

110TH CONGRESS
2D SESSION

H. R. 5515

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

FEBRUARY 28, 2008

Mr. SAM JOHNSON of Texas (for himself, Mr. LEWIS of Kentucky, Mr. BRADY of Texas, and Mr. RYAN of Wisconsin) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Education and Labor, and Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “New Employee
5 Verification Act of 2008”.

6 **TITLE I—ELECTRONIC**
7 **EMPLOYMENT VERIFICATION**

8 **SEC. 101. AMENDMENTS TO IMMIGRATION LAWS TO IM-**
9 **PROVE EMPLOYMENT AUTHORIZATION**
10 **VERIFICATION.**

11 (a) IN GENERAL.—

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

16 (A) in subsection (a)(1)(B)—

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

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

23 (B) in subsection (b), in the matter pre-
24 ceding paragraph (1), by striking “United

1 States,” and inserting “United States who is
2 subject to compliance with this subsection,”.

3 (2) VERIFICATION VIA EEVS AND SEEVS SYS-
4 TEMS.—Subsections (c) and (d) of section 274A of
5 the Immigration and Nationality Act (8 U.S.C.
6 1324a) are amended to read as follows:

7 “(c) ELECTRONIC EMPLOYMENT VERIFICATION SYS-
8 TEM.—

9 “(1) ENROLLMENT.—

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

23 “(i) is required to register under this
24 paragraph; or

25 “(ii) voluntarily registers.

1 “(B) VOLUNTARY PARTICIPATION.—The
2 Secretary of Homeland Security, in consultation
3 with the Commissioner of Social Security, may
4 permit any person or other entity subject to
5 subsection (a)(1)(B), and that is not yet re-
6 quired to participate in the EEVS under section
7 235(a)(4) of the Social Security Act to partici-
8 pate in the EEVS on a voluntary basis.

9 “(C) EXPEDITED PARTICIPATION.—The
10 Secretary of Homeland Security, on a case-by-
11 case or classwide basis, may require any person
12 or other entity subject to subsection (a)(1)(B),
13 and that is not yet required to participate in
14 the EEVS under section 235(a)(4) of the Social
15 Security Act, to participate in the EEVS (or,
16 alternatively, the Secure Employment Eligibility
17 Verification System established under section
18 235(b) of the Social Security Act (the
19 ‘SEEVS’) on an expedited basis if the Sec-
20 retary designates such person or entity as—

21 “(i) employing individuals having ac-
22 cess to locations or information that have
23 a direct impact on the security of the
24 United States; or

1 “(ii) having engaged in material viola-
2 tions of this section.

3 “(D) REQUIREMENT TO NOTIFY.—The
4 Secretary of Homeland Security shall notify
5 persons or entities required to register not less
6 than 60 days prior to the effective date of such
7 requirement through publication in the Federal
8 Register regarding the requirement for partici-
9 pation in the EEVS under subparagraphs (A)
10 and (C)(i) and by mail regarding the require-
11 ment for participation in the EEVS under sub-
12 paragraph (C)(ii). Such notice shall include the
13 training materials described in section
14 235(a)(5) of the Social Security Act.

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

22 “(F) CONSEQUENCE OF FAILURE TO PAR-
23 TICIPATE.—If a person or other entity is re-
24 quired or has elected to participate in the

1 EEVS or the SEEVS and fails to comply with
2 the requirements thereof, such failure—

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

6 “(ii) shall create a rebuttable pre-
7 sumption that the person or other entity
8 has violated subsection (a)(1)(A), except
9 that such presumption shall not apply to a
10 prosecution under subsection (f)(1).

11 “(G) PROTECTION FROM LIABILITY.—No
12 person or other entity that participates in the
13 EEVS or the SEEVS shall be liable under any
14 law for any employment-related action taken
15 with respect to an individual in reliance on in-
16 formation provided by the EEVS or the SEEVS
17 (as applicable) in connection with such partici-
18 pation, if such action is taken in accordance
19 with the requirements of this subsection, section
20 235 of the Social Security Act, and applicable
21 regulations prescribed thereunder.

22 “(H) EXCLUSIVE MEANS OF
23 VERIFICATION.—If a person or other entity is
24 required or has elected to participate in the

1 EEVS, subsections (b) and (d) shall not apply
2 to the person or other entity.

3 “(2) OBTAINING DOCUMENTS FOR EEVS.—

4 “(A) INFORMATION REQUIRED.—A person
5 or other entity registered to participate in the
6 EEVS shall, with respect to the hiring, or re-
7 cruiting or referring for a fee, any individual
8 for employment in the United States, obtain
9 from the individual—

10 “(i) the individual’s name and date of
11 birth;

12 “(ii) the individual’s social security
13 account number; and

14 “(iii) in the case of an individual who
15 does not claim to be a national of the
16 United States, such alien identification or
17 authorization number as the Secretary
18 shall require.

19 “(B) DOCUMENTS REQUIRED.—The person
20 or entity shall require that the individual
21 produce one of the following documents con-
22 sistent with the status claimed by the individual
23 and bearing identifying information consistent
24 with that obtained from the individual:

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

3 “(I) a United States passport; or

4 “(II) a driver’s license or identity
5 card, issued by a State, the Common-
6 wealth of the Northern Mariana Is-
7 lands, or an outlying possession of the
8 United States, that contains a photo-
9 graph of the individual, other identi-
10 fying information (including the indi-
11 vidual’s name, date of birth, gender,
12 and address) and security features to
13 make the license or card resistant to
14 tampering, counterfeiting, and fraudu-
15 lent use.

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

1 “(iii) In the case of an alien who is
2 authorized under the Immigration and Na-
3 tionality Act or by the Secretary of Home-
4 land Security to be employed in the United
5 States, an employment authorization card,
6 issued by the Secretary that contains a
7 photograph of the individual, other identi-
8 fying information (including name, date of
9 birth, gender, and address), and security
10 features to make the document resistant to
11 tampering, counterfeiting, and fraudulent
12 use.

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

23 “(C) UNACCEPTABLE DOCUMENTS.—If the
24 Secretary finds that a document or class of doc-
25 uments described in clause (ii) is not reliable to

1 establish identity or is being used fraudulently
2 to an unacceptable degree, the Secretary shall
3 prohibit, or impose conditions, on the use of
4 such documents or class of documents for pur-
5 poses of this subsection. The Secretary shall
6 publish notice of any findings under this clause
7 in the Federal Register.

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

17 “(4) CONSEQUENCES OF CERTAIN EEVS DETER-
18 MINATIONS.—

19 “(A) NO CONTEST OF INITIAL DIS-
20 APPROVAL.—If an individual does not contest
21 the initial disapproval notice described in sec-
22 tion 235(a)(3)(C)(ii) of the Social Security Act
23 by the end of the 10-day period beginning on
24 the date on which the notice is received from
25 the employer, the disapproval shall become

1 final, and the employer shall, within 3 business
2 days after the end of such 10-day period, termi-
3 nate the employment, recruitment, or referral of
4 the individual by the employer.

5 “(B) PERMISSIBLE DISMISSAL.—

6 “(i) IN GENERAL.—An employer may
7 dismiss an employee if the employee fails
8 to obtain approval of employment eligibility
9 by the end of the 20-day period beginning
10 on the date on which an initial disapproval
11 notice described in section 235(a)(3)(C)(ii)
12 of the Social Security Act is received by
13 the employee. In the case of any such fail-
14 ure to obtain approval, any continued em-
15 ployment of the employee by such employer
16 shall be carried out under a consistent pol-
17 icy that treats similarly situated employees
18 in the same manner.

19 “(ii) EXCEPTION FOR RE-
20 VERIFICATION.—This subparagraph shall
21 not apply to initial disapprovals received
22 from the system in the course of re-
23 verification pursuant to subsection
24 (a)(3)(C).

1 “(iii) EXCEPTION FOR INQUIRIES
2 PENDING BEFORE GOVERNMENT AGEN-
3 CY.—Nothing in this subparagraph shall
4 be interpreted as requiring an employer to
5 dismiss an employee while the inquiry re-
6 garding the employee’s eligibility for em-
7 ployment in the United States is pending
8 with a governmental agency.

9 “(iv) PROTECTION OF OTHER CAUSES
10 FOR TERMINATION.—Nothing in this sub-
11 paragraph shall affect the right of an em-
12 ployer to terminate the employment of an
13 employee for any reason other than any
14 such failure to obtain approval of employ-
15 ment eligibility.

16 “(C) DISAPPROVAL.—In any case in which
17 a disapproval notice described in section
18 235(a)(3)(C)(v) of the Social Security Act is
19 issued, the employer shall, within 3 business
20 days after receipt of such notice, terminate the
21 employment, recruitment, or referral of the in-
22 dividual who is the subject of the notice.

23 “(D) PRESUMPTION OF VIOLATION.—If a
24 person or other entity registered to participate
25 in the EEVS continues, in violation of this

1 paragraph to employ, recruit, or refer an indi-
2 vidual, a rebuttable presumption is created that
3 the registrant has violated subsections (a)(1)(A)
4 and (a)(2) of this section, except that such pre-
5 sumption shall not apply to a prosecution under
6 subsection (f)(1) of this section.

7 “(d) SECURE EMPLOYMENT ELIGIBILITY
8 VERIFICATION SYSTEM.—

9 “(1) IN GENERAL.—Beginning with the first
10 day of operation of the SEEVS a person or other
11 entity subject to subsection (a)(1)(B) of this section
12 may elect to comply with such subsection by partici-
13 pating in the SEEVS. Such participation shall be in
14 lieu of participation in the EEVS established under
15 section 235(a) of the Social Security Act. Such par-
16 ticipation shall be subject to the requirements of sec-
17 tion 235(b) of such Act and the regulations issued
18 under such section.

19 “(2) REQUIREMENT TO NOTIFY.—The Sec-
20 retary of Homeland Security shall notify persons or
21 entities subject to subsection (a)(1)(B) about the op-
22 portunity to participate in the SEEVS not less than
23 60 days prior to the first day of operation of the
24 system.

1 “(3) PRESUMPTION.—Participation in SEEVS
2 by an employer that follows the required procedures
3 of the system shall create a presumption that the
4 employer has not violated the requirements of this
5 Act with respect to its hiring decisions, which pre-
6 sumption shall only be overcome by clear and con-
7 vincing evidence of willful noncompliance resulting in
8 the hiring of an unauthorized employee.

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

13 “(5) COMPLIANCE WITH EEVS REQUIREMENTS
14 UPON TERMINATION OF ELECTION.—If a person or
15 other entity terminates its election to participate in
16 the SEEVS, the person or entity shall be subject to
17 compliance with subsection (c) with respect to all
18 employment actions beginning on the date of such
19 termination.”.

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

24 “(2) PREEMPTION; NO NATIONAL IDENTIFICA-
25 TION CARD.—

1 “(A) PREEMPTION.—The provisions of this
2 section preempt any provision of any law of any
3 State or political subdivision thereof or any con-
4 tract entered into by any State or political sub-
5 division thereof which—

6 “(i) imposes civil or criminal sanctions
7 upon employers for actions governed by the
8 Act;

9 “(ii) requires, authorizes or permits a
10 system of verification of the immigration
11 status of employees or employment appli-
12 cants;

13 “(iii) requires, authorizes, or permits
14 the use of a federally mandated employ-
15 ment verification system for any other pur-
16 pose other than that required by Federal
17 law, including verifying status of renters,
18 determining eligibility for receipt of bene-
19 fits, enrollment in school, obtaining or re-
20 taining a business or other license provided
21 by the unit of government, or conducting a
22 background check; or

23 “(iv) requires or prohibits the use of
24 an immigration status employment
25 verification system for any purpose, except

1 as required by Federal law, including with-
2 out limitation, such purposes as—

3 “(I) a condition of receiving a
4 government contract;

5 “(II) a condition of receiving a
6 business license; or

7 “(III) the basis of assessing a
8 penalty.

9 “(B) NO AUTHORIZATION OF NATIONAL
10 IDENTIFICATION CARD.—Nothing in this sec-
11 tion shall be construed to authorize, directly or
12 indirectly, the issuance or use of national iden-
13 tification cards or the establishment of a na-
14 tional identification card.”.

15 (c) CONFORMING AMENDMENTS.—

16 (1) REPEAL OF PILOT PROGRAMS FOR EMPLOY-
17 MENT ELIGIBILITY CONFIRMATION.—Subtitle A of
18 title IV of the Illegal Immigration Reform and Im-
19 migrant Responsibility Act of 1996 (division C of
20 Public Law 104–208; 8 U.S.C. 1324a note) is re-
21 pealed.

22 (2) CONSTRUCTION.—Nothing in this sub-
23 section or in section 274A of the Immigration and
24 Nationality Act (8 U.S.C. 1324a), as amended by
25 this section, may be construed to limit the authority

1 of the Secretary of Homeland Security to allow or
2 continue to allow the participation of employers who
3 participated in a pilot program under subtitle A of
4 title IV of the Illegal Immigration Reform and Im-
5 migrant Responsibility Act of 1996 (division C of
6 Public Law 104–208; 8 U.S.C. 1324a note) to par-
7 ticipate in the Electronic Employment Verification
8 System established under subsection (a) of section
9 235 of the Social Security Act or the Secure Em-
10 ployment Eligibility Verification System established
11 under subsection (b) of such section.

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

24 (e) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated to the Secretary of

1 Homeland Security such sums as may be necessary to
 2 carry out the amendments made by this section.

3 **SEC. 102. AMENDMENTS TO SOCIAL SECURITY ACT TO IM-**
 4 **PROVE EMPLOYMENT AUTHORIZATION**
 5 **VERIFICATION.**

6 (a) AMENDMENT TO TITLE II.—

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

10 “ELECTRONIC EMPLOYMENT VERIFICATION

11 “SEC. 235. (a) ELECTRONIC EMPLOYMENT
 12 VERIFICATION SYSTEM.—

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

23 “(A) be accessible over the Internet and a
 24 toll-free telephone line maintained by the Com-
 25 missioner; and

1 “(B) have the capacity to determine
2 whether—

3 “(i) identifying information with re-
4 spect to an individual, submitted by the
5 subject employer, is consistent with the in-
6 formation maintained by the Commissioner
7 (with respect to both citizens and nationals
8 of the United States) and by the Secretary
9 of Homeland Security (solely with respect
10 to aliens); and

11 “(ii) the individual is a citizen or na-
12 tional or is not an unauthorized alien (as
13 defined in section 274A(h)(3) of the Immi-
14 gration and Nationality Act (8 U.S.C.
15 1324a(h)(3))) with respect to the employ-
16 ment.

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

23 “(3) VERIFICATION OF EMPLOYMENT AUTHOR-
24 IZATION.—

1 “(A) IN GENERAL.—The Commissioner
2 shall, through the EEVS—

3 “(i) respond to each inquiry regarding
4 an individual’s identifying information and
5 eligibility for employment in the United
6 States for the subject employer, as re-
7 corded in the information maintained by
8 the Commissioner or the Secretary of
9 Homeland Security as appropriate, and in-
10 clude in the response the time period
11 (which may be unlimited) for which the in-
12 dividual is authorized to be employed in
13 the United States by such employer, as so
14 recorded; and

15 “(ii) maintain a record of each such
16 inquiry and the information provided in re-
17 sponse to such inquiry.

18 “(B) SUBMISSION TO SYSTEM.—

19 “(i) IN GENERAL.—A subject em-
20 ployer shall submit an inquiry through the
21 EEVS to seek confirmation of an individ-
22 ual’s identifying information and eligibility
23 for employment in the United States—

24 “(I) in the case of hiring subject
25 to clause (i) of section 274A(a)(1)(B)

1 of the Immigration and Nationality
2 Act (8 U.S.C. 1324a(a)(1)(B)), dur-
3 ing the period beginning on the date
4 of hire and ending at the end of the
5 third business day after the employee
6 has reported for duty; and

7 “(II) in the case of recruitment
8 or referral for a fee subject to clause
9 (ii) of such section, not later than the
10 first day of such recruitment or refer-
11 ral.

12 “(ii) REQUIRED INFORMATION.—Such
13 inquiry shall include—

14 “(I) the individual’s name and
15 date of birth;

16 “(II) the individual’s social secu-
17 rity account number;

18 “(III) in the case of an individual
19 who does not claim to be a national of
20 the United States, such alien identi-
21 fication or authorization number as
22 the Secretary shall require.

23 “(C) EEVS SCREENING OF EMPLOYMENT
24 ELIGIBILITY.—

1 “(i) IN GENERAL.—As soon as pos-
2 sible, but not later than 3 days after a
3 subject employer submits an inquiry to the
4 EEVS regarding an individual, the EEVS
5 shall provide to the subject employer,
6 through the EEVS, approval or initial dis-
7 approval of the employment of the indi-
8 vidual in the United States.

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

1 “(iii) CONTEST.—If the individual
2 contests the initial disapproval, the indi-
3 vidual shall submit appropriate information
4 to contest such notice under the proce-
5 dures established by the Commissioner, in
6 consultation with the Secretary of Home-
7 land Security, not later than 10 days after
8 receiving the notice from the subject em-
9 ployer.

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

1 “(v) DISAPPROVAL.—The Commis-
2 sioner, in consultation with the Secretary
3 of Homeland Security, shall ensure prompt
4 resolution of the individual’s contest of the
5 initial disapproval and issue either an ap-
6 proval or disapproval notice to the subject
7 employer through the EEVS.

8 “(D) ADMINISTRATIVE REVIEW OF DIS-
9 APPROVALS.—

10 “(i) IN GENERAL.—An individual who
11 is terminated from employment pursuant
12 to subparagraph (B) or (C) of section
13 274A(c)(4) of the Immigration and Na-
14 tionality Act may, not later than 30 days
15 after the date of such termination, file an
16 appeal of the disapproval notice resulting
17 in such termination.

18 “(ii) PROCEDURES.—The Commis-
19 sioner and the Secretary of Homeland Se-
20 curity shall jointly develop procedures to
21 review appeals filed under clause (i) and—

22 “(I) with respect to disapprovals
23 based on information maintained by
24 the Commissioner, the appeal shall be
25 filed with the Commissioner and the

1 Commissioner shall make the final de-
2 terminations; and

3 “(II) with respect to disapprovals
4 based on information maintained by
5 the Secretary of Homeland Security,
6 the appeal shall be filed with the Sec-
7 retary of Homeland Security and the
8 Secretary shall make the final deter-
9 minations on such appeals and pro-
10 vide certification of such final deter-
11 minations to the Commissioner.

12 “(iii) REVIEW FOR ERRORS.—If a
13 final determination on an appeal filed
14 under clause (i) results in approval of an
15 individual’s eligibility to work in the
16 United States, the Commissioner (in the
17 case of a final determination under clause
18 (ii)(I)) or the Secretary of Homeland Secu-
19 rity (in the case of a final determination
20 under clause (ii)(II)) shall determine if the
21 final disapproval notice issued for the indi-
22 vidual was the result of an act or omission
23 that was the responsibility of the individual
24 or from another cause.

25 “(iv) COMPENSATION FOR ERRORS.—

1 “(I) IN GENERAL.—In any case
2 in which the Commissioner makes a
3 determination under this subpara-
4 graph that the disapproval notice
5 issued for an individual was caused by
6 a negligent, reckless, willful, or mali-
7 cious act of the Government and was
8 not caused by an act or omission that
9 was the responsibility of the indi-
10 vidual, or the Secretary of Homeland
11 Security provides to the Commissioner
12 certification of such a determination
13 pursuant to clause (ii)(II), the Com-
14 missioner shall certify to the Treasury
15 the amount of the lost wages and the
16 Secretary of the Treasury shall com-
17 pensate the individual for such lost
18 wages from the general fund of the
19 Treasury.

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

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

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

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

21 “(i) IN GENERAL.—An individual may
22 obtain judicial review of a final determina-
23 tion under subparagraph (D) by a civil ac-
24 tion commenced not later than 30 days
25 after the date of such determination.

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

11 “(iii) ANSWER.—A certified copy of
12 the administrative record compiled during
13 the administrative review under subpara-
14 graph (D), including the evidence received
15 during such review, shall be filed in such
16 civil action. The court shall have power to
17 enter, upon the pleadings and administra-
18 tive record, a judgment affirming, modi-
19 fying or reversing such administrative deci-
20 sion, with or without remanding the matter
21 for further proceedings.

22 “(iv) COMPENSATION FOR ERROR.—
23 In cases in which such judicial review re-
24 sults in a determination that compensation
25 for lost wages is due, such compensation

1 shall be computed and paid in accordance
2 with subparagraph (D)(iv).

3 “(4) IMPLEMENTATION OF THE EEVS.—

4 “(A) IN GENERAL.—The Commissioner
5 shall establish a schedule for implementation of
6 the EEVS that is designed to assure that the
7 capacity of all aspects of the EEVS, including
8 the equipment and personnel required to com-
9 plete reviews of contested initial disapprovals
10 and corrections of erroneous records, within the
11 time limits established by subparagraphs (C)
12 and (D) of paragraph (3).

13 “(B) PRIORITIES.—The schedule estab-
14 lished pursuant to subparagraph (A) shall be
15 established based on the priority of maximizing
16 the deterrent effect on illegal migration and un-
17 authorized employment on the most expeditious
18 basis possible.

19 “(C) BASIC PILOT PARTICIPANTS.—The
20 schedule established pursuant to subparagraph
21 (A) shall assure that all participants in the
22 basic pilot program for employment eligibility
23 verification described in section 403(a) of the
24 Illegal Immigration Reform and Immigrant Re-
25 sponsibility Act of 1996 (8 U.S.C. 1324a note)

1 are registered in the EEVS as soon as feasible
2 after the date of the enactment of the New Em-
3 ployee Verification Act of 2008.

4 “(D) ALL OTHERS.—Every person that is
5 a subject employer with respect to one or more
6 individuals as of the date of enactment of the
7 New Employee Verification Act of 2008 shall be
8 required to register in the EEVS, or be compli-
9 ant under subsection (b) of this section, not
10 later than 36 months after such date.

11 “(5) STANDARDS FOR OPERATION.—

12 “(A) POLICIES AND PROCEDURES.—The
13 Commissioner, the Secretary of Homeland Se-
14 curity, and the Secretary of Health and Human
15 Services shall establish procedures for col-
16 lecting, updating, removing, and adding data to
17 the EEVS to ensure the accuracy and integrity
18 of the data and to limit access to the data to
19 authorized personnel.

20 “(B) PUBLIC EDUCATION.—Not later than
21 6 months before the first registration date, the
22 Commissioner, in cooperation with the Sec-
23 retary of Health and Human Services, the Sec-
24 retary of Homeland Security, and the States,
25 shall develop a public education campaign re-

1 garding the obligations imposed by this section,
2 as well as instructional materials provided with-
3 out cost to the public regarding how to use the
4 EEVS.

5 “(C) REGISTRANT TRAINING.—Not later
6 than 6 months before the first registration date,
7 the Commissioner, in cooperation with the Sec-
8 retary of Homeland Security, the Secretary of
9 Health and Human Services, and the States,
10 shall institute a comprehensive program of out-
11 reach and training for employers regarding the
12 operation and benefits of using the verification
13 systems described in this section and informing
14 them of ongoing assistance resources for the
15 implementation and use of such systems.

16 “(D) EEVS REQUIREMENTS.—The Com-
17 missioner and the Secretary of Homeland Secu-
18 rity shall ensure the following:

19 “(i) The EEVS—

20 “(I) is fully integrated across ap-
21 propriate agencies;

22 “(II) is accessible to all reg-
23 istered employers via internet and
24 telephone;

1 “(III) allows for real-time data
2 entry; and

3 “(IV) contains a mechanism for
4 subject employers to attest to their
5 compliance.

6 “(ii) Timely entry and access of all
7 EEVS data.

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

10 “(iv) Secure procedures for individ-
11 uals to examine their records, request ex-
12 pedited corrections of errors, and appeal
13 disapprovals concerning EEVS data under
14 appeal procedures developed jointly by the
15 Commissioner and the Secretary of Home-
16 land Security.

17 “(v) Procedures limiting agency and
18 contractor personnel authorized to enter
19 EEVS data.

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

23 “(E) NOTICES TO EMPLOYEES.—The Com-
24 missioner, in consultation with the Secretary of
25 Homeland Security, shall develop a written

1 form for employers to provide to individuals for
2 whom they receive an initial disapproval and
3 disapproval notices that shall include—

4 “(i) in the case of an initial dis-
5 approval—

6 “(I) the right to contest such ini-
7 tial disapproval; and

8 “(II) contact information for ini-
9 tiating such contest, including the ap-
10 propriate agency to contact and the
11 procedures to follow in doing so; and

12 “(ii) in the case of a disapproval, the
13 right to appeal the disapproval, including
14 the appropriate agency to contact and the
15 procedures to follow in doing so.

16 “(F) ADDITIONAL RESPONSIBILITIES OF
17 COMMISSIONER IN SUPPORT OF THE EEVS.—

18 The Commissioner shall establish—

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

21 “(I) whether the name, date of
22 birth, and social security account
23 number of an individual provided in
24 an inquiry made to the EEVS by an
25 employer is consistent with such infor-

1 mation maintained by the Commis-
2 sioner;

3 “(II) the citizenship status asso-
4 ciated with such name and social se-
5 curity account number, according to
6 the records maintained by the Com-
7 missioner;

8 “(III) whether the name and
9 number belongs to an individual who
10 is deceased or a child under the age of
11 seven, to the records maintained by
12 the Commissioner;

13 “(IV) whether the name belongs
14 to an individual whose record has a
15 fraud indicator; and

16 “(V) whether the name and num-
17 ber is blocked in accordance with
18 paragraph (7); and

19 “(ii) in consultation with the Sec-
20 retary of Homeland Security, a reliable, se-
21 cure method for an individual to verify
22 such individual’s own eligibility for employ-
23 ment in the United States.

24 “(G) ANNUAL REPORT AND CERTIFI-
25 CATION.—Not later than 24 months after the

1 date of the enactment of the New Employee
2 Verification Act of 2008, and annually there-
3 after, the Commissioner, in cooperation with
4 the Secretary of Homeland Security, shall sub-
5 mit to the Congress a report that includes—

6 “(i) a certified determination of the
7 percentage of inquiries to the EEVS and
8 SEEVS that result in a final approval or
9 disapproval notice, within the applicable
10 period described in paragraph (3)(C), that
11 are not overturned in a subsequent appeal,
12 and if that percentage is less than 99 per-
13 cent of the cases, the steps being taken to
14 bring the percentage to 99 percent or high-
15 er within specified time frames; and

16 “(ii) an assessment of the privacy and
17 security of the EEVS and SEEVS.

18 “(6) LIMITATION ON COLLECTION AND USE OF
19 DATA.—

20 “(A) COLLECTION.—

21 “(i) IN GENERAL.—The EEVS shall
22 collect and maintain only the minimum
23 data necessary to facilitate the successful
24 operation of the EEVS, and in no case

1 shall the data be other than information
2 necessary—

3 “(I) to register subject employ-
4 ers;

5 “(II) to initiate and respond to
6 inquiries or contests;

7 “(III) to establish and enforce
8 compliance with paragraphs (3) and
9 (4); or

10 “(IV) to detect and prevent em-
11 ployment related identity fraud.

12 “(ii) PENALTIES.—Any officer, em-
13 ployee, or contractor who willfully and
14 knowingly collects and maintains data in
15 the EEVS other than data described in
16 clause (i) shall be, for each such violation,
17 guilty of a misdemeanor and, upon convic-
18 tion, fined as provided in title 18, United
19 States Code, imprisoned for not more than
20 1 year, or both.

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

24 “(i) for the purpose of committing
25 identity fraud, or assisting another person

1 in committing identity fraud, as defined in
2 section 1028 of title 18, United States
3 Code;

4 “(ii) for the purpose of unlawfully ob-
5 taining employment in the United States
6 or unlawfully obtaining employment in the
7 United States for any other person; or

8 “(iii) for any purpose other than as
9 provided for under any provision of law,
10 shall be guilty of a felony and upon conviction
11 shall be fined under title 18, United States
12 Code, or be imprisoned for not more than 5
13 years, or both.

14 “(C) EXCEPTIONS.—Nothing in subpara-
15 graph (A) or (B) may be construed to limit the
16 collection, maintenance, or use of data by the
17 Commissioner of Internal Revenue or the Com-
18 missioner of Social Security as provided by law.

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

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

1 “(1) IN GENERAL.—Not later than 18 months
2 after the date of the enactment of the New Em-
3 ployee Verification Act of 2008, the Commissioner
4 shall, after consultation with the Secretary of Home-
5 land Security, the Director of the National Institute
6 of Standards and Technology, and the Employment
7 Verification Advisory Panel established under para-
8 graph (5), establish by regulation a Secure Employ-
9 ment Eligibility Verification System (referred to in
10 this subsection as the ‘SEEVS’). The purpose of the
11 SEEVS shall be to provide for identity authentica-
12 tion and employment eligibility verification with re-
13 spect to enrolled new employees which shall be avail-
14 able to subject employers who elect to participate in
15 the SEEVS in lieu of the EEVS. Any subject em-
16 ployer may cancel the employer’s participation in the
17 SEEVS after one year after electing to participate.

18 “(2) MINIMUM REQUIREMENTS.—In accordance
19 with the regulations prescribed by the Commissioner
20 pursuant to paragraph (1)—

21 “(A) IDENTITY AUTHENTICATION AND EM-
22 PLOYMENT ELIGIBILITY VERIFICATION BY EN-
23 ROLLMENT PROVIDERS.—The SEEVS shall uti-
24 lize the services of private sector entities (here-
25 inafter in this subsection referred to as ‘enroll-

1 ment providers'), with appropriate expertise,
2 which shall be subject to initial and periodic
3 certification by the Commissioner, to provide—

4 “(i) enrollment under the SEEVS of
5 new employees by means of identity au-
6 thentication in a manner that provides a
7 high level of certainty as to their true iden-
8 tities, using immigration and identifying
9 information maintained by the Social Secu-
10 rity Administration and the Department of
11 Homeland Security, review of identity doc-
12 uments, and background screening
13 verification techniques using publicly avail-
14 able information;

15 “(ii) protection of the authenticated
16 information through biometric technology;
17 and

18 “(iii) verification of employment eligi-
19 bility of such new employees.

20 “(B) DATABASE MANAGEMENT.—The
21 SEEVS shall provide for databases of identi-
22 fying information which may be retained by the
23 enrollment providers. Databases controlled by
24 the Commissioner and Secretary of Homeland
25 Security shall be maintained in a manner to

1 capture new entries and new status information
2 in a timely manner and to interact with the pri-
3 vate enrollment databases to keep employment
4 authorization status and identifying information
5 current on a daily basis. The information main-
6 tained in such databases shall be subject to the
7 requirements established pursuant to paragraph
8 (5), except that—

9 “(i) use of the data shall be limited to
10 obtaining employment eligibility
11 verification only, unless the new employee
12 consents to use the data for other pur-
13 poses, as provided in regulations prescribed
14 by the Commissioner, and

15 “(ii) other identifying traits of the
16 new employees shall be stored through an
17 encoding process that keeps their accurate
18 names, dates of birth, social security num-
19 bers, and immigration identification num-
20 bers (if any) separate, except during elec-
21 tronic verification.

22 “(C) ACCESSIBILITY TO EMPLOYERS.—
23 Availability of data maintained in the SEEVS
24 shall be managed so that any subject employer
25 who participates in the SEEVS can obtain

1 verification with respect to any new employee
2 enrolled with any enrollment provider serving in
3 the SEEVS.

4 “(D) LIMITATIONS RELATING TO BIOMET-
5 RIC DATA.—Any biometric data maintained in
6 the SEEVS relating to any new employee shall
7 be—

8 “(i) encrypted and segregated from
9 identifying information relating to the new
10 employee, and

11 “(ii) maintained and linked to identi-
12 fying information relating to the new em-
13 ployee only by consent of the new employee
14 for the purpose of verifying employment
15 eligibility or approved correction processes
16 or for other purposes specifically author-
17 ized by the employee as provided in regula-
18 tions prescribed by the Commissioner.

19 “(E) ACCURACY OF ASSOCIATION OF DATA
20 WITH ENROLLED NEW EMPLOYEES.—The en-
21 rollment process under the SEEVS shall be
22 managed, in the case of each new employee en-
23 rolled in the SEEVS, so as to result in the ac-
24 curate association of data consisting of name,
25 date of birth, Social Security number, and im-

1 migration identification number (if any) with
2 the established identity of the new employee.

3 “(F) LIMITATIONS ON ACCESSIBILITY OF
4 INFORMATION.—Data stored in SEEVS relat-
5 ing to any enrolled new employee shall not be
6 accessible to any person other than those oper-
7 ating the SEEVS and for the sole purpose of
8 identity authentication and employment eligi-
9 bility verification in connection with the new
10 employee, except—

11 “(i) by the written consent of the new
12 employee given specifically for each in-
13 stance or category of disclosure for any
14 other purpose as provided in regulations
15 prescribed by the Commissioner, or

16 “(ii) in response to a warrant issued
17 by a judicial authority of competent juris-
18 diction in a criminal proceeding.

19 “(G) PUBLIC EDUCATION.—The Commis-
20 sioner shall conduct a program of ongoing, com-
21 prehensive public education campaign relating
22 to the SEEVS.

23 “(3) EMPLOYER RESPONSIBILITIES.—Under
24 the regulations prescribed by the Commissioner pur-
25 suant to paragraph (1)—

1 “(A) USE LIMITED TO ENROLLED NEW
2 EMPLOYEES.—Use of the SEEVS by subject
3 employers participating in the SEEVS shall be
4 limited to use in connection with the hiring of
5 new employees occurring after their enrollment
6 in the SEEVS.

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

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

1 “(D) LIMITATIONS ON SELECTIVE USE.—
2 No subject employer may use the SEEVS selec-
3 tively to verify any class, level, or category of
4 new employees. Nothing in this subparagraph
5 shall be construed to preclude subject employers
6 from utilizing the SEEVS in connection with
7 hiring at selected employment locations without
8 implementing such usage at all locations of the
9 employer.

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

13 “(A) ACCESS FOR EMPLOYEES TO COR-
14 RECT AND UPDATE INFORMATION.—Employees
15 enrolled in the SEEVS shall be provided access
16 to the SEEVS to verify information relating to
17 their employment authorization and readily
18 available processes to correct and update their
19 enrollment information and information relating
20 to employment authorization.

21 “(B) SAME RIGHTS AND PROTECTIONS AS
22 THOSE PROVIDED UNDER THE EEVS.—Employ-
23 ees shall be provided the same rights and pro-
24 tections in connection with responses to inquir-
25 ies under the SEEVS relating to identity au-

1 thentication or employment eligibility
2 verification as are afforded under subsection
3 (a).

4 “(C) RIGHT TO CANCEL ENROLLMENT.—
5 Each employee enrolled in the SEEVS shall
6 have the right to cancel such employee’s enroll-
7 ment at any time and to have all identifying in-
8 formation and biometrics in connection with
9 such employee removed from the SEEVS with-
10 out prejudice to future enrollments.

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

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

1 Social Security may by regulations prescribe or
2 as otherwise provided by Federal law.

3 “(B) PENALTY FOR DISCLOSURE IN VIOLA-
4 TION OF SUBPARAGRAPH (A).—Any person de-
5 scribed in subparagraph (A) who violates sub-
6 paragraph (A) shall be guilty of a felony and,
7 upon conviction thereof, shall be punished by a
8 fine not exceeding \$10,000 for each occurrence
9 of a violation, or by imprisonment not exceeding
10 5 years, or both.

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

22 “(D) RESTITUTION.—

23 “(i) IN GENERAL.—Any Federal
24 court, when sentencing a defendant con-
25 victed of an offense under this paragraph,

1 may order, in addition to or in lieu of any
2 other penalty authorized by law, that the
3 defendant make restitution to the victims
4 of such offense specified in clause (ii). Sec-
5 tions 3612, 3663, and 3664 of title 18,
6 United States Code, shall apply with re-
7 spect to the issuance and enforcement of
8 orders of restitution to victims of such of-
9 fense under this subparagraph. If the court
10 does not order restitution, or orders only
11 partial restitution, under this subsection,
12 the court shall state on the record the rea-
13 sons therefor.

14 “(ii) VICTIMS SPECIFIED.—The vic-
15 tims specified in this clause are the fol-
16 lowing:

17 “(I) Any individual who suffers a
18 financial loss as a result of the disclo-
19 sure described in subparagraph (B) or
20 (C)

21 “(II) The Commissioner of Social
22 Security, to the extent that the disclo-
23 sure described in subparagraph (B) or
24 (C) results in the inappropriate pay-

1 ment of a benefit by the Commis-
2 sioner.

3 “(iii) DEPOSIT IN THE TRUST FUNDS
4 OF AMOUNTS PAID AS RESTITUTION TO
5 THE COMMISSIONER.—Funds paid to the
6 Commissioner as restitution pursuant to a
7 court order under this subparagraph shall
8 be deposited in the Federal Old-Age and
9 Survivors Insurance Trust Fund or the
10 Federal Disability Insurance Trust Fund,
11 as appropriate.

12 “(c) CREATION OF EMPLOYMENT VERIFICATION AD-
13 VISORY PANEL.—

14 “(1) IN GENERAL.—Not later than 180 days
15 after the date of the enactment of the New Em-
16 ployee Verification Act of 2008, the Commissioner
17 shall establish an Employment Verification Advisory
18 Panel (hereinafter in this subsection referred to as
19 the ‘Advisory Panel’).

20 “(2) MEMBERSHIP.—The Advisory Panel
21 should consist of members appointed by the Com-
22 missioner, after consulting with the Secretary of
23 Homeland Security, the Secretary of the Treasury,
24 the Director of National Institutes of Standards and
25 Technology, and other appropriate Federal agencies.

1 Such members should include representatives from
2 appropriate Federal agencies and private sector rep-
3 resentatives of affected industries and groups, in-
4 cluding human resource, employer and employee or-
5 ganizations, experts in fields including database se-
6 curity, biometrics, and privacy.

7 “(3) FUNCTIONS.—The Advisory Panel shall
8 advise the Commissioner and the Secretary of
9 Homeland Security on the implementation and de-
10 ployment of the verification systems established
11 under this section, including—

12 “(A) the best means of promoting effi-
13 ciency, responsiveness, accuracy, public edu-
14 cation, user support, interoperability, and cost-
15 effectiveness of the systems established under
16 this section;

17 “(B) best practices and procedures in
18 order to protect the privacy and identities of in-
19 dividuals enrolled in the systems established
20 under this section;

21 “(C) standards of database accuracy, error
22 rates, privacy, and measurable compliance that
23 should be met before implementation begins
24 and before each additional phase of implemen-
25 tation; and

1 “(D) the best means by which data ob-
2 tained through the EEVS and the SEEVS may
3 be used to timely improve the accuracy of data-
4 bases maintained by the Commissioner and the
5 Secretary of Homeland Security.

6 “(4) TERMINATION.—The Advisory Panel shall
7 terminate 5 years after the date of the enactment of
8 this Act.”.

9 (2) AUTHORIZATION OF APPROPRIATIONS AND
10 LIMITATION OF RESPONSIBILITIES.—

11 (A) AUTHORIZATION.—There are author-
12 ized to be appropriated to the Commissioner of
13 Social Security such sums as may be necessary
14 to carry out the amendments made by this sec-
15 tion.

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

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

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

12 (2) in paragraph (2), by striking “—” and all
13 that follows and inserting “not later than the 3rd
14 business day after the employee first reported for
15 duty.”.

16 **SEC. 103. ANTIDISCRIMINATION PROTECTIONS.**

17 (a) APPLICATION OF PROHIBITION OF DISCRIMINA-
18 TION TO VERIFICATION SYSTEM.—Section 274B(a) of the
19 Immigration and Nationality Act (8 U.S.C. 1324b(a)) is
20 amended—

21 (1) in paragraph (1)—

22 (A) in the matter preceding subparagraph
23 (A), by inserting “, the verification of the indi-
24 vidual’s work authorization through the Elec-
25 tronic Employment Verification System de-

1 scribed in section 235(a) of the Social Security
2 Act or the Secure Employment Eligibility
3 Verification System described in section 235(b)
4 of such Act,” after “the individual for employ-
5 ment”; and

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

9 (2) by amending paragraph (3) to read as fol-
10 lows:

11 “(3) ANTIDISCRIMINATION REQUIREMENTS OF
12 THE ELECTRONIC EMPLOYMENT VERIFICATION SYS-
13 TEM AND THE SECURE EMPLOYMENT ELIGIBILITY
14 VERIFICATION SYSTEM.—

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

23 “(i) to terminate or undertake any ad-
24 verse employment action due to an initial

1 disapproval or disapproval unless author-
2 ized or required under such sections;

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

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

15 “(iv) to require an individual to make
16 an inquiry under the self-verification proce-
17 dures established under section
18 235(b)(5)(A) of such Act.

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

1 “(C) RE-VERIFICATION.—A person or
2 other entity, in the course of participating in
3 the Electronic Employment Verification System
4 described in section 235(a) of the Social Secu-
5 rity Act, shall not repeat the verification proc-
6 ess established by such section unless—

7 “(i) the previously approved period of
8 employment provided by the system has ex-
9 pired, or

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

19 (b) INCREASE IN CIVIL MONEY PENALTIES.—Section
20 274B(g)(2)(B)(iv) of such Act (8 U.S.C.
21 1324b(g)(2)(B)(iv)) is amended—

22 (1) in subclause (I), by striking “\$250 and not
23 more than \$2,000” and inserting “\$1,000 and not
24 more than \$4,000”;

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

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

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

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

14 **SEC. 104. PENALTIES.**

15 Section 274A of the Immigration and Nationality Act
16 (8 U.S.C. 1324a) is amended—

17 (1) in subsection (e)(4)—

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

22 (B) in subparagraph (A)(i), by striking
23 “not less than \$250 and not more than
24 \$2,000” and inserting “not less than \$5,000
25 and not more than \$7,500”;

1 (C) in subparagraph (A)(ii), by striking
2 “not less than \$2,000 and not more than
3 \$5,000” and inserting “not less than \$10,000
4 and not more than \$15,000”;

5 (D) in subparagraph (A)(iii), by striking
6 “not less than \$3,000 and not more than
7 \$10,000” and inserting “not less than \$25,000
8 and not more than \$40,000”; and

9 (E) by amending subparagraph (B) to read
10 as follows:

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

14 (2) in subsection (e)(5)—

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

17 (B) by striking “\$100” and inserting
18 “\$1,000”;

19 (C) by striking “\$1,000” and inserting
20 “\$25,000”;

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

1 (E) by adding at the end the following sen-
2 tence: “Failure by a person or entity to utilize
3 the employment eligibility verification system as
4 required by law, or providing information to the
5 system that the person or entity knows or rea-
6 sonably believes to be false, shall be treated as
7 a violation of subsection (a)(1)(A).”;

8 (3) by adding at the end of subsection (e) the
9 following new paragraphs:

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

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

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

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

9 The last sentence of paragraph (4) shall apply under
10 this paragraph in the same manner as it applies
11 under such paragraph.

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

1 “(12) SAFE HARBOR FOR CONTRACTORS.—A
2 person or other entity shall not be liable for a pen-
3 alty under paragraph (4)(A) with respect to the vio-
4 lation of subsection (a)(1)(A), (a)(1)(B), or (a)(2)
5 with respect to the hiring or continuation of employ-
6 ment of an unauthorized alien by a subcontractor of
7 that person or entity unless the person or entity
8 knew that the subcontractor hired or continued to
9 employ such alien in violation of such subsection.”;
10 (4) by amending paragraph (1) of subsection (f)
11 to read as follows:

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

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

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

24 (a) REQUIREMENT.—The Comptroller General of the
25 United States shall conduct an annual study of the Em-

1 ployment Eligibility Verification System described in sec-
2 tion 235(a) of the Social Security Act as added by this
3 Act (hereinafter in the Act referred to as the “EEVS”)
4 and the Secure Employment Eligibility Verification Sys-
5 tem described in section 235(b) of such Act as added by
6 this Act (hereinafter in the Act referred to as the
7 “SEEVS”).

8 (b) PURPOSE.—The study shall evaluate the accu-
9 racy, efficiency, integrity, and impact of the EEVS and
10 the SEEVS.

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

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

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

4 (3) An assessment of the effects of the EEVS
5 and SEEVS on the employment of unauthorized
6 aliens (as defined in section 274A(h)(3) of the Im-
7 migration and Nationality Act).

8 (4) An assessment of the effects of the EEVS
9 and the SEEVS, including the effects of initial dis-
10 approvals on unfair immigration-related employment
11 practices, and employment discrimination based on
12 national origin or citizenship status.

13 (5) An assessment of the effects of the EEVS
14 and SEEVS on employers.

15 (6) An assessment of whether the Secretary and
16 the Commissioner of Social Security have adequate
17 resources to carry out the duties and responsibilities
18 set forth in section 235 of the Social Security Act.

1 **SEC. 106. DISCLOSURE TO THE SECRETARY OF HOMELAND**
2 **SECURITY OF INFORMATION IN THE NA-**
3 **TIONAL DIRECTORY OF NEW HIRES ABOUT**
4 **EMPLOYERS WITH THE GREATEST NUMBER**
5 **OR PERCENTAGE OF EMPLOYEES WITH MIS-**
6 **MATCHED SOCIAL SECURITY INFORMATION.**

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

10 “(11) DISCLOSURE TO SECRETARY OF HOME-
11 LAND SECURITY OF INFORMATION ABOUT EMPLOY-
12 ERS WITH THE GREATEST NUMBER OR PERCENTAGE
13 OF EMPLOYEES WITH MISMATCHED SOCIAL SECUR-
14 RITY INFORMATION.—

15 “(A) DISCLOSURE REQUIREMENT.—

16 “(i) IN GENERAL.—Within 4 months
17 after the Secretary receives from the Sec-
18 retary of Homeland Security, in accord-
19 ance with clause (ii) of this subparagraph,
20 a written request for the information de-
21 scribed in subparagraph (B), the Secretary
22 shall disclose the information to the Sec-
23 retary of Homeland Security, based on the
24 information available on new hires for the
25 12 months preceding compilation of infor-
26 mation in response to the request.

1 “(ii) SUNSET.—A request is received
2 in accordance with this clause if the re-
3 quest is received in the 3-year period that
4 begins with the date of the enactment of
5 this paragraph.

6 “(B) INFORMATION TO BE DISCLOSED.—
7 The information described in this subparagraph
8 is the following:

9 “(i) TOP 1,000 EMPLOYERS WITH
10 GREATEST NUMBER OF EMPLOYEES WITH
11 MISMATCHED SOCIAL SECURITY INFORMA-
12 TION.—The name, taxpayer identification
13 number, and address of each employer who
14 is among the 1,000 employers ranked high-
15 est under subparagraph (C)(i), and the
16 total number of mismatches with respect to
17 the employees of each such employer. If
18 there is more than 1 employer so ranked
19 1,000th, then such information with re-
20 spect to all employers so ranked shall be
21 included.

22 “(ii) TOP 1,000 EMPLOYERS WITH
23 GREATEST PERCENTAGE OF EMPLOYEES
24 WITH MISMATCHED SOCIAL SECURITY IN-
25 FORMATION.—The name, taxpayer identi-

1 fication number, and address of each em-
2 ployer who is among the 1,000 employers
3 ranked highest under subparagraph (C)(ii),
4 the total number of mismatches with re-
5 spect to the employees of each such em-
6 ployer, and the total percentage of the em-
7 ployees of each such employer with respect
8 to whom there is a mismatch. If there is
9 more than 1 employer so ranked 1,000th,
10 then such information with respect to all
11 employers so ranked shall be included.

12 “(iii) TOP 500 EMPLOYERS WITH
13 GREATEST NUMBER OF EMPLOYEES WITH
14 SAME REPORTED SOCIAL SECURITY NUM-
15 BERS.—The name, taxpayer identification
16 number, and address of each employer who
17 is among the 500 employers ranked high-
18 est under subparagraph (C)(iii), and the
19 total number of employees of each such
20 employer who have the same social security
21 account number as another employee of
22 the employer. If there is more than 1 em-
23 ployer so ranked 500th, then such informa-
24 tion with respect to all employers so
25 ranked shall be included.

1 “(C) RANKINGS OF EMPLOYERS.—

2 “(i) RANKING BY NUMBER OF MIS-
3 MATCHED EMPLOYEES.—The Secretary
4 shall assign a rank to each employer with
5 respect to whom there is new hire informa-
6 tion which has been submitted to the Na-
7 tional Directory of New Hires, based on
8 the number of employees of the employer
9 with respect to whom there is a mismatch,
10 as described in clause (iv). The Secretary
11 shall assign a rank of 1 to the employer
12 with the greatest number of such employ-
13 ees, and a lower rank to employers with
14 lesser numbers of such employees. The
15 Secretary shall assign the same rank to
16 employers with the same number of such
17 employees.

18 “(ii) RANKING BY PERCENTAGE OF
19 MISMATCHED EMPLOYEES.—The Secretary
20 shall assign a rank to each employer with
21 respect to whom there is new hire informa-
22 tion which has been submitted to the Na-
23 tional Directory of New Hires, based on
24 the percentage of employees of the em-
25 ployer with respect to whom there is a mis-

1 match, as described in clause (iv). The
2 Secretary shall assign a rank of 1 to the
3 employer with the greatest percentage of
4 such employees, and a lower rank to em-
5 ployers with lesser percentages of such em-
6 ployees. The Secretary shall assign the
7 same rank to employers with the same per-
8 centage of such employees.

9 “(iii) RANKING BY NUMBER OF EM-
10 PLOYEES WITH SAME SOCIAL SECURITY
11 ACCOUNT NUMBER.—The Secretary shall
12 assign a rank to each employer with re-
13 spect to whom there is new hire informa-
14 tion which has been submitted to the Na-
15 tional Directory of New Hires, based on
16 the number of employees of the employer
17 whose social security account number re-
18 ported to the National Directory of New
19 Hires is the same as the social security ac-
20 count number of another employee of the
21 employer, so reported. The Secretary shall
22 assign a rank of 1 to the employer with the
23 greatest number of such employees, and a
24 lower rank to employers with lesser num-
25 bers of such employees. The Secretary

1 shall assign the same rank to employers
2 with the same number of such employees.

3 “(iv) MISMATCHES.—For purposes of
4 this paragraph, there is a mismatch with
5 respect to an employee if the Secretary de-
6 termines that—

7 “(I) the social security account
8 number of the employee, as reported
9 to the National Directory of New
10 Hires (taking into account possible
11 correction by the Social Security Ad-
12 ministration), is invalid; or

13 “(II) the name and social secu-
14 rity account number of the employee,
15 as so reported (taking into account
16 such possible correction), do not
17 match the name and social security
18 account number of the employee in
19 the records of the Social Security Ad-
20 ministration.

21 “(D) LIMITATION ON USE OF DISCLOSED
22 INFORMATION.—The Secretary of Homeland
23 Security may use the information disclosed pur-
24 suant to subparagraph (A) of this paragraph
25 only for the purpose of establishing and enforce-

1 ing compliance with the Immigration and Na-
2 tionality Act.

3 “(E) CONDITION ON DISCLOSURE.—The
4 Secretary shall make a disclosure in accordance
5 with subparagraph (A) only to the extent that
6 the Secretary determines that the disclosure
7 would not interfere with the effective operation
8 of the program under this part.

9 “(F) REIMBURSEMENT OF HHS COSTS.—
10 The Secretary of Homeland Security shall reim-
11 burse the Secretary, in accordance with sub-
12 section (k)(3), for the costs incurred by the
13 Secretary in making the disclosures required by
14 subparagraph (A) of this paragraph.”.

15 (b) CONFORMING AMENDMENT TO IEVS.—

16 (1) IN GENERAL.—Section 1137(a)(3) of such
17 Act (42 U.S.C. 1320b–7(a)(3)) is amended by in-
18 serting “(including the full name and social security
19 account number of, and the aggregate wages paid to,
20 each employee during the reporting period, and the
21 name, address, and Federal employer identification
22 number of each employer reporting wages)” after
23 “quarterly wage reports”.

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

4 **TITLE II—OASDI BENEFITS**

5 **SEC. 201. DENIAL OF CREDIT TOWARD BENEFITS FOR** 6 **EARNINGS FROM UNAUTHORIZED WORK.**

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

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

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

16 “(B) the Secretary of Homeland Security deter-
17 mines, pursuant to paragraph (2), that such indi-
18 vidual was not authorized to be employed in the
19 United States during any portion of such calender
20 year.

21 “(2)(A) The Secretary of Homeland Security shall
22 enter into an agreement with the Commissioner to provide,
23 in a form and manner specified by the Commissioner, such
24 information as the Commissioner determines necessary to

1 carry out the limitations on crediting quarters of coverage
2 for years under paragraph (1).

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

7 “(i) The name, social security account number,
8 and date of birth of each individual who is author-
9 ized by the Secretary of Homeland Security or the
10 Secretary of State to be employed in the United
11 States.

12 “(ii) The date on which each such authorization
13 is granted.

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

16 “(iv) The date of naturalization for each indi-
17 vidual who becomes a naturalized citizen of the
18 United States.

19 “(C) The information provided to the Commissioner
20 under subparagraph (A) relating to years in which an indi-
21 vidual was not authorized to be employed in the United
22 states during any portion of a year shall be the final deter-
23 mination of the Secretary of Homeland Security after an
24 opportunity for review or appeal under procedures which

1 shall be established by the Secretary of Homeland Security
2 and shall not be reviewable by the Commissioner.

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

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

11 (1) by striking “and” at the end of paragraph
12 (1);

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

15 (3) by adding at the end the following new
16 paragraph:

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

23 (c) TRANSMISSION OF INFORMATION FROM COMMIS-
24 SIONER TO SECRETARY.—Section 205(c)(2) of such Act

1 (42 U.S.C. 405(c)(2)) is amended by adding at the end
2 the following new subparagraph:

3 “(I) The Commissioner and the Secretary of Home-
4 land Security shall enter into an agreement to establish
5 a system to transmit to the Secretary of Homeland Secu-
6 rity any social security account number assigned to an in-
7 dividual after the date of the enactment of the New Em-
8 ployee Verification Act of 2008, and other identifying in-
9 formation relating to such individual, in any case in which
10 such individual is not a citizen or national of the United
11 States at the time of the assignment of such number to
12 such individual. The Secretary of Homeland Security shall
13 incorporate such number and other identifying informa-
14 tion into all records of the Department of Homeland Secu-
15 rity maintained with respect to such individual.”.

16 (d) EFFECTIVE DATES.—

17 (1) Section 214(d)(1) of the Social Security Act
18 (added by subsection (a)) shall be effective with re-
19 spect to quarters of coverage credited for calendar
20 years commencing after the date on which the Sec-
21 retary of Homeland Security and the Commissioner
22 certify, by publication in the Federal Register, that
23 the system for developing and maintaining informa-
24 tion pursuant to section 214(d)(2)(B) of the Social

1 Security Act (added by subsection (a)) is oper-
2 ational.

3 (2) The Commissioner of Social Security and
4 the Secretary of Homeland Security shall enter into
5 the agreement described in section 205(c)(2) of the
6 Social Security Act (added by subsection (c)) not
7 later than 180 days after the date of the enactment
8 of this Act.

9 **SEC. 202. IMPROVEMENTS IN PROVISIONS GOVERNING TO-**
10 **TALIZATION AGREEMENTS.**

11 (a) ADDITIONAL INFORMATION REQUIRED IN DOCU-
12 MENT TRANSMITTING TOTALIZATION AGREEMENTS TO
13 THE CONGRESS.—

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

17 “(e)(1) Any agreement to establish a totalization ar-
18 rangement entered into pursuant to this section (and any
19 such agreement to amend a totalization arrangement)
20 shall be transmitted by the President to each House of
21 the Congress together with a report by the President in
22 support of such agreement. The President’s report shall
23 include the following:

24 “(A) an identification and assessment by the
25 Commissioner of Social Security of the major risks

1 associated with entering into such an agreement
2 with such other country, including an assessment
3 of—

4 “(i) the integrity of such other country’s
5 data and records on births, deaths, marriages,
6 divorces, earnings, and other information affect-
7 ing eligibility for benefits or benefit amounts,
8 and

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

12 “(B) the number of individuals who are United
13 States citizens estimated by the Chief Actuary of the
14 Social Security Administration to be affected by the
15 agreement;

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

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

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

1 “(ii) individuals who are not United States
2 citizens and their employers;

3 “(E) the Chief Actuary’s estimate of the effect
4 of the agreement, in the short term and in the long
5 term, on the receipts and disbursements under the
6 social security system established by this title; and

7 “(F) an analysis by the Chief Actuary of the
8 sensitivity of the estimates of the Chief Actuary to
9 alternative assumptions with respect to economic
10 and demographic variables.”.

11 (2) EFFECTIVE DATE.—The amendment made
12 by this subsection shall apply with respect to agree-
13 ments, establishing totalization arrangements pursu-
14 ant to section 233 of the Social Security Act, which
15 are transmitted to the Congress on or after the date
16 of the enactment of this Act.

17 (b) APPROVAL OF TOTALIZATION AGREEMENTS BY
18 JOINT RESOLUTION.—

19 (1) IN GENERAL.—Section 233(e) of such Act
20 (42 U.S.C. 433(e)) is amended by striking para-
21 graph (2) and inserting the following new para-
22 graphs:

23 “(2)(A) Except as provided in paragraph (4) or (5),
24 the agreement transmitted to the Congress pursuant to
25 paragraph (1) may enter into force according to its terms

1 or upon the expiration of the period of 60 calendar days
2 following the date of its transmittal to each House of the
3 Congress (excluding Saturdays, Sundays, holidays, and
4 days on which either House of Congress is not in session),
5 whichever is later.

6 “(B) Whenever a document setting forth an agree-
7 ment entered into under this section and the President’s
8 report in support of the agreement is transmitted to the
9 Congress pursuant to paragraph (1), copies of such docu-
10 ment shall be delivered to both Houses of Congress on
11 the same day and shall be delivered to the Clerk of the
12 House of Representatives if the House is not in session
13 and to the Secretary of the Senate if the Senate is not
14 in session.

15 “(3)(A) Any document setting forth an agreement en-
16 tered into under this section and transmitted to each
17 House of the Congress pursuant to paragraph (1) shall
18 set forth a determination of the Chief Actuary of the So-
19 cial Security Administration as to whether there is ex-
20 pected, over the 75-year period following the date of the
21 entry into force of the agreement, a net reduction in any
22 positive actuarial balance for such period of the social se-
23 curity system established by this title (or a net increase
24 in any negative actuarial balance for such period for such
25 system) attributable to the operation of such agreement

1 equal to at least 0.005 percent of the present value of tax-
2 able payroll for such period.

3 “(B) For purposes of this paragraph—

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

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

12 “(iii) The term ‘adjusted summarized income
13 rate’ means, over a period, the ratio (expressed as
14 a percentage) of the sum of the trust fund balance
15 at the beginning of the period plus the present value
16 of the total income from taxes during such period,
17 to the present value of the taxable payroll for such
18 period.

19 “(iv) The term ‘adjusted summarized cost rate’
20 means, over a period, the ratio (expressed as a per-
21 centage) of the sum of the present value of the cost
22 during such period plus the present value of the tar-
23 geted trust fund balance, to the present value of the
24 taxable payroll for the years for such period.

1 “(v) The term ‘trust fund balance’ means the
2 combined balance of the Federal Old-Age and Sur-
3 vivors Insurance Trust Fund and the Federal Dis-
4 ability Insurance Trust Fund (hereinafter in this
5 subparagraph referred to as the ‘Trust Funds’).

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

11 “(vii) The term ‘cost’ means, during a period,
12 disbursements from the Trust Funds during such
13 period, including scheduled benefit payments, special
14 monthly payments to certain uninsured persons who
15 have 3 or more quarters of coverage (and whose pay-
16 ments are therefore not reimbursable from the gen-
17 eral fund of the Treasury), administrative expenses,
18 net transfers from the Trust Funds to the Railroad
19 Retirement program under financial-interchange
20 provisions, and payments for vocational rehabilita-
21 tion services for disabled beneficiaries, and excluding
22 special monthly payments to certain uninsured per-
23 sons whose payments are reimbursable from the gen-
24 eral fund of the Treasury, and transfers under the
25 interfund borrowing provisions of section 201(l).

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

7 “(C) In making determinations under this paragraph,
8 the Chief Actuary shall employ the intermediate assump-
9 tions of the Board of Trustees of the Federal Old-Age and
10 Survivors Insurance Trust Fund and the Federal Dis-
11 ability Insurance Trust Fund in its most recent annual
12 report issued pursuant to section 201.

13 “(4) An agreement entered into under this section
14 shall not enter into force if there is enacted into law, dur-
15 ing the period of 60 calendar days specified in paragraph
16 (2)(A), a bill or joint resolution disapproving such agree-
17 ment.

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

1 “(A) is attributable to the operation of such
2 agreement, and

3 “(B) is equal to at least 0.005 percent of the
4 present value of taxable payroll for such period,
5 such agreement shall not enter into force unless, during
6 the period of 60 calendar days specified in paragraph
7 (2)(A), there is enacted into law a bill or joint resolution
8 approving such agreement.

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

11 “(i) as an exercise of the rulemaking power of
12 the House of Representatives and the Senate, re-
13 spectively, and as such they are deemed a part of
14 the rules of each House, respectively, but applicable
15 only with respect to the procedure to be followed in
16 that House in the case of disapproval resolutions
17 and approval resolutions, and they supersede other
18 rules only to the extent that they are inconsistent
19 therewith; and

20 “(ii) with full recognition of the constitutional
21 right of either House to change the rules (so far as
22 relating to the procedure of that House) at any time,
23 in the same manner and to the same extent as in
24 the case of any other rule of that House.

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

9 “(C) For purposes of consideration of a bill or joint
10 resolution described in paragraph (4) or (5) providing
11 solely for approval or disapproval of an agreement under
12 this section, the agreement shall not be subject to amend-
13 ment after the transmittal to each House of the Congress
14 pursuant to paragraph (1).”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by this subsection shall apply with respect to agree-
17 ments, establishing totalization arrangements pursu-
18 ant to section 233 of the Social Security Act, which
19 are transmitted to the Congress on or after the date
20 of the enactment of this Act.

21 (3) SPECIAL RULE.—Notwithstanding sub-
22 section (e) of section 233 of the Social Security Act
23 (as in effect prior to the amendments made by this
24 section), any agreement entered into pursuant to
25 such section 233, establishing totalization arrange-

1 ments between the social security system established
2 by title II of such Act and the social security system
3 of another country, which—

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

6 (B) was transmitted to the Congress pur-
7 suant to such subsection (e) on or after Sep-
8 tember 1, 2007, and before the date of the en-
9 actment of this Act,

10 shall be deemed not to have entered into force as of
11 the date of the enactment of this Act and shall be
12 deemed to enter into force after such date only as
13 provided in section 233(e) of such Act (as amended
14 by this section) as if such agreement had been trans-
15 mitted to the Congress on the date on which the
16 President transmits to the Congress on or after such
17 date, pursuant to section 233(e)(1) of such Act (as
18 amended by this section), a report in support of
19 such agreement meeting the requirements of such
20 section 233(e)(1) (as so amended).

21 (c) BIENNIAL REPORTS TO THE CONGRESS REGARD-
22 ING ONGOING OPERATION OF TOTALIZATION AGREE-
23 MENTS.—

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

4 “Biennial Oversight Reports

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

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

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

24 “(3) information relating to perceived problems
25 with the integrity of the other country’s data and

1 records used in determining eligibility for benefits or
2 benefit amounts, and

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

10 (2) INITIAL REPORT.—The Commissioner of
11 Social Security shall submit the initial report pursu-
12 ant to section 233(f) of the Social Security Act
13 (added by this subsection) not later than December
14 31, 2008.

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

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

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

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

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

1 (4) by adding at the end the following new sub-
2 paragraph:

3 “(D) no lump sum death payment shall be
4 made to such individual after the Commissioner of
5 Social Security is notified by the Attorney General
6 or the Secretary of Homeland Security that such in-
7 dividual has been so removed.”.

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to any individual with respect to
10 whose removal from the United States the Commissioner
11 of Social Security receives notification from the Attorney
12 General or the Secretary of Homeland Security after the
13 twelfth month that begins after the date of the enactment
14 of this Act.

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