

110TH CONGRESS
2D SESSION

H. R. 6454

To extend and expand the E-verify program for employment eligibility confirmation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 10, 2008

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

A BILL

To extend and expand the E-verify program for employment eligibility confirmation, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may cited as the “E-Verify Extension and
5 Expansion Act of 2008.”

1 **SEC. 2. EXTENSION AND EXPANSION OF PROGRAMS.**

2 Sections 401 through 405 of the Illegal Immigration
3 Reform and Immigrant Responsibility Act of 1996 (8
4 U.S.C. 1324a note) are amended to read as follows:

5 **“SEC. 401. ESTABLISHMENT OF PROGRAMS.**

6 “(a) IN GENERAL.—The Secretary of Homeland Se-
7 curity shall conduct 2 pilot programs of employment eligi-
8 bility confirmation under this subtitle.

9 “(b) IMPLEMENTATION DEADLINE; TERMINATION.—
10 The Secretary of Homeland Security shall implement the
11 pilot programs in a manner that permits persons and
12 other entities to have elections under section 402 made
13 and in effect not later than 1 year after the date of the
14 enactment of the E-Verify Extension and Expansion Act
15 of 2008. Unless the Congress otherwise provides, the Sec-
16 retary of Homeland Security shall terminate the pilot pro-
17 grams not later than December 31, 2013.

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

21 “(1) the E-Verify pilot program (described in
22 section 403(b)) in all 50 States; and

23 “(2) the secure electronic employment
24 verification system (described in section 405) in all
25 50 States not later than December 1, 2009.

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

1 “(1) E-VERIFY PROGRAM REFERENCES.—The
2 terms ‘program’ or ‘E-Verify program’ refer to any
3 of the two E-Verify programs provided for under
4 this subtitle.

5 “(2) CONFIRMATION SYSTEM.—The term ‘con-
6 firmation system’ means the confirmation system es-
7 tablished under section 404.

8 “(3) REFERENCES TO SECTION 274A.—Any ref-
9 erence in this subtitle to section 274A (or a subdivi-
10 sion of such section) is deemed to be a reference to
11 section 274A of the Immigration and Nationality
12 Act (8 U.S.C. 1324a).

13 “(4) I-9 OR SIMILAR FORM.—The term ‘I-9 or
14 similar form’ means the form used for purposes of
15 section 274A(b)(1)(A) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1324a(b)(1)(A)), or such
17 other form as the Secretary of Homeland Security
18 determines to be appropriate.

19 “(5) LIMITED APPLICATION TO RECRUITERS
20 AND REFERRERS.—Any reference to the recruitment
21 or referral (or a recruiter or referrer) in relation to
22 employment is deemed a reference only to such re-
23 cruitment or referral (or recruiter or referrer) that
24 is subject to section 274A(a)(1)(B)(ii) of the Immi-

1 gration and Nationality Act (8 U.S.C.
2 1324a(a)(1)(B)(ii)).

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

6 “(7) STATE.—The term ‘State’ has the mean-
7 ing given such term in section 101(a)(36) of the Im-
8 migration and Nationality Act (8 U.S.C.
9 1101(a)(36)).

10 **“SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN AN**
11 **E-VERIFY PROGRAM.**

12 “(a) VOLUNTARY ELECTION.—Subject to subsection
13 (c)(3), any person or other entity that conducts any hiring
14 (or recruitment or referral) may elect to participate in the
15 E-Verify program by enrolling. Except as specifically pro-
16 vided in paragraphs (1) and (2) of subsection (d), the Sec-
17 retary of Homeland Security may not require any person
18 or other entity to participate in an E-Verify program.

19 “(b) BENEFIT OF REBUTTABLE PRESUMPTION.—

20 “(1) IN GENERAL.—If a person or other entity
21 is participating in a pilot program and obtains con-
22 firmation of identity and employment eligibility in
23 compliance with the terms and conditions of the pro-
24 gram with respect the hiring (or recruitment or re-
25 ferral) of an individual for employment in the

1 United States, or current employees pursuant to sec-
2 tion 403(a)(1)(B), the person or entity has estab-
3 lished a rebuttable presumption that the person or
4 entity has not violated section 274A(a)(1)(A) with
5 respect to such hiring (or such recruitment or refer-
6 ral).

7 “(2) CONSTRUCTION.—Paragraph (1) shall not
8 be construed as preventing a person or other entity
9 that has an election in effect under subsection (a)
10 from establishing an affirmative defense under sec-
11 tion 274A(a)(3), if the person or entity complies
12 with the requirements of section 274A(a)(1)(a) but
13 fails to obtain confirmation under paragraph (1).

14 “(3) PROTECTION FROM LIABILITY.—No person
15 or entity participating in an E-Verify program shall
16 be civilly or criminally liable under any Federal,
17 State, or local law for any action taken in good faith
18 reliance on information provided through the con-
19 firmation system.

20 “(c) GENERAL TERMS OF ELECTIONS.—

21 “(1) IN GENERAL.—An election under sub-
22 section (a) shall be in such form and manner, under
23 such terms and conditions, and shall take effect, as
24 the Secretary of Homeland Security shall specify.

25 The Secretary of Homeland Security may not im-

1 pose any fees as a condition of making an election
2 or participating in the basic E-Verify program.

3 “(2) SCOPE OF ELECTION.—Subject to para-
4 graph (3), any electing person or other entity may
5 provide that the election under subsection (a) shall
6 apply (during the period in which the election is in
7 effect)—

8 “(A) to all its hiring (and all recruitment
9 and referral; or

10 “(B) to its hiring (or recruitment or refer-
11 ral) in one or more places of hiring (or recruit-
12 ment or referral, as the case may be).

13 “(3) TERMINATION OF ELECTIONS.—The Sec-
14 retary of Homeland Security may terminate an elec-
15 tion by a person or other entity under this section
16 because the person or entity has substantially failed
17 to comply with its obligations under the program. A
18 person or other entity may terminate an election in
19 such form and manner as the Secretary of Home-
20 land Security shall specify.

21 “(d) SELECT ENTITIES REQUIRED TO PARTICIPATE
22 IN A PILOT PROGRAM.—

23 “(1) FEDERAL GOVERNMENT.—

24 “(A) EXECUTIVE DEPARTMENTS.—

1 “(i) IN GENERAL.—Each Department
2 of the Federal Government shall elect to
3 participate in an E-Verify program and
4 shall comply with the terms and conditions
5 of such an election.

6 “(ii) ELECTION.—Subject to clause
7 (iii), the Secretary of each such Depart-
8 ment—

9 “(I) shall elect the E-Verify pro-
10 gram (or programs) in which the De-
11 partment shall participate; and

12 “(II) may limit the election to
13 hiring occurring in certain States (or
14 geographic areas) and in specified di-
15 visions within the Department, as
16 long as all hiring by such divisions
17 and in such locations is covered.

18 “(iii) ROLE OF SECRETARY OF HOME-
19 LAND SECURITY.—The Secretary of Home-
20 land Security shall assist and coordinate
21 elections under this subparagraph in such
22 manner as assures that—

23 “(I) a significant portion of the
24 total hiring within each Department

1 within the United States is covered
2 under such a program; and

3 “(II) there is significant partici-
4 pation by the Federal executive
5 branch in the pilot programs.

6 “(B) LEGISLATIVE BRANCH.—Each Mem-
7 ber of Congress, each officer of Congress, and
8 the head of each agency of the legislative
9 branch, that conducts hiring shall elect to par-
10 ticipate in a pilot program, may specify which
11 pilot program or programs in which the Mem-
12 ber, officer, or agency will participate, and shall
13 comply with the terms and conditions of such
14 election.

15 “(2) APPLICATION TO CERTAIN VIOLATORS.—
16 An order under section 274A(e)(4), or section
17 274B(g) of the Immigration and Nationality Act (8
18 U.S.C. 1324b(g)), may require the subject of the
19 order to participate in, and comply with the terms
20 of, a pilot program with respect to the subject’s hir-
21 ing (or recruitment or referral) of individuals.

22 “(3) CONSEQUENCES OF FAILURE TO PARTICI-
23 PATE.—If a person other entity is required under
24 this subsection to participate in a pilot program and

1 fails to comply with the requirements of such pro-
2 gram with respect to an individual—

3 “(A) such failure shall be treated as a vio-
4 lation of section 274A(a)(1)(B) with respect to
5 that individual; and

6 “(B) a rebuttable presumption is created
7 that the person or entity has violated section
8 274A(a)(1)(A).

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

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

15 **“SEC. 403. PROCEDURES FOR PARTICIPANTS IN E-VERIFY**
16 **PROGRAMS.**

17 “(a) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
18 TEM.—

19 “(1) IN GENERAL.—The Secretary of Homeland
20 Security, in cooperation with the Commissioner of
21 Social Security, shall establish an electronic employ-
22 ment verification system (hereinafter in this subtitle
23 referred to as the ‘system’), that shall be—

24 “(A) equipped with the capacity to deter-
25 mine whether—

1 “(i) the identifying information (in-
2 cluding name, social security number, alien
3 document number, and date of birth) sub-
4 mitted by an employer with respect to each
5 employee subject to verification is con-
6 sistent with the records maintained by the
7 Secretary of Homeland Security (solely
8 with respect to aliens) and by the Commis-
9 sioner of Social Security (with respect to
10 both nationals and aliens); and

11 “(ii) the employee is authorized to be
12 employed by the employer and for what pe-
13 riod (which may be unlimited); and

14 “(B) used only to verify newly hired em-
15 ployees or current employees whose employment
16 authorization has expired or employees as to
17 whom Commissioner of Social Security has no-
18 tified the employer in writing that the employ-
19 ee’s name and corresponding social security ac-
20 count number fail to match the Social Security
21 Administration records or as to whom the De-
22 partment of Homeland Security has notified in
23 writing that the employees immigration status
24 or employment authorization document is as-
25 signed to another person or that there is no

1 agency record that the document has been as-
2 signed to any person.

3 “(b) BASIC E-VERIFY PROGRAM.—A person or other
4 entity that elects to participate in the basic E-Verify pro-
5 gram described in this subsection shall register in the sys-
6 tem and agrees to conform to the following procedures in
7 the case of the hiring (or recruitment or referral) for em-
8 ployment in the United States of each individual covered
9 by the election:

10 “(1) VERIFICATION OF EMPLOYMENT AUTHOR-
11 IZATION.—

12 “(A) IN GENERAL.—The Secretary of
13 Homeland Security shall, through the system—

14 “(i) respond to each inquiry made by
15 a registered employer through the Internet
16 or other electronic media, or over a toll-
17 free telephone line, regarding an individ-
18 ual’s identity and eligibility for employ-
19 ment in the United States; and

20 “(ii) maintain a record of each such
21 inquiry and the information provided in re-
22 sponse to such inquiry.

23 “(B) VERIFICATION BY EMPLOYER.—

24 “(i) INFORMATION REQUIRED.—A
25 registered employer shall, with respect to

1 the hiring, or recruiting or referring for a
2 fee, of any individual for employment in
3 the United States, obtain from the indi-
4 vidual—

5 “(I) the individual’s name and
6 date of birth and, if the individual
7 was born in the United States, the
8 State in which such individual was
9 born;

10 “(II) the individual’s social secu-
11 rity account number; and

12 “(III) in the case of an individual
13 who does not claim to be a national of
14 the United States, such alien identi-
15 fication or authorization number that
16 the Secretary of Homeland Security
17 shall require.

18 “(ii) DOCUMENTS REQUIRED.—The
19 employer shall require that the individual
20 produce one of the following documents
21 consistent with the status claimed by the
22 individual and bearing identifying informa-
23 tion consistent with that obtained from the
24 individual—

1 “(I) in the case of an individual
2 who is a national of the United
3 States, a United States passport or
4 driver’s license or identity card issued
5 by a State, the Commonwealth of the
6 Northern Mariana Islands or an out-
7 lying possession of the United States;

8 “(II) in the case of an alien law-
9 fully admitted for permanent resi-
10 dence in the United States, a perma-
11 nent resident card, as specified by the
12 Secretary of Homeland Security;

13 “(III) in the case of an alien who
14 is authorized under this Act or by the
15 Secretary of Homeland Security to be
16 employed in the United States, an em-
17 ployment authorization card, issued
18 by the Secretary of Homeland Secu-
19 rity that contains a photograph of the
20 individual or other identifying infor-
21 mation, including name, date of birth,
22 gender, and address and contains se-
23 curity features to make the document
24 resistant to tampering, counterfeiting,
25 and fraudulent use; and

1 “(IV) in the case of an individual
2 who is unable to obtain a document
3 described in subclause (I), (II), or
4 (III), a document designated by the
5 Secretary of Homeland Security that
6 contains a photograph of the indi-
7 vidual or other identifying informa-
8 tion, including name, date of birth,
9 gender, and address and contains se-
10 curity features to make the document
11 resistant to tampering, counterfeiting,
12 and fraudulent use.

13 “(iii) ATTESTATION.—The employer
14 shall attest, under penalty of perjury and
15 on a form or through an electronic mecha-
16 nism or telephonic connection prescribed
17 by the Secretary of Homeland Security,
18 that the employer has obtained information
19 required by clause (i) and examined a con-
20 sistent document required by clause (ii),
21 using an electronic signature or telephonic
22 identification code approved by the Sec-
23 retary of Homeland Security.

24 “(iv) SUBMISSION TO SYSTEM.—A
25 registered employer shall submit an inquiry

1 through the system to seek confirmation of
2 the individual's identity and eligibility for
3 employment in the United States—

4 “(I) anytime after the employer
5 makes an offer of employment to the
6 employee but before the end of the
7 third business day after the employee
8 has reported for duty;

9 “(II) anytime as permitted under
10 the provisions of section 403(a)(1)(B);
11 or

12 “(III) anytime at the request of
13 an employee or prospective employee
14 who wishes to make the inquiry for
15 the purpose of ascertaining the indi-
16 vidual's own eligibility for employment
17 in the United States.

18 “(C) SYSTEM SCREENING OF EMPLOY-
19 MENT ELIGIBILITY.—

20 “(i) IN GENERAL.—Not later than 3
21 days after an employer submits an inquiry
22 to the system regarding an individual, the
23 Secretary of Homeland Security shall pro-
24 vide, through the system, to the employer
25 approval or initial disapproval of the em-

1 employment of the individual in the United
2 States.

3 “(ii) REDRESS PROCEDURE.—If an
4 employer receives an initial disapproval
5 from the system for an employee, the em-
6 ployer shall inform such employee of the
7 issuance of such notice in writing on a
8 form prescribed by the Secretary of Home-
9 land Security not later than 3 days after
10 receiving such notice. Such individual shall
11 acknowledge receipt of such notice in writ-
12 ing on a form as prescribed by the Sec-
13 retary of Homeland Security.

14 “(iii) NO CONTEST.—If the individual
15 does not contest the initial disapproval no-
16 tice not later than 5 days after receiving
17 notice from the individual’s employer the
18 Secretary of Homeland Security shall no-
19 tify the employer and disapproval shall be-
20 come final and the employer shall record
21 on the system the appropriate code to indi-
22 cate the individual did not contest the ini-
23 tial disapproval. An individual’s failure to
24 contest an initial disapproval shall not be
25 considered an admission of any fact with

1 respect to any violation of this Act or any
2 other provision of law.

3 “(iv) CONTEST.—If the individual
4 contests the initial disapproval, the indi-
5 vidual shall submit appropriate information
6 to contest such notice under the proce-
7 dures established by the Secretary of
8 Homeland Security not later than 5 days
9 after receiving the notice from the individ-
10 ual’s employer.

11 “(v) PROHIBITION ON TERMI-
12 NATION.—An employer may not terminate
13 the employment of an individual based on
14 the initial disapproval if the employee con-
15 tests the disapproval and until the em-
16 ployee is given an opportunity to resolve
17 any discrepancy with the relevant govern-
18 ment agency responsible for maintaining
19 the information in question. Nothing in
20 this clause shall be interpreted as requiring
21 an employer to dismiss an employee while
22 the inquiry regarding the employee’s eligi-
23 bility for employment in the United States
24 is pending with a governmental agency.

1 “(vi) DISAPPROVAL.—The Secretary
2 of Homeland Security shall promptly re-
3 solve an individual’s contest of the initial
4 disapproval and issue either an approval or
5 disapproval. If a disapproval is issued, the
6 Secretary of Homeland Security shall give
7 notice to the employer through the system
8 and the employer shall terminate the em-
9 ployment, recruitment, or referral of the
10 individual.

11 “(vii) EMPLOYMENT AFTER DIS-
12 APPROVAL.—If the employer continues to
13 employ, recruit, or refer the individual
14 after receiving final disapproval, a rebut-
15 table presumption is created that the em-
16 ployer has violated sections 274A(a)(1)(A)
17 and 274A(a)(2), except that such presump-
18 tion shall not apply to a prosecution under
19 section 274A(f)(1).

20 “(viii) INFORMATION ON DIS-
21 APPROVED EMPLOYEES.—Such employer
22 shall provide to the Secretary of Homeland
23 Security any information relating to a dis-
24 approved employee that the Secretary of
25 Homeland Security determines would as-

1 sist the Secretary of Homeland Security in
2 enforcing or administering the immigration
3 laws.

4 “(D) ADMINISTRATIVE REVIEW OF DIS-
5 APPROVALS.—

6 “(i) IN GENERAL.—An individual who
7 is terminated from employment pursuant
8 to subparagraph (C)(vi) may, not later
9 than 60 days after the date of such termi-
10 nation, file an appeal of the disapproval
11 notice resulting in such termination.

12 “(ii) PROCEDURES.—The Secretary of
13 Homeland Security and Commissioner of
14 Social Security shall develop procedures to
15 review appeals filed under clause (i) and to
16 make final determinations on such appeals.

17 “(iii) REVIEW FOR ERRORS.—If a
18 final determination on an appeal filed
19 under clause (i) results in approval of an
20 individual’s eligibility to work in the
21 United States, the administrative review
22 process shall require the Secretary of
23 Homeland Security to determine if the
24 final disapproval notice issued for the indi-
25 vidual was the result of—

1 “(I) an error or negligence on the
2 part of an employee or official oper-
3 ating or responsible for the system;

4 “(II) the rules, processes, or pro-
5 cedures utilized by the system; or

6 “(III) erroneous system informa-
7 tion that was not the result of acts or
8 omissions of the individual.

9 “(iv) COMPENSATION FOR ERROR.—

10 “(I) IN GENERAL.—If the Sec-
11 retary of Homeland Security makes a
12 determination under this subpara-
13 graph that the final disapproval notice
14 issued for an individual was not
15 caused by an act or omission of the
16 individual, the Secretary of Homeland
17 Security shall compensate the indi-
18 vidual for lost wages.

19 “(II) CALCULATION OF LOST
20 WAGES.—Lost wages shall be cal-
21 culated based on the wage rate and
22 work schedule that prevailed prior to
23 termination. The individual shall be
24 compensated for wages lost beginning
25 on the first scheduled work day after

1 employment was terminated and end-
2 ing 180 days after completion of the
3 administrative review process de-
4 scribed in this subparagraph or the
5 day after the individual is reinstated
6 or obtains employment elsewhere,
7 whichever occurs first.

8 “(III) LIMITATION ON COM-
9 PENSATION.—For purposes of deter-
10 mining an individual’s compensation
11 for the loss of employment, such com-
12 pensation shall be reduced by any
13 compensation earned from any em-
14 ployment during such period and shall
15 not include any period in which the
16 individual as ineligible for employment
17 in the United States.

18 “(E) JUDICIAL REVIEW OF DIS-
19 APPROVALS.—

20 “(i) IN GENERAL.—After the Sec-
21 retary of Homeland Security makes a final
22 determination on an appeal filed by an in-
23 dividual under the administrative review
24 process described in subparagraph (D), the
25 individual may obtain judicial review of

1 such determination by a civil action com-
2 menced not later than 60 days after the
3 date of such decision, or such further time
4 as the Secretary of Homeland Security
5 may allow.

6 “(ii) JURISDICTION.—A civil action
7 for such judicial review shall be brought in
8 the district court of the United States for
9 the judicial district in which the plaintiff
10 resides, or has a principal place of busi-
11 ness, or, if the plaintiff does not reside or
12 have a principal place of business within
13 any such judicial district, in the District
14 Court of the United States for the District
15 of Columbia.

16 “(iii) ANSWER.—As part of the Sec-
17 retary of Homeland Security’s answer to a
18 complaint for such judicial review, the Sec-
19 retary of Homeland Security shall file a
20 certified copy of the administrative record
21 compiled during the administrative review
22 under subparagraph (C), including the evi-
23 dence received during such review. The
24 court shall have power to enter, upon the
25 pleading and administrative record, a judg-

1 ment affirming, modifying, or reversing
2 such administrative decision, with or with-
3 out remanding the matter for further pro-
4 ceedings.

5 “(iv) COMPENSATION FOR ERROR.—
6 In cases in which such judicial review re-
7 sults in a determination that compensation
8 for lost wages is due, such compensation
9 shall be computed in accordance with sub-
10 paragraph (D)(iv).

11 **“SEC. 404. DESIGN, IMPLEMENTATION, STANDARDS AND**
12 **LIMITATIONS OF EMPLOYMENT ELIGIBILITY**
13 **CONFIRMATION SYSTEM.**

14 “(a) DESIGN IN GENERAL.—Based upon rec-
15 ommendations from the National Institute of Standards
16 and Technology (NIST), the Secretary of Homeland Secu-
17 rity shall, not later than 180 days after the date of the
18 enactment of this Act, develop a system and certify a tech-
19 nology standard that can be used to verify the employment
20 eligibility of all persons applying for employment in the
21 United States by a registered employer participating in
22 an E-Verify program.

23 “(1) INTEGRATED.—The technology standard
24 developed shall be the technological basis for a cross-
25 agency, cross-platform electronic system that is a

1 cost-effective, efficient, fully integrated means to
2 share immigration and Social Security information
3 necessary to confirm the employment eligibility of all
4 persons seeking employment. The technology shall
5 benefit from the identity features utilized in driver's
6 licenses and identity cards issued by States in com-
7 pliance with title II of the REAL ID Act of 2005
8 (49 U.S.C. 30301 note). The technology shall re-
9 quire the Department of Homeland Security and So-
10 cial Security Administration to perform real-time
11 data entry of employment eligibility information that
12 is immediately available for verification purposes.
13 The technology shall ascertain when an individual's
14 name and social security number are reported by
15 multiple employers at the same time in the Social
16 Security Administration's database before a con-
17 firmation is issued as to an individual's eligibility for
18 employment.

19 “(2) FULLY ELECTRONIC SYSTEM.—The system
20 shall contain a mechanism for employers to attest to
21 their compliance with section 403(b)(1) through this
22 system and to retain an electronic record of such at-
23 testation without creation of paper records.

24 “(3) ACCESSIBLE.—The electronic system de-
25 scribed in this subsection, once implemented, shall

1 be readily and easily accessible to all participating
2 employers via internet and telephone.

3 “(4) USE OF TECHNOLOGY.—A registered em-
4 ployer shall be permitted to utilize any technology,
5 including technology that is maintained or operated
6 by the private sector, that is consistent with this sec-
7 tion and any regulation or guidance from the Sec-
8 retary of Homeland Security to streamline the pro-
9 cedures for the attestation and verification require-
10 ments as provided in this section.

11 “(5) REPORTS.—Not later than one year after
12 the date of the enactment of this Act and annually
13 thereafter, the Secretary of Homeland Security and
14 Director of NIST shall jointly report to Congress de-
15 scribing the development, implementation, efficacy,
16 necessary funding, and privacy implications of the
17 technology standard and electronic database system
18 to be developed and implemented in accordance with
19 this section.

20 “(b) IMPLEMENTATION OF THE SYSTEM.—

21 “(1) Based on the standards set forth in sub-
22 section (a), the Secretary of Homeland Security
23 shall establish a reliable, secure method to provide
24 through the system, within the time periods required
25 by this subsection—

1 “(A) a determination of whether the name
2 and identifying information and numbers pro-
3 vided in an inquiry by an employer is consistent
4 with such information maintained by the Com-
5 missioner of Social Security for nationals of the
6 United States and by the Secretary of Home-
7 land Security for aliens in order to confirm the
8 validity of the information provided; and

9 “(B) a determination of whether the indi-
10 vidual is authorized to be employed in the
11 United States by the employer submitting such
12 inquiry and for what period, which may be un-
13 limited.

14 “(2) The Secretary of Homeland Security shall
15 establish a schedule for implementation of the sys-
16 tem that is designed to assure that the capacity of
17 all aspects of the system, including the equipment
18 and personnel required to complete reviews of con-
19 tested initial disapprovals and corrections of erro-
20 neous records within the time frames required to
21 comply with time limits set by section 403(b).

22 “(3) The schedule established pursuant to this
23 subsection shall assure that all participants in the
24 E-Verify system are to be enrolled in the new system
25 not later than November 1, 2008.

1 “(4) Prior to implementing the schedule estab-
2 lished pursuant to this subsection, including each
3 phase of expansion of such schedule, the Secretary
4 of Homeland Security shall comply with the require-
5 ments of subsection (c), as determined by the Gov-
6 ernment Accountability Office (GAO) to achieve the
7 standards described in subsection (c).

8 “(c) STANDARDS FOR OPERATION OF THE SYS-
9 TEM.—

10 “(1) POLICIES AND PROCEDURES.—The Sec-
11 retary of Homeland Security and the Commissioner
12 of Social Security shall establish rules, guidelines,
13 policies, and operating and auditing procedures for
14 collecting, removing, adding, and updating data
15 maintained in the system to ensure the accuracy and
16 integrity of the data such that the operation of the
17 system shall—

18 “(A) incorporate a simple and timely meth-
19 od for correcting errors regarding immigration
20 status, work authorization, or any other rel-
21 evant data in a timely and effective manner; de-
22 termine which Government official provided the
23 data to ascertain the accuracy of such data;
24 and clarify information known to lead to errors

1 regarding immigration status, work authoriza-
2 tion, or misidentification;

3 “(B) include procedures for individuals to
4 examine their personal record for errors, seek
5 expedited corrections of data contained in the
6 system, and appeal decisions concerning data
7 contained in the system, strictly limit the agen-
8 cy personnel authorized to input data into the
9 system, and identify classes of prejudicial infor-
10 mation requiring authorization of supervisory
11 personnel before entry into the system;

12 “(C) provide 24-hour Internet and tele-
13 phonic help-desk support to answer questions
14 about the technology as well as to resolve ques-
15 tions about employment status and shall receive
16 inquiries from individuals or employers con-
17 cerning determinations made by the electronic
18 employment eligibility verification system, and
19 shall identify for an individual, at the time of
20 inquiry, the particular data that resulted in a
21 determination that the system was unable to
22 verify the individual’s identity or eligibility for
23 employment;

24 “(D) incorporate a clearinghouse bureau to
25 centralize and streamline the process through

1 which members of the public can seek to correct
2 erroneous or inaccurate information contained
3 in the system that is related to immigration
4 status or otherwise impedes the issuance of a
5 Social Security number operated under specific
6 time schedules for reviewing data correction re-
7 quests, rendering decisions on such requests,
8 and implementing appropriate correcting action
9 in a timely manner; and

10 “(E) make available or provide to employ-
11 ers, upon request, not later than 60 days prior
12 to the time such employers are required to en-
13 roll in the system, appropriate training mate-
14 rials to facilitate compliance with section
15 274A(b).

16 “(2) DATA MAINTENANCE PROCEDURES.—The
17 Secretary of Homeland Security and the Commis-
18 sioner of Social Security shall establish rules, guide-
19 lines, policies, and operating and auditing proce-
20 dures for collecting, removing, updating, and adding
21 data to the system to ensure the accuracy and integ-
22 rity of the data and to limit access to the data to
23 authorized personnel.

24 “(3) INFORMATION TO EMPLOYEE.—The Sec-
25 retary of Homeland Security shall develop a written

1 form for employers to provide to individuals who re-
2 ceive an initial or final disapproval notice. Such form
3 shall be made available in a language other than
4 English, as necessary and reasonable, and shall in-
5 clude—

6 “(A) information about the reason for such
7 notice;

8 “(B) the right to contest such notice; and

9 “(C) contact information for the appro-
10 priate agency and instructions for initiating
11 such contest.

12 “(4) PUBLIC EDUCATION.—The Secretary of
13 Homeland Security shall develop a public education
14 campaign regarding the obligations imposed on em-
15 ployees and employers by this Act, as well as tuto-
16 rials without cost to the public regarding how to use
17 the newly developed verification system. The public
18 education campaign shall be implemented no later
19 than 12 months after the enactment of this Act.

20 “(5) TRAINING AND OUTREACH.—Not later
21 than 12 months after the date of the enactment of
22 this Act, the Secretary of Homeland Security shall
23 develop and implement training on the rules, guide-
24 lines, policies, and procedures established for all per-
25 sonnel authorized to access information maintained

1 in the system. The Secretary of Homeland Security
2 shall also conduct informational seminars to partici-
3 pating employers and employees regarding the oper-
4 ation and benefits of using the verification system
5 described in this section.

6 “(6) ENUMERATION.—The Secretary of Home-
7 land Security, in consultation with the Secretary of
8 State and the Commissioner of Social Security, shall
9 establish such rules, guidelines, policies, and oper-
10 ating and auditing procedures for collecting, updat-
11 ing, and adding information to the system to ensure
12 the issuance of social security numbers to all non-
13 citizens authorized to work in the United States not
14 later than 10 days after lawful admission to the
15 United States or approval of a change of non-
16 immigrant status by the Secretary of Homeland Se-
17 curity.

18 “(7) RESPONSIBILITIES OF THE COMMISSIONER
19 OF SOCIAL SECURITY.—The Commissioner of Social
20 Security shall carry out the responsibilities set forth
21 in section 205(c)(2) of the Social Security Act (42
22 U.S.C. 405(c)(2)) in such a manner as to support
23 the operation of the verification systems established
24 in accordance with this section.

1 “(8) ANNUAL REPORT AND CERTIFICATION.—
2 Not later than January 1, 2009, and annually there-
3 after, the Secretary of Homeland Security shall sub-
4 mit to Congress a report that includes a certified de-
5 termination of the percentage of inquiries that result
6 in a final approval or disapproval notice, within the
7 period described in section 403(b)(1)(C), that are
8 not overturned in a subsequent contest of a dis-
9 approval, and if that percentage is less than 99 per-
10 cent of the cases, the steps being taken to bring the
11 percentage to 99 percent or higher within 90 days.

12 “(d) LIMITATION ON COLLECTION AND USE OF
13 DATA.—

14 “(1) LIMITATION ON COLLECTION OF DATA.—

15 “(A) IN GENERAL.—The system shall col-
16 lect and maintain only the minimum data nec-
17 essary to facilitate the successful operation of
18 the system, and in no case shall the data be
19 other than—

20 “(i) information necessary to enroll
21 employers under section 402(a);

22 “(ii) information necessary to estab-
23 lish and enforce compliance under section
24 403;

1 “(iii) information necessary to detect
2 and prevent employment related identity
3 fraud; and

4 “(iv) such other information the Sec-
5 retary of Homeland Security determines is
6 necessary, through rulemaking in accord-
7 ance with section 553 of title 5, United
8 States Code.

9 “(B) PENALTIES.—Any officer, employee,
10 or contractor who willfully and knowingly col-
11 lects and maintains data in the system other
12 than data described in subparagraph (A)(i)
13 shall be guilty of a misdemeanor and fined nor
14 more than \$1,000 for each violation.

15 “(2) LIMITATION ON USE OF DATA.—Whoever
16 willfully and knowingly accesses, discloses, or uses
17 any information obtained or maintained by the sys-
18 tem—

19 “(A) for the purpose of committing iden-
20 tity fraud, or assisting another person in com-
21 mitting identity fraud, as defined in section
22 1028 of title 18, United States Code;

23 “(B) for the purpose of unlawfully obtain-
24 ing employment in the United States for any
25 other person; or

1 tered by the Secretary or a private entity certified by the
2 Secretary that can be adopted by employers on a voluntary
3 pilot basis to comply with their obligations under section
4 403, which program shall comply with the following re-
5 quirements:

6 “(1) The system shall be based on one or more
7 technologies that have been screened and approved
8 by NIST, after consultation with employers and pro-
9 spective providers of the system technology, to meet
10 or exceed the following standards—

11 “(A) all approved technologies must be
12 interoperable such that any employer that
13 adopts participation in the system can verify
14 any prospective employee enrolled with any cer-
15 tified provider;

16 “(B) all approved technologies must be
17 based on a verification of identity, identifying
18 data, and personal traits (including biometric
19 identifiers) determined by NIST to provide a
20 high level of accuracy;

21 “(C) biometric data shall be segregated
22 and encoded such that it is separate from iden-
23 tifying information and can be linked to such
24 identifying information only through activation
25 by the subject individual voluntarily activating

1 the linkage through the verification process or
2 approved correction mechanism; and

3 “(D) databases controlled by the Secretary
4 of Homeland Security and by the Commissioner
5 of Social Security shall be maintained in a man-
6 ner to capture new entries and new status in-
7 formation in a real time manner and to interact
8 with other enrollment databases approved by
9 the Secretary of Homeland Security to keep
10 employment authorization status current on a
11 daily basis.

12 “(2) The system shall be limited in application
13 to hiring decisions made after implementation of the
14 system and specific defined circumstances of expira-
15 tion of prior authorized employment or affirmative,
16 credible evidence of lack of authorization.

17 “(3) The system shall provide for the enroll-
18 ment of prospective employees in a manner that pro-
19 vides a high level of certainty as to their true identi-
20 ties using comparison to Social Security and immi-
21 gration identifying information, forensic review of
22 identity documents, and background screening
23 verification techniques using publicly available infor-
24 mation.

1 “(4) The enrollment process shall result in the
2 association of an accurate name, date of birth, social
3 security number, and immigration identification
4 number (if any) with the established identity of each
5 enrollee.

6 “(5) The system shall provide for databases of
7 identifying information subject to privacy standards
8 established and enforced by the Secretary of Home-
9 land Security, including a requirement that biomet-
10 ric and other identifying traits of enrollees be stored
11 through an encoding process that keeps their accu-
12 rate names, dates of birth, social security numbers,
13 and immigration identification numbers (if any) sep-
14 arate except during electronic verification.

15 “(6) The system shall permit individuals to
16 specify that their enrollment be cancelled at any
17 time and all identifying information and biometrics
18 removed from the system without prejudice to future
19 enrollments.

20 “(7) The system shall provide for regular up-
21 dating at least once per business day of all records
22 contained in all provider databases with the employ-
23 ment authorization status of each enrolled indi-
24 vidual.

1 “(8) The system shall require that verification
2 be accomplished by employers after a job offer has
3 been made and accepted, but can be prior to the
4 commencement of work.

5 “(9) The system shall require that verification
6 be performed by enrolled employers or certified
7 agents using technologies approved pursuant to
8 paragraph (1) such that a secure identity and identi-
9 fying information are screened against the databases
10 of all enrolled individuals.

11 “(10) Employers shall be permitted to attest to
12 compliance with this section for employees by use of
13 any electronic program so long as such program—

14 “(A) allows the employer to complete such
15 attestation and the verification of employment
16 eligibility in a single transaction;

17 “(B) is compatible and interoperable with
18 the system; and

19 “(C) keeps an electronic record of attesta-
20 tion by employers and employees without re-
21 quiring additional paper-based forms as part of
22 the record that is retained in a manner that is
23 accessible to the Secretary of Homeland Secu-
24 rity for inspection and audit purposes.

1 “(11) Employers that elect participation in the
2 system shall arrange and pay a reasonable fee di-
3 rectly related to cost of the enrollment of any em-
4 ployee requiring verification who has not previously
5 enrolled with the Secretary or a certified provider.

6 “(12) Employers shall not be permitted to se-
7 lectively use the system for any class level or cat-
8 egory of employee, but can implement the system at
9 selected locations without implementing it at all lo-
10 cations.

11 “(13) Enrolled individuals shall be permitted to
12 access the system to verify their own employment
13 authorization and shall be provided with readily
14 available processes to correct and update their en-
15 rollment and employment authorization information.

16 “(14) Review, challenge, and anti-discrimina-
17 tion protections regarding the verification responses
18 and their uses from the system shall provide the
19 same level of rights and protections to employees as
20 those afforded under section 403.

21 “(15) Employers shall be permitted to make
22 employment decisions in reliance on the employment
23 authorization information provided by the system in
24 the same manner as provided under section 402.

1 “(16) Employers shall be immune from liability
2 under this section for all locations in which the sys-
3 tem is operated for all employment decisions made
4 in accordance with the procedures established for
5 use of the system, provided that the system is used
6 in accordance with its requirements and employment
7 decisions are not made contrary to the authorization
8 responses received.

9 “(17) No data stored pursuant to the system
10 shall be accessible to any person other than those
11 operating the system to verify employment without
12 the written consent of each enrolled individual given
13 specifically for each instance of disclosure or in re-
14 sponse to a warrant issued on the basis of probable
15 cause issued by a judicial authority in a criminal
16 proceeding.”.

17 **SEC. 3. ENHANCEMENT OF FEDERAL PREEMPTION STAND-**
18 **ARDS.**

19 Section 274A(h)(2) of the Immigration and Nation-
20 ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as
21 follows:

22 “(2) PREEMPTION.—No State or local govern-
23 ment law or contract shall—

1 “(A) impose civil or criminal sanctions
2 upon employers who employ or otherwise do
3 business with unauthorized aliens;

4 “(B) prohibit, require, authorize or permit
5 a system of verification of the authorization of
6 employees or employment applicants to accept
7 employment except as explicitly authorized by
8 Federal law;

9 “(C) require, authorize, or permit the use
10 of a federally mandated employment verification
11 system for any other purpose other than re-
12 quired by Federal law, including obtaining or
13 retaining a business or other license provided by
14 the unit of government; and

15 “(D) require employers to use an employ-
16 ment verification system for any purpose, ex-
17 cept as required by Federal law, including with-
18 out limitation such purposes as—

19 “(i) a condition of receiving a govern-
20 ment contract;

21 “(ii) a condition of receiving a busi-
22 ness license; or

23 “(iii) the basis of assessing a pen-
24 alty.”.

○