

AMENDMENT NO. _____ Calendar No. _____

Purpose: To extend and increase the effectiveness of the pilot program for employment eligibility confirmation for aliens.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

H. R. 1

Making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. SESSIONS to the amendment (No. 570) proposed by Ms. COLLINS (for herself and Mr. NELSON of Nebraska)

Viz:

1 At the end of division A, add the following:

1 **TITLE XVII—IMMIGRATION**
2 **MATTERS**

3 **SEC. 1701. EXTENSION OF PILOT PROGRAMS FOR EMPLOY-**
4 **MENT ELIGIBILITY CONFIRMATION.**

5 Section 401(b) of the Illegal Immigration Reform and
6 Immigrant Responsibility Act of 1996 (division C of Pub-
7 lic Law 104–208; 8 U.S.C. 1324a note) is amended by
8 striking “11-year period” and inserting “16-year period”.

9 **SEC. 1702. PROTECTION OF SOCIAL SECURITY ADMINIS-**
10 **TRATION PROGRAMS RELATED TO PILOT**
11 **PROGRAMS FOR EMPLOYMENT ELIGIBILITY**
12 **CONFIRMATION.**

13 (a) **DEFINITIONS.**—In this section:

14 (1) **APPROPRIATE COMMITTEES OF CONGRESS**
15 **DEFINED.**—The term “appropriate committees of
16 Congress” means—

17 (A) the Committee on Appropriations, the
18 Committee on Finance, and the Committee on
19 the Judiciary of the Senate; and

20 (B) the Committee on Appropriations, the
21 Committee on the Judiciary, and the Com-
22 mittee on Ways and Means of the House of
23 Representatives.

24 (2) **COMMISSIONER.**—The term “Commis-
25 sioner” means the Commissioner of Social Security.

1 (3) PILOT PROGRAM.—The term “pilot pro-
2 gram” means the pilot program carried out under
3 section 404 of the Illegal Immigration Reform and
4 Immigrant Responsibility Act of 1996 (division C of
5 Public Law 104–208; 8 U.S.C. 1324a note).

6 (4) SECRETARY.—The term “Secretary” means
7 the Secretary of Homeland Security.

8 (b) FUNDING UNDER AGREEMENT.—For each fiscal
9 year after fiscal year 2008, the Commissioner and the Sec-
10 retary shall enter into an agreement that—

11 (1) provides funds to the Commissioner for the
12 full costs of carrying out the responsibilities of the
13 Commissioner under the pilot program, including the
14 costs of—

15 (A) acquiring, installing, and maintaining
16 technological equipment and systems to carry
17 out such responsibilities, but only the portion of
18 such costs that are attributable exclusively to
19 such responsibilities; and

20 (B) responding to individuals who contest
21 tentative nonconfirmations provided by the con-
22 firmation system established pursuant to the
23 pilot program;

24 (2) provides such funds to the Commissioner
25 quarterly, in advance of the applicable quarter,

1 based on estimating methodology agreed to by the
2 Commissioner and the Secretary; and

3 (3) requires an annual accounting and reconcili-
4 ation of the actual costs incurred by the Commis-
5 sioner to carry out such responsibilities and the
6 funds provided under the agreement that shall be re-
7 viewed by the Office of the Inspector General in the
8 Social Security Administration and in the Depart-
9 ment of Homeland Security.

10 (c) CONTINUATION OF EMPLOYMENT VERIFICATION
11 IN ABSENCE OF TIMELY AGREEMENT.—

12 (1) CONTINUATION OF PREVIOUS AGREE-
13 MENT.—

14 (A) IN GENERAL.—Subject to subpara-
15 graph (B), if the agreement required under sub-
16 section (b) for a fiscal year is not reached as
17 of the first day of such fiscal year, the most re-
18 cent previous agreement between the Commis-
19 sioner and the Secretary to provide funds to the
20 Commissioner for carrying out the responsibil-
21 ities of the Commissioner under the pilot pro-
22 gram shall be deemed to remain in effect until
23 the date that the agreement required under
24 subsection (b) for such fiscal year becomes ef-
25 fective.

1 (B) ANNUAL ADJUSTMENT.—If the most
2 recent previous agreement is deemed to remain
3 in effect for a fiscal year under subparagraph
4 (A), the Director of the Office of Management
5 and Budget is authorized to modify the amount
6 provided under such agreement for such fiscal
7 year to account for—

8 (i) inflation; or

9 (ii) any increase or decrease in the
10 number of individuals who require services
11 from the Commissioner under the pilot
12 program.

13 (2) NOTIFICATION OF CONGRESS.—If the most
14 recent previous agreement is deemed to remain in
15 effect under paragraph (1)(A) for a fiscal year, the
16 Commissioner and the Secretary shall—

17 (A) not later than the first day of such fis-
18 cal year, submit to the appropriate committees
19 of Congress a notification of the failure to reach
20 the agreement required under subsection (b) for
21 such fiscal year; and

22 (B) once during each 90-day period until
23 the date that the agreement required under
24 subsection (b) has been reached for such fiscal
25 year, submit to the appropriate committees of

1 Congress a notification of the status of negotia-
2 tions between the Commissioner and the Sec-
3 retary to reach such an agreement.

4 **SEC. 1703. STUDY AND REPORT OF ERRONEOUS RE-**
5 **SPONSES SENT UNDER THE PILOT PROGRAM**
6 **FOR EMPLOYMENT ELIGIBILITY CONFIRMA-**
7 **TION.**

8 (a) STUDY.—As soon as practicable after the date of
9 the enactment of this Act, the Comptroller General of the
10 United States shall conduct a study of the erroneous ten-
11 tative nonconfirmations sent to individuals seeking con-
12 firmation of employment eligibility under the pilot pro-
13 gram established under section 404 of the Illegal Immigra-
14 tion Reform and Immigrant Responsibility Act of 1996
15 (division C of Public Law 104–208; 8 U.S.C. 1324a note).

16 (b) MATTERS TO BE STUDIED.—The study required
17 by subsection (a) shall include an analysis of—

18 (1) the causes of erroneous tentative noncon-
19 firmations sent to individuals under the pilot pro-
20 gram referred to in subsection (a);

21 (2) the processes by which such erroneous ten-
22 tative nonconfirmations are remedied; and

23 (3) the effect of such erroneous tentative non-
24 confirmations on individuals, employers, and agen-
25 cies and departments of the United States.

1 (c) REPORT.—Not later than 2 years after the date
2 of the enactment of this Act, the Comptroller General of
3 the United States shall submit to the Committee on Fi-
4 nance and the Committee on the Judiciary of the Senate
5 and the Committee on the Judiciary and the Committee
6 on Ways and Means of the House of Representatives a
7 report on the results of the study required by this section.

8 **SEC. 1704. STUDY AND REPORT OF THE EFFECTS OF THE**
9 **PILOT PROGRAM FOR EMPLOYMENT ELIGI-**
10 **BILITY CONFIRMATION ON SMALL ENTITIES.**

11 (a) DEFINITIONS.—In this section:

12 (1) APPROPRIATE COMMITTEES OF CON-
13 GRESS.—The term “appropriate committees of Con-
14 gress” means—

15 (A) the Committee on the Judiciary of the
16 Senate; and

17 (B) the Committee on the Judiciary of the
18 House of Representatives.

19 (2) COMPTROLLER GENERAL.—The term
20 “Comptroller General” means the Comptroller Gen-
21 eral of the United States.

22 (3) PILOT PROGRAM.—The term “pilot pro-
23 gram” means the pilot program described in section
24 404 of the Illegal Immigration Reform and Immi-

1 grant Responsibility Act of 1996 (division C of Pub-
2 lic Law 104–208; 8 U.S.C. 1324a note).

3 (4) SMALL ENTITY.—The term “small entity”
4 has the meaning given that term in section 601 of
5 title 5, United States Code.

6 (b) STUDY.—As soon as practicable after the date of
7 the enactment of this Act, the Comptroller General shall
8 conduct a study of the effects of the pilot on small entities.

9 (c) MATTERS TO BE STUDIED.—

10 (1) IN GENERAL.—The study required by sub-
11 section (b) shall include an analysis of—

12 (A) the costs of complying with the pilot
13 program incurred by small entities;

14 (B)(i) the description and estimated num-
15 ber of small entities enrolled in and partici-
16 pating in the pilot program; or

17 (ii) why no such estimated number is avail-
18 able;

19 (C) the projected reporting, recordkeeping,
20 and other compliance requirements of the pilot
21 program that apply to small entities;

22 (D) the factors that impact enrollment and
23 participation of small entities in the pilot pro-
24 gram, including access to appropriate tech-

1 nology, geography, and entity size and class;
2 and

3 (E) the actions, if any, carried out by the
4 Secretary of Homeland Security to minimize
5 the economic impact of participation in the pilot
6 program on small entities.

7 (2) DIRECT AND INDIRECT EFFECTS.—The
8 study required by subsection (b) shall analyze, and
9 treat separately, with respect to small entities—

10 (A) any direct effects of compliance with
11 the pilot program, including effects on wages
12 and time used and fees spent on such compli-
13 ance; and

14 (B) any indirect effects of such compli-
15 ance, including effects on cash flow, sales, and
16 competitiveness of such compliance.

17 (3) DISAGGREGATION BY ENTITY SIZE.—The
18 study required by subsection (b) shall analyze sepa-
19 rately data with respect to—

20 (A) small entities with fewer than 50 em-
21 ployees; and

22 (B) small entities that operate in States
23 that require small entities to participate in the
24 pilot program.

1 (d) REPORT.—Not later than 2 years after the date
2 of the enactment of this Act, the Comptroller General shall
3 submit to the appropriate committees of Congress a report
4 on the study required by subsection (b).

5 **SEC. 1705. RESTRICTION ON USE OF FUNDS.**

6 None of the funds made available in this Act may
7 be used to enter into a contract with a person or govern-
8 ment entity that does not participate in the pilot program
9 described in section 404 of the Illegal Immigration Reform
10 and Immigrant Responsibility Act of 1996 (division C of
11 Public Law 104–208; 8 U.S.C. 1324a note).