c) It is the policy of the executive branch to enforce fully the antidiscrimination provisions of the INA. Nothing in this order relieves employers of antidiscrimination obligations under section 274B of the INA (8 U.S.C. 1324b) or any other law.

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

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

SEC. 3. Using the procedures established pursuant to 8 U.S.C. 1324a(e): (a) the Secretary of Homeland Security may investigate to determine whether a contractor or an organizational unit thereof is not in compliance with the INA employment provisions;

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

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

SEC. 4. (a) Whenever the Secretary of Homeland Security or the Attorney General determines that a contractor or an organizational unit thereof is not in compliance with the INA employment provisions, the Secretary of Homeland Security or the Attorney General shall transmit that determination to the appropriate contracting agency and such other Federal agencies as the Secretary of Homeland Security or the Attorney General may determine. Upon receipt of such determination from the Secretary of Homeland Security or the Attorney General, the head of the appropriate contracting agency shall consider the contractor or an organizational unit thereof for debarment as well as for such other action as may be appropriate in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation.

(b) The head of the contracting agency may debar the contractor or an organizational unit thereof based on the determination of the Secretary of Homeland Security or the Attorney General that it is not in compliance with the INA employment provisions. Such determination shall not be reviewable in the debarment proceedings.

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

(d) The period of the debarment shall be for 1 year and may be extended for additional periods of 1 year if, using the procedures established pursuant to 8 U.S.C. 1324a(e), the Secretary of Homeland Security or the Attorney General determines that the organizational unit of the Federal contractor continues to be in violation of the INA employment provisions.

(e) The Administrator of General Services shall list a debarred contractor or an organizational unit thereof on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs and the contractor or an organizational unit thereof shall be ineligible to participate in any procurement or nonprocurement activities.

SEC. 5. (a) Executive departments and agencies that enter into contracts shall require, as a condition of each contract, that the contractor agree to use an electronic employment eligibility verification system designated by the Secretary of Homeland Security to verify the employment eligibility of: (i) all persons hired during the contract term by the contractor to perform employment duties within the United States; and (ii) all persons assigned by the contractor to perform work within the United States on the Federal contract.

(b) The Secretary of Homeland Security:

(i) shall administer, maintain, and modify as necessary and appropriate the electronic employment eligibility verification system designated by the Secretary under subsection (a) of this section; and

(ii) may establish with respect to such electronic employment verification system:

(A) terms and conditions for use of the system; and

(B) procedures for monitoring the use, failure to use, or improper use of the system.

(c) The Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration shall amend the Federal Acquisition Regulation to the extent necessary and appropriate to implement the debarment responsibility, the employment eligibility verification responsibility, and other related responsibilities assigned to heads of departments and agencies under this order.

(d) Except to the extent otherwise specified by law or this order, the Secretary of Homeland Security and the Attorney General:

(i) shall administer and enforce this order; and

(ii) may, after consultation to the extent appropriate with the Secretary of Defense, the Secretary of Labor, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, the Administrator for Federal Procurement Policy, and the heads of such other departments or agencies as may be appropriate, issue such rules, regulations, or orders, or establish such requirements, as may be necessary and appropriate to implement this order.

SEC. 6. Each contracting department and agency shall cooperate with and provide such information and assistance to the Secretary of Homeland Security and the Attorney General as may be required in the performance of their respective functions under this order.

SEC. 7. The Secretary of Homeland Security, the Attorney General, the Secretary of Defense, the Administrator of General Services, the Administrator of the National Aeronautics and Space Administration, and the heads of contracting departments and agencies may delegate any of their functions or duties under this order to any officer or employee of their respective departments or agencies.

SEC. 8. (a) This order shall be implemented in a manner intended to minimize the burden on participants in the Federal procurement process.

(b) This order shall be implemented in a manner consistent with the protection of intelligence and law enforcement sources, methods, and activities from unauthorized disclosure.

SEC. 9. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

§ 1324b. Unfair immigration-related employment practices

(a) Prohibition of discrimination based on national origin or citizenship status

(1) General rule

It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 1324a(h)(3) of this title) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(A) because of such individual's national origin, or

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–2], or

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) "Protected individual" defined

As used in paragraph (1), the term ''protected individual'' means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 1160(a) or 1255a(a)(1) of this title, is admitted as a refugee under section 1157 of this title, or is granted asylum under section 1158 of this title; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after November 6, 1986, and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(4) Additional exception providing right to prefer equally qualified citizens

Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

(5) Prohibition of intimidation or retaliation

It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. An individual so intimidated, threatened, coerced, or retaliated against shall be considered, for purposes of subsections (d) and (g), to have been discriminated against.

(6) Treatment of certain documentary practices as employment practices

A person's or other entity's request, for purposes of satisfying the requirements of section 1324a(b) of this title, for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1).

(b) Charges of violations

(1) In general

Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) No overlap with EEOC complaints

No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII