

“(IV) FINALITY.—The EEVS shall provide a final confirmation or nonconfirmation within 10 business days from the date of the employee’s contesting of the further action notice. As long as the employee is taking the steps required by the Secretary and the agency that the employee has contacted to resolve a further action notice, the Secretary shall extend the period of investigation until the secondary verification procedure allows the Secretary to provide final confirmation or nonconfirmation. If the employee fails to take the steps required by the Secretary and the appropriate agency, a final nonconfirmation may be issued to that employee.

“(V) RE-EXAMINATION.—Nothing in this section shall prevent the Secretary from reexamining a case where a final confirmation has been provided if subsequently received information indicates that the individual may not be work authorized.

In no case shall an employer terminate employment of an individual solely because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final and the period to timely file an administrative appeal has passed, and in the case where an administrative appeal has been denied, the period to timely file a petition for judicial review has passed. When final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation. An individual’s failure to contest a further action notice shall not be considered an admission of guilt with respect to any violation of this section or any provision of law.

“(D) CONSEQUENCES OF NONCONFIRMATION.—

“(i) TERMINATION OF CONTINUED EMPLOYMENT.—If the employer has received a final nonconfirmation regarding an individual, the employer shall terminate employment (or recruitment or referral) of the individual, unless the individual files an administrative appeal of a final nonconfirmation notice under paragraph (7) within the time period prescribed in that paragraph and the Secretary or the Commissioner stays the final nonconfirmation notice pending the resolution of the administrative appeal.

“(ii) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the employer continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation (unless the individual filed an administrative appeal of a final nonconfirmation notice under paragraph (7) within the time period prescribed in that paragraph and the Secretary or the Commissioner stayed the final nonconfirmation notice pending the resolution of the administrative appeal), a rebuttable presumption is created that the employer has violated subsections (a)(1)(A) and (a)(2) of this section. The previous sentence shall not apply in any prosecution under subsection (f)(1) of this section.

“(E) OBLIGATION TO RESPOND TO QUERIES AND ADDITIONAL INFORMATION.—

“(i) Employers are required to comply with requests from the Secretary through EEVS for information, including queries concerning current and former employees that relate to the functioning of the EEVS, the accuracy of the responses provided by the EEVS, and any suspected fraud or identity theft in the use of the EEVS. Failure to comply with such a request is a violation of section (a)(1)(B).

“(ii) Individuals being verified through EEVS may be required to take further action to address irregularities identified in the documents relied upon for purposes of employment verification. The employer shall communicate to the individual any such re-

quirement for further actions and shall record the date and manner of such communication. The individual must acknowledge in writing the receipt of this communication from the employer. Failure to communicate such a requirement is a violation of section (a)(1)(B).

“(iii) The Secretary is authorized, with notice to the public provided in the Federal Register, to implement, clarify, and supplement the requirements of this paragraph in order to facilitate the functioning of the EEVS or to prevent fraud or identity theft in the use of the EEVS.

“(F) IMPERMISSIBLE USE OF THE EEVS.—

“(i) An employer may not use the EEVS to verify an individual prior to extending to the individual an offer of employment.

“(ii) An employer may not require an individual to verify the individual’s own employment eligibility through the EEVS as a condition of extending to that individual an offer of employment. Nothing in this paragraph shall be construed to prevent an employer from encouraging an employee or a prospective employee from verifying the employee’s or a prospective employee’s own employment eligibility prior to obtaining employment pursuant to paragraph (5)(H).

“(iii) An employer may not terminate an individual’s employment solely because that individual has been issued a further action notice.

“(iv) An employer may not take the following actions solely because an individual has been issued a further action notice:

“(I) reduce salary, bonuses or other compensation due to the employee;

“(II) suspend the employee without pay;

“(III) reduce the hours that the employee is required to work if such reduction is accompanied by a reduction in salary, bonuses or other compensation due to the employee, except that, with the agreement of the employee, an employer may provide an employee with reasonable time off without pay in order to contest and resolve the further action notice received by the employee; or

“(IV) deny the employee the training necessary to perform the employment duties for which the employee has been hired.

“(v) An employer may not, in the course of utilizing the procedures for document verification set forth in subsection (c), require that a prospective employee present additional documents or different documents than those prescribed under that subsection.

“(vi) The Secretary of Homeland Security shall develop the necessary policies and procedures to monitor employers’ use of the EEVS and their compliance with the requirements set forth in this section. Employers are required to comply with requests from the Secretary for information related to any monitoring, audit or investigation undertaken pursuant to this subparagraph.

“(vii) The Secretary of Homeland Security, in consultation with the Secretary of Labor, shall establish and maintain a process by which any employee (or any prospective employee who would otherwise have been hired) who has reason to believe that an employer has violated subparagraphs (i)–(v) may file a complaint against the employer.

“(viii) Any employer found to have violated subparagraphs (i)–(v) shall pay civil penalty of up to \$10,000 for each violation.

“(ix) This paragraph is not intended to, and does not, create any right, benefit, trust, or responsibility, whether substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does it create any right of review in a judicial proceeding.

“(x) No later than 3 months after the date of enactment of this section, the Secretary

of Homeland Security, in cooperation with the Secretary of Labor and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information respecting the rights and remedies prescribed under this section. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities and remedies under this section.

“(I) In order to carry out the campaign under this paragraph, the Secretary of Homeland Security may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign.

“(II) There are authorized to be appropriated to carry out this paragraph \$40,000,000 for each fiscal year 2007 through 2009.

“(G) Based on a regular review of the EEVS and the document verification procedures to identify fraudulent use and to assess the security of the documents being used to establish identity or employment authorization, the Secretary in consultation with the Commissioner of Social Security may modify by Notice published in the Federal Register the documents that must be presented to the employer, the information that must be provided to EEVS by the employer, and the procedures that must be followed by employers with respect to any aspect of the EEVS if the Secretary in his discretion concludes that the modification is necessary to ensure that EEVS accurately and reliably determines the work authorization of employees while providing protection against fraud and identity theft.

“(H) Subject to appropriate safeguards to prevent misuse of the system, the Secretary in consultation with the Commissioner of Social Security, shall establish secure procedures to permit an individual who seeks to verify the individual’s own employment eligibility prior to obtaining or changing employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the EEVS.

“(6) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE CONFIRMATION SYSTEM.—No employer participating in the EEVS shall be liable under any law for any employment-related action taken with respect to the employee in good faith reliance on information provided through the confirmation system.

“(7) ADMINISTRATIVE REVIEW.—

“(A) IN GENERAL.—An individual who receives a final nonconfirmation notice may, not later than 15 days after the date that such notice is received, file an administrative appeal of such final notice. An individual who did not timely contest a further action notice may not avail himself of this paragraph. Unless the Secretary of Homeland Security, in consultation with the Commissioner of Social Security, specifies otherwise, all administrative appeals shall be filed as follows:

“(i) NATIONALS OF THE UNITED STATES.—An individual claiming to be a national of the United States shall file the administrative appeal with the Commissioner.

“(ii) ALIENS.—An individual claiming to be an alien authorized to work in the United States shall file the administrative appeal with the Secretary.

“(B) REVIEW FOR ERROR.—The Secretary and the Commissioner shall each develop procedures for resolving administrative appeals regarding final nonconfirmations based upon the information that the individual has provided, including any additional evidence that was not previously considered. Appeals shall be resolved within 30 days after the individual has submitted all evidence relevant