

statutory exceptions is a provision authorizing the Attorney General to establish additional exceptions for certain types of programs, services, and assistance. The programs, services, and assistance that the Attorney General may specify are limited to those which (1) deliver in-kind services at the community level, including through public or private nonprofit agencies; (2) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and (3) are necessary for the protection of life or safety. (Sections 401(b)(1)(D) and 411(b)(4).

The Department intends to publish an Order finalizing the implementation of that authority. Before it does so, the Department is publishing this Notice to solicit the input of federal, state, and local agencies operating programs or providing services or assistance that may be covered by the final Order. Responses to this solicitation will assist the Department in reaching a final determination regarding the types of programs, services, or assistance that should be covered by that Order. After reviewing any comments and consulting with other agencies, the Attorney General then will issue a final specification of programs, services, and assistance for which all persons remain eligible, regardless of immigration status.

If you believe that any program or programs you administer have been or may be affected by the Attorney General Order, the Department would appreciate receiving your comments. In your comments, please give the citations of any applicable federal, state, or local statutes or regulations that govern the creation, operation, or scope of your affected programs. Please also give a brief description of the structure of the program(s), your agency's view of whether the program, service, or assistance falls within the purview of the Attorney General Order, and any arguments to support that interpretation.

Dated: September 9, 1997.

**Janet Reno,**

*Attorney General.*

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as set forth in § 401(b) and § 411(b) of the Act, as amended by the Balanced Budget Act of 1997, Pub. L. No. 105-33 (1997).

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

[INS No. 1872-97]

#### Pilot Programs for Employment Eligibility Confirmation

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice prescribes guidelines under which employers may elect to participate in one or more of three pilot programs for employment eligibility confirmation to be conducted by the Immigration and Naturalization Service (Service) with the involvement of the Social Security Administration (SSA). This notice also requests comments from employers and other interested parties on the pilots. The Commissioner of the Service invites employers in states where the three pilot programs for employment eligibility confirmation will be conducted to contact the Service to elect to participate in one or more of them. The pilot programs build on the experience of the Service and SSA over the last 5 years in developing and operating employment verification pilot programs with the goal of enabling participating employers to verify their newly hired employees' work eligibility quickly, easily, and accurately.

**DATES:** There is no deadline for submission of election forms to participate in an employment verification pilot program(s), but interested employers should send their completed election forms to the Service as soon as possible to maximize their opportunity to participate.

**ADDRESSES:** Please submit your election forms, requests for information and any comments you may have on the pilot programs to the Immigration and Naturalization Service, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, Attention: SAVE Program Branch—Election Forms and/or Comments.

#### FOR FURTHER INFORMATION CONTACT:

John E. Nahan, Immigration and Naturalization Service, SAVE Program, 425 I Street, NW., ULLICO Building, 4th Floor, Washington, DC 20536, telephone (202) 514-2317.

#### SUPPLEMENTARY INFORMATION:

##### I. Statutory Authority

Title IV, Subtitle A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, enacted on September 30, 1996, provides that all

United States employers, subject to eligibility for participation, geographical limitations, and limitations of available Service and SSA resources, may elect to participate in one or more of three employment verification pilot programs to be conducted by the Service. The three pilot programs are: (1) the Basic Pilot; (2) the Citizen Attestation Pilot; and (3) the Machine-Readable Document Pilot.

##### II. Purpose

The purpose of these pilot programs is to implement IIRIRA's mandate to test three methods of providing an effective, nondiscriminatory work eligibility verification procedure focusing on electronic verification. Through an automated confirmation system, employers will match information provided by employees on the Form I-9, Employment Eligibility Verification, against existing information contained in SSA's or the Service's databases to confirm that an individual is eligible to work.

##### III. General Description of the Pilot Programs for Employment Eligibility Confirmation

The IIRIRA requires the Service to conduct three distinct pilot programs, each of which can last no longer than 4 years, unless otherwise directed by Congress. The programs include: (1) the Basic Pilot; (2) the Citizen Attestation Pilot; and (3) the Machine-Readable Document Pilot. Participation in the pilots will be voluntary on the part of employers, except with regard to the executive and legislative branches of the Federal Government and certain employers found to be in violation of sections 274A(e)(4) or 274B(g) of the Immigration and Nationality Act (Act), 8 U.S.C. 1101 et seq., in states where the pilots are being conducted. Although the decision for an employer to participate is voluntary, verification may not be selective; all employees subject to verification under the terms of a pilot program must be verified by an employer participating in that pilot.

##### A. Mandatory Elections

##### 1. Federal Government Participation

Certain Federal Government entities are required by Section 402(e) of IIRIRA to elect to participate in at least one of the three pilot programs. The Secretary of each department of the executive branch is required to make an election of one or more of the pilot programs, but may limit the election to hiring in those states or geographic areas covered by the pilot(s) selected, and to specified divisions within the department, as long

as all hiring by such divisions and in such locations is covered. In the legislative branch, each Member of Congress, each officer of Congress, and the head of each agency of the legislative branch that conducts hiring in a state in which a pilot program will operate must participate in at least one pilot programs. Governmental entities required to participate in a pilot program must return the election form to the Service. The Service's acceptance of elections by employers required to make elections is subject to the constraints of available resources and the pilot eligibility requirements.

## 2. Violators of the Act

Orders finding employers liable under sections 274A(e)(4) or 274B(g) of the Act for knowingly employing unauthorized aliens, or under section 274B(g) of the Act for unfair immigration-related employment practices, may require the subject of the order to participate in a pilot program with respect to hiring, recruitment, or referral of individuals in a state covered by such a program. This provision will be the subject of forthcoming regulations or other necessary implementing action by the authorities responsible for issuing such orders. Persons or entities subject to such orders should not return the election form to the Service, unless they desire to participate voluntarily in a pilot program.

Persons or entities required to participate in a pilot program who fail to comply with the requirements of the pilot program, with respect to an individual, are subject to civil penalties under section 274A of the Act.

## B. Confirmation System Requirements

Section 404(d) of IIRIRA requires that the confirmation system to be established to service employers participating in the three pilot programs be designed and operated to:

- (1) maximize reliability and ease of use, consistent with protecting the privacy and security of the underlying information;
- (2) respond to all appropriate inquiries and to register times when such inquiries are not received;
- (3) include appropriate safeguards to prevent unauthorized disclosure of personal information; and
- (4) have reasonable safeguards against the system's resulting in lawful discriminatory practices based on national origin or citizenship status, including the selective or unauthorized use of the system to verify eligibility, the use of the system prior to an offer of employment, and the exclusion of certain individuals from consideration

for employment as a result of a perceived likelihood that additional verification will be necessary, beyond what is required for most job applicants.

All the pilots will have a number of features and safeguards in common to meet these requirements. The confirmation system will contain safeguards designed to protect the integrity of personal information contained in SSA and Service databases, including passwords, access codes, and user identification numbers. The information provided through the confirmation system will be limited only to that necessary to satisfy the employer's need to verify work eligibility. Necessary manuals and training material will be provided to employers. The Service will designate one or more individuals in each Service district office covering an area in which a pilot program is being implemented to assist the public, as well as provide information and assistance from the Service's SAVE Program in Washington, DC.

## C. Memorandum of Understanding (MOU)

No employment eligibility confirmation information will be exchanged between the employer and the Service or SSA under a pilot program unless and until the employer has entered into an MOU with the Service and SSA (if applicable), stating in detail the terms and conditions applicable to that pilot. The MOUs for each pilot will contain appropriate undertakings on the part of the employer regarding its responsibilities under the pilot including, but not limited to, the following:

- (1) the employer agrees that it will not initiate any verification procedure until after the employee has been hired and the Form I-9 has been completed;
- (2) the employer agrees that it will verify all new employees subject to verification under the terms of the pilot;
- (3) the employer agrees to display prominently appropriate notices to inform employees and prospective employees about its participation in the pilot and to provide anti-discrimination information; and
- (4) the employer agrees not to take any adverse action against an employee based upon his or her employment eligibility status while SSA or the Service is processing a verification request, unless the employer obtains knowledge that the employee is unauthorized;
- (5) the employer agrees to provide access to its employment records to the Service and SSA, and its agents or

designees for the purpose of pilot evaluation; and

(6) the employer agrees that the information provided to it through the confirmation system will be used to supplement and confirm the Form I-9 verification of identity and work authorization of newly hired employees, and not for any other purpose.

Violation of these conditions will be grounds for immediate termination of the employer's participation in the pilot, and for appropriate legal action. In particular, information received by the Service or SSA in the course of the pilot indicating that the employer has engaged in unlawful immigration-related employment practices will be referred to the Special Counsel for Immigration-Related Unfair Employment Practices within the Civil Rights Division of the Department of Justice.

Except as otherwise specifically designated by IIRIRA, all legal obligations pertaining to employment verification and to the obtaining and use of SSA or other Federal Government information, including anti-discrimination protections, will continue to apply to pilot program participants. Section 403(d) of IIRIRA states that no person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

Under section 402(b) of IIRIRA, an employer participating in any of the three pilot programs obtains the benefit of a rebuttable presumption that it has not violated section 274A(1)(A) of the Act—which provides civil penalties for knowingly employing an unauthorized alien—with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in compliance with the terms and conditions of the pilot program.

## D. Unfair Immigration-Related Employment Practices

An employer participating in any of the pilots agrees not to discriminate unlawfully against any individual in hiring, firing, or recruitment practices because of his or her national origin or, in the case of a protected individual, as defined in section 274B(a)(3) of the Act, because of his or her citizenship status. Such illegal practices can include discharging or refusing to hire eligible employees because of their foreign appearance or language. An employer also violates the anti-discrimination provision if it requests more or different documents than are required under

section 274B of the Act, or refuses to honor documents that on their face reasonably appear to be genuine, if done with the purpose or with the intent of discriminating against an individual because of his or her citizenship or national origin. Violation of the unfair immigration-related practices provisions of the Act could subject an employer to civil penalties pursuant to section 274B of the Act.

#### *E. Evaluation of Pilot Programs*

Section 405 of IIRIRA requires that the Service report to Congress on the Basic Pilot, the Citizen Attestation Pilot, and the Machine-Readable Pilot programs and make recommendations on whether they should be continued or modified. To assist in evaluating the pilots and developing these reports, the Service or auditors contracted by the Service may contact participating employers to review work records created during the pilot(s), and to solicit their views and the views of their employees concerning these pilot programs.

#### *F. Equipment Requirements*

The Service and SSA will provide the verification services contemplated by the employment verification pilot programs at no cost to employers, but employers will be responsible for providing the equipment needed to make inquiries. Equipment needed for participation in the Basic Pilot and the Machine-Readable Document Pilot includes a personal computer with a modem, and a touch-tone telephone (and modem, if the same device) on a phone line which results in only one phone number being recognized as the originating phone number, regardless of whether it is controlled through a switch, private branch exchange, or direct outward dialing—this line should be an analog voice grade line. Equipment required for the Citizen Attestation Pilot is a personal computer and a modem. For the Machine-Readable Document Pilot, a machine to read the machine-readable documents will be necessary in addition to the Basic Pilot equipment. No decision has been made yet as to exactly what machine will be used for the Machine-Readable Document Pilot, or as to whether employers will be responsible for providing it. The requirements for the Machine-Readable Document Pilot will be defined in a separate Memorandum of Understanding (MOU) between the Service, SSA, and the participating employer.

#### **IV. Basic Pilot**

The Basic Pilot requires participating employers to verify employment authorization for all new employees, regardless of citizenship. The IIRIRA mandates that the Basic Pilot be offered to employers in at least five of the seven states with the highest estimated population of aliens who are not lawfully present in the United States. The Service has estimated the population of aliens who are not lawfully present in the United States to be highest in the states of California, Texas, New York, Florida, and Illinois, and is soliciting elections to participate from employers in those five states.

##### *A. Changes to Form I-9 Procedures for the Basic Pilot*

Unlike Service employment verification pilots to date, the Basic Pilot involves changes to Form I-9 employment verification procedures. Except as specifically provided, however, all employment eligibility verification requirements generally applicable to employers apply equally to pilot participants. The only specific change to document examination procedures for employers participating in the Basic Pilot will be that "List B" identity documents without a photograph will not be acceptable, for the following reasons:

(1) Documents referred to in section 274A(b)(1)(B)(ii) of the Act must be designated by the Service as suitable for the purpose of identification in a pilot program. The documents referred to by this statutory citation include all Form I-9 "List A" documents acceptable for both identity and employment eligibility under 8 CFR 274a.2(b)(1)(A), except for the U.S. Passport (expired or unexpired). The Service hereby designates all Form I-9 "List A" documents, identified by current Service regulations, as suitable for the purpose of identification in a pilot program. The U.S. Passport (expired or unexpired) is also suitable for the purpose of identification in a pilot program as a statutory Form I-9 "List A" document, without the need for specific designation by the Service. As a result of this designation of suitable documents, employment verification procedures involving "List A" documents, showing both identity and employment eligibility, will remain unchanged for participants in the Basic Pilot, and for participants in the Citizen Attestation and Machine-Readable Document pilots, to the extent that those pilots adopt Basic Pilot procedures;

(2) The IIRIRA requires that a document referred to in section

274A(b)(1)(D) of the Act contain a photograph of the individual. This statutory citation refers to Form I-9 "List B" documents that establish identity only under 8 CFR 274a.2(b)(1)(B). "List B" documents do not necessarily include photographs. However, only "List B" documents with photographs may be accepted for purposes of identity verification by employers participating in the Basic Pilot, or in the Citizens Attestation or Machine-Readable Document pilots, to the extent that those two pilots adopt Basic Pilot procedures. The Service does not anticipate issuing a new version of the Form I-9 specifically for employment verification pilot participants;

(3) The IIRIRA states that the employer has complied with the employment eligibility verification requirements of section 274A(b)(1) of the Act with respect to examination of a document if the document reasonably appears on its face to be genuine and to pertain to the individual whose identity and work eligibility is being confirmed. This provision does not alter, for pilot program purposes, the standards for document examination applicable to all U.S. employers under sections 274A(b)(1) and 274B(a)(6) of the Act; and

(4) The IIRIRA provides that if the Service finds that a pilot program would reliably determine, with respect to an individual, whether the person with the identity claimed by the individual is authorized to work in the United States, and whether the individual is claiming the identity of another person, it may waive the requirement that a Form I-9 "List C" employment eligibility document also be presented if the employee presents a List B identity document rather than a "List A" identity and employment eligibility document. The pilot programs are designed to make reliable determinations of work eligibility, and the Service will consider as they proceed whether waiving the "List C" requirement is appropriate. Any such determination prior to implementation of the pilot programs, however, would be premature.

##### *B. Basic Pilot Verification Procedures*

The Basic Pilot involves separate verification checks (if necessary) of the SSA and Service databases, using automated systems to verify Social Security account numbers (SSNs) and alien registration numbers. The verification procedures will be initiated after the employee has been hired and the Form I-9 completed. Employers must verify all newly hired employees

without exception, and must make verification inquiries within 3 days of the hiring (unless the automated system to be queried is temporarily unavailable, in which case the time period is extended to accommodate employers attempting, in good faith, to make inquiries during the period of unavailability).

In all cases, the verification inquiry will go first to SSA. If necessary, the SSA response will instruct employers to use the Service's automated verification procedures. The automated verification procedures are designed to verify the employee's work eligibility within 3 work days of the initial call to SSA. If the automated procedures do not result in verification, a "tentative nonconfirmation" will result. In that case, the employer will inquire of the employee whether he or she wishes to contest the tentative nonconfirmation. If so, the employee will be referred to secondary verification, which will require him or her to contact or visit an SSA or Service office, as appropriate, within 8 Federal Government work days of being notified by the employer of the tentative nonconfirmation.

A tentative nonconfirmation received from either SSA or the Service does not mean that the employee is not authorized to work, and employers may not interpret it as such. There are many reasons why a work-authorized individual may be the subject of a tentative nonconfirmation, including mistakes on the Form I-9 by either the employer or the employee, inaccurate data entry by the employer, legal change of the employee's name, or erroneous, incomplete, or outdated Government records. Although it does not mean that the employee is not work-authorized, a tentative nonconfirmation means that a work-authorized employee must, without fail, take advantage of his or her secondary verification opportunity to correct the situation if he or she wishes to continue employment.

#### SSA Verification—the Automated System

After completing the Form I-9, the employer will access the SSA database using a touch-tone telephone to input the employee's name, SSN, and date of birth, as recorded on the Form I-9. If the data input by the employer matches the SSA database and shows the employee to be work-authorized, the employer will receive a confirmation of employment eligibility. If the information does not match SSA records, or if the employment eligibility of the employee is not confirmed, the employer will receive further instructions. In some cases, the

employer will be instructed to initiate the Service verification procedures. In other cases, the SSA response shall constitute a tentative nonconfirmation. The employer will record appropriate transaction codes received from SSA on a verification transaction record form. Social Security personal earnings account information will not be accessible to the employer through the SSA verification process.

#### a. SSA Secondary Verification

If the employer receives a tentative nonconfirmation of an employee from SSA, the employer must notify the employee and determine whether or not the employee will contest the tentative nonconfirmation. If the employee does not contest the tentative nonconfirmation, it will be considered a final nonconfirmation. If the employee contests the tentative nonconfirmation, he or she must visit an SSA field office within 8 Federal Government work days to resolve any discrepancy in SSA records, including updating the database if appropriate. The SSA and the Service have 10 Federal Government work days within which to respond to contested tentative nonconfirmation cases. During this period, the employer may not terminate or take adverse action against the employee based upon his or her employment eligibility status. At the expiration of the 8-day period, the employer will make another telephone inquiry of the SSA database, which will result in confirmation, a second and final nonconfirmation, or additional verification instructions.

#### 2. Service Verification—the Automated System

The Service's automated verification will take place only as may be directed by the SSA verification response. Participating employers access the Service database using personal computers with a modem. To conduct an initial query of the Service database, the employer keys in certain information from the employee's Form I-9. The Service database will respond within seconds either by confirming work authorization, or by requiring more information relating to Form I-9 employment eligibility documentation in order to permit the Service to conduct further searches of its records. The result of the further searches will be available through the automated system within 3 Federal Government work days. If the Service is unable to confirm work authorization based upon the automated process, a tentative nonconfirmation results.

#### a. Service Secondary Verification

An employee who is the subject of a tentative nonconfirmation after completion of an automated Service verification check is provided a secondary verification opportunity to verify his or her employment status. In these cases, the employer must notify the employee of the tentative nonconfirmation and determine whether or not he or she will contest the tentative nonconfirmation. If the employee does not contest the tentative nonconfirmation, it will be considered a final nonconfirmation. If the employee contests the tentative nonconfirmation, he or she must contact the Service within 8 Federal Government work days for resolution of his or her case. The employer will instruct the employee to call a Service toll-free telephone number or visit a local Service office within that time period. The SSA and the Service have 10 Federal Government work days within which to respond to contested tentative nonconfirmation cases. During this period, the employer may not terminate or take adverse action against the employee based upon his or her employment eligibility status, unless the Service determines, within that time, that the employee is not work-authorized.

Within or at the conclusion of the 10-day period for secondary verification, an employer will receive one of the following messages via the electronic confirmation system concerning the employee's work eligibility: (1) if the employee contacts the Service and verifies his or her employment eligibility, the employer will receive an "employment-authorized" confirmation; (2) if the employee contacts the Service but the Service determines that the employee is not work-authorized, the employer will receive an "unauthorized" response (final nonconfirmation); (3) if the employee does not contact the Service to resolve his or her case, the employer will receive a "no show" response, which shall also constitute a final nonconfirmation for purposes of the pilot; or (4) if in some cases the Service needs more than 10 work days to resolve a case, the employer will receive a "case in continuance" response, and the employee should continue to work until a definitive answer is received from the Service. If necessary, based on the secondary verification contact, the Service database will be updated. The employer will record appropriate verification codes received from the Service, either by printing the verification screen and attaching it to

the Form I-9, or recording the verification code on the Form I-9.

### 3. Consequences of Final Nonconfirmation

An employer receiving a final nonconfirmation from SSA or the Service with regard to an employee may terminate the employee, and shall not be civilly or criminally liable under any law for the termination, as long as the action was taken in good faith reliance on information provided through the confirmation system. If the employer does not terminate an employee after final nonconfirmation, the employer must notify the Service. If the employer fails to notify the Service of continued employment after receiving final nonconfirmation, the failure is deemed a violation of section 274A(a)(1)(B) of the Act for failure to comply with proper hiring procedures, and the employer may be assessed a civil monetary penalty of between \$500 and \$1,000. An employer continuing to employ an individual after receiving a final nonconfirmation also could be subject to legal penalties under section 274A(a)(1) of the Act. Section 403(a)(4)(C)(iii) of IIRIRA establishes a rebuttable presumption that an employer who continues to employ an individual after receiving final nonconfirmation has knowingly employed an unauthorized alien.

### V. The Citizen Attestation Pilot

The Citizen Attestation Pilot provides different verification procedures depending on whether or not the employee attests on the Form I-9 that he or she is a U.S. citizen or national. Except as specified in section 403(b) of IIRIRA, the Citizen Attestation Pilot is the same as the Basic Pilot. The Citizen Attestation Pilot is required to operate in at least five states, or, if fewer, all of the states in which each driver's license and identification card contains a photograph of the individual, and which have been determined by the Attorney General to have sufficient application and issuance procedures to make their driver's licenses and identification cards resistant to counterfeiting, tampering, and fraudulent use.

Section 656(b) of IIRIRA directed the Department of Transportation (DOT) to promulgate regulations regarding issuance procedures for state-issued driver's licenses and identification cards, and the acceptable secure format for such licenses and cards. As the Citizen Attestation Pilot progresses, and once the DOT regulations are promulgated, the Service will make further determinations based on those

regulations whether actual or prospective Citizen Attestation Pilot states meet DOT requirements. At present, the Service has not made any determination that any state's procedures are inadequate for participation in the pilot. In order to implement IIRIRA's directive to begin the Citizen Attestation Pilot, and to give as many employers as possible the opportunity to express interest in participating in a pilot, the Service is soliciting elections for the Citizen Attestation Pilot from employers in all states. Based on further determinations as to licensing procedures in states with sufficient employer interest, the Service will decide which states will be the initial sites for the Citizen Attestation Pilot.

#### A. Changes to Form I-9 Procedures for the Citizen Attestation Pilot

As in the Basic Pilot, the Service designates all Form I-9 "List A" documents identified by current Service regulations at 8 CFR 274a(2)(b)(1)(A) as suitable for purposes of identification of employees (regardless of citizenship) for the Citizen Attestation Pilot. Also, only "List B" identity documents with photographs may be accepted from any employee by employers participating in the Citizen Attestation Pilot. In all other respects, the Form I-9 procedures for employees who do not attest on the Form I-9 that they are U.S. citizens or nationals are the same as those applicable to all U.S. employers under section 274A of the Act.

The Form I-9 procedures applicable to employers participating in the Citizen Attestation Pilot in the case of employees attesting to U.S. citizenship or nationality in section 1 of the Form I-9 are, however, quite different. The only "List A" document that an employer may accept from such an employee is a U.S. passport (expired or unexpired). If the U.S. citizen or national employee presents a "List B" identity document, it must contain a photograph. United States citizen or national employees are not required to present a social security card or other "List C" document evidencing employment authorization in addition to a "List B" identity document with photograph.

#### 1. Waiver of Document Presentation Requirement

For a subset of employers within the Citizen Attestation Pilot (fewer than 1,000 employers to be selected at the discretion of the Service), employees who attest to U.S. citizenship or nationality on the Form I-9 do not have to produce any documentation at all. In

those cases, only section 1 of the Form I-9 will be completed. Normal retention and inspection requirements will continue to apply to such Forms I-9, as they do to all Forms I-9 completed by participants in any pilot program.

#### B. Citizen Attestation Pilot Automated Verification Procedures

In the case of employees attesting to U.S. citizenship or nationality on the Form I-9 as described above, no further verification will take place. For alien employees, the process will be identical to the "Service Verification" procedures described for the Basic Pilot. The Citizen Attestation Pilot will not use SSA verification procedures.

### VI. The Machine-Readable Document Pilot

The Machine-Readable Document Pilot is identical to the Basic Pilot in all respects, and the above discussion of the Basic Pilot applies to it in full, except for the geographic scope of the pilot and for one additional feature. If an employee subject to employment eligibility verification presents a driver's license or identification card containing a machine-readable SSN issued by the state in which the pilot program is being conducted, the employer will make an inquiry to SSA through the confirmation system by using the machine-readable feature. Integrating the machine-readable feature with the SSA database presents particular technical challenges. As a result, employers electing to participate in the Machine-Readable Document Pilot, and selected for participation in it, may be offered the otherwise identical Basic Pilot before the machine-readable feature is available, with later phase-in of that feature.

The Machine-Readable Document Pilot is required to operate in at least five states or, if fewer, all of the states that include a machine-readable SSN on their driver's licenses and identification cards. The Service has determined for the purposes of the Machine-Readable Document Pilot that the state of Iowa includes machine-readable SSNs on some or all of its driver's licenses and identification cards. Employers in that state may elect to participate in this pilot.

### VII. Eligibility for Participation in the Pilot Programs

#### A. General Criteria

Subject to the specific limitations for each pilot, and to the constraints of available resources, any person or entity that conducts any hiring, or any recruiting or referral for a fee subject to

section 274A(a)(1)(B)(ii) of the Act, in a state in which a pilot program will operate, may elect to participate in the pilot. In other words, any employer or other entity subject to the employment eligibility verification requirements of section 274(a)(1) of the Act is eligible. "State" includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States in addition to the 50 states. All participants must be willing to sign and comply with the MOU for their respective pilot, which will contain more specific terms and conditions of the pilot. The participation of any employer in any pilot may be terminated by the Service because the employer has substantially failed to comply with its obligations under the pilot program.

Employers electing to participate in a pilot program may request that their election apply to all their hiring in each of the states in which the pilot will take place, or that it be limited to its hiring in one or more applicable states, or to one or more places of hiring within a state. The Service will endeavor to honor employers' preferences to the extent available resources and pilot availability permits. Multi-site employers may elect more than one pilot if they hire employees in at least one location within the geographic area covered by each pilot elected. However, each hiring location may only participate in one pilot, any preference may be given to employers not otherwise able to participate in a pilot over those who wish to participate in more than one pilot.

Section 402 of IIRIRA permits the Service to provide for employers' elections to extend to states to which the pilot programs are not operating, but in which the employer hires. The Service will determine when it is feasible to provide for such extensions outside pilot states based on employer demand and available resources.

#### 1. Basic Pilot Eligibility

Employers in California, Texas, New York, Florida, and Illinois may elect to participate in the Basic Pilot. The

Service has estimated that these states have the highest population of aliens who are not lawfully present in the United States. At present, the SSA verification system can service no more than approximately 2,000 employers. As a result, initial demand for the Basic Pilot may substantially exceed availability.

#### 2. Citizen Attestation Pilot Eligibility

Employers in all states (including the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States) may elect to participate in the Citizen Attestation Pilot, but the Service reserves the right to limit the pilot to certain states based on the level of employer interest and on further determinations as to state licensing procedures. The Service may restrict the number of employers that may participate in the Citizen Attestation Pilot in order to produce a representative sample of employers and to reduce the potential impact of fraud, as well as limitations based on available resources that may apply to any or all of the pilots. The number of employers participating in the Citizen Attestation Pilot for whom document presentation requirements are waived under section 403(b)(4) of IIRIRA may be further restricted in order to provide a representative sample of employers, and in no event will exceed 1,000 employers.

#### 3. Machine-Readable Document Pilot Eligibility

Employers in Iowa may elect to participate in the Machine-Readable Document Pilot. The Service has determined that Iowa issues driver's licenses and similar identification documents containing a machine-readable SSN. As the Machine-Readable Document Pilot uses the same SSA system limited at present to no more than approximately 2,000 employers as the Basic Pilot, initial availability of this pilot will also be very limited.

#### VIII. Project Restrictions

The Service may limit participation in any or all of the three pilots by rejecting

employers' elections, or by limiting their applicability to certain states or places of hiring based on its determination that there are insufficient resources available to provide appropriate services under the pilot program to the employer. The lifespan of each pilot program is limited to 4 years, beginning on the first day the pilot is in effect.

#### IX. Request for Comments

Section 402(d) of IIRIRA mandates consultation with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs. The details of these pilot programs are still being developed, and are subject to refinement and modification in the course of implementation. The Service encourages all interested parties, including but not limited to representatives of employers (and recruiters and referrers), to participate in this process by providing written comments to the Service in response to this notice regarding any aspect of the IIRIRA-mandated employment eligibility confirmation pilot programs. Comments should be mailed to the Immigration and Naturalization Service, 425 I Street, NW., ULLICO—4th Floor, Washington, DC 20536, Attention: SAVE Program, Pilot Comments.

#### X. OMB Reporting Burden

The information collection requirement (Form I-876) has been approved by the Office of Management and Budget provisions of the Paperwork Reduction Act. The OMB control number for this information collection is 1115-0217.

Dated: September 9, 1997.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

**Note:** The Form I-876 is provided as an attachment to this notice can be reproduced.

BILLING CODE 4410-10-M

U. S. Department of Justice  
Immigration and Naturalization Service

OMB NO. 1115-0217 Expires 11/30/97  
**Election Form To Participate in Employment  
Eligibility Confirmation Pilot Programs**

**Which pilot program(s) do you elect?**

A. ☐ The Basic Pilot

You may elect the **Basic Pilot** only if you are located in **California, Texas, New York, Florida, and Illinois.**

B. ☐ The Citizen Attestation Pilot

Employers in all states (including the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the U.S.), may elect to participate in the Citizen Attestation Pilot, but the INS reserves the right to limit the pilot to certain states based on the level of employer interest and on further determinations as to state licensing procedures.

C. ☐ The Machine-Readable Document Pilot

You may elect the **Machine-Readable Document Pilot** only if you are located in **Iowa.**

Employer name: \_\_\_\_\_

Employer address: \_\_\_\_\_

County in which employer resides: \_\_\_\_\_

If you hire at locations other than the above address, please list all the locations you want to participate in the pilot(s). (Attach additional sheet(s) if necessary). \_\_\_\_\_

(Please Note: The Service will determine when it is feasible to provide for extensions outside Pilot states based on available resources).

Employer Identification Number: \_\_\_\_\_

Standard Industry Code (if known): \_\_\_\_\_

Person(s) to be contacted concerning employment verification pilot: \_\_\_\_\_

Telephone number(s): \_\_\_\_\_

For the Basic Pilot or the Machine-Readable Document Pilot, for each site from which verification will take place, provide the site phone number: \_\_\_\_\_

Number of company employees: \_\_\_\_\_

Are you a federal executive branch employer?: \_\_\_\_\_

Are you a federal legislative branch employer?: \_\_\_\_\_

Do you wish to be considered for a waiver of the document presentation requirement for your U.S. citizen or national employees? \_\_\_\_\_

(Note: This question is to be answered only by employers electing the **Citizen Attestation Pilot.**)

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**INSTRUCTIONS**

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM.

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Title IV, Subtitle A of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009 (IIRIRA), requires the Immigration and Naturalization Service (INS), in cooperation with the Social Security Administration (SSA) to conduct three pilot programs of employment eligibility confirmation: 1) the **Basic Pilot**; 2) the **Citizen Attestation Pilot**; and 3) the **Machine-Readable Document Pilot**. Participation in the pilot programs is voluntary on the part of employers, except with regard to the executive and legislative branches of the federal government and certain employers found to be in violation of sections 274A or 274B of the Immigration and Nationality Act (INA), in states where the pilot(s) are being conducted.

No fee will be charged for participating in the pilots, but employers will be responsible for providing the equipment needed to make inquiries. Equipment needed for participation in the Basic and Machine-Readable Pilots includes a personal computer with a modem, and a touch-tone telephone (and modem, if the same device) on a telephone line which results in only one phone number being recognized as the originating phone number, regardless of whether it is controlled through a switch, private branch exchange, or direct outward dialing (this should be an analog voice grade line). Equipment required for the Citizen Attestation Pilot is a personal computer with a modem. Additional equipment may be needed for the Machine-Readable Document Pilot. The INS may limit employer participation due to limited resources.

This document is your election to participate in employment verification pilots being conducted by the INS and the SSA. Its purpose is to identify the level of employer interest in the three pilots in order to assist the INS in implementing the pilots in the most advantageous way based on available resources. **Although you must complete and return this election form if you wish to be considered for participation in a pilot, returning the form neither obligates you to participate in any pilot nor obligates the INS to select you for participation.** Employers selected to participate in a pilot must execute a Memorandum of Understanding (MOU) with the INS and SSA (if applicable), that will provide the specific terms and conditions governing that pilot.

If you are a U.S. employer (or recruiter or referrer for a fee) who is subject to the employment eligibility verification requirements of section 274A of the INA, and you wish to be considered, please complete Form I-876 (Election Form) and mail to the U.S. Immigration and Naturalization Service, SAVE Program, 425 I Street, NW, ULLICO, 4th Floor, Washington, DC 20536. You may also fax this form to the SAVE Program at (202) 514-9981. You will be contacted by an INS representative concerning your participation in an employment verification pilot program.

**Privacy Act Notice.** The authority for collecting this information is the Immigration and Nationality Act, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009. This information will be used to identify the level of employer interest in the three Employment Eligibility Confirmation Pilot Programs; the Basic Pilot, the Citizen Attestation Pilot, and the Machine-Readable Document Pilot. These pilot programs mandated by IIRIRA are to test three methods of providing an effective, non-discriminatory work eligibility verification procedure focusing on electronic verification. The information collected will assist the Immigration and Naturalization Service and the Social Security Administration in implementing the pilots in the most advantageous way based on available resources.

**Reporting Burden.** We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1) learning about this form, 60 minutes; 2) completing the form, 15 minutes; and 3) assembling and filing (recordkeeping) the form, 15 minutes, for an average of 90 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C. 20536.