

The Basic Pilot:

Section 401 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA – Public Law 104-208) required the then-INS to establish three pilot programs to verify the employment eligibility of new hires. The pilots had to be established in at least five states and run for four years, after which they would terminate unless Congress acted to extend them or make them permanent. Participation in the pilots had to be voluntary, except that in certain cases, a court could order an employer to participate in one of them as part of the penalty for hiring illegal aliens.

The first of the three pilots required under IIRIRA, the “Basic Pilot,” is the only one that was extended by Congress and still exists. Under this pilot, an employer who elects to participate signs a Memorandum of Understanding with the Social Security Administration and the (now) Department of Homeland Security that spells out the responsibilities of each party. Then, when an employer hires a new employee, he first satisfies current law by having the employee fill out an I-9 form within three business days of hire. The I-9 simply states the employee’s name, date of birth, social security number, and an attestation that the employee is a US citizen, lawful permanent resident, or alien authorized to work in the United States. The employee presents to the employer either one document establishing both identity and work authorization (e.g., a US passport or green card) or two documents that together establish identity and work authorization (e.g., a driver’s license and a social security card). The employer examines them to make sure they reasonably appear to be valid (i.e., the photo is not taped onto the driver’s license) and records the document number, issuing agency and expiration date, if any, on the I-9. Then the employer signs an attestation on the I-9 saying that he has examined the documents and they appear valid.

Once the I-9 is done, the employer logs onto a secure DHS website, enters the employee’s full name, date of birth, and social security number. He chooses from a drop-down box which document/combination of documents the employee presented, and then clicks the submit button. The information about the employee is transmitted immediately to SSA. If the SSN and the name match in SSA records, the employer receives a message within two or three seconds (I have used the system and it is amazingly fast) that the employee is authorized to work and the process is finished.

If the SSN and name match, but the SSA cannot verify that the employee is work authorized (i.e., the SSN may have been issued “not for employment purposes”) the employer gets a message that DHS is attempting to verify work authorization. DHS usually responds within 24 hours, but the law gives it three days, since it has to check its records by hand if the automated check does not match the name and immigration document. If DHS finds a match, it tells the employer and the process is finished. Otherwise, the employer is told to have the employee check with DHS directly to clear up the problem.

If the SSN and name do not match, the employer gets a message to refer the employee to SSA to clear up the problem.

In either case where the employee is referred to SSA/DHS, the employer will be notified within 10 days that either work authorization is confirmed or it is not confirmed, in which case the employer must terminate the employee.

Benefits of the Basic Pilot:

- 1) It is easy to use and it is free for employers.
- 2) An employer who uses the pilot in good faith cannot be held liable for hiring an illegal alien – use of the system is an affirmative defense – or for discrimination because he never has to ask the hire for more or different documents since the computer does all the checking. Under current law, if an employer suspects that one or more of the documents a new hire presents is a fake, he cannot ask for a different document or another document without risking a discrimination lawsuit by the new hire (on the grounds that the employer discriminated against the hire by treating him/her differently and asking for more than the law requires). If the new hire sues, the employer would have to prove that the document appeared on its face to be fake (whether it is or not). On the other hand, if DHS were to inspect the employer's records and notice that the document in question looked like a fake, the employer would be liable for employer sanctions. An employer who uses the pilot program can invest in training of the new hire virtually immediately, without the risk that the employee will be found to be here illegally and removed, thus wasting all the resources invested in training.
- 3) Mandatory use of the pilot program ensures that all US businesses operate on a level playing field. Right now, since participation is voluntary, an employer who wants to obey the law will sign up to use the program, but an employer who wants to hire illegal aliens, or does not care if he hires illegal aliens, will not sign up. The employer who hires illegals and pays them under the table or does not give them benefits will have a competitive advantage over the employer who faithfully obeys the law. There are only two ways to level the playing field: allow all employers to hire anyone they want at any wages/working conditions they want to offer (i.e., guarantee a race to the bottom in wages and quality of life for the average worker); or ensure that no employer can hire illegal aliens and enforce labor laws (American workers win since they don't have to compete with the entire Third World for work; American taxpayers benefit because they don't have to subsidize employers' cheap labor by providing welfare, health care, education, etc.).