

113TH CONGRESS
1ST SESSION

H. R. 1772

To amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. SMITH of Texas (for himself, Mr. GOODLATTE, Mr. CALVERT, Mr. GOWDY, Mr. WESTMORELAND, Mr. STIVERS, Mr. LANCE, Mr. KING of New York, Mr. DEFAZIO, Mr. SENSENBRENNER, Mr. FRANKS of Arizona, Mr. POE of Texas, Mr. SCHWEIKERT, Mr. ROYCE, Mrs. BLACKBURN, Mr. FORBES, Mr. CHAFFETZ, Mr. BURGESS, Mr. LABRADOR, Mr. FARENTHOLD, Mr. HOLDING, Mr. BISHOP of Utah, and Mr. ISSA) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Legal Workforce Act”.

1 **SEC. 2. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
2 **ESS.**

3 (a) IN GENERAL.—Section 274A(b) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended
5 to read as follows:

6 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
7 PROCESS.—

8 “(1) NEW HIRES, RECRUITMENT, AND REFER-
9 RAL.—The requirements referred to in paragraphs
10 (1)(B) and (3) of subsection (a) are, in the case of
11 a person or other entity hiring, recruiting, or refer-
12 ring an individual for employment in the United
13 States, the following:

14 “(A) ATTESTATION AFTER EXAMINATION
15 OF DOCUMENTATION.—

16 “(i) ATTESTATION.—During the
17 verification period (as defined in subpara-
18 graph (E)), the person or entity shall at-
19 test, under penalty of perjury and on a
20 form, including electronic and telephonic
21 formats, designated or established by the
22 Secretary by regulation not later than 6
23 months after the date of the enactment of
24 the Legal Workforce Act, that it has
25 verified that the individual is not an unau-
26 thorized alien by—

1 “(I) obtaining from the indi-
2 vidual the individual’s social security
3 account number and recording the
4 number on the form (if the individual
5 claims to have been issued such a
6 number), and, if the individual does
7 not attest to United States nationality
8 under subparagraph (B), obtaining
9 such identification or authorization
10 number established by the Depart-
11 ment of Homeland Security for the
12 alien as the Secretary of Homeland
13 Security may specify, and recording
14 such number on the form; and

15 “(II) examining—

16 “(aa) a document relating to
17 the individual presenting it de-
18 scribed in clause (ii); or

19 “(bb) a document relating to
20 the individual presenting it de-
21 scribed in clause (iii) and a docu-
22 ment relating to the individual
23 presenting it described in clause
24 (iv).

1 “(ii) DOCUMENTS EVIDENCING EM-
2 PLOYMENT AUTHORIZATION AND ESTAB-
3 LISHING IDENTITY.—A document de-
4 scribed in this subparagraph is an individ-
5 ual’s—

6 “(I) unexpired United States
7 passport or passport card;

8 “(II) unexpired permanent resi-
9 dent card that contains a photograph;

10 “(III) unexpired employment au-
11 thorization card that contains a pho-
12 tograph;

13 “(IV) in the case of a non-
14 immigrant alien authorized to work
15 for a specific employer incident to sta-
16 tus, a foreign passport with Form I-
17 94 or Form I-94A, or other docu-
18 mentation as designated by the Sec-
19 retary specifying the alien’s non-
20 immigrant status as long as the pe-
21 riod of status has not yet expired and
22 the proposed employment is not in
23 conflict with any restrictions or limita-
24 tions identified in the documentation;

1 “(V) passport from the Fed-
2 erated States of Micronesia (FSM) or
3 the Republic of the Marshall Islands
4 (RMI) with Form I-94 or Form I-
5 94A, or other documentation as des-
6 ignated by the Secretary, indicating
7 nonimmigrant admission under the
8 Compact of Free Association Between
9 the United States and the FSM or
10 RMI; or

11 “(VI) other document designated
12 by the Secretary of Homeland Secu-
13 rity, if the document—

14 “(aa) contains a photograph
15 of the individual and biometric
16 identification data from the indi-
17 vidual and such other personal
18 identifying information relating
19 to the individual as the Secretary
20 of Homeland Security finds, by
21 regulation, sufficient for purposes
22 of this clause;

23 “(bb) is evidence of author-
24 ization of employment in the
25 United States; and

1 “(cc) contains security fea-
2 tures to make it resistant to tam-
3 pering, counterfeiting, and fraud-
4 ulent use.

5 “(iii) DOCUMENTS EVIDENCING EM-
6 PLOYMENT AUTHORIZATION.—A document
7 described in this subparagraph is an indi-
8 vidual’s social security account number
9 card (other than such a card which speci-
10 fies on the face that the issuance of the
11 card does not authorize employment in the
12 United States).

13 “(iv) DOCUMENTS ESTABLISHING
14 IDENTITY OF INDIVIDUAL.—A document
15 described in this subparagraph is—

16 “(I) an individual’s unexpired
17 State issued driver’s license or identi-
18 fication card if it contains a photo-
19 graph and information such as name,
20 date of birth, gender, height, eye
21 color, and address;

22 “(II) an individual’s unexpired
23 U.S. military identification card;

24 “(III) an individual’s unexpired
25 Native American tribal identification

1 document issued by a tribal entity rec-
2 ognized by the Bureau of Indian Af-
3 fairs; or

4 “(IV) in the case of an individual
5 under 18 years of age, a parent or
6 legal guardian’s attestation under
7 penalty of law as to the identity and
8 age of the individual.

9 “(v) AUTHORITY TO PROHIBIT USE OF
10 CERTAIN DOCUMENTS.—If the Secretary of
11 Homeland Security finds, by regulation,
12 that any document described in clause (i),
13 (ii), or (iii) as establishing employment au-
14 thorization or identity does not reliably es-
15 tablish such authorization or identity or is
16 being used fraudulently to an unacceptable
17 degree, the Secretary may prohibit or place
18 conditions on its use for purposes of this
19 paragraph.

20 “(vi) SIGNATURE.—Such attestation
21 may be manifested by either a hand-writ-
22 ten or electronic signature.

23 “(B) INDIVIDUAL ATTESTATION OF EM-
24 PLOYMENT AUTHORIZATION.—During the
25 verification period (as defined in subparagraph

1 (E)), the individual shall attest, under penalty
2 of perjury on the form designated or established
3 for purposes of subparagraph (A), that the indi-
4 vidual is a citizen or national of the United
5 States, an alien lawfully admitted for perma-
6 nent residence, or an alien who is authorized
7 under this Act or by the Secretary of Homeland
8 Security to be hired, recruited, or referred for
9 such employment. Such attestation may be
10 manifested by either a hand-written or elec-
11 tronic signature. The individual shall also pro-
12 vide that individual's social security account
13 number (if the individual claims to have been
14 issued such a number), and, if the individual
15 does not attest to United States nationality
16 under this subparagraph, such identification or
17 authorization number established by the De-
18 partment of Homeland Security for the alien as
19 the Secretary may specify.

20 “(C) RETENTION OF VERIFICATION FORM
21 AND VERIFICATION.—

22 “(i) IN GENERAL.—After completion
23 of such form in accordance with subpara-
24 graphs (A) and (B), the person or entity
25 shall—

1 “(I) retain a paper, microfiche,
2 microfilm, or electronic version of the
3 form and make it available for inspec-
4 tion by officers of the Department of
5 Homeland Security, the Special Coun-
6 sel for Immigration-Related Unfair
7 Employment Practices, or the Depart-
8 ment of Labor during a period begin-
9 ning on the date of the recruiting or
10 referral of the individual, or, in the
11 case of the hiring of an individual, the
12 date on which the verification is com-
13 pleted, and ending—

14 “(aa) in the case of the re-
15 recruiting or referral of an indi-
16 vidual, 3 years after the date of
17 the recruiting or referral; and

18 “(bb) in the case of the hir-
19 ing of an individual, the later of
20 3 years after the date the
21 verification is completed or one
22 year after the date the individ-
23 ual’s employment is terminated;
24 and

1 “(II) during the verification pe-
2 riod (as defined in subparagraph (E)),
3 make an inquiry, as provided in sub-
4 section (d), using the verification sys-
5 tem to seek verification of the identity
6 and employment eligibility of an indi-
7 vidual.

8 “(ii) CONFIRMATION.—

9 “(I) CONFIRMATION RE-
10 CEIVED.—If the person or other entity
11 receives an appropriate confirmation
12 of an individual’s identity and work
13 eligibility under the verification sys-
14 tem within the time period specified,
15 the person or entity shall record on
16 the form an appropriate code that is
17 provided under the system and that
18 indicates a final confirmation of such
19 identity and work eligibility of the in-
20 dividual.

21 “(II) TENTATIVE NONCONFIRMA-
22 TION RECEIVED.—If the person or
23 other entity receives a tentative non-
24 confirmation of an individual’s iden-
25 tity or work eligibility under the

1 verification system within the time pe-
2 riod specified, the person or entity
3 shall so inform the individual for
4 whom the verification is sought. If the
5 individual does not contest the non-
6 confirmation within the time period
7 specified, the nonconfirmation shall be
8 considered final. The person or entity
9 shall then record on the form an ap-
10 propriate code which has been pro-
11 vided under the system to indicate a
12 final nonconfirmation. If the indi-
13 vidual does contest the nonconfirma-
14 tion, the individual shall utilize the
15 process for secondary verification pro-
16 vided under subsection (d). The non-
17 confirmation will remain tentative
18 until a final confirmation or noncon-
19 firmation is provided by the
20 verification system within the time pe-
21 riod specified. In no case shall an em-
22 ployer terminate employment of an in-
23 dividual because of a failure of the in-
24 dividual to have identity and work eli-
25 gibility confirmed under this section

1 until a nonconfirmation becomes final.
2 Nothing in this clause shall apply to a
3 termination of employment for any
4 reason other than because of such a
5 failure. In no case shall an employer
6 rescind the offer of employment to an
7 individual because of a failure of the
8 individual to have identity and work
9 eligibility confirmed under this sub-
10 section until a nonconfirmation be-
11 comes final. Nothing in this subclause
12 shall apply to a rescission of the offer
13 of employment for any reason other
14 than because of such a failure.

15 “(III) FINAL CONFIRMATION OR
16 NONCONFIRMATION RECEIVED.—If a
17 final confirmation or nonconfirmation
18 is provided by the verification system
19 regarding an individual, the person or
20 entity shall record on the form an ap-
21 propriate code that is provided under
22 the system and that indicates a con-
23 firmation or nonconfirmation of iden-
24 tity and work eligibility of the indi-
25 vidual.

1 “(IV) EXTENSION OF TIME.—If
2 the person or other entity in good
3 faith attempts to make an inquiry
4 during the time period specified and
5 the verification system has registered
6 that not all inquiries were received
7 during such time, the person or entity
8 may make an inquiry in the first sub-
9 sequent working day in which the
10 verification system registers that it
11 has received all inquiries. If the
12 verification system cannot receive in-
13 quiries at all times during a day, the
14 person or entity merely has to assert
15 that the entity attempted to make the
16 inquiry on that day for the previous
17 sentence to apply to such an inquiry,
18 and does not have to provide any ad-
19 ditional proof concerning such inquiry.

20 “(V) CONSEQUENCES OF NON-
21 CONFIRMATION.—

22 “(aa) TERMINATION OR NO-
23 TIFICATION OF CONTINUED EM-
24 PLOYMENT.—If the person or
25 other entity has received a final

1 nonconfirmation regarding an in-
2 dividual, the person or entity
3 may terminate employment of the
4 individual (or decline to recruit
5 or refer the individual). If the
6 person or entity does not termi-
7 nate employment of the indi-
8 vidual or proceeds to recruit or
9 refer the individual, the person or
10 entity shall notify the Secretary
11 of Homeland Security of such
12 fact through the verification sys-
13 tem or in such other manner as
14 the Secretary may specify.

15 “(bb) FAILURE TO NO-
16 TIFY.—If the person or entity
17 fails to provide notice with re-
18 spect to an individual as required
19 under item (aa), the failure is
20 deemed to constitute a violation
21 of subsection (a)(1)(A) with re-
22 spect to that individual.

23 “(VI) CONTINUED EMPLOYMENT
24 AFTER FINAL NONCONFIRMATION.—If
25 the person or other entity continues to

1 employ (or to recruit or refer) an indi-
2 vidual after receiving final noncon-
3 firmation, a rebuttable presumption is
4 created that the person or entity has
5 violated subsection (a)(1)(A).

6 “(D) EFFECTIVE DATES OF NEW PROCE-
7 DURES.—

8 “(i) HIRING.—Except as provided in
9 clause (iii), the provisions of this para-
10 graph shall apply to a person or other enti-
11 ty hiring an individual for employment in
12 the United States as follows:

13 “(I) With respect to employers
14 having 10,000 or more employees in
15 the United States on the date of the
16 enactment of the Legal Workforce
17 Act, on the date that is 6 months
18 after the date of the enactment of
19 such Act.

20 “(II) With respect to employers
21 having 500 or more employees in the
22 United States, but less than 10,000
23 employees in the United States, on
24 the date of the enactment of the
25 Legal Workforce Act, on the date that

1 is 12 months after the date of the en-
2 actment of such Act.

3 “(III) With respect to employers
4 having 20 or more employees in the
5 United States, but less than 500 em-
6 ployees in the United States, on the
7 date of the enactment of the Legal
8 Workforce Act, on the date that is 18
9 months after the date of the enact-
10 ment of such Act.

11 “(IV) With respect to employers
12 having 1 or more employees in the
13 United States, but less than 20 em-
14 ployees in the United States, on the
15 date of the enactment of the Legal
16 Workforce Act, on the date that is 24
17 months after the date of the enact-
18 ment of such Act.

19 “(ii) RECRUITING AND REFERRING.—
20 Except as provided in clause (iii), the pro-
21 visions of this paragraph shall apply to a
22 person or other entity recruiting or refer-
23 ring an individual for employment in the
24 United States on the date that is 12

1 months after the date of the enactment of
2 the Legal Workforce Act.

3 “(iii) AGRICULTURAL LABOR OR SERV-
4 ICES.—With respect to an employee per-
5 forming agricultural labor or services, this
6 paragraph shall not apply with respect to
7 the verification of the employee until the
8 date that is 24 months after the date of
9 the enactment of the Legal Workforce Act.
10 For purposes of the preceding sentence,
11 the term ‘agricultural labor or services’ has
12 the meaning given such term by the Sec-
13 retary of Agriculture in regulations and in-
14 cludes agricultural labor as defined in sec-
15 tion 3121(g) of the Internal Revenue Code
16 of 1986, agriculture as defined in section
17 3(f) of the Fair Labor Standards Act of
18 1938 (29 U.S.C. 203(f)), the handling,
19 planting, drying, packing, packaging, proc-
20 essing, freezing, or grading prior to deliv-
21 ery for storage of any agricultural or horti-
22 cultural commodity in its unmanufactured
23 state, all activities required for the prepa-
24 ration, processing or manufacturing of a
25 product of agriculture (as such term is de-

1 fined in such section 3(f)) for further dis-
2 tribution, and activities similar to all the
3 foregoing as they relate to fish or shellfish
4 in aquaculture facilities. An employee de-
5 scribed in this clause shall not be counted
6 for purposes of clause (i).

7 “(iv) TRANSITION RULE.—Subject to
8 paragraph (4), the following shall apply to
9 a person or other entity hiring, recruiting,
10 or referring an individual for employment
11 in the United States until the effective
12 date or dates applicable under clauses (i)
13 through (iii):

14 “(I) This subsection, as in effect
15 before the enactment of the Legal
16 Workforce Act.

17 “(II) Subtitle A of title IV of the
18 Illegal Immigration Reform and Im-
19 migrant Responsibility Act of 1996 (8
20 U.S.C. 1324a note), as in effect be-
21 fore the effective date in section 7(c)
22 of the Legal Workforce Act.

23 “(III) Any other provision of
24 Federal law requiring the person or
25 entity to participate in the E-Verify

1 Program described in section 403(a)
2 of the Illegal Immigration Reform and
3 Immigrant Responsibility Act of 1996
4 (8 U.S.C. 1324a note), as in effect be-
5 fore the effective date in section 7(c)
6 of the Legal Workforce Act, including
7 Executive Order 13465 (8 U.S.C.
8 1324a note; relating to Government
9 procurement).

10 “(E) VERIFICATION PERIOD DEFINED.—

11 “(i) IN GENERAL.—For purposes of
12 this paragraph:

13 “(I) In the case of recruitment or
14 referral, the term ‘verification period’
15 means the period ending on the date
16 recruiting or referring commences.

17 “(II) In the case of hiring, the
18 term ‘verification period’ means the
19 period beginning on the date on which
20 an offer of employment is extended
21 and ending on the date that is 3 busi-
22 ness days after the date of hire, ex-
23 cept as provided in clause (iii). The
24 offer of employment may be condi-
25 tioned in accordance with clause (ii).

1 “(ii) JOB OFFER MAY BE CONDI-
2 TIONAL.—A person or other entity may
3 offer a prospective employee an employ-
4 ment position that is conditioned on final
5 verification of the identity and employment
6 eligibility of the employee using the proce-
7 dures established under this paragraph.

8 “(iii) SPECIAL RULE.—Notwith-
9 standing clause (i)(II), in the case of an
10 alien who is authorized for employment
11 and who provides evidence from the Social
12 Security Administration that the alien has
13 applied for a social security account num-
14 ber, the verification period ends three busi-
15 ness days after the alien receives the social
16 security account number.

17 “(2) REVERIFICATION FOR INDIVIDUALS WITH
18 LIMITED WORK AUTHORIZATION.—

19 “(A) IN GENERAL.—Except as provided in
20 subparagraph (B), a person or entity shall
21 make an inquiry, as provided in subsection (d),
22 using the verification system to seek
23 reverification of the identity and employment
24 eligibility of all individuals with a limited period
25 of work authorization employed by the person

1 or entity during the 3 business days before the
2 date on which the employee’s work authoriza-
3 tion expires as follows:

4 “(i) With respect to employers having
5 10,000 or more employees in the United
6 States on the date of the enactment of the
7 Legal Workforce Act, beginning on the
8 date that is 6 months after the date of the
9 enactment of such Act.

10 “(ii) With respect to employers having
11 500 or more employees in the United
12 States, but less than 10,000 employees in
13 the United States, on the date of the en-
14 actment of the Legal Workforce Act, be-
15 ginning on the date that is 12 months
16 after the date of the enactment of such
17 Act.

18 “(iii) With respect to employers hav-
19 ing 20 or more employees in the United
20 States, but less than 500 employees in the
21 United States, on the date of the enact-
22 ment of the Legal Workforce Act, begin-
23 ning on the date that is 18 months after
24 the date of the enactment of such Act.

1 “(iv) With respect to employers hav-
2 ing 1 or more employees in the United
3 States, but less than 20 employees in the
4 United States, on the date of the enact-
5 ment of the Legal Workforce Act, begin-
6 ning on the date that is 24 months after
7 the date of the enactment of such Act.

8 “(B) AGRICULTURAL LABOR OR SERV-
9 ICES.—With respect to an employee performing
10 agricultural labor or services, or an employee
11 recruited or referred by a farm labor contractor
12 (as defined in section 3 of the Migrant and Sea-
13 sonal Agricultural Worker Protection Act (29
14 U.S.C. 1801)), subparagraph (A) shall not
15 apply with respect to the reverification of the
16 employee until the date that is 24 months after
17 the date of the enactment of the Legal Work-
18 force Act. For purposes of the preceding sen-
19 tence, the term ‘agricultural labor or services’
20 has the meaning given such term by the Sec-
21 retary of Agriculture in regulations and in-
22 cludes agricultural labor as defined in section
23 3121(g) of the Internal Revenue Code of 1986,
24 agriculture as defined in section 3(f) of the
25 Fair Labor Standards Act of 1938 (29 U.S.C.

1 203(f)), the handling, planting, drying, packing,
2 packaging, processing, freezing, or grading
3 prior to delivery for storage of any agricultural
4 or horticultural commodity in its unmanufac-
5 tured state, all activities required for the prepa-
6 ration, processing, or manufacturing of a prod-
7 uct of agriculture (as such term is defined in
8 such section 3(f)) for further distribution, and
9 activities similar to all the foregoing as they re-
10 late to fish or shellfish in aquaculture facilities.
11 An employee described in this subparagraph
12 shall not be counted for purposes of subpara-
13 graph (A).

14 “(C) REVERIFICATION.—Paragraph
15 (1)(C)(ii) shall apply to reverifications pursuant
16 to this paragraph on the same basis as it ap-
17 plies to verifications pursuant to paragraph (1),
18 except that employers shall—

19 “(i) use a form designated or estab-
20 lished by the Secretary by regulation for
21 purposes of this paragraph; and

22 “(ii) retain a paper, microfiche, micro-
23 film, or electronic version of the form and
24 make it available for inspection by officers
25 of the Department of Homeland Security,

1 the Special Counsel for Immigration-Related Unfair Employment Practices, or the
2 Department of Labor during the period beginning on the date the reverification commences and ending on the date that is the
3 later of 3 years after the date of such
4 reverification or 1 year after the date the
5 individual's employment is terminated.
6

7
8
9 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

10 “(A) ON A MANDATORY BASIS FOR CERTAIN EMPLOYEES.—

11
12 “(i) IN GENERAL.—Not later than the
13 date that is 6 months after the date of the
14 enactment of the Legal Workforce Act, an
15 employer shall make an inquiry, as provided in subsection (d), using the
16 verification system to seek verification of
17 the identity and employment eligibility of
18 any individual described in clause (ii) employed by the employer whose employment
19 eligibility has not been verified under the
20 E-Verify Program described in section
21 403(a) of the Illegal Immigration Reform
22 and Immigrant Responsibility Act of 1996
23 (8 U.S.C. 1324a note).
24
25

1 “(ii) INDIVIDUALS DESCRIBED.—An
2 individual described in this clause is any of
3 the following:

4 “(I) An employee of any unit of
5 a Federal, State, or local government.

6 “(II) An employee who requires a
7 Federal security clearance working in
8 a Federal, State or local government
9 building, a military base, a nuclear
10 energy site, a weapons site, or an air-
11 port or other facility that requires
12 workers to carry a Transportation
13 Worker Identification Credential
14 (TWIC).

15 “(III) An employee assigned to
16 perform work in the United States
17 under a Federal contract, except that
18 this subclause—

19 “(aa) is not applicable to in-
20 dividuals who have a clearance
21 under Homeland Security Presi-
22 dential Directive 12 (HSPD 12
23 clearance), are administrative or
24 overhead personnel, or are work-
25 ing solely on contracts that pro-

1 vide Commercial Off The Shelf
2 goods or services as set forth by
3 the Federal Acquisition Regu-
4 latory Council, unless they are
5 subject to verification under sub-
6 clause (II); and

7 “(bb) only applies to con-
8 tracts over the simple acquisition
9 threshold as defined in section
10 2.101 of title 48, Code of Federal
11 Regulations.

12 “(B) ON A MANDATORY BASIS FOR MUL-
13 TIPLE USERS OF SAME SOCIAL SECURITY AC-
14 COUNT NUMBER.—In the case of an employer
15 who is required by this subsection to use the
16 verification system described in subsection (d),
17 or has elected voluntarily to use such system,
18 the employer shall make inquiries to the system
19 in accordance with the following:

20 “(i) The Commissioner of Social Secu-
21 rity shall notify annually employees (at the
22 employee address listed on the Wage and
23 Tax Statement) who submit a social secu-
24 rity account number to which more than
25 one employer reports income and for which

1 there is a pattern of unusual multiple use.
2 The notification letter shall identify the
3 number of employers to which income is
4 being reported as well as sufficient infor-
5 mation notifying the employee of the proc-
6 ess to contact the Social Security Adminis-
7 tration Fraud Hotline if the employee be-
8 lieves the employee's identity may have
9 been stolen. The notice shall not share in-
10 formation protected as private, in order to
11 avoid any recipient of the notice from
12 being in the position to further commit or
13 begin committing identity theft.

14 “(ii) If the person to whom the social
15 security account number was issued by the
16 Social Security Administration has been
17 identified and confirmed by the Commis-
18 sioner, and indicates that the social secu-
19 rity account number was used without
20 their knowledge, the Secretary and the
21 Commissioner shall lock the social security
22 account number for employment eligibility
23 verification purposes and shall notify the
24 employers of the individuals who wrong-
25 fully submitted the social security account

1 number that the employee may not be
2 work eligible.

3 “(iii) Each employer receiving such
4 notification of an incorrect social security
5 account number under clause (ii) shall use
6 the verification system described in sub-
7 section (d) to check the work eligibility sta-
8 tus of the applicable employee within 10
9 business days of receipt of the notification.

10 “(C) ON A VOLUNTARY BASIS.—Subject to
11 paragraph (2), and subparagraphs (A) through
12 (C) of this paragraph, beginning on the date
13 that is 30 days after the date of the enactment
14 of the Legal Workforce Act, an employer may
15 make an inquiry, as provided in subsection (d),
16 using the verification system to seek verification
17 of the identity and employment eligibility of any
18 individual employed by the employer. If an em-
19 ployer chooses voluntarily to seek verification of
20 any individual employed by the employer, the
21 employer shall seek verification of all individ-
22 uals so employed. An employer’s decision about
23 whether or not voluntarily to seek verification
24 of its current workforce under this subpara-
25 graph may not be considered by any govern-

1 ment agency in any proceeding, investigation,
2 or review provided for in this Act.

3 “(D) VERIFICATION.—Paragraph
4 (1)(C)(ii) shall apply to verifications pursuant
5 to this paragraph on the same basis as it ap-
6 plies to verifications pursuant to paragraph (1),
7 except that employers shall—

8 “(i) use a form designated or estab-
9 lished by the Secretary by regulation for
10 purposes of this paragraph; and

11 “(ii) retain a paper, microfiche, micro-
12 film, or electronic version of the form and
13 make it available for inspection by officers
14 of the Department of Homeland Security,
15 the Special Counsel for Immigration-Rel-
16 ated Unfair Employment Practices, or the
17 Department of Labor during the period be-
18 ginning on the date the verification com-
19 mences and ending on the date that is the
20 later of 3 years after the date of such
21 verification or 1 year after the date the in-
22 dividual’s employment is terminated.

23 “(4) EARLY COMPLIANCE.—

24 “(A) FORMER E-VERIFY REQUIRED USERS,
25 INCLUDING FEDERAL CONTRACTORS.—Notwith-

1 standing the deadlines in paragraphs (1) and
2 (2), beginning on the date of the enactment of
3 the Legal Workforce Act, the Secretary is au-
4 thorized to commence requiring employers re-
5 quired to participate in the E-Verify Program
6 described in section 403(a) of the Illegal Immi-
7 gration Reform and Immigrant Responsibility
8 Act of 1996 (8 U.S.C. 1324a note), including
9 employers required to participate in such pro-
10 gram by reason of Federal acquisition laws
11 (and regulations promulgated under those laws,
12 including the Federal Acquisition Regulation),
13 to commence compliance with the requirements
14 of this subsection (and any additional require-
15 ments of such Federal acquisition laws and reg-
16 ulation) in lieu of any requirement to partici-
17 pate in the E-Verify Program.

18 “(B) FORMER E-VERIFY VOLUNTARY
19 USERS AND OTHERS DESIRING EARLY COMPLI-
20 ANCE.—Notwithstanding the deadlines in para-
21 graphs (1) and (2), beginning on the date of
22 the enactment of the Legal Workforce Act, the
23 Secretary shall provide for the voluntary com-
24 pliance with the requirements of this subsection
25 by employers voluntarily electing to participate

1 in the E-Verify Program described in section
2 403(a) of the Illegal Immigration Reform and
3 Immigrant Responsibility Act of 1996 (8 U.S.C.
4 1324a note) before such date, as well as by
5 other employers seeking voluntary early compli-
6 ance.

7 “(5) COPYING OF DOCUMENTATION PER-
8 MITTED.—Notwithstanding any other provision of
9 law, the person or entity may copy a document pre-
10 sented by an individual pursuant to this subsection
11 and may retain the copy, but only (except as other-
12 wise permitted under law) for the purpose of com-
13 plying with the requirements of this subsection.

14 “(6) LIMITATION ON USE OF FORMS.—A form
15 designated or established by the Secretary of Home-
16 land Security under this subsection and any infor-
17 mation contained in or appended to such form, may
18 not be used for purposes other than for enforcement
19 of this Act and any other provision of Federal crimi-
20 nal law.

21 “(7) GOOD FAITH COMPLIANCE.—

22 “(A) IN GENERAL.—Except as otherwise
23 provided in this subsection, a person or entity
24 is considered to have complied with a require-
25 ment of this subsection notwithstanding a tech-

1 nical or procedural failure to meet such require-
2 ment if there was a good faith attempt to com-
3 ply with the requirement.

4 “(B) EXCEPTION IF FAILURE TO CORRECT
5 AFTER NOTICE.—Subparagraph (A) shall not
6 apply if—

7 “(i) the failure is not de minimus;

8 “(ii) the Secretary of Homeland Secu-
9 rity has explained to the person or entity
10 the basis for the failure and why it is not
11 de minimus;

12 “(iii) the person or entity has been
13 provided a period of not less than 30 cal-
14 endar days (beginning after the date of the
15 explanation) within which to correct the
16 failure; and

17 “(iv) the person or entity has not cor-
18 rected the failure voluntarily within such
19 period.

20 “(C) EXCEPTION FOR PATTERN OR PRAC-
21 TICE VIOLATORS.—Subparagraph (A) shall not
22 apply to a person or entity that has or is engag-
23 ing in a pattern or practice of violations of sub-
24 section (a)(1)(A) or (a)(2).

1 “(8) SINGLE EXTENSION OF DEADLINES UPON
2 CERTIFICATION.—In a case in which the Secretary
3 of Homeland Security has certified to the Congress
4 that the employment eligibility verification system
5 required under subsection (d) will not be fully oper-
6 ational by the date that is 6 months after the date
7 of the enactment of the Legal Workforce Act, each
8 deadline established under this section for an em-
9 ployer to make an inquiry using such system shall
10 be extended by 6 months. No other extension of such
11 a deadline shall be made.”.

12 (b) DATE OF HIRE.—Section 274A(h) of the Immi-
13 gration and Nationality Act (8 U.S.C. 1324a(h)) is
14 amended by adding at the end the following:

15 “(4) DEFINITION OF DATE OF HIRE.—As used
16 in this section, the term ‘date of hire’ means the
17 date of actual commencement of employment for
18 wages or other remuneration, unless otherwise speci-
19 fied.”.

20 **SEC. 3. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.**

21 Section 274A(d) of the Immigration and Nationality
22 Act (8 U.S.C. 1324a(d)) is amended to read as follows:

23 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
24 TEM.—

1 “(1) IN GENERAL.—Patterned on the employ-
2 ment eligibility confirmation system established
3 under section 404 of the Illegal Immigration Reform
4 and Immigrant Responsibility Act of 1996 (8 U.S.C.
5 1324a note), the Secretary of Homeland Security
6 shall establish and administer a verification system
7 through which the Secretary (or a designee of the
8 Secretary, which may be a nongovernmental enti-
9 ty)—

10 “(A) responds to inquiries made by per-
11 sons at any time through a toll-free telephone
12 line and other toll-free electronic media con-
13 cerning an individual’s identity and whether the
14 individual is authorized to be employed; and

15 “(B) maintains records of the inquiries
16 that were made, of verifications provided (or
17 not provided), and of the codes provided to in-
18 quirers as evidence of their compliance with
19 their obligations under this section.

20 “(2) INITIAL RESPONSE.—The verification sys-
21 tem shall provide confirmation or a tentative non-
22 confirmation of an individual’s identity and employ-
23 ment eligibility within 3 working days of the initial
24 inquiry. If providing confirmation or tentative non-
25 confirmation, the verification system shall provide an

1 appropriate code indicating such confirmation or
2 such nonconfirmation.

3 “(3) SECONDARY CONFIRMATION PROCESS IN
4 CASE OF TENTATIVE NONCONFIRMATION.—In cases
5 of tentative nonconfirmation, the Secretary shall
6 specify, in consultation with the Commissioner of
7 Social Security, an available secondary verification
8 process to confirm the validity of information pro-
9 vided and to provide a final confirmation or noncon-
10 firmation not later than 10 working days after the
11 date on which the notice of the tentative noncon-
12 firmation is received by the employee. The Secretary,
13 in consultation with the Commissioner, may extend
14 this deadline once on a case-by-case basis for a pe-
15 riod of 10 working days, and if the time is extended,
16 shall document such extension within the verification
17 system. The Secretary, in consultation with the
18 Commissioner, shall notify the employee and em-
19 ployer of such extension. The Secretary, in consulta-
20 tion with the Commissioner, shall create a standard
21 process of such extension and notification and shall
22 make a description of such process available to the
23 public. When final confirmation or nonconfirmation
24 is provided, the verification system shall provide an

1 appropriate code indicating such confirmation or
2 nonconfirmation.

3 “(4) DESIGN AND OPERATION OF SYSTEM.—

4 The verification system shall be designed and oper-
5 ated—

6 “(A) to maximize its reliability and ease of
7 use by persons and other entities consistent
8 with insulating and protecting the privacy and
9 security of the underlying information;

10 “(B) to respond to all inquiries made by
11 such persons and entities on whether individ-
12 uals are authorized to be employed and to reg-
13 ister all times when such inquiries are not re-
14 ceived;

15 “(C) with appropriate administrative, tech-
16 nical, and physical safeguards to prevent unau-
17 thorized disclosure of personal information;

18 “(D) to have reasonable safeguards against
19 the system’s resulting in unlawful discrimina-
20 tory practices based on national origin or citi-
21 zenship status, including—

22 “(i) the selective or unauthorized use
23 of the system to verify eligibility; or

24 “(ii) the exclusion of certain individ-
25 uals from consideration for employment as

1 a result of a perceived likelihood that addi-
2 tional verification will be required, beyond
3 what is required for most job applicants;

4 “(E) to maximize the prevention of iden-
5 tity theft use in the system; and

6 “(F) to limit the subjects of verification to
7 the following individuals:

8 “(i) Individuals hired, referred, or re-
9 cruited, in accordance with paragraph (1)
10 or (4) of subsection (b).

11 “(ii) Employees and prospective em-
12 ployees, in accordance with paragraph (1),
13 (2), (3), or (4) of subsection (b).

14 “(iii) Individuals seeking to confirm
15 their own employment eligibility on a vol-
16 untary basis.

17 “(5) RESPONSIBILITIES OF COMMISSIONER OF
18 SOCIAL SECURITY.—As part of the verification sys-
19 tem, the Commissioner of Social Security, in con-
20 sultation with the Secretary of Homeland Security
21 (and any designee of the Secretary selected to estab-
22 lish and administer the verification system), shall es-
23 tablish a reliable, secure method, which, within the
24 time periods specified under paragraphs (2) and (3),
25 compares the name and social security account num-

1 ber provided in an inquiry against such information
2 maintained by the Commissioner in order to validate
3 (or not validate) the information provided regarding
4 an individual whose identity and employment eligi-
5 bility must be confirmed, the correspondence of the
6 name and number, and whether the individual has
7 presented a social security account number that is
8 not valid for employment. The Commissioner shall
9 not disclose or release social security information
10 (other than such confirmation or nonconfirmation)
11 under the verification system except as provided for
12 in this section or section 205(c)(2)(I) of the Social
13 Security Act.

14 “(6) RESPONSIBILITIES OF SECRETARY OF
15 HOMELAND SECURITY.—As part of the verification
16 system, the Secretary of Homeland Security (in con-
17 sultation with any designee of the Secretary selected
18 to establish and administer the verification system),
19 shall establish a reliable, secure method, which, with-
20 in the time periods specified under paragraphs (2)
21 and (3), compares the name and alien identification
22 or authorization number (or any other information
23 as determined relevant by the Secretary) which are
24 provided in an inquiry against such information
25 maintained or accessed by the Secretary in order to

1 validate (or not validate) the information provided,
2 the correspondence of the name and number, wheth-
3 er the alien is authorized to be employed in the
4 United States, or to the extent that the Secretary
5 determines to be feasible and appropriate, whether
6 the records available to the Secretary verify the
7 identity or status of a national of the United States.

8 “(7) UPDATING INFORMATION.—The Commis-
9 sioner of Social Security and the Secretary of Home-
10 land Security shall update their information in a
11 manner that promotes the maximum accuracy and
12 shall provide a process for the prompt correction of
13 erroneous information, including instances in which
14 it is brought to their attention in the secondary
15 verification process described in paragraph (3).

16 “(8) LIMITATION ON USE OF THE
17 VERIFICATION SYSTEM AND ANY RELATED SYS-
18 TEMS.—

19 “(A) NO NATIONAL IDENTIFICATION
20 CARD.—Nothing in this section shall be con-
21 strued to authorize, directly or indirectly, the
22 issuance or use of national identification cards
23 or the establishment of a national identification
24 card.

1 “(B) CRITICAL INFRASTRUCTURE.—The
2 Secretary may authorize or direct any person or
3 entity responsible for granting access to, pro-
4 tecting, securing, operating, administering, or
5 regulating part of the critical infrastructure (as
6 defined in section 1016(e) of the Critical Infra-
7 structure Protection Act of 2001 (42 U.S.C.
8 5195c(e))) to use the verification system to the
9 extent the Secretary determines that such use
10 will assist in the protection of the critical infra-
11 structure.

12 “(9) REMEDIES.—If an individual alleges that
13 the individual would not have been dismissed from
14 a job but for an error of the verification mechanism,
15 the individual may seek compensation only through
16 the mechanism of the Federal Tort Claims Act, and
17 injunctive relief to correct such error. No class ac-
18 tion may be brought under this paragraph.”.

19 **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**
20 **EMPLOYMENT.**

21 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
22 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-
23 MENT.—Section 274A(a) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1324a(a)) is amended—

25 (1) in paragraph (1)(A), by striking “for a fee”;

1 (2) in paragraph (1), by amending subpara-
2 graph (B) to read as follows:

3 “(B) to hire, continue to employ, or to re-
4 cruit or refer for employment in the United
5 States an individual without complying with the
6 requirements of subsection (b).”; and

7 (3) in paragraph (2), by striking “after hiring
8 an alien for employment in accordance with para-
9 graph (1),” and inserting “after complying with
10 paragraph (1),”.

11 (b) DEFINITION.—Section 274A(h) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended
13 by section 2(b) of this Act, is further amended by adding
14 at the end the following:

15 “(5) DEFINITION OF RECRUIT OR REFER.—As
16 used in this section, the term ‘refer’ means the act
17 of sending or directing a person who is in the United
18 States or transmitting documentation or information
19 to another, directly or indirectly, with the intent of
20 obtaining employment in the United States for such
21 person. Only persons or entities referring for remun-
22 eration (whether on a retainer or contingency
23 basis) are included in the definition, except that
24 union hiring halls that refer union members or non-
25 union individuals who pay union membership dues

1 are included in the definition whether or not they re-
2 ceive remuneration, as are labor service entities or
3 labor service agencies, whether public, private, for-
4 profit, or nonprofit, that refer, dispatch, or other-
5 wise facilitate the hiring of laborers for any period
6 of time by a third party. As used in this section, the
7 term ‘recruit’ means the act of soliciting a person
8 who is in the United States, directly or indirectly,
9 and referring the person to another with the intent
10 of obtaining employment for that person. Only per-
11 sons or entities referring for remuneration (whether
12 on a retainer or contingency basis) are included in
13 the definition, except that union hiring halls that
14 refer union members or nonunion individuals who
15 pay union membership dues are included in this defi-
16 nition whether or not they receive remuneration, as
17 are labor service entities or labor service agencies,
18 whether public, private, for-profit, or nonprofit that
19 recruit, dispatch, or otherwise facilitate the hiring of
20 laborers for any period of time by a third party.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date that is 1 year
23 after the date of the enactment of this Act, except that
24 the amendments made by subsection (a) shall take effect
25 6 months after the date of the enactment of this Act inso-

1 far as such amendments relate to continuation of employ-
2 ment.

3 **SEC. 5. GOOD FAITH DEFENSE.**

4 Section 274A(a)(3) of the Immigration and Nation-
5 ality Act (8 U.S.C. 1324a(a)(3)) is amended to read as
6 follows:

7 “(3) GOOD FAITH DEFENSE.—

8 “(A) DEFENSE.—An employer (or person
9 or entity that hires, employs, recruits, or refers
10 (as defined in subsection (h)(5)), or is otherwise
11 obligated to comply with this section) who es-
12 tablishes that it has complied in good faith with
13 the requirements of subsection (b)—

14 “(i) shall not be liable to a job appli-
15 cant, an employee, the Federal Govern-
16 ment, or a State or local government,
17 under Federal, State, or local criminal or
18 civil law for any employment-related action
19 taken with respect to a job applicant or
20 employee in good-faith reliance on informa-
21 tion provided through the system estab-
22 lished under subsection (d); and

23 “(ii) has established compliance with
24 its obligations under subparagraphs (A)
25 and (B) of paragraph (1) and subsection

1 (b) absent a showing by the Secretary of
2 Homeland Security, by clear and con-
3 vincing evidence, that the employer had
4 knowledge that an employee is an unau-
5 thorized alien.

6 “(B) FAILURE TO SEEK AND OBTAIN
7 VERIFICATION.—Subject to the effective dates
8 and other deadlines applicable under subsection
9 (b), in the case of a person or entity in the
10 United States that hires, or continues to em-
11 ploy, an individual, or recruits or refers an indi-
12 vidual for employment, the following require-
13 ments apply:

14 “(i) FAILURE TO SEEK
15 VERIFICATION.—

16 “(I) IN GENERAL.—If the person
17 or entity has not made an inquiry,
18 under the mechanism established
19 under subsection (d) and in accord-
20 ance with the timeframes established
21 under subsection (b), seeking
22 verification of the identity and work
23 eligibility of the individual, the de-
24 fense under subparagraph (A) shall
25 not be considered to apply with re-

1 spect to any employment, except as
2 provided in subclause (II).

3 “(II) SPECIAL RULE FOR FAIL-
4 URE OF VERIFICATION MECHANISM.—

5 If such a person or entity in good
6 faith attempts to make an inquiry in
7 order to qualify for the defense under
8 subparagraph (A) and the verification
9 mechanism has registered that not all
10 inquiries were responded to during the
11 relevant time, the person or entity can
12 make an inquiry until the end of the
13 first subsequent working day in which
14 the verification mechanism registers
15 no nonresponses and qualify for such
16 defense.

17 “(ii) FAILURE TO OBTAIN
18 VERIFICATION.—If the person or entity
19 has made the inquiry described in clause
20 (i)(I) but has not received an appropriate
21 verification of such identity and work eligi-
22 bility under such mechanism within the
23 time period specified under subsection
24 (d)(2) after the time the verification in-
25 quiry was received, the defense under sub-

1 paragraph (A) shall not be considered to
2 apply with respect to any employment after
3 the end of such time period.”.

4 **SEC. 6. PREEMPTION AND STATES' RIGHTS.**

5 Section 274A(h)(2) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as
7 follows:

8 “(2) PREEMPTION.—

9 “(A) SINGLE, NATIONAL POLICY.—The
10 provisions of this section preempt any State or
11 local law, ordinance, policy, or rule, including
12 any criminal or civil fine or penalty structure,
13 insofar as they may now or hereafter relate to
14 the hiring, continued employment, or status
15 verification for employment eligibility purposes,
16 of unauthorized aliens.

17 “(B) STATE ENFORCEMENT OF FEDERAL
18 LAW.—

19 “(i) BUSINESS LICENSING.—A State,
20 locality, municipality, or political subdivi-
21 sion may exercise its authority over busi-
22 ness licensing and similar laws as a pen-
23 alty for failure to use the verification sys-
24 tem described in subsection (d) to verify

1 employment eligibility when and as re-
2 quired under subsection (b).

3 “(ii) GENERAL RULES.—A State, at
4 its own cost, may enforce the provisions of
5 this section, but only insofar as such State
6 follows the Federal regulations imple-
7 menting this section, applies the Federal
8 penalty structure set out in this section,
9 and complies with all Federal rules and
10 guidance concerning implementation of this
11 section. Such State may collect any fines
12 assessed under this section. An employer
13 may not be subject to enforcement, includ-
14 ing audit and investigation, by both a Fed-
15 eral agency and a State for the same viola-
16 tion under this section. Whichever entity,
17 the Federal agency or the State, is first to
18 initiate the enforcement action, has the
19 right of first refusal to proceed with the
20 enforcement action. The Secretary must
21 provide copies of all guidance, training,
22 and field instructions provided to Federal
23 officials implementing the provisions of
24 this section to each State.”.

1 **SEC. 7. REPEAL.**

2 (a) IN GENERAL.—Subtitle A of title IV of the Illegal
3 Immigration Reform and Immigrant Responsibility Act of
4 1996 (8 U.S.C. 1324a note) is repealed.

5 (b) REFERENCES.—Any reference in any Federal
6 law, Executive order, rule, regulation, or delegation of au-
7 thority, or any document of, or pertaining to, the Depart-
8 ment of Homeland Security, Department of Justice, or the
9 Social Security Administration, to the employment eligi-
10 bility confirmation system established under section 404
11 of the Illegal Immigration Reform and Immigrant Respon-
12 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to
13 refer to the employment eligibility confirmation system es-
14 tablished under section 274A(d) of the Immigration and
15 Nationality Act, as amended by section 3 of this Act.

16 (c) EFFECTIVE DATE.—This section shall take effect
17 on the date that is 36 months after the date of the enact-
18 ment of this Act.

19 **SEC. 8. PENALTIES.**

20 Section 274A of the Immigration and Nationality Act
21 (8 U.S.C. 1324a) is amended—

22 (1) in subsection (e)(1)—

23 (A) by striking “Attorney General” each
24 place such term appears and inserting “Sec-
25 retary of Homeland Security”; and

1 (B) in subparagraph (D), by striking
2 “Service” and inserting “Department of Home-
3 land Security”;

4 (2) in subsection (e)(4)—

5 (A) in subparagraph (A), in the matter be-
6 fore clause (i), by inserting “, subject to para-
7 graph (10),” after “in an amount”;

8 (B) in subparagraph (A)(i), by striking
9 “not less than \$250 and not more than
10 \$2,000” and inserting “not less than \$2,500
11 and not more than \$5,000”;

12 (C) in subparagraph (A)(ii), by striking
13 “not less than \$2,000 and not more than
14 \$5,000” and inserting “not less than \$5,000
15 and not more than \$10,000”;

16 (D) in subparagraph (A)(iii), by striking
17 “not less than \$3,000 and not more than
18 \$10,000” and inserting “not less than \$10,000
19 and not more than \$25,000”; and

20 (E) by amending subparagraph (B) to read
21 as follows:

22 “(B) may require the person or entity to
23 take such other remedial action as is appro-
24 priate.”;

25 (3) in subsection (e)(5)—

1 (A) in the paragraph heading, strike “PA-
2 PERWORK”;

3 (B) by inserting “, subject to paragraphs
4 (10) through (12),” after “in an amount”;

5 (C) by striking “\$100” and inserting
6 “\$1,000”;

7 (D) by striking “\$1,000” and inserting
8 “\$25,000”; and

9 (E) by adding at the end the following:
10 “Failure by a person or entity to utilize the em-
11 ployment eligibility verification system as re-
12 quired by law, or providing information to the
13 system that the person or entity knows or rea-
14 sonably believes to be false, shall be treated as
15 a violation of subsection (a)(1)(A).”;

16 (4) by adding at the end of subsection (e) the
17 following:

18 “(10) EXEMPTION FROM PENALTY FOR GOOD
19 FAITH VIOLATION.—In the case of imposition of a
20 civil penalty under paragraph (4)(A) with respect to
21 a violation of subsection (a)(1)(A) or (a)(2) for hir-
22 ing or continuation of employment or recruitment or
23 referral by person or entity and in the case of im-
24 position of a civil penalty under paragraph (5) for a
25 violation of subsection (a)(1)(B) for hiring or re-

1 recruitment or referral by a person or entity, the pen-
2 alty otherwise imposed may be waived or reduced if
3 the violator establishes that the violator acted in
4 good faith.

5 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR
6 CERTAIN VIOLATIONS.—

7 “(A) IN GENERAL.—If a person or entity
8 is determined by the Secretary of Homeland Se-
9 curity to be a repeat violator of paragraph
10 (1)(A) or (2) of subsection (a), or is convicted
11 of a crime under this section, such person or
12 entity may be considered for debarment from
13 the receipt of Federal contracts, grants, or co-
14 operative agreements in accordance with the de-
15 barment standards and pursuant to the debar-
16 ment procedures set forth in the Federal Acqui-
17 sition Regulation.

18 “(B) DOES NOT HAVE CONTRACT, GRANT,
19 AGREEMENT.—If the Secretary of Homeland
20 Security or the Attorney General wishes to have
21 a person or entity considered for debarment in
22 accordance with this paragraph, and such an
23 person or entity does not hold a Federal con-
24 tract, grant or cooperative agreement, the Sec-
25 retary or Attorney General shall refer the mat-

1 ter to the Administrator of General Services to
2 determine whether to list the person or entity
3 on the List of Parties Excluded from Federal
4 Procurement, and if so, for what duration and
5 under what scope.

6 “(C) HAS CONTRACT, GRANT, AGREE-
7 MENT.—If the Secretary of Homeland Security
8 or the Attorney General wishes to have a per-
9 son or entity considered for debarment in ac-
10 cordance with this paragraph, and such person
11 or entity holds a Federal contract, grant or co-
12 operative agreement, the Secretary or Attorney
13 General shall advise all agencies or departments
14 holding a contract, grant, or cooperative agree-
15 ment with the person or entity of the Govern-
16 ment’s interest in having the person or entity
17 considered for debarment, and after soliciting
18 and considering the views of all such agencies
19 and departments, the Secretary or Attorney
20 General may refer the matter to any appro-
21 priate lead agency to determine whether to list
22 the person or entity on the List of Parties Ex-
23 cluded from Federal Procurement, and if so, for
24 what duration and under what scope.

1 “(D) REVIEW.—Any decision to debar a
2 person or entity in accordance with this para-
3 graph shall be reviewable pursuant to part 9.4
4 of the Federal Acquisition Regulation.

5 “(12) OFFICE FOR STATE AND LOCAL GOVERN-
6 MENT COMPLAINTS.—The Secretary of Homeland
7 Security shall establish an office—

8 “(A) to which State and local government
9 agencies may submit information indicating po-
10 tential violations of subsection (a), (b), or
11 (g)(1) that were generated in the normal course
12 of law enforcement or the normal course of
13 other official activities in the State or locality;

14 “(B) that is required to indicate to the
15 complaining State or local agency within 5 busi-
16 ness days of the filing of such a complaint by
17 identifying whether the Secretary will further
18 investigate the information provided;

19 “(C) that is required to investigate those
20 complaints filed by State or local government
21 agencies that, on their face, have a substantial
22 probability of validity;

23 “(D) that is required to notify the com-
24 plaining State or local agency of the results of
25 any such investigation conducted; and

1 “(E) that is required to report to the Con-
2 gress annually the number of complaints re-
3 ceived under this paragraph, the States and lo-
4 calities that filed such complaints, and the reso-
5 lution of the complaints investigated by the Sec-
6 retary.”; and

7 (5) by amending paragraph (1) of subsection (f)
8 to read as follows:

9 “(1) CRIMINAL PENALTY.—Any person or enti-
10 ty which engages in a pattern or practice of viola-
11 tions of subsection (a)(1) or (2) shall be fined not
12 more than \$15,000 for each unauthorized alien with
13 respect to which such a violation occurs, imprisoned
14 for not less than one year and not more than 10
15 years, or both, notwithstanding the provisions of any
16 other Federal law relating to fine levels.”.

17 **SEC. 9. FRAUD AND MISUSE OF DOCUMENTS.**

18 Section 1546(b) of title 18, United States Code, is
19 amended—

20 (1) in paragraph (1), by striking “identification
21 document,” and inserting “identification document
22 or document meant to establish work authorization
23 (including the documents described in section
24 274A(b) of the Immigration and Nationality Act),”;
25 and

1 (2) in paragraph (2), by striking “identification
2 document” and inserting “identification document or
3 document meant to establish work authorization (in-
4 cluding the documents described in section 274A(b)
5 of the Immigration and Nationality Act),”.

6 **SEC. 10. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
7 **TION PROGRAMS.**

8 (a) **FUNDING UNDER AGREEMENT.**—Effective for
9 fiscal years beginning on or after October 1, 2013, the
10 Commissioner of Social Security and the Secretary of
11 Homeland Security shall enter into and maintain an
12 agreement which shall—

13 (1) provide funds to the Commissioner for the
14 full costs of the responsibilities of the Commissioner
15 under section 274A(d) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1324a(d)), as amended by
17 section 3 of this Act, including (but not limited
18 to)—

19 (A) acquiring, installing, and maintaining
20 technological equipment and systems necessary
21 for the fulfillment of the responsibilities of the
22 Commissioner under such section 274A(d), but
23 only that portion of such costs that are attrib-
24 utable exclusively to such responsibilities; and

1 (B) responding to individuals who contest
2 a tentative nonconfirmation provided by the em-
3 ployment eligibility verification system estab-
4 lished under such section;

5 (2) provide such funds annually in advance of
6 the applicable quarter based on estimating method-
7 ology agreed to by the Commissioner and the Sec-
8 retary (except in such instances where the delayed
9 enactment of an annual appropriation may preclude
10 such quarterly payments); and

11 (3) require an annual accounting and reconcili-
12 ation of the actual costs incurred and the funds pro-
13 vided under the agreement, which shall be reviewed
14 by the Inspectors General of the Social Security Ad-
15 ministration and the Department of Homeland Secu-
16 rity.

17 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
18 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
19 which the agreement required under subsection (a) for any
20 fiscal year beginning on or after October 1, 2013, has not
21 been reached as of October 1 of such fiscal year, the latest
22 agreement between the Commissioner and the Secretary
23 of Homeland Security providing for funding to cover the
24 costs of the responsibilities of the Commissioner under
25 section 274A(d) of the Immigration and Nationality Act

1 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
2 terim basis for such fiscal year until such time as an
3 agreement required under subsection (a) is subsequently
4 reached, except that the terms of such interim agreement
5 shall be modified by the Director of the Office of Manage-
6 ment and Budget to adjust for inflation and any increase
7 or decrease in the volume of requests under the employ-
8 ment eligibility verification system. In any case in which
9 an interim agreement applies for any fiscal year under this
10 subsection, the Commissioner and the Secretary shall, not
11 later than October 1 of such fiscal year, notify the Com-
12 mittee on Ways and Means, the Committee on the Judici-
13 ary, and the Committee on Appropriations of the House
14 of Representatives and the Committee on Finance, the
15 Committee on the Judiciary, and the Committee on Ap-
16 propriations of the Senate of the failure to reach the
17 agreement required under subsection (a) for such fiscal
18 year. Until such time as the agreement required under
19 subsection (a) has been reached for such fiscal year, the
20 Commissioner and the Secretary shall, not later than the
21 end of each 90-day period after October 1 of such fiscal
22 year, notify such Committees of the status of negotiations
23 between the Commissioner and the Secretary in order to
24 reach such an agreement.

1 **SEC. 11. FRAUD PREVENTION.**

2 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
3 **NUMBERS.**—The Secretary of Homeland Security, in con-
4 sultation with the Commissioner of Social Security, shall
5 establish a program in which social security account num-
6 bers that have been identified to be subject to unusual
7 multiple use in the employment eligibility verification sys-
8 tem established under section 274A(d) of the Immigration
9 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
10 section 3 of this Act, or that are otherwise suspected or
11 determined to have been compromised by identity fraud
12 or other misuse, shall be blocked from use for such system
13 purposes unless the individual using such number is able
14 to establish, through secure and fair additional security
15 procedures, that the individual is the legitimate holder of
16 the number.

17 (b) **ALLOWING SUSPENSION OF USE OF CERTAIN SO-**
18 **CIAL SECURITY ACCOUNT NUMBERS.**—The Secretary of
19 Homeland Security, in consultation with the Commis-
20 sioner of Social Security, shall establish a program which
21 shall provide a reliable, secure method by which victims
22 of identity fraud and other individuals may suspend or
23 limit the use of their social security account number or
24 other identifying information for purposes of the employ-
25 ment eligibility verification system established under sec-
26 tion 274A(d) of the Immigration and Nationality Act (8

1 U.S.C. 1324a(d)), as amended by section 3 of this Act.
2 The Secretary may implement the program on a limited
3 pilot program basis before making it fully available to all
4 individuals.

5 (c) ALLOWING PARENTS TO PREVENT THEFT OF
6 THEIR CHILD'S IDENTITY.—The Secretary of Homeland
7 Security, in consultation with the Commissioner of Social
8 Security, shall establish a program which shall provide a
9 reliable, secure method by which parents or legal guard-
10 ians may suspend or limit the use of the social security
11 account number or other identifying information of a
12 minor under their care for the purposes of the employment
13 eligibility verification system established under 274A(d) of
14 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
15 as amended by section 3 of this Act. The Secretary may
16 implement the program on a limited pilot program basis
17 before making it fully available to all individuals.

18 **SEC. 12. IDENTITY AUTHENTICATION EMPLOYMENT ELIGI-**
19 **BILITY VERIFICATION PILOT PROGRAM.**

20 Not later than 48 months after the date of the enact-
21 ment of this Act, the Secretary of Homeland Security,
22 after consultation with the Commissioner of Social Secu-
23 rity and the Director of the National Institute of Stand-
24 ards and Technology, shall establish by regulation an
25 Identity Authentication Employment Eligibility

1 Verification pilot program (the “Authentication Pilot”).
2 The purpose of the Authentication Pilot shall be to provide
3 for identity authentication and employment eligibility
4 verification with respect to enrolled new employees which
5 shall be available to subject employers who elect to partici-
6 pate in the Authentication Pilot. Any subject employer
7 may cancel the employer’s participation in the Authentica-
8 tion Pilot after one year after electing to participate with-
9 out prejudice to future participation.

10 **SEC. 13. INSPECTOR GENERAL AUDITS.**

11 (a) IN GENERAL.—Not later than 1 year after the
12 date of the enactment of this Act, the Inspector General
13 of the Social Security Administration shall complete audits
14 of the following categories in order to uncover evidence
15 of individuals who are not authorized to work in the
16 United States:

17 (1) Workers who dispute wages reported on
18 their social security account number when they be-
19 lieve someone else has used such number and name
20 to report wages.

21 (2) Children’s social security account numbers
22 used for work purposes.

23 (3) Employers whose workers present signifi-
24 cant numbers of mismatched social security account
25 numbers or names for wage reporting.

1 (b) SUBMISSION.—The Inspector General of the So-
2 cial Security Administration shall submit the audits com-
3 pleted under subsection (a) to the Committee on Ways and
4 Means of the House of Representative and the Committee
5 on Finance of the Senate for review of the evidence of
6 individuals who are not authorized to work in the United
7 States. The Chairmen of those Committees shall then de-
8 termine information to be shared with the Secretary of
9 Homeland Security so that such Secretary can investigate
10 the unauthorized employment demonstrated by such evi-
11 dence.

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