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(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R.

To amend the Social Security Act to prevent unauthorized earnings from being credited toward benefits under title II of such Act and to make improvements in provisions governing totalization agreements, to amend the Social Security Act and the Immigration and Nationality Act to prevent unauthorized employment, and to improve coordination of the provisions of such Acts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SAM JOHNSON of Texas introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Social Security Act to prevent unauthorized earnings from being credited toward benefits under title II of such Act and to make improvements in provisions governing totalization agreements, to amend the Social Security Act and the Immigration and Nationality Act to prevent unauthorized employment, and to improve coordination of the provisions of such Acts, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “New Employee
3 Verification Act of 2008”.

4 **TITLE I—ELECTRONIC**
5 **EMPLOYMENT VERIFICATION**

6 **SEC. 101. AMENDMENTS TO IMMIGRATION LAWS TO IM-**
7 **PROVE EMPLOYMENT AUTHORIZATION**
8 **VERIFICATION.**

9 (a) IN GENERAL.—

10 (1) CHANGE IN EMPLOYMENT ELIGIBILITY
11 VERIFICATION PROCESS.—Section 274A of the Im-
12 migration and Nationality Act (8 U.S.C. 1324a) is
13 amended—

14 (A) in subsection (a)(1)(B)—

15 (i) in clause (i), by striking “sub-
16 section (b)” and inserting “(b), (c), or
17 (d)”; and

18 (ii) in clause (ii), by striking “sub-
19 section (b).” and inserting “subsection (b),
20 (c), or (d).”; and

21 (B) in subsection (b), in the matter pre-
22 ceding paragraph (1), by striking “United
23 States,” and inserting “United States who is
24 subject to compliance with this subsection.”.

25 (2) VERIFICATION VIA EEVS AND SEEVS SYS-
26 TEMS.—Subsections (c) and (d) of section 274A of

1 the Immigration and Nationality Act (8 U.S.C.
2 1324a) are amended to read as follows:

3 “(c) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
4 TEM.—

5 “(1) ENROLLMENT.—

6 “(A) IN GENERAL.—Every person or other
7 entity subject to subsection (a)(1)(B), and that
8 is not in compliance with such subsection by
9 reason of compliance with subsection (d), shall
10 participate in the Electronic Employment
11 Verification System established under section
12 235(a) of the Social Security Act (the ‘EEVS’)
13 on a schedule established in accordance with
14 section 235(a)(4) of the Social Security Act
15 with respect to all hiring, recruitment, and re-
16 ferral described in subsection (a)(1)(B) occur-
17 ring after the earlier of the date on which the
18 entity—

19 “(i) is required to register under this
20 paragraph; or

21 “(ii) voluntarily registers.

22 “(B) VOLUNTARY PARTICIPATION.—The
23 Secretary of Homeland Security, in consultation
24 with the Commissioner of Social Security, may
25 permit any person or other entity subject to

1 subsection (a)(1)(B), and that is not yet re-
2 quired to participate in the EEVS under section
3 235(a)(4) of the Social Security Act to partici-
4 pate in the EEVS on a voluntary basis.

5 “(C) EXPEDITED PARTICIPATION.—The
6 Secretary of Homeland Security, on a case-by-
7 case or classwide basis, may require any person
8 or other entity subject to subsection (a)(1)(B),
9 and that is not yet required to participate in
10 the EEVS under section 235(a)(4) of the Social
11 Security Act, to participate in the EEVS (or,
12 alternatively, the Secure Employment Eligibility
13 Verification System established under section
14 235(b) of the Social Security Act (the
15 ‘SEEVS’) on an expedited basis if the Sec-
16 retary designates such person or entity as—

17 “(i) employing individuals having ac-
18 cess to locations or information that have
19 a direct impact on the security of the
20 United States; or

21 “(ii) having engaged in material viola-
22 tions of this section.

23 “(D) REQUIREMENT TO NOTIFY.—The
24 Secretary of Homeland Security shall notify
25 persons or entities required to register not less

1 than 60 days prior to the effective date of such
2 requirement through publication in the Federal
3 Register regarding the requirement for partici-
4 pation in the EEVS under subparagraphs (A)
5 and (C)(i) and by mail regarding the require-
6 ment for participation in the EEVS under sub-
7 paragraph (C)(ii). Such notice shall include the
8 training materials described in section
9 235(a)(5) of the Social Security Act.

10 “(E) REGISTRATION.—A person or other
11 entity shall register to participate in the EEVS
12 or the SEEVS in the manner prescribed by the
13 Commissioner of Social Security prior to the
14 date the person or entity is required or per-
15 mitted to submit information with respect to an
16 individual under this subsection.

17 “(F) CONSEQUENCE OF FAILURE TO PAR-
18 TICIPATE.—If a person or other entity is re-
19 quired or has elected to participate in the
20 EEVS or the SEEVS and fails to comply with
21 the requirements thereof, such failure—

22 “(i) shall be treated as a violation of
23 subsection (a)(1)(B) punishable under sub-
24 section (e)(5); and

1 “(ii) shall create a rebuttable pre-
2 sumption that the person or other entity
3 has violated subsection (a)(1)(A), except
4 that such presumption shall not apply to a
5 prosecution under subsection (f)(1).

6 “(G) PROTECTION FROM LIABILITY.—No
7 person or other entity that participates in the
8 EEVS or the SEEVS shall be liable under any
9 law for any employment-related action taken
10 with respect to an individual in reliance on in-
11 formation provided by the EEVS or the SEEVS
12 (as applicable) in connection with such partici-
13 pation, if such action is taken in accordance
14 with the requirements of this subsection, section
15 235 of the Social Security Act, and applicable
16 regulations prescribed thereunder.

17 “(H) EXCLUSIVE MEANS OF
18 VERIFICATION.—If a person or other entity is
19 required or has elected to participate in the
20 EEVS, subsections (b) and (d) shall not apply
21 to the person or other entity.

22 “(2) OBTAINING DOCUMENTS FOR EEVS.—

23 “(A) INFORMATION REQUIRED.— A person
24 or other entity registered to participate in the
25 EEVS shall, with respect to the hiring, or re-

1 cruiting or referring for a fee, any individual
2 for employment in the United States, obtain
3 from the individual—

4 “(i) the individual’s name and date of
5 birth;

6 “(ii) the individual’s social security
7 account number; and

8 “(iii) in the case of an individual who
9 does not claim to be a national of the
10 United States, such alien identification or
11 authorization number as the Secretary
12 shall require.

13 “(B) DOCUMENTS REQUIRED.—The person
14 or entity shall require that the individual
15 produce one of the following documents con-
16 sistent with the status claimed by the individual
17 and bearing identifying information consistent
18 with that obtained from the individual:

19 “(i) In the case of an individual who
20 is a national of the United States—

21 “(I) a United States passport; or

22 “(II) a driver’s license or identity
23 card, issued by a State, the Common-
24 wealth of the Northern Mariana Is-
25 lands, or an outlying possession of the

1 United States, that contains a photo-
2 graph of the individual, other identi-
3 fying information (including the indi-
4 vidual's name, date of birth, gender,
5 and address) and security features to
6 make the license or card resistant to
7 tampering, counterfeiting, and fraudu-
8 lent use.

9 “(ii) In the case of an alien lawfully
10 admitted for permanent residence in the
11 United States, a permanent resident card,
12 as specified by the Secretary, that contains
13 a photograph of the individual, other iden-
14 tifying information (including name, date
15 of birth, gender, and address), and con-
16 tains security features to make the docu-
17 ment resistant to tampering, counter-
18 feiting, and fraudulent use.

19 “(iii) In the case of an alien who is
20 authorized under the Immigration and Na-
21 tionality Act or by the Secretary of Home-
22 land Security to be employed in the United
23 States, an employment authorization card,
24 issued by the Secretary that contains a
25 photograph of the individual, other identi-

1 fying information (including name, date of
2 birth, gender, and address), and security
3 features to make the document resistant to
4 tampering, counterfeiting, and fraudulent
5 use.

6 “(iv) In the case of an individual who
7 is unable to obtain a document described
8 in clause (i), (ii), or (iii), a document des-
9 ignated by the Secretary that contains a
10 photograph of the individual, other identi-
11 fying information (including name, date of
12 birth, gender, and address) and security
13 features to make the document resistant to
14 tampering, counterfeiting, and fraudulent
15 use.

16 “(C) UNACCEPTABLE DOCUMENTS.—If the
17 Secretary finds that a document or class of doc-
18 uments described in clause (ii) is not reliable to
19 establish identity or is being used fraudulently
20 to an unacceptable degree, the Secretary shall
21 prohibit, or impose conditions, on the use of
22 such documents or class of documents for pur-
23 poses of this subsection. The Secretary shall
24 publish notice of any findings under this clause
25 in the Federal Register.

1 “(3) ATTESTATION.—A person or other entity
2 registered to participate in the EEVS shall attest,
3 under penalty of perjury using an electronic signa-
4 ture or code approved by the Commissioner of Social
5 Security through an internet or telephonic connec-
6 tion prescribed by the Commissioner, that registrant
7 has obtained the information required by paragraph
8 (2)(A) and examined a consistent document required
9 by paragraph (2)(B).

10 “(4) CONSEQUENCES OF CERTAIN EEVS DETER-
11 MINATIONS.—

12 “(A) NO CONTEST OF INITIAL DIS-
13 APPROVAL.—If an individual does not contest
14 the initial disapproval notice described in sec-
15 tion 235(a)(3)(C)(ii) of the Social Security Act
16 by the end of the 10-day period beginning on
17 the date on which the notice is received from
18 the employer, the disapproval shall become
19 final, and the employer shall, within 3 business
20 days after the end of such 10-day period, termi-
21 nate the employment, recruitment, or referral of
22 the individual by the employer.

23 “(B) PERMISSIBLE DISMISSAL.—

24 “(i) IN GENERAL.—An employer may
25 dismiss an employee if the employee fails

1 to obtain approval of employment eligibility
2 by the end of the 20-day period beginning
3 on the date on which an initial disapproval
4 notice described in section 235(a)(3)(C)(ii)
5 of the Social Security Act is received by
6 the employee. In the case of any such fail-
7 ure to obtain approval, any continued em-
8 ployment of the employee by such employer
9 shall be carried out under a consistent pol-
10 icy that treats similarly situated employees
11 in the same manner.

12 “(ii) EXCEPTION FOR RE-
13 VERIFICATION.—This subparagraph shall
14 not apply to initial disapprovals received
15 from the system in the course of re-
16 verification pursuant to subsection
17 (a)(3)(C).

18 “(iii) EXCEPTION FOR INQUIRIES
19 PENDING BEFORE GOVERNMENT AGEN-
20 CY.—Nothing in this subparagraph shall
21 be interpreted as requiring an employer to
22 dismiss an employee while the inquiry re-
23 garding the employee’s eligibility for em-
24 ployment in the United States is pending
25 with a governmental agency.

1 “(iv) PROTECTION OF OTHER CAUSES
2 FOR TERMINATION.—Nothing in this sub-
3 paragraph shall affect the right of an em-
4 ployer to terminate the employment of an
5 employee for any reason other than any
6 such failure to obtain approval of employ-
7 ment eligibility.

8 “(C) DISAPPROVAL.—In any case in which
9 a disapproval notice described in section
10 235(a)(3)(C)(v) of the Social Security Act is
11 issued, the employer shall, within 3 business
12 days after receipt of such notice, terminate the
13 employment, recruitment, or referral of the in-
14 dividual who is the subject of the notice.

15 “(D) PRESUMPTION OF VIOLATION.—If a
16 person or other entity registered to participate
17 in the EEVS continues, in violation of this
18 paragraph to employ, recruit, or refer an indi-
19 vidual, a rebuttable presumption is created that
20 the registrant has violated subsections (a)(1)(A)
21 and (a)(2) of this section, except that such pre-
22 sumption shall not apply to a prosecution under
23 subsection (f)(1) of this section.

24 “(d) SECURE EMPLOYMENT ELIGIBILITY
25 VERIFICATION SYSTEM.—

1 “(1) IN GENERAL.—Beginning with the first
2 day of operation of the SEEVS a person or other
3 entity subject to subsection (a)(1)(B) of this section
4 may elect to comply with such subsection by partici-
5 pating in the SEEVS. Such participation shall be in
6 lieu of participation in the EEVS established under
7 section 235(a) of the Social Security Act. Such par-
8 ticipation shall be subject to the requirements of sec-
9 tion 235(b) of such Act and the regulations issued
10 under such section.

11 “(2) REQUIREMENT TO NOTIFY.—The Sec-
12 retary of Homeland Security shall notify persons or
13 entities subject to subsection (a)(1)(B) about the op-
14 portunity to participate in the SEEVS not less than
15 60 days prior to the first day of operation of the
16 system.

17 “(3) PRESUMPTION.—Participation in SEEVS
18 by an employer that follows the required procedures
19 of the system shall create a presumption that the
20 employer has not violated the requirements of this
21 Act with respect to its hiring decisions, which pre-
22 sumption shall only be overcome by clear and con-
23 vincing evidence of willful noncompliance resulting in
24 the hiring of an unauthorized employee.

1 “(4) EXCLUSIVE MEANS OF VERIFICATION.—If
2 a person or other entity is required or has elected
3 to participate in the SEEVS, subsections (b) and (c)
4 shall not apply to the person or other entity.

5 “(5) COMPLIANCE WITH EEVS REQUIREMENTS
6 UPON TERMINATION OF ELECTION.—If a person or
7 other entity terminates its election to participate in
8 the SEEVS, the person or entity shall be subject to
9 compliance with subsection (c) with respect to all
10 employment actions beginning on the date of such
11 termination.”.

12 (b) ENHANCEMENT OF FEDERAL PREEMPTION
13 STANDARDS.—Section 274A(h)(2) of the Immigration and
14 Nationality Act (8 U.S.C. 1324a(h)(2)) is amended to
15 read as follows:

16 “(2) PREEMPTION; NO NATIONAL IDENTIFICA-
17 TION CARD.—

18 “(A) PREEMPTION.—The provisions of this
19 section preempt any provision of any law of any
20 State or political subdivision thereof or any con-
21 tract entered into by any State or political sub-
22 division thereof which—

23 “(i) imposes civil or criminal sanctions
24 upon employers for actions governed by the
25 Act;

1 “(ii) requires, authorizes or permits a
2 system of verification of the immigration
3 status of employees or employment appli-
4 cants;

5 “(iii) requires, authorizes, or permits
6 the use of a federally mandated employ-
7 ment verification system for any other pur-
8 pose other than that required by Federal
9 law, including verifying status of renters,
10 determining eligibility for receipt of bene-
11 fits, enrollment in school, obtaining or re-
12 taining a business or other license provided
13 by the unit of government, or conducting a
14 background check; or

15 “(iv) requires or prohibits the use of
16 an immigration status employment
17 verification system for any purpose, except
18 as required by Federal law, including with-
19 out limitation, such purposes as—

20 “(I) a condition of receiving a
21 government contract;

22 “(II) a condition of receiving a
23 business license; or

24 “(III) the basis of assessing a
25 penalty.

1 “(B) NO AUTHORIZATION OF NATIONAL
2 IDENTIFICATION CARD.—Nothing in this sec-
3 tion shall be construed to authorize, directly or
4 indirectly, the issuance or use of national iden-
5 tification cards or the establishment of a na-
6 tional identification card.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) REPEAL OF PILOT PROGRAMS FOR EMPLOY-
9 MENT ELIGIBILITY CONFIRMATION.—Subtitle A of
10 title IV of the Illegal Immigration Reform and Im-
11 migrant Responsibility Act of 1996 (division C of
12 Public Law 104-208; 8 U.S.C. 1324a note) is re-
13 pealed.

14 (2) CONSTRUCTION.—Nothing in this sub-
15 section or in section 274A of the Immigration and
16 Nationality Act (8 U.S.C. 1324a), as amended by
17 this section, may be construed to limit the authority
18 of the Secretary of Homeland Security to allow or
19 continue to allow the participation of employers who
20 participated in a pilot program under subtitle A of
21 title IV of the Illegal Immigration Reform and Im-
22 migrant Responsibility Act of 1996 (division C of
23 Public Law 104-208; 8 U.S.C. 1324a note) to par-
24 ticipate in the Electronic Employment Verification
25 System established under subsection (a) of section

1 235 of the Social Security Act or the Secure Em-
2 ployment Eligibility Verification System established
3 under subsection (b) of such section.

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on the date of the enactment
6 of this Act, except that subsection (c)(1) shall not take
7 effect until employers who participated in a pilot program
8 under subtitle A of title IV of the Illegal Immigration Re-
9 form and Immigrant Responsibility Act of 1996 (division
10 C of Public Law 104-208; 8 U.S.C. 1324a note) are able
11 to participate in the Electronic Employment Verification
12 System established under subsection (a) of section 235 of
13 the Social Security Act or the Secure Employment Eligi-
14 bility Verification System established under subsection (b)
15 of such section.

16 (e) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to the Secretary of
18 Homeland Security such sums as may be necessary to
19 carry out the amendments made by this section.

20 **SEC. 102. AMENDMENTS TO SOCIAL SECURITY ACT TO IM-**
21 **PROVE EMPLOYMENT AUTHORIZATION**
22 **VERIFICATION.**

23 (a) AMENDMENT TO TITLE II.—

1 (1) IN GENERAL.—Title II of the Social Secu-
2 rity Act (42 U.S.C. 401 et seq.) is amended by add-
3 ing at the end the following new section:

4 “ELECTRONIC EMPLOYMENT VERIFICATION
5 “SEC. 235. (a) ELECTRONIC EMPLOYMENT
6 VERIFICATION SYSTEM.—

7 “(1) IN GENERAL.—The Commissioner of So-
8 cial Security, in cooperation and consultation with
9 the Secretary of Health and Human Services, Sec-
10 retary of Homeland Security, the States, and the
11 Advisory Panel created in subsection (c) of this sec-
12 tion, shall establish an Electronic Employment
13 Verification System (the ‘EEVS’) utilizing informa-
14 tion in the National Directory of New Hires (estab-
15 lished pursuant to section 453(i)). The EEVS
16 shall—

17 “(A) be accessible over the Internet and a
18 toll-free telephone line maintained by the Com-
19 missioner; and

20 “(B) have the capacity to determine
21 whether—

22 “(i) identifying information with re-
23 spect to an individual, submitted by the
24 subject employer, is consistent with the in-
25 formation maintained by the Commissioner
26 (with respect to both citizens and nationals

1 of the United States) and by the Secretary
2 of Homeland Security (solely with respect
3 to aliens); and

4 “(ii) the individual is a citizen or na-
5 tional or is not an unauthorized alien (as
6 defined in section 274A(h)(3) of the Immi-
7 gration and Nationality Act (8 U.S.C.
8 1324a(h)(3))) with respect to the employ-
9 ment.

10 “(2) SUBJECT EMPLOYER.—For purposes of
11 this section, the term ‘subject employer’ means, in
12 connection with any individual, an employer (within
13 the meaning of section 453A(a)(2)(B)(i)) of such in-
14 dividual and includes any person who recruits or re-
15 fers for employment such individual for a fee.

16 “(3) VERIFICATION OF EMPLOYMENT AUTHOR-
17 IZATION.—

18 “(A) IN GENERAL.—The Commissioner
19 shall, through the EEVS—

20 “(i) respond to each inquiry regarding
21 an individual’s identifying information and
22 eligibility for employment in the United
23 States for the subject employer, as re-
24 corded in the information maintained by
25 the Commissioner or the Secretary of

1 Homeland Security as appropriate, and in-
2 clude in the response the time period
3 (which may be unlimited) for which the in-
4 dividual is authorized to be employed in
5 the United States by such employer, as so
6 recorded; and

7 “(ii) maintain a record of each such
8 inquiry and the information provided in re-
9 sponse to such inquiry.

10 “(B) SUBMISSION TO SYSTEM.—

11 “(i) IN GENERAL.—A subject em-
12 ployer shall submit an inquiry through the
13 EEVS to seek confirmation of an individ-
14 ual’s identifying information and eligibility
15 for employment in the United States—

16 “(I) in the case of hiring subject
17 to clause (i) of section 274A(a)(1)(B)
18 of the Immigration and Nationality
19 Act (8 U.S.C. 1324a(a)(1)(B)), dur-
20 ing the period beginning on the date
21 of hire and ending at the end of the
22 third business day after the employee
23 has reported for duty; and

24 “(II) in the case of recruitment
25 or referral for a fee subject to clause

1 (ii) of such section, not later than the
2 first day of such recruitment or refer-
3 ral.

4 “(ii) REQUIRED INFORMATION.—Such
5 inquiry shall include—

6 “(I) the individual’s name and
7 date of birth;

8 “(II) the individual’s social secu-
9 rity account number;

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

15 “(C) EEVS SCREENING OF EMPLOYMENT
16 ELIGIBILITY.—

17 “(i) IN GENERAL.—As soon as pos-
18 sible, but not later than 3 days after a
19 subject employer submits an inquiry to the
20 EEVS regarding an individual, the EEVS
21 shall provide to the subject employer,
22 through the EEVS, approval or initial dis-
23 approval of the employment of the indi-
24 vidual in the United States.

1 “(ii) INITIAL DISAPPROVAL.— If a
2 subject employer receives an initial dis-
3 approval from the system for an individual,
4 the subject employer shall notify such indi-
5 vidual of the issuance of such disapproval
6 in writing, on the form described in para-
7 graph (5)(E), not later than 3 days after
8 receiving such notice. Such individual shall
9 acknowledge receipt of such notice in writ-
10 ing on a form prescribed by the Commis-
11 sioner. The Commissioner shall provide the
12 individual an opportunity to contest the
13 initial disapproval, and the notification of
14 the individual by the subject employer shall
15 include a description of the individual’s
16 right to contest such disapproval.

17 “(iii) CONTEST.—If the individual
18 contests the initial disapproval, the indi-
19 vidual shall submit appropriate information
20 to contest such notice under the proce-
21 dures established by the Commissioner, in
22 consultation with the Secretary of Home-
23 land Security, not later than 10 days after
24 receiving the notice from the subject em-
25 ployer.

1 “(iv) NO CONTEST.—If the individual
2 does not contest the initial disapproval no-
3 tice by the end of the 10-day period begin-
4 ning on the date on which the notice is re-
5 ceived from the subject employer, the dis-
6 approval shall become final, and the sub-
7 ject employer shall record on the system
8 the appropriate code, in accordance with
9 regulations of the Commissioner, to indi-
10 cate the individual did not contest the ini-
11 tial disapproval. An individual’s failure to
12 contest an initial disapproval shall not be
13 considered an admission of any fact with
14 respect to any violation of this title, the
15 Immigration and Nationality Act, or any
16 other provision of law.

17 “(v) DISAPPROVAL.—The Commis-
18 sioner, in consultation with the Secretary
19 of Homeland Security, shall ensure prompt
20 resolution of the individual’s contest of the
21 initial disapproval and issue either an ap-
22 proval or disapproval notice to the subject
23 employer through the EEVS.

24 “(D) ADMINISTRATIVE REVIEW OF DIS-
25 APPROVALS.—

1 “(i) IN GENERAL.—An individual who
2 is terminated from employment pursuant
3 to subparagraph (B) or (C) of section
4 274A(c)(4) of the Immigration and Na-
5 tionality Act may, not later than 30 days
6 after the date of such termination, file an
7 appeal of the disapproval notice resulting
8 in such termination.

9 “(ii) PROCEDURES.—The Commis-
10 sioner and the Secretary of Homeland Se-
11 curity shall jointly develop procedures to
12 review appeals filed under clause (i) and—

13 “(I) with respect to disapprovals
14 based on information maintained by
15 the Commissioner, the appeal shall be
16 filed with the Commissioner and the
17 Commissioner shall make the final de-
18 terminations; and

19 “(II) with respect to disapprovals
20 based on information maintained by
21 the Secretary of Homeland Security,
22 the appeal shall be filed with the Sec-
23 retary of Homeland Security and the
24 Secretary shall make the final deter-
25 minations on such appeals and pro-

1 vide certification of such final deter-
2 minations to the Commissioner.

3 “(iii) REVIEW FOR ERRORS.—If a
4 final determination on an appeal filed
5 under clause (i) results in approval of an
6 individual’s eligibility to work in the
7 United States, the Commissioner (in the
8 case of a final determination under clause
9 (ii)(I)) or the Secretary of Homeland Secu-
10 rity (in the case of a final determination
11 under clause (ii)(II)) shall determine if the
12 final disapproval notice issued for the indi-
13 vidual was the result of an act or omission
14 that was the responsibility of the individual
15 or from another cause.

16 “(iv) COMPENSATION FOR ERRORS.—

17 “(I) IN GENERAL.—In any case
18 in which the Commissioner makes a
19 determination under this subpara-
20 graph that the disapproval notice
21 issued for an individual was caused by
22 a negligent, reckless, willful, or mali-
23 cious act of the Government and was
24 not caused by an act or omission that
25 was the responsibility of the indi-

1 vidual, or the Secretary of Homeland
2 Security provides to the Commissioner
3 certification of such a determination
4 pursuant to clause (ii)(II), the Com-
5 missioner shall certify to the Treasury
6 the amount of the lost wages and the
7 Secretary of the Treasury shall com-
8 pensate the individual for such lost
9 wages from the general fund of the
10 Treasury.

11 “(II) CALCULATION OF LOST
12 WAGES.—Lost wages shall be cal-
13 culated based on the wage rate and
14 work schedule that prevailed prior to
15 termination. The individual shall be
16 compensated for wages lost beginning
17 on the first scheduled work day after
18 employment was terminated and end-
19 ing 180 days after completion of the
20 administrative review process de-
21 scribed in this paragraph or the day
22 after the individual is reinstated or
23 obtains employment elsewhere, which-
24 ever occurs first.

1 “(III) LIMITATION ON COM-
2 PENSATION.—For purposes of deter-
3 mining an individual’s compensation
4 for the loss of employment, such com-
5 pensation shall be reduced by any
6 compensation earned from any em-
7 ployment during such period and shall
8 not include any period in which the
9 individual was ineligible for employ-
10 ment in the United States.

11 “(E) JUDICIAL REVIEW OF DIS-
12 APPROVALS.—

13 “(i) IN GENERAL.—An individual may
14 obtain judicial review of a final determina-
15 tion under subparagraph (D) by a civil ac-
16 tion commenced not later than 30 days
17 after the date of such determination.

18 “(ii) JURISDICTION.—A civil action
19 for such judicial review shall be brought in
20 the district court of the United States for
21 the judicial district in which the plaintiff
22 resides, or has a principal place of busi-
23 ness, or, if the plaintiff does not reside or
24 have a principal place of business within
25 any such judicial district, in the District

1 Court of the United States for the District
2 of Columbia.

3 “(iii) ANSWER.—A certified copy of
4 the administrative record compiled during
5 the administrative review under subpara-
6 graph (D), including the evidence received
7 during such review, shall be filed in such
8 civil action. The court shall have power to
9 enter, upon the pleadings and administra-
10 tive record, a judgment affirming, modi-
11 fying or reversing such administrative deci-
12 sion, with or without remanding the matter
13 for further proceedings.

14 “(iv) COMPENSATION FOR ERROR.—
15 In cases in which such judicial review re-
16 sults in a determination that compensation
17 for lost wages is due, such compensation
18 shall be computed and paid in accordance
19 with subparagraph (D)(iv).

20 “(4) IMPLEMENTATION OF THE EEVS.—

21 “(A) IN GENERAL.—The Commissioner
22 shall establish a schedule for implementation of
23 the EEVS that is designed to assure that the
24 capacity of all aspects of the EEVS, including
25 the equipment and personnel required to com-

1 plete reviews of contested initial disapprovals
2 and corrections of erroneous records, within the
3 time limits established by subparagraphs (C)
4 and (D) of paragraph (3).

5 “(B) PRIORITIES.—The schedule estab-
6 lished pursuant to subparagraph (A) shall be
7 established based on the priority of maximizing
8 the deterrent effect on illegal migration and un-
9 authorized employment on the most expeditious
10 basis possible.

11 “(C) BASIC PILOT PARTICIPANTS.—The
12 schedule established pursuant to subparagraph
13 (A) shall assure that all participants in the
14 basic pilot program for employment eligibility
15 verification described in section 403(a) of the
16 Illegal Immigration Reform and Immigrant Re-
17 sponsibility Act of 1996 (8 U.S.C. 1324a note)
18 are registered in the EEVS as soon as feasible
19 after the date of the enactment of the New Em-
20 ployee Verification Act of 2008.

21 “(D) ALL OTHERS.—Every person that is
22 a subject employer with respect to one or more
23 individuals as of the date of enactment of the
24 New Employee Verification Act of 2008 shall be
25 required to register in the EEVS, or be compli-

1 ant under subsection (b) of this section, not
2 later than 36 months after such date.

3 “(5) STANDARDS FOR OPERATION.—

4 “(A) POLICIES AND PROCEDURES.—The
5 Commissioner, the Secretary of Homeland Se-
6 curity, and the Secretary of Health and Human
7 Services shall establish procedures for col-
8 lecting, updating, removing, and adding data to
9 the EEVS to ensure the accuracy and integrity
10 of the data and to limit access to the data to
11 authorized personnel.

12 “(B) PUBLIC EDUCATION.—Not later than
13 6 months before the first registration date, the
14 Commissioner, in cooperation with the Sec-
15 retary of Health and Human Services, the Sec-
16 retary of Homeland Security, and the States,
17 shall develop a public education campaign re-
18 garding the obligations imposed by this section,
19 as well as instructional materials provided with-
20 out cost to the public regarding how to use the
21 EEVS.

22 “(C) REGISTRANT TRAINING.—Not later
23 than 6 months before the first registration date,
24 the Commissioner, in cooperation with the Sec-
25 retary of Homeland Security, the Secretary of

1 Health and Human Services, and the States,
2 shall institute a comprehensive program of out-
3 reach and training for employers regarding the
4 operation and benefits of using the verification
5 systems described in this section and informing
6 them of ongoing assistance resources for the
7 implementation and use of such systems.

8 “(D) EEVS REQUIREMENTS.—The Com-
9 missioner and the Secretary of Homeland Secu-
10 rity shall ensure the following:

11 “(i) The EEVS—

12 “(I) is fully integrated across ap-
13 propriate agencies;

14 “(II) is accessible to all reg-
15 istered employers via internet and
16 telephone;

17 “(III) allows for real-time data
18 entry; and

19 “(IV) contains a mechanism for
20 subject employers to attest to their
21 compliance.

22 “(ii) Timely entry and access of all
23 EEVS data.

24 “(iii) A method to correct relevant
25 EEVS data on a timely basis.

1 “(iv) Secure procedures for individ-
2 uals to examine their records, request ex-
3 pedited corrections of errors, and appeal
4 disapprovals concerning EEVS data under
5 appeal procedures developed jointly by the
6 Commissioner and the Secretary of Home-
7 land Security.

8 “(v) Procedures limiting agency and
9 contractor personnel authorized to enter
10 EEVS data.

11 “(vi) A 24-hour internet and tele-
12 phonic help-desk is available to respond to
13 questions about the use of the system.

14 “(E) NOTICES TO EMPLOYEES.—The Com-
15 missioner, in consultation with the Secretary of
16 Homeland Security, shall develop a written
17 form for employers to provide to individuals for
18 whom they receive an initial disapproval and
19 disapproval notices that shall include—

20 “(i) in the case of an initial dis-
21 approval—

22 “(I) the right to contest such ini-
23 tial disapproval; and

24 “(II) contact information for ini-
25 tiating such contest, including the ap-

1 appropriate agency to contact and the
2 procedures to follow in doing so; and
3 “(ii) in the case of a disapproval, the
4 right to appeal the disapproval, including
5 the appropriate agency to contact and the
6 procedures to follow in doing so.

7 “(F) ADDITIONAL RESPONSIBILITIES OF
8 COMMISSIONER IN SUPPORT OF THE EEVS.—
9 The Commissioner shall establish—

10 “(i) a reliable, secure method for de-
11 termining, through the EEVS—

12 “(I) whether the name, date of
13 birth, and social security account
14 number of an individual provided in
15 an inquiry made to the EEVS by an
16 employer is consistent with such infor-
17 mation maintained by the Commis-
18 sioner;

19 “(II) the citizenship status asso-
20 ciated with such name and social se-
21 curity account number, according to
22 the records maintained by the Com-
23 missioner;

24 “(III) whether the name and
25 number belongs to an individual who

1 is deceased or a child under the age of
2 seven, to the records maintained by
3 the Commissioner;

4 “(IV) whether the name belongs
5 to an individual whose record has a
6 fraud indicator; and

7 “(V) whether the name and num-
8 ber is blocked in accordance with
9 paragraph (7); and

10 “(ii) in consultation with the Sec-
11 retary of Homeland Security, a reliable, se-
12 cure method for an individual to verify
13 such individual’s own eligibility for employ-
14 ment in the United States.

15 “(G) ANNUAL REPORT AND CERTIFI-
16 CATION.—Not later than 24 months after the
17 date of the enactment of the New Employee
18 Verification Act of 2008, and annually there-
19 after, the Commissioner, in cooperation with
20 the Secretary of Homeland Security, shall sub-
21 mit to the Congress a report that includes—

22 “(i) a certified determination of the
23 percentage of inquiries to the EEVS and
24 SEEVS that result in a final approval or
25 disapproval notice, within the applicable

1 period described in paragraph (3)(C), that
2 are not overturned in a subsequent appeal,
3 and if that percentage is less than 99 per-
4 cent of the cases, the steps being taken to
5 bring the percentage to 99 percent or high-
6 er within specified time frames; and

7 “(ii) an assessment of the privacy and
8 security of the EEVS and SEEVS.

9 “(6) LIMITATION ON COLLECTION AND USE OF
10 DATA.—

11 “(A) COLLECTION.—

12 “(i) IN GENERAL.—The EEVS shall
13 collect and maintain only the minimum
14 data necessary to facilitate the successful
15 operation of the EEVS, and in no case
16 shall the data be other than information
17 necessary—

18 “(I) to register subject employ-
19 ers;

20 “(II) to initiate and respond to
21 inquiries or contests;

22 “(III) to establish and enforce
23 compliance with paragraphs (3) and
24 (4); or

1 “(IV) to detect and prevent em-
2 ployment related identity fraud.

3 “(ii) PENALTIES.—Any officer, em-
4 ployee, or contractor who willfully and
5 knowingly collects and maintains data in
6 the EEVS other than data described in
7 clause (i) shall be, for each such violation,
8 guilty of a misdemeanor and, upon convic-
9 tion, fined as provided in title 18, United
10 States Code, imprisoned for not more than
11 1 year, or both.

12 “(B) USE.—Whoever willfully and know-
13 ingly accesses, discloses, or uses any informa-
14 tion obtained or maintained by the EEVS—

15 “(i) for the purpose of committing
16 identity fraud, or assisting another person
17 in committing identity fraud, as defined in
18 section 1028 of title 18, United States
19 Code;

20 “(ii) for the purpose of unlawfully ob-
21 taining employment in the United States
22 or unlawfully obtaining employment in the
23 United States for any other person; or

24 “(iii) for any purpose other than as
25 provided for under any provision of law,

1 shall be guilty of a felony and upon conviction
2 shall be fined under title 18, United States
3 Code, or be imprisoned for not more than 5
4 years, or both.

5 “(C) EXCEPTIONS.—Nothing in subpara-
6 graph (A) or (B) may be construed to limit the
7 collection, maintenance, or use of data by the
8 Commissioner of Internal Revenue or the Com-
9 missioner of Social Security as provided by law.

10 “(7) RIGHT TO BLOCK USE OF NUMBER.—The
11 Commissioner shall establish procedures under which
12 an individual who has been assigned a social security
13 account number may block the use of such number
14 under the EEVS and may remove any such block.

15 “(b) SECURE EMPLOYMENT ELIGIBILITY
16 VERIFICATION SYSTEM.—

17 “(1) IN GENERAL.—Not later than 18 months
18 after the date of the enactment of the New Em-
19 ployee Verification Act of 2008, the Commissioner
20 shall, after consultation with the Secretary of Home-
21 land Security, the Director of the National Institute
22 of Standards and Technology, and the Employment
23 Verification Advisory Panel established under para-
24 graph (5), establish by regulation a Secure Employ-
25 ment Eligibility Verification System (referred to in

1 this subsection as the ‘SEEVS’). The purpose of the
2 SEEVS shall be to provide for identity authentica-
3 tion and employment eligibility verification with re-
4 spect to enrolled new employees which shall be avail-
5 able to subject employers who elect to participate in
6 the SEEVS in lieu of the EEVS. Any subject em-
7 ployer may cancel the employer’s participation in the
8 SEEVS after one year after electing to participate.

9 “(2) MINIMUM REQUIREMENTS.—In accordance
10 with the regulations prescribed by the Commissioner
11 pursuant to paragraph (1)—

12 “(A) IDENTITY AUTHENTICATION AND EM-
13 PLOYMENT ELIGIBILITY VERIFICATION BY EN-
14 ROLLMENT PROVIDERS.—The SEEVS shall uti-
15 lize the services of private sector entities (here-
16 inafter in this subsection referred to as ‘enroll-
17 ment providers’), with appropriate expertise,
18 which shall be subject to initial and periodic
19 certification by the Commissioner, to provide—

20 “(i) enrollment under the SEEVS of
21 new employees by means of identity au-
22 thentication in a manner that provides a
23 high level of certainty as to their true iden-
24 tities, using immigration and identifying
25 information maintained by the Social Secu-

1 rity Administration and the Department of
2 Homeland Security, review of identity doc-
3 uments, and background screening
4 verification techniques using publicly avail-
5 able information;

6 “ (ii) protection of the authenticated
7 information through biometric technology;
8 and

9 “ (iii) verification of employment eligi-
10 bility of such new employees.

11 “(B) DATABASE MANAGEMENT.—The
12 SEEVS shall provide for databases of identi-
13 fying information which may be retained by the
14 enrollment providers. Databases controlled by
15 the Commissioner and Secretary of Homeland
16 Security shall be maintained in a manner to
17 capture new entries and new status information
18 in a timely manner and to interact with the pri-
19 vate enrollment databases to keep employment
20 authorization status and identifying information
21 current on a daily basis. The information main-
22 tained in such databases shall be subject to the
23 requirements established pursuant to paragraph
24 (5), except that—

1 “(i) use of the data shall be limited to
2 obtaining employment eligibility
3 verification only, unless the new employee
4 consents to use the data for other pur-
5 poses, as provided in regulations prescribed
6 by the Commissioner, and

7 “(ii) other identifying traits of the
8 new employees shall be stored through an
9 encoding process that keeps their accurate
10 names, dates of birth, social security num-
11 bers, and immigration identification num-
12 bers (if any) separate, except during elec-
13 tronic verification.

14 “(C) ACCESSIBILITY TO EMPLOYERS.—
15 Availability of data maintained in the SEEVS
16 shall be managed so that any subject employer
17 who participates in the SEEVS can obtain
18 verification with respect to any new employee
19 enrolled with any enrollment provider serving in
20 the SEEVS.

21 “(D) LIMITATIONS RELATING TO BIOMET-
22 RIC DATA.—Any biometric data maintained in
23 the SEEVS relating to any new employee shall
24 be—

1 “(i) encrypted and segregated from
2 identifying information relating to the new
3 employee, and

4 “(ii) maintained and linked to identi-
5 fying information relating to the new em-
6 ployee only by consent of the new employee
7 for the purpose of verifying employment
8 eligibility or approved correction processes
9 or for other purposes specifically author-
10 ized by the employee as provided in regula-
11 tions prescribed by the Commissioner.

12 “(E) ACCURACY OF ASSOCIATION OF DATA
13 WITH ENROLLED NEW EMPLOYEES.—The en-
14 rollment process under the SEEVS shall be
15 managed, in the case of each new employee en-
16 rolled in the SEEVS, so as to result in the ac-
17 curate association of data consisting of name,
18 date of birth, Social Security number, and im-
19 migration identification number (if any) with
20 the established identity of the new employee.

21 “(F) LIMITATIONS ON ACCESSIBILITY OF
22 INFORMATION.—Data stored in SEEVS relat-
23 ing to any enrolled new employee shall not be
24 accessible to any person other than those oper-
25 ating the SEEVS and for the sole purpose of

1 identity authentication and employment eligi-
2 bility verification in connection with the new
3 employee, except—

4 “(i) by the written consent of the new
5 employee given specifically for each in-
6 stance or category of disclosure for any
7 other purpose as provided in regulations
8 prescribed by the Commissioner, or

9 “(ii) in response to a warrant issued
10 by a judicial authority of competent juris-
11 diction in a criminal proceeding.

12 “(G) PUBLIC EDUCATION.—The Commis-
13 sioner shall conduct a program of ongoing, com-
14 prehensive public education campaign relating
15 to the SEEVS.

16 “(3) EMPLOYER RESPONSIBILITIES.—Under
17 the regulations prescribed by the Commissioner pur-
18 suant to paragraph (1)—

19 “(A) USE LIMITED TO ENROLLED NEW
20 EMPLOYEES.—Use of the SEEVS by subject
21 employers participating in the SEEVS shall be
22 limited to use in connection with the hiring of
23 new employees occurring after their enrollment
24 in the SEEVS.

1 “(B) USE FOR LIMITED PERIOD.—Use of
2 the SEEVS by any subject employer partici-
3 pating in the SEEVS in connection with any
4 new employee may occur only during the period
5 beginning on the date of hire and ending at the
6 end of the third business day after the employee
7 has reported for duty. Use of the SEEVS with
8 respect to recruitment or referral for a fee may
9 occur only until the first day of such recruit-
10 ment or referral.

11 “(C) RESPONSIBILITY OF EMPLOYERS TO
12 ENROLL NEW EMPLOYEES.—In connection with
13 the hiring by any subject employer of a new
14 employee who has not been previously enrolled
15 in the SEEVS, enrollment of the new employee
16 shall occur only upon application by the subject
17 employer submitted to an enrollment provider,
18 together with payment of any costs associated
19 with the enrollment.

20 “(D) LIMITATIONS ON SELECTIVE USE.—
21 No subject employer may use the SEEVS selec-
22 tively to verify any class, level, or category of
23 new employees. Nothing in this subparagraph
24 shall be construed to preclude subject employers
25 from utilizing the SEEVS in connection with

1 hiring at selected employment locations without
2 implementing such usage at all locations of the
3 employer.

4 “(4) EMPLOYEE PROTECTIONS.—Under regula-
5 tions prescribed by the Commissioner pursuant to
6 paragraph (1)—

7 “(A) ACCESS FOR EMPLOYEES TO COR-
8 RECT AND UPDATE INFORMATION.—Employees
9 enrolled in the SEEVS shall be provided access
10 to the SEEVS to verify information relating to
11 their employment authorization and readily
12 available processes to correct and update their
13 enrollment information and information relating
14 to employment authorization.

15 “(B) SAME RIGHTS AND PROTECTIONS AS
16 THOSE PROVIDED UNDER THE EEVS.—Employ-
17 ees shall be provided the same rights and pro-
18 tections in connection with responses to inquir-
19 ies under the SEEVS relating to identity au-
20 thentication or employment eligibility
21 verification as are afforded under subsection
22 (a).

23 “(C) RIGHT TO CANCEL ENROLLMENT.—
24 Each employee enrolled in the SEEVS shall
25 have the right to cancel such employee’s enroll-

1 ment at any time and to have all identifying in-
2 formation and biometrics in connection with
3 such employee removed from the SEEVS with-
4 out prejudice to future enrollments.

5 “(5) MAINTENANCE OF SECURITY AND CON-
6 FIDENTIALITY OF INFORMATION.—

7 “(A) IN GENERAL.—Every person who is a
8 subject employer participating in the SEEVS or
9 an officer or contractor of such a subject em-
10 ployer and who has access to any information
11 obtained at any time from the Social Security
12 Administration shall maintain the security and
13 confidentiality of such information. No such
14 person may disclose any file, record, report,
15 paper, or other item containing information so
16 obtained at any time by any such person from
17 the Commissioner of Social Security or from
18 any officer or employee of the Social Security
19 Administration except as the Commissioner of
20 Social Security may by regulations prescribe or
21 as otherwise provided by Federal law.

22 “(B) PENALTY FOR DISCLOSURE IN VIOLA-
23 TION OF SUBPARAGRAPH (A).—Any person de-
24 scribed in subparagraph (A) who violates sub-
25 paragraph (A) shall be guilty of a felony and,

1 upon conviction thereof, shall be punished by a
2 fine not exceeding \$10,000 for each occurrence
3 of a violation, or by imprisonment not exceeding
4 5 years, or both.

5 “(C) PENALTY FOR KNOWING DISCLOSURE
6 OF FRAUDULENT INFORMATION.—Any person
7 who willfully and knowingly accesses, discloses,
8 or uses any information which such person pur-
9 ports to be information obtained as described in
10 subparagraph (A) knowing such information to
11 be false shall be guilty of a felony and, upon
12 conviction thereof, shall be punished by a fine
13 not exceeding \$10,000 for each occurrence of a
14 violation, or by imprisonment not exceeding 5
15 years, or both.

16 “(D) RESTITUTION.—

17 “(i) IN GENERAL.—Any Federal
18 court, when sentencing a defendant con-
19 victed of an offense under this paragraph,
20 may order, in addition to or in lieu of any
21 other penalty authorized by law, that the
22 defendant make restitution to the victims
23 of such offense specified in clause (ii). Sec-
24 tions 3612, 3663, and 3664 of title 18,
25 United States Code, shall apply with re-

1 spect to the issuance and enforcement of
2 orders of restitution to victims of such of-
3 fense under this subparagraph. If the court
4 does not order restitution, or orders only
5 partial restitution, under this subsection,
6 the court shall state on the record the rea-
7 sons therefor.

8 “(ii) VICTIMS SPECIFIED.—The vic-
9 tims specified in this clause are the fol-
10 lowing:

11 “(I) Any individual who suffers a
12 financial loss as a result of the disclo-
13 sure described in subparagraph (B) or
14 (C)

15 “(II) The Commissioner of Social
16 Security, to the extent that the disclo-
17 sure described in subparagraph (B) or
18 (C) results in the inappropriate pay-
19 ment of a benefit by the Commis-
20 sioner.

21 “(iii) DEPOSIT IN THE TRUST FUNDS
22 OF AMOUNTS PAID AS RESTITUTION TO
23 THE COMMISSIONER.—Funds paid to the
24 Commissioner as restitution pursuant to a
25 court order under this subparagraph shall

1 be deposited in the Federal Old-Age and
2 Survivors Insurance Trust Fund or the
3 Federal Disability Insurance Trust Fund,
4 as appropriate.

5 “(c) CREATION OF EMPLOYMENT VERIFICATION AD-
6 VISORY PANEL.—

7 “(1) IN GENERAL.—Not later than 180 days
8 after the date of the enactment of the New Em-
9 ployee Verification Act of 2008, the Commissioner
10 shall establish an Employment Verification Advisory
11 Panel (hereinafter in this subsection referred to as
12 the ‘Advisory Panel’).

13 “(2) MEMBERSHIP.—The Advisory Panel
14 should consist of members appointed by the Com-
15 missioner, after consulting with the Secretary of
16 Homeland Security, the Secretary of the Treasury,
17 the Director of National Institutes of Standards and
18 Technology, and other appropriate Federal agencies.
19 Such members should include representatives from
20 appropriate Federal agencies and private sector rep-
21 resentatives of affected industries and groups, in-
22 cluding human resource, employer and employee or-
23 ganizations, experts in fields including database se-
24 curity, biometrics, and privacy.

1 “(3) FUNCTIONS.—The Advisory Panel shall
2 advise the Commissioner and the Secretary of
3 Homeland Security on the implementation and de-
4 ployment of the verification systems established
5 under this section, including—

6 “(A) the best means of promoting effi-
7 ciency, responsiveness, accuracy, public edu-
8 cation, user support, interoperability, and cost-
9 effectiveness of the systems established under
10 this section;

11 “(B) best practices and procedures in
12 order to protect the privacy and identities of in-
13 dividuals enrolled in the systems established
14 under this section;

15 “(C) standards of database accuracy, error
16 rates, privacy, and measurable compliance that
17 should be met before implementation begins
18 and before each additional phase of implemen-
19 tation; and

20 “(D) the best means by which data ob-
21 tained through the EEVS and the SEEVS may
22 be used to timely improve the accuracy of data-
23 bases maintained by the Commissioner and the
24 Secretary of Homeland Security.

1 “(4) TERMINATION.—The Advisory Panel shall
2 terminate 5 years after the date of the enactment of
3 this Act.”.

4 (2) AUTHORIZATION OF APPROPRIATIONS AND
5 LIMITATION OF RESPONSIBILITIES.—

6 (A) AUTHORIZATION.—There are author-
7 ized to be appropriated to the Commissioner of
8 Social Security such sums as may be necessary
9 to carry out the amendments made by this sec-
10 tion.

11 (B) LIMITATION.—The Commissioner of
12 Social Security may carry out the Commis-
13 sioner’s responsibilities under the amendment
14 made by paragraph (1) only to the extent that
15 funds are appropriated in advance to cover the
16 Commissioner’s full costs in carrying out such
17 responsibilities. In no case shall funds from the
18 Federal Old-Age and Survivors Insurance Trust
19 Fund or the Federal Disability Insurance Trust
20 Fund be used to carry out such responsibilities.

21 (b) AMENDMENTS RELATING TO PROVISION OF IN-
22 FORMATION BY EMPLOYERS TO THE STATE DIRECTORY
23 OF NEW HIRES.—Section 453A(b) of the Social Security
24 Act (42 U.S.C. 653a(b)) is amended—

1 (1) in paragraph (1)(A), by striking “and social
2 security number of the employee” and inserting
3 “date of birth, and social security number (or such
4 alien identification or authorization number as the
5 Secretary of Homeland Security shall require) of the
6 employee, the date the employee first reported for
7 duty”; and

8 (2) in paragraph (2), by striking “—” and all
9 that follows and inserting “not later than the 3rd
10 business day after the employee first reported for
11 duty.”.

12 **SEC. 103. ANTIDISCRIMINATION PROTECTIONS.**

13 (a) APPLICATION OF PROHIBITION OF DISCRIMINA-
14 TION TO VERIFICATION SYSTEM.—Section 274B(a) of the
15 Immigration and Nationality Act (8 U.S.C. 1324b(a)) is
16 amended—

17 (1) in paragraph (1)—

18 (A) in the matter preceding subparagraph
19 (A), by inserting “, the verification of the indi-
20 vidual’s work authorization through the Elec-
21 tronic Employment Verification System de-
22 scribed in section 235(a) of the Social Security
23 Act or the Secure Employment Eligibility
24 Verification System described in section 235(b)

1 of such Act,” after “the individual for employ-
2 ment”; and

3 (B) in subparagraph (B), by striking “in
4 the case of a protected individual (as defined in
5 paragraph (3)),”; and

6 (2) by amending paragraph (3) to read as fol-
7 lows:

8 “(3) ANTIDISCRIMINATION REQUIREMENTS OF
9 THE ELECTRONIC EMPLOYMENT VERIFICATION SYS-
10 TEM AND THE SECURE EMPLOYMENT ELIGIBILITY
11 VERIFICATION SYSTEM.—

12 “(A) IN GENERAL.—It is an unfair immi-
13 gration-related employment practice for a per-
14 son or other entity, in the course of partici-
15 pating in the Electronic Employment
16 Verification System described in section 235(a)
17 of the Social Security Act or the Secure Em-
18 ployment Eligibility Verification System de-
19 scribed in section 235(b) of such Act—

20 “(i) to terminate or undertake any ad-
21 verse employment action due to an initial
22 disapproval or disapproval unless author-
23 ized or required under such sections;

1 “(ii) to use the verification system for
2 screening of an applicant prior to an offer
3 of employment; or

4 “(iii) except as described in sub-
5 sections (a)(3)(C) and (b)(4)(A) of section
6 235 of such Act, to use the verification
7 system for a current employee after the
8 first day of employment, or for the re-
9 verification of an employee after the em-
10 ployee has satisfied the process described
11 in subsection (a) or (b) of section 235 of
12 such Act.

13 “(iv) to require an individual to make
14 an inquiry under the self-verification proce-
15 dures established under section
16 235(b)(5)(A) of such Act.

17 “(B) PREEMPLOYMENT SCREENING AND
18 BACKGROUND CHECK.—Nothing in subpara-
19 graph (A) shall be construed to preclude a pre-
20 employment screening or background check that
21 is required or permitted under any other provi-
22 sion of law.

23 “(C) RE-VERIFICATION.—A person or
24 other entity, in the course of participating in
25 the Electronic Employment Verification System

1 described in section 235(a) of the Social Secu-
2 rity Act, shall not repeat the verification proc-
3 ess established by such section unless—

4 “(i) the previously approved period of
5 employment provided by the system has ex-
6 pired, or

7 “(ii) if such person or other entity is
8 the most recent such person or other entity
9 in connection with the employee, the Com-
10 missioner of Social Security, in cooperation
11 with the Secretary of Homeland Security,
12 has provided specific notice to re-verify the
13 employee based on specific information
14 about the employee’s authorization to be
15 employed by such person or entity.”.

16 (b) INCREASE IN CIVIL MONEY PENALTIES.—Section
17 274B(g)(2)(B)(iv) of such Act (8 U.S.C.
18 1324b(g)(2)(B)(iv)) is amended—

19 (1) in subclause (I), by striking “\$250 and not
20 more than \$2,000” and inserting “\$1,000 and not
21 more than \$4,000”;

22 (2) in subclause (II), by striking “\$2,000 and
23 not more than \$5,000” and inserting “\$4,000 and
24 not more than \$10,000”;

1 (3) in subclause (III), by striking “\$3,000 and
2 not more than \$10,000” and inserting “\$6,000 and
3 not more than \$20,000”; and

4 (4) in subclause (IV), by striking “\$100 and
5 not more than \$1,000” and inserting “\$500 and not
6 more than \$5,000”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of the enactment
9 of this Act and shall apply to violations occurring on or
10 after such date.

11 **SEC. 104. PENALTIES.**

12 Section 274A of the Immigration and Nationality Act
13 (8 U.S.C. 1324a) is amended—

14 (1) in subsection (e)(4)—

15 (A) in subparagraph (A), in the matter be-
16 fore clause (i), by inserting “, subject to para-
17 graphs (10) through (12),” after “in an
18 amount”;

19 (B) in subparagraph (A)(i), by striking
20 “not less than \$250 and not more than
21 \$2,000” and inserting “not less than \$5,000
22 and not more than \$7,500”;

23 (C) in subparagraph (A)(ii), by striking
24 “not less than \$2,000 and not more than

1 \$5,000” and inserting “not less than \$10,000
2 and not more than \$15,000”;

3 (D) in subparagraph (A)(iii), by striking
4 “not less than \$3,000 and not more than
5 \$10,000” and inserting “not less than \$25,000
6 and not more than \$40,000”; and

7 (E) by amending subparagraph (B) to read
8 as follows:

9 “(B) may require the person or entity to
10 take such other remedial action as is appro-
11 priate.”;

12 (2) in subsection (e)(5)—

13 (A) by inserting “, subject to paragraphs
14 (10) through (12),” after “in an amount”;

15 (B) by striking “\$100” and inserting
16 “\$1,000”;

17 (C) by striking “\$1,000” and inserting
18 “\$25,000”;

19 (D) by striking “the size of the business of
20 the employer being charged, the good faith of
21 the employer” and inserting “the good faith of
22 the employer being charged”; and

23 (E) by adding at the end the following sen-
24 tence: “Failure by a person or entity to utilize
25 the employment eligibility verification system as

1 required by law, or providing information to the
2 system that the person or entity knows or rea-
3 sonably believes to be false, shall be treated as
4 a violation of subsection (a)(1)(A).”;

5 (3) by adding at the end of subsection (e) the
6 following new paragraphs:

7 “(10) MITIGATION OF CIVIL MONEY PENALTIES
8 FOR SMALLER EMPLOYERS.—In the case of imposi-
9 tion of a civil penalty under paragraph (4)(A) with
10 respect to a violation of subsection (a)(1)(A) or
11 (a)(2) for hiring or continuation of employment by
12 an employer and in the case of imposition of a civil
13 penalty under paragraph (5) for a violation of sub-
14 section (a)(1)(B) for hiring by an employer, the dol-
15 lar amounts otherwise specified in the respective
16 paragraph shall be reduced as follows:

17 “(A) In the case of an employer with an
18 average of fewer than 26 full-time equivalent
19 employees (as defined by the Secretary of
20 Homeland Security), the amounts shall be re-
21 duced by 60 percent.

22 “(B) In the case of an employer with an
23 average of at least 26, but fewer than 101, full-
24 time equivalent employees (as so defined), the
25 amounts shall be reduced by 40 percent.

1 “(C) In the case of an employer with an
2 average of at least 101, but fewer than 251,
3 full-time equivalent employees (as so defined),
4 the amounts shall be reduced by 20 percent.

5 The last sentence of paragraph (4) shall apply under
6 this paragraph in the same manner as it applies
7 under such paragraph.

8 “(11) EXEMPTION FROM PENALTY FOR INITIAL
9 GOOD FAITH VIOLATION.—In the case of imposition
10 of a civil penalty under paragraph (4)(A) with re-
11 spect to a violation of subsection (a)(1)(A) or (a)(2)
12 for hiring or continuation of employment or recruit-
13 ment or referral by person or entity and in the case
14 of imposition of a civil penalty under paragraph (5)
15 for a violation of subsection (a)(1)(B) for hiring or
16 recruitment or referral by a person or entity, the
17 penalty otherwise imposed shall be waived if the vio-
18 lator establishes that it was the first such violation
19 of such provision by the violator and the violator
20 acted in good faith.

21 “(12) SAFE HARBOR FOR CONTRACTORS.—A
22 person or other entity shall not be liable for a pen-
23 alty under paragraph (4)(A) with respect to the vio-
24 lation of subsection (a)(1)(A), (a)(1)(B), or (a)(2)
25 with respect to the hiring or continuation of employ-

1 ment of an unauthorized alien by a subcontractor of
2 that person or entity unless the person or entity
3 knew that the subcontractor hired or continued to
4 employ such alien in violation of such subsection.”;

5 (4) by amending paragraph (1) of subsection (f)
6 to read as follows:

7 “(1) CRIMINAL PENALTY.—Any person or enti-
8 ty which engages in a pattern or practice of viola-
9 tions of subsection (a)(1) or (2) shall be fined not
10 more than \$50,000 for each unauthorized alien with
11 respect to which such a violation occurs, imprisoned
12 for not less than one year, or both, notwithstanding
13 the provisions of any other Federal law relating to
14 fine levels.”; and

15 (5) in subsection (f)(2), by striking “Attorney
16 General” each place it appears and inserting “Sec-
17 retary of Homeland Security”.

18 **SEC. 105. ANNUAL GAO STUDY AND REPORT.**

19 (a) REQUIREMENT.—The Comptroller General of the
20 United States shall conduct an annual study of the Em-
21 ployment Eligibility Verification System described in sec-
22 tion 235(a) of the Social Security Act as added by this
23 Act (hereinafter in the Act referred to as the “EEVS”)
24 and the Secure Employment Eligibility Verification Sys-
25 tem described in section 235(b) of such Act as added by

1 this Act (hereinafter in the Act referred to as the
2 “SEEVS”).

3 (b) PURPOSE.—The study shall evaluate the accu-
4 racy, efficiency, integrity, and impact of the EEVS and
5 the SEEVS.

6 (c) REPORT.—Not later than the date that is 15
7 months after the date of the enactment of this Act, and
8 annually thereafter, ending once the System has been fully
9 implemented for 5 years, the Comptroller General shall
10 submit to the Congress a report containing the findings
11 of the study carried out under this section. Each such re-
12 port shall include, at a minimum, the following:

13 (1) An assessment of the EEVS and SEEVS
14 performance with respect to the rate at which indi-
15 viduals who are eligible for employment in the
16 United States are correctly approved within the time
17 periods specified in section 235(a)(3)(B) of the So-
18 cial Security Act.

19 (2) An assessment of the privacy and security
20 of the EEVS and the SEEVS and its effects on
21 identity fraud or the misuse of personal data.

22 (3) An assessment of the effects of the EEVS
23 and SEEVS on the employment of unauthorized
24 aliens (as defined in section 274A(h)(3) of the Im-
25 migration and Nationality Act).

1 (4) An assessment of the effects of the EEVS
2 and the SEEVS, including the effects of initial dis-
3 approvals on unfair immigration-related employment
4 practices, and employment discrimination based on
5 national origin or citizenship status.

6 (5) An assessment of the effects of the EEVS
7 and SEEVS on employers.

8 (6) An assessment of whether the Secretary and
9 the Commissioner of Social Security have adequate
10 resources to carry out the duties and responsibilities
11 set forth in section 235 of the Social Security Act.

12 **SEC. 106. DISCLOSURE TO THE SECRETARY OF HOMELAND**
13 **SECURITY OF INFORMATION IN THE NA-**
14 **TIONAL DIRECTORY OF NEW HIRES ABOUT**
15 **EMPLOYERS WITH THE GREATEST NUMBER**
16 **OR PERCENTAGE OF EMPLOYEES WITH MIS-**
17 **MATCHED SOCIAL SECURITY INFORMATION.**

18 (a) IN GENERAL.—Section 453(j) of the Social Secu-
19 rity Act (42 U.S.C. 653(j)) is amended by adding at the
20 end the following:

21 “(11) DISCLOSURE TO SECRETARY OF HOME-
22 LAND SECURITY OF INFORMATION ABOUT EMPLOY-
23 ERS WITH THE GREATEST NUMBER OR PERCENTAGE
24 OF EMPLOYEES WITH MISMATCHED SOCIAL SECUR-
25 ITY INFORMATION.—

1 “(A) DISCLOSURE REQUIREMENT.—

2 “(i) IN GENERAL.—Within 4 months
3 after the Secretary receives from the Sec-
4 retary of Homeland Security, in accord-
5 ance with clause (ii) of this subparagraph,
6 a written request for the information de-
7 scribed in subparagraph (B), the Secretary
8 shall disclose the information to the Sec-
9 retary of Homeland Security, based on the
10 information available on new hires for the
11 12 months preceding compilation of infor-
12 mation in response to the request.

13 “(ii) SUNSET.—A request is received
14 in accordance with this clause if the re-
15 quest is received in the 3-year period that
16 begins with the date of the enactment of
17 this paragraph.

18 “(B) INFORMATION TO BE DISCLOSED.—
19 The information described in this subparagraph
20 is the following:

21 “(i) TOP 1,000 EMPLOYERS WITH
22 GREATEST NUMBER OF EMPLOYEES WITH
23 MISMATCHED SOCIAL SECURITY INFORMA-
24 TION.—The name, taxpayer identification
25 number, and address of each employer who

1 is among the 1,000 employers ranked high-
2 est under subparagraph (C)(i), and the
3 total number of mismatches with respect to
4 the employees of each such employer. If
5 there is more than 1 employer so ranked
6 1,000th, then such information with re-
7 spect to all employers so ranked shall be
8 included.

9 “(ii) TOP 1,000 EMPLOYERS WITH
10 GREATEST PERCENTAGE OF EMPLOYEES
11 WITH MISMATCHED SOCIAL SECURITY IN-
12 FORMATION.—The name, taxpayer identi-
13 fication number, and address of each em-
14 ployer who is among the 1,000 employers
15 ranked highest under subparagraph (C)(ii),
16 the total number of mismatches with re-
17 spect to the employees of each such em-
18 ployer, and the total percentage of the em-
19 ployees of each such employer with respect
20 to whom there is a mismatch. If there is
21 more than 1 employer so ranked 1,000th,
22 then such information with respect to all
23 employers so ranked shall be included.

24 “(iii) TOP 500 EMPLOYERS WITH
25 GREATEST NUMBER OF EMPLOYEES WITH

1 SAME REPORTED SOCIAL SECURITY NUM-
2 BERS.—The name, taxpayer identification
3 number, and address of each employer who
4 is among the 500 employers ranked high-
5 est under subparagraph (C)(iii), and the
6 total number of employees of each such
7 employer who have the same social security
8 account number as another employee of
9 the employer. If there is more than 1 em-
10 ployer so ranked 500th, then such informa-
11 tion with respect to all employers so
12 ranked shall be included.

13 “(C) RANKINGS OF EMPLOYERS.—

14 “(i) RANKING BY NUMBER OF MIS-
15 MATCHED EMPLOYEES.—The Secretary
16 shall assign a rank to each employer with
17 respect to whom there is new hire informa-
18 tion which has been submitted to the Na-
19 tional Directory of New Hires, based on
20 the number of employees of the employer
21 with respect to whom there is a mismatch,
22 as described in clause (iv). The Secretary
23 shall assign a rank of 1 to the employer
24 with the greatest number of such employ-
25 ees, and a lower rank to employers with

1 lesser numbers of such employees. The
2 Secretary shall assign the same rank to
3 employers with the same number of such
4 employees.

5 “(ii) RANKING BY PERCENTAGE OF
6 MISMATCHED EMPLOYEES.—The Secretary
7 shall assign a rank to each employer with
8 respect to whom there is new hire informa-
9 tion which has been submitted to the Na-
10 tional Directory of New Hires, based on
11 the percentage of employees of the em-
12 ployer with respect to whom there is a mis-
13 match, as described in clause (iv). The
14 Secretary shall assign a rank of 1 to the
15 employer with the greatest percentage of
16 such employees, and a lower rank to em-
17 ployers with lesser percentages of such em-
18 ployees. The Secretary shall assign the
19 same rank to employers with the same per-
20 centage of such employees.

21 “(iii) RANKING BY NUMBER OF EM-
22 PLOYEES WITH SAME SOCIAL SECURITY
23 ACCOUNT NUMBER.—The Secretary shall
24 assign a rank to each employer with re-
25 spect to whom there is new hire informa-

1 tion which has been submitted to the Na-
2 tional Directory of New Hires, based on
3 the number of employees of the employer
4 whose social security account number re-
5 ported to the National Directory of New
6 Hires is the same as the social security ac-
7 count number of another employee of the
8 employer, so reported. The Secretary shall
9 assign a rank of 1 to the employer with the
10 greatest number of such employees, and a
11 lower rank to employers with lesser num-
12 bers of such employees. The Secretary
13 shall assign the same rank to employers
14 with the same number of such employees.

15 “(iv) MISMATCHES.—For purposes of
16 this paragraph, there is a mismatch with
17 respect to an employee if the Secretary de-
18 termines that—

19 “(I) the social security account
20 number of the employee, as reported
21 to the National Directory of New
22 Hires (taking into account possible
23 correction by the Social Security Ad-
24 ministration), is invalid; or

1 “(II) the name and social secu-
2 rity account number of the employee,
3 as so reported (taking into account
4 such possible correction), do not
5 match the name and social security
6 account number of the employee in
7 the records of the Social Security Ad-
8 ministration.

9 “(D) LIMITATION ON USE OF DISCLOSED
10 INFORMATION.—The Secretary of Homeland
11 Security may use the information disclosed pur-
12 suant to subparagraph (A) of this paragraph
13 only for the purpose of establishing and enforce-
14 ing compliance with the Immigration and Na-
15 tionality Act.

16 “(E) CONDITION ON DISCLOSURE.—The
17 Secretary shall make a disclosure in accordance
18 with subparagraph (A) only to the extent that
19 the Secretary determines that the disclosure
20 would not interfere with the effective operation
21 of the program under this part.

22 “(F) REIMBURSEMENT OF HHS COSTS.—
23 The Secretary of Homeland Security shall reim-
24 burse the Secretary, in accordance with sub-
25 section (k)(3), for the costs incurred by the

1 Secretary in making the disclosures required by
2 subparagraph (A) of this paragraph.”.

3 (b) CONFORMING AMENDMENT TO IEVS.—

4 (1) IN GENERAL.—Section 1137(a)(3) of such
5 Act (42 U.S.C. 1320b–7(a)(3)) is amended by in-
6 serting “(including the full name and social security
7 account number of, and the aggregate wages paid to,
8 each employee during the reporting period, and the
9 name, address, and Federal employer identification
10 number of each employer reporting wages)” after
11 “quarterly wage reports”.

12 (2) EFFECTIVE DATE.—The amendment made
13 by paragraph (1) shall take effect 180 days after the
14 date of the enactment of this Act.

15 **TITLE II—OASDI BENEFITS**

16 **SEC. 201. DENIAL OF CREDIT TOWARD BENEFITS FOR** 17 **EARNINGS FROM UNAUTHORIZED WORK.**

18 (a) IN GENERAL.—Section 214 of the Social Security
19 Act (42 U.S.C. 414) is amended by adding at the end the
20 following:

21 “(d)(1) No quarters of coverage shall be credited for
22 purposes of this section or section 223(a)(1)(A) for any
23 calender year in the case of any individual if—

1 “(A) on the last day of such year, such indi-
2 vidual is not a citizen or national of the United
3 States, and

4 “(B) the Secretary of Homeland Security deter-
5 mines, pursuant to paragraph (2), that such indi-
6 vidual was not authorized to be employed in the
7 United States during any portion of such calender
8 year.

9 “(2)(A) The Secretary of Homeland Security shall
10 enter into an agreement with the Commissioner to provide,
11 in a form and manner specified by the Commissioner, such
12 information as the Commissioner determines necessary to
13 carry out the limitations on crediting quarters of coverage
14 for years under paragraph (1).

15 “(B) For the purpose of carrying out the Secretary’s
16 duties under subparagraph (A), the Secretary of Home-
17 land Security shall, in consultation with the Commis-
18 sioner, develop and maintain the following information:

19 “(i) The name, social security account number,
20 and date of birth of each individual who is author-
21 ized by the Secretary of Homeland Security or the
22 Secretary of State to be employed in the United
23 States.

24 “(ii) The date on which each such authorization
25 is granted.

1 “(iii) The date on which each such authoriza-
2 tion is revoked or terminated.

3 “(iv) The date of naturalization for each indi-
4 vidual who becomes a naturalized citizen of the
5 United States.

6 “(C) The information provided to the Commissioner
7 under subparagraph (A) relating to years in which an indi-
8 vidual was not authorized to be employed in the United
9 states during any portion of a year shall be the final deter-
10 mination of the Secretary of Homeland Security after an
11 opportunity for review or appeal under procedures which
12 shall be established by the Secretary of Homeland Security
13 and shall not be reviewable by the Commissioner.

14 “(3) Paragraph (1) shall not apply with respect to
15 an individual who was assigned a social security account
16 number prior to the date of the enactment of the New
17 Employee Verification Act of 2008.”.

18 (b) DISREGARD OF EARNINGS FOR YEARS FOR
19 WHICH NO QUARTER OF COVERAGE MAY BE CRED-
20 ITED.—Section 215(e) of such Act (42 U.S.C. 415(e)) is
21 amended—

22 (1) by striking “and” at the end of paragraph
23 (1);

24 (2) by striking the period at the end of para-
25 graph (2) and inserting “; and”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(3) in computing the average indexed monthly
4 earnings of an individual, there shall not be counted
5 any annual wages or self-employment income for any
6 year for which no quarter of coverage may be cred-
7 ited to such individual as a result of the application
8 of section 214(d)(1).”.

9 (c) TRANSMISSION OF INFORMATION FROM COMMIS-
10 SIONER TO SECRETARY.—Section 205(c)(2) of such Act
11 (42 U.S.C. 405(c)(2)) is amended by adding at the end
12 the following new subparagraph:

13 “(I) The Commissioner and the Secretary of Home-
14 land Security shall enter into an agreement to establish
15 a system to transmit to the Secretary of Homeland Secu-
16 rity any social security account number assigned to an in-
17 dividual after the date of the enactment of the New Em-
18 ployee Verification Act of 2008, and other identifying in-
19 formation relating to such individual, in any case in which
20 such individual is not a citizen or national of the United
21 States at the time of the assignment of such number to
22 such individual. The Secretary of Homeland Security shall
23 incorporate such number and other identifying informa-
24 tion into all records of the Department of Homeland Secu-
25 rity maintained with respect to such individual.”.

1 (d) EFFECTIVE DATES.—

2 (1) Section 214(d)(1) of the Social Security Act
3 (added by subsection (a)) shall be effective with re-
4 spect to quarters of coverage credited for calendar
5 years commencing after the date on which the Sec-
6 retary of Homeland Security and the Commissioner
7 certify, by publication in the Federal Register, that
8 the system for developing and maintaining informa-
9 tion pursuant to section 214(d)(2)(B) of the Social
10 Security Act (added by subsection (a)) is oper-
11 ational.

12 (2) The Commissioner of Social Security and
13 the Secretary of Homeland Security shall enter into
14 the agreement described in section 205(c)(2) of the
15 Social Security Act (added by subsection (c)) not
16 later than 180 days after the date of the enactment
17 of this Act.

18 **SEC. 202. IMPROVEMENTS IN PROVISIONS GOVERNING TO-**
19 **TALIZATION AGREEMENTS.**

20 (a) ADDITIONAL INFORMATION REQUIRED IN DOCU-
21 MENT TRANSMITTING TOTALIZATION AGREEMENTS TO
22 THE CONGRESS.—

23 (1) IN GENERAL.—Section 233(e)(1) of the So-
24 cial Security Act (42 U.S.C. 433(e)(1)) is amended
25 to read as follows:

1 “(e)(1) Any agreement to establish a totalization ar-
2 rangement entered into pursuant to this section (and any
3 such agreement to amend a totalization arrangement)
4 shall be transmitted by the President to each House of
5 the Congress together with a report by the President in
6 support of such agreement. The President’s report shall
7 include the following:

8 “(A) an identification and assessment by the
9 Commissioner of Social Security of the major risks
10 associated with entering into such an agreement
11 with such other country, including an assessment
12 of—

13 “(i) the integrity of such other country’s
14 data and records on births, deaths, marriages,
15 divorces, earnings, and other information affect-
16 ing eligibility for benefits or benefit amounts,
17 and

18 “(ii) the potential for fraudulent receipt of
19 benefits under this title and how any such po-
20 tential fraud would be mitigated;

21 “(B) the number of individuals who are United
22 States citizens estimated by the Chief Actuary of the
23 Social Security Administration to be affected by the
24 agreement;

1 “(C) the number of individuals who are not
2 United States citizens estimated by the Chief Actu-
3 ary to be affected by the agreement;

4 “(D) the Chief Actuary’s estimate of any result-
5 ing reduction in liability for taxes or contributions
6 and increases in benefit payments, under the social
7 security system established by this title and the so-
8 cial security system of such other country, of—

9 “(i) individuals who are United States citi-
10 zens and their employers, and

11 “(ii) individuals who are not United States
12 citizens and their employers;

13 “(E) the Chief Actuary’s estimate of the effect
14 of the agreement, in the short term and in the long
15 term, on the receipts and disbursements under the
16 social security system established by this title; and

17 “(F) an analysis by the Chief Actuary of the
18 sensitivity of the estimates of the Chief Actuary to
19 alternative assumptions with respect to economic
20 and demographic variables.”.

21 (2) EFFECTIVE DATE.—The amendment made
22 by this subsection shall apply with respect to agree-
23 ments, establishing totalization arrangements pursu-
24 ant to section 233 of the Social Security Act, which

1 are transmitted to the Congress on or after the date
2 of the enactment of this Act.

3 (b) APPROVAL OF TOTALIZATION AGREEMENTS BY
4 JOINT RESOLUTION.—

5 (1) IN GENERAL.—Section 233(e) of such Act
6 (42 U.S.C. 433(e)) is amended by striking para-
7 graph (2) and inserting the following new para-
8 graphs:

9 “(2)(A) Except as provided in paragraph (4) or (5),
10 the agreement transmitted to the Congress pursuant to
11 paragraph (1) may enter into force according to its terms
12 or upon the expiration of the period of 60 calendar days
13 following the date of its transmittal to each House of the
14 Congress (excluding Saturdays, Sundays, holidays, and
15 days on which either House of Congress is not in session),
16 whichever is later.

17 “(B) Whenever a document setting forth an agree-
18 ment entered into under this section and the President’s
19 report in support of the agreement is transmitted to the
20 Congress pursuant to paragraph (1), copies of such docu-
21 ment shall be delivered to both Houses of Congress on
22 the same day and shall be delivered to the Clerk of the
23 House of Representatives if the House is not in session
24 and to the Secretary of the Senate if the Senate is not
25 in session.

1 “(3)(A) Any document setting forth an agreement en-
2 tered into under this section and transmitted to each
3 House of the Congress pursuant to paragraph (1) shall
4 set forth a determination of the Chief Actuary of the So-
5 cial Security Administration as to whether there is ex-
6 pected, over the 75-year period following the date of the
7 entry into force of the agreement, a net reduction in any
8 positive actuarial balance for such period of the social se-
9 curity system established by this title (or a net increase
10 in any negative actuarial balance for such period for such
11 system) attributable to the operation of such agreement
12 equal to at least 0.005 percent of the present value of tax-
13 able payroll for such period.

14 “(B) For purposes of this paragraph—

15 “(i) The term ‘actuarial balance’ means, with
16 respect to a period, the difference between the ad-
17 justed summarized income rate over such period and
18 the adjusted summarized cost rate over such period.

19 “(ii) The term ‘taxable payroll’ means, for a pe-
20 riod, the total wages (as defined in section 209) to
21 be paid, and self-employment income (as defined in
22 section 211(b)) to be derived, during such period.

23 “(iii) The term ‘adjusted summarized income
24 rate’ means, over a period, the ratio (expressed as
25 a percentage) of the sum of the trust fund balance

1 at the beginning of the period plus the present value
2 of the total income from taxes during such period,
3 to the present value of the taxable payroll for such
4 period.

5 “(iv) The term ‘adjusted summarized cost rate’
6 means, over a period, the ratio (expressed as a per-
7 centage) of the sum of the present value of the cost
8 during such period plus the present value of the tar-
9 geted trust fund balance, to the present value of the
10 taxable payroll for the years for such period.

11 “(v) The term ‘trust fund balance’ means the
12 combined balance of the Federal Old-Age and Sur-
13 vivors Insurance Trust Fund and the Federal Dis-
14 ability Insurance Trust Fund (hereinafter in this
15 subparagraph referred to as the ‘Trust Funds’).

16 “(vi) The term ‘income from taxes’ means, dur-
17 ing a period, the amounts deposited in the Trust
18 Funds as appropriations during the period based on
19 taxes under chapters 2 and 21 and section 86 of the
20 Internal Revenue Code of 1986.

21 “(vii) The term ‘cost’ means, during a period,
22 disbursements from the Trust Funds during such
23 period, including scheduled benefit payments, special
24 monthly payments to certain uninsured persons who
25 have 3 or more quarters of coverage (and whose pay-

1 ments are therefore not reimbursable from the gen-
2 eral fund of the Treasury), administrative expenses,
3 net transfers from the Trust Funds to the Railroad
4 Retirement program under financial-interchange
5 provisions, and payments for vocational rehabilita-
6 tion services for disabled beneficiaries, and excluding
7 special monthly payments to certain uninsured per-
8 sons whose payments are reimbursable from the gen-
9 eral fund of the Treasury, and transfers under the
10 interfund borrowing provisions of section 201(l).

11 “(viii) The term ‘target trust fund balance’
12 means the trust fund balance, as of the end of the
13 75-year period described in subparagraph (A), nec-
14 essary to support an OASDI trust fund ratio (as de-
15 fined in section 201(l)(3)(B)(iii)) of 100 percent for
16 the year following the last year of such period.

17 “(C) In making determinations under this paragraph,
18 the Chief Actuary shall employ the intermediate assump-
19 tions of the Board of Trustees of the Federal Old-Age and
20 Survivors Insurance Trust Fund and the Federal Dis-
21 ability Insurance Trust Fund in its most recent annual
22 report issued pursuant to section 201.

23 “(4) An agreement entered into under this section
24 shall not enter into force if there is enacted into law, dur-
25 ing the period of 60 calendar days specified in paragraph

1 (2)(A), a bill or joint resolution disapproving such agree-
2 ment.

3 “(5) In any case in which the determination of the
4 Chief Actuary described in subparagraph (A) of paragraph
5 (3) in connection with an agreement entered into under
6 this section is that, with respect to the 75-year period de-
7 scribed in such subparagraph, there is expected a net re-
8 duction, in the actuarial balance for such period of the
9 social security system established by this title, which—

10 “(A) is attributable to the operation of such
11 agreement, and

12 “(B) is equal to at least 0.005 percent of the
13 present value of taxable payroll for such period,

14 such agreement shall not enter into force unless, during
15 the period of 60 calendar days specified in paragraph
16 (2)(A), there is enacted into law a bill or joint resolution
17 approving such agreement.

18 “(6)(A) The provisions of this paragraph are enacted
19 by the Congress—

20 “(i) as an exercise of the rulemaking power of
21 the House of Representatives and the Senate, re-
22 spectively, and as such they are deemed a part of
23 the rules of each House, respectively, but applicable
24 only with respect to the procedure to be followed in
25 that House in the case of disapproval resolutions

1 and approval resolutions, and they supersede other
2 rules only to the extent that they are inconsistent
3 therewith; and

4 “(ii) with full recognition of the constitutional
5 right of either House to change the rules (so far as
6 relating to the procedure of that House) at any time,
7 in the same manner and to the same extent as in
8 the case of any other rule of that House.

9 “(B) During the period of 60 calendar days specified
10 in paragraph (2)(A), it shall be in order as a matter of
11 highest privilege in each House of the Congress to con-
12 sider a bill or joint resolution described in paragraph (4)
13 or (5) providing solely for the disapproval or approval of
14 an agreement entered into under this section, if offered
15 by the majority leader or minority leader of such House
16 (or a designee).

17 “(C) For purposes of consideration of a bill or joint
18 resolution described in paragraph (4) or (5) providing
19 solely for approval or disapproval of an agreement under
20 this section, the agreement shall not be subject to amend-
21 ment after the transmittal to each House of the Congress
22 pursuant to paragraph (1).”.

23 (2) EFFECTIVE DATE.—The amendment made
24 by this subsection shall apply with respect to agree-
25 ments, establishing totalization arrangements pursu-

1 ant to section 233 of the Social Security Act, which
2 are transmitted to the Congress on or after the date
3 of the enactment of this Act.

4 (3) SPECIAL RULE.—Notwithstanding sub-
5 section (e) of section 233 of the Social Security Act
6 (as in effect prior to the amendments made by this
7 section), any agreement entered into pursuant to
8 such section 233, establishing totalization arrange-
9 ments between the social security system established
10 by title II of such Act and the social security system
11 of another country, which—

12 (A) was signed by the Commissioner of So-
13 cial Security in June 2004, and

14 (B) was transmitted to the Congress pur-
15 suant to such subsection (e) on or after Sep-
16 tember 1, 2007, and before the date of the en-
17 actment of this Act,

18 shall be deemed not to have entered into force as of
19 the date of the enactment of this Act and shall be
20 deemed to enter into force after such date only as
21 provided in section 233(e) of such Act (as amended
22 by this section) as if such agreement had been trans-
23 mitted to the Congress on the date on which the
24 President transmits to the Congress on or after such
25 date, pursuant to section 233(e)(1) of such Act (as

1 amended by this section), a report in support of
2 such agreement meeting the requirements of such
3 section 233(e)(1) (as so amended).

4 (c) BIENNIAL REPORTS TO THE CONGRESS REGARD-
5 ING ONGOING OPERATION OF TOTALIZATION AGREE-
6 MENTS.—

7 (1) IN GENERAL.—Section 233 of such Act (42
8 U.S.C. 433) is amended by adding at the end the
9 following new subsection:

10 “Biennial Oversight Reports

11 “(f) The Commissioner of Social Security shall sub-
12 mit biennially to the Committee on Ways and Means of
13 the House of Representatives and the Committee on Fi-
14 nance of the Senate a report evaluating the operation, dur-
15 ing the preceding 2-year period covered by the report, of
16 each agreement entered into pursuant to this section.
17 Such report shall include—

18 “(1) if the report is submitted during the 10-
19 year period following the date on which the agree-
20 ment enters into force, the change in benefit costs
21 under the social security system established by this
22 title which is attributable to the agreement, as esti-
23 mated as of the date of the report, and the change
24 in contributions under such system which is attrib-
25 utable to such agreement, as so estimated,

1 “(2) information relating to actual, or perceived
2 potential, fraudulent receipt of benefits attributable
3 to the operation of the agreement under the social
4 security system established by this title,

5 “(3) information relating to perceived problems
6 with the integrity of the other country’s data and
7 records used in determining eligibility for benefits or
8 benefit amounts, and

9 “(4) if the report is submitted during the 10-
10 year period following the date on which the agree-
11 ment enters into force, information relating to demo-
12 graphic or other trends that may cause future devi-
13 ations from the original estimates of costs to each
14 social security system which are attributable to the
15 agreement.”.

16 (2) INITIAL REPORT.—The Commissioner of
17 Social Security shall submit the initial report pursu-
18 ant to section 233(f) of the Social Security Act
19 (added by this subsection) not later than December
20 31, 2008.

21 **SEC. 203. SUSPENSION OF BENEFITS FOR INDIVIDUALS RE-**
22 **MOVED FROM THE UNITED STATES.**

23 (a) IN GENERAL.—Section 202(n)(1) of the Social
24 Security Act (42 U.S.C. 402(n)(1)) is amended—

1 (1) in subparagraph (A), by striking “, on the
2 basis of his wages and self-employment income,”;

3 (2) in subparagraph (B), by striking “and” at
4 the end;

5 (3) in subparagraph (C), by striking the period
6 and inserting “, and”; and

7 (4) by adding at the end the following new sub-
8 paragraph:

9 “(D) no lump sum death payment shall be
10 made to such individual after the Commissioner of
11 Social Security is notified by the Attorney General
12 or the Secretary of Homeland Security that such in-
13 dividual has been so removed.”.

14 (b) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply to any individual with respect to
16 whose removal from the United States the Commissioner
17 of Social Security receives notification from the Attorney
18 General or the Secretary of Homeland Security after the
19 twelfth month that begins after the date of the enactment
20 of this Act.