

“(6) An employer is presumed to have acted with knowledge or reckless disregard if the employer fails to comply with written standards, procedures or instructions issued by the Secretary. Such standards, procedures or instructions shall be objective and verifiable.

“(b) DEFINITIONS.—

“(1) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term ‘unauthorized alien’ means, with respect to the employment of an alien at a particular time, that the alien is not at that time either—

“(A) an alien lawfully admitted for permanent residence; or

“(B) authorized to be so employed by this Act or by the Secretary.

“(2) DEFINITION OF EMPLOYER.—For purposes of this section, the term ‘employer’ means any person or entity hiring, recruiting, or referring an individual for employment in the United States.

“(c) DOCUMENT VERIFICATION REQUIREMENTS.—

“Any employer hiring, recruiting, or referring an individual for employment in the United States shall take all reasonable steps to verify that the individual is authorized to work in the United States, including the requirements of subsection (d) and the following paragraphs:

“(1) Attestation after examination of documentation.

“(A) IN GENERAL.—The employer must attest, under penalty of perjury and on a form prescribed by the Secretary, that it has verified the identity and work authorization status of the individual by examining:—

“(i) a document described in subparagraph (B); or

“(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

Such attestation may be manifested by a handwritten or electronic signature. An employer has complied with the requirement of this paragraph with respect to examination of documentation if the employer has followed applicable regulations and any written procedures or instructions provided by the Secretary and if a reasonable person would conclude that the documentation is genuine and establishes the employee’s identity and authorization to work, taking into account any information provided to the employer by the Secretary, including photographs.

“(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual’s—

“(i) United States passport, or passport card issued pursuant to the Secretary of State’s authority under 22 U.S.C. 211a;

“(ii) permanent resident card or other document issued by the Secretary or Secretary of State to aliens authorized to work in the United States, if the document—

“(I) contains a photograph of the individual, biometric data, such as fingerprints, or such other personal identifying information relating to the individual as the Secretary finds, by regulation, sufficient for the purposes of this subsection;

“(II) is evidence of authorization for employment in the United States; and

“(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

“(iii) temporary interim benefits card valid under section 218C(c) of the Immigration and Nationality Act, as amended by Section 602 of the Comprehensive Immigration Reform Act of 2007, bearing a photograph and an expiration date, and issued by the Secretary to aliens applying for temporary worker status under the Z-visa.

“(C) DOCUMENT ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph includes—

“(i) an individual’s drivers license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States, provided that the issuing state or entity has certified to the Secretary of Homeland Security that it is in compliance with the minimum standards required under section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13) (49 U.S.C. 30301 note) and implementing regulations issued by the Secretary of Homeland Security once those requirements become effective;

“(ii) an individual’s driver’s license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States which is not compliant with section 202 of the REAL ID Act of 2005 if—

“(I) the driver’s license or identity card contains the individual’s photograph as well as the individual’s name, date of birth, gender, height, eye color and address,

“(II) the card has been approved for this purpose in accordance with timetables and procedures established by the Secretary pursuant to subsection (c)(1)(F) of this section, and

“(III) the card is presented by the individual and examined by the employer in combination with a U.S. birth certificate, or a Certificate of Naturalization, or a Certificate of Citizenship, or such other documents as may be prescribed by the Secretary.

“(iii) for individuals under 16 years of age who are unable to present a document listed in clause (i) or (ii), documentation of personal identity of such other type as the Secretary finds provides a reliable means of identification, provided it contains security features to make it resistant to tampering, counterfeiting, and fraudulent use; or

“(iv) other documentation evidencing identity as identified by the Secretary in his discretion, with notice to the public provided in the Federal Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document, contains security features that make the document as resistant to tampering, counterfeiting, and fraudulent use as the documents listed in (B)(i), B(ii), or (C)(i).

“(D) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—The following documents may be accepted as evidence of employment authorization—

“(i) a social security account number card issued by the Commissioner of Social Security (other than a card which specifies on its face that the card is not valid for employment in the United States). The Secretary, in consultation with the Commissioner of Social Security, may require by publication of a notice in the Federal Register that only a social security account number card described in Section 305 of this Title be accepted for this purpose; or

“(ii) any other documentation evidencing authorization of employment in the United States which the Secretary declares, by publication in the Federal Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

“(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary finds that any document or class of documents described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary shall, with notice to the public provided in the Federal Register, prohibit or

restrict the use of that document or class of documents for purposes of this subsection.

“(F) After June 1, 2013, no driver’s license or state identity card may be accepted if it does not comply with the REAL ID Act of 2005. This paragraph (c)(1)(F) shall have no effect on paragraphs (c)(1)(B), (c)(1)(C)(iii), (c)(1)(C)(iv), or (c)(1)(D).

“(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form prescribed by the Secretary, that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or electronic signature.

“(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the employer must retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security (or persons designated by the Secretary), the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

“(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, seven years after the date of the recruiting or referral; and

“(B) in the case of the hiring of an individual—

“(i) seven years after the date of such hiring; or

“(ii) two years after the date the individual’s employment is terminated, whichever is earlier.

“(4) Copying of documentation and record-keeping required.

“(A) Notwithstanding any other provision of law, the employer shall copy all documents presented by an individual pursuant to this subsection and shall retain a paper, microfiche microfilm, or electronic copy as prescribed in paragraph (3), but only (except as otherwise permitted under law) for the purposes of complying with the requirements of this subsection. Such copies shall reflect the signatures of the employer and the employee, as well as the date of receipt.

“(B) The employer shall also maintain records of Social Security Administration correspondence regarding name and number mismatches or no-matches and the steps taken to resolve such issues.

“(C) The employer shall maintain records of all actions and copies of any correspondence or action taken by the employer to clarify or resolve any issue that raises reasonable doubt as to the validity of the alien’s identity or work authorization.

“(D) The employer shall maintain such records as prescribed in this subsection. The Secretary may prescribe the manner of recordkeeping and may require that additional records be kept or that additional documents be copied and maintained. The Secretary may require that these documents be transmitted electronically, and may develop automated capabilities to request such documents.

“(5) PENALTIES.—An employer that fails to comply with any requirement of this subsection shall be penalized under subsection (e)(4)(B).

“(6) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of national identification card.