

112TH CONGRESS  
1ST SESSION

# H. R. 2164

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2011

Mr. SMITH of Texas (for himself, Mr. CALVERT, Mr. GALLEGLY, Mr. CHAFFETZ, Mr. BILBRAY, Mr. ROYCE, Mr. GARY G. MILLER of California, Mrs. MYRICK, Mr. SENSENBRENNER, Mr. FRANKS of Arizona, Mr. CARTER, Mr. KINGSTON, Mr. DANIEL E. LUNGREN of California, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce and Ways and Means, 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

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

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

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

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

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

18           “(bb) a document described  
19           in clause (iii) and a document de-  
20           scribed in clause (iv).

21           “(ii) DOCUMENTS EVIDENCING EM-  
22          PLOYMENT AUTHORIZATION AND ESTAB-  
23          LISHING IDENTITY.—A document de-  
24          scribed in this subparagraph is an individ-  
25          ual’s—

1           “(I) unexpired United States  
2 passport or passport card;

3           “(II) unexpired permanent resi-  
4 dent card that contains a photograph;

5           “(III) unexpired employment au-  
6 thorization card that contains a pho-  
7 tograph;

8           “(IV) in the case of a non-  
9 immigrant alien authorized to work  
10 for a specific employer incident to sta-  
11 tus, a foreign passport with Form I-  
12 94 or Form I-94A bearing the same  
13 name as the passport and containing  
14 as endorsement of the alien’s non-  
15 immigrant status, as long as the pe-  
16 riod of endorsement has not yet ex-  
17 pired and the proposed employment is  
18 not in conflict with any restrictions or  
19 limitations identified on the form;

20           “(V) passport from the Fed-  
21 erated States of Micronesia (FSM) or  
22 the Republic of the Marshall Islands  
23 (RMI) with Form I-94 or Form I-  
24 94A indicating nonimmigrant admis-  
25 sion under the Compact of Free Asso-

1 ciation Between the United States and  
2 the FSM or RMI; or

3 “(VI) other document designated  
4 by the Secretary of Homeland Secu-  
5 rity, if the document—

6 “(aa) contains a photograph  
7 of the individual and biometric  
8 identification data from the indi-  
9 vidual and such other personal  
10 identifying information relating  
11 to the individual as the Secretary  
12 of Homeland Security finds, by  
13 regulation, sufficient for purposes  
14 of this clause;

15 “(bb) is evidence of author-  
16 ization of employment in the  
17 United States; and

18 “(cc) contains security fea-  
19 tures to make it resistant to tam-  
20 pering, counterfeiting, and fraud-  
21 ulent use.

22 “(iii) DOCUMENTS EVIDENCING EM-  
23 PLOYMENT AUTHORIZATION.—A document  
24 described in this subparagraph is an indi-  
25 vidual’s social security account number

1 card (other than such a card which speci-  
2 fies on the face that the issuance of the  
3 card does not authorize employment in the  
4 United States).

5 “(iv) DOCUMENTS ESTABLISHING  
6 IDENTITY OF INDIVIDUAL.—A document  
7 described in this subparagraph is—

8 “(I) an individual’s unexpired  
9 State issued driver’s license or identi-  
10 fication card if it contains a photo-  
11 graph and information such as name,  
12 date of birth, gender, height, eye  
13 color, and address;

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

16 “(III) an individual’s unexpired  
17 Native American tribal identification  
18 document; or

19 “(IV) in the case of an individual  
20 under 18 years of age, a parent or  
21 legal guardian’s attestation under  
22 penalty of law as to the identity and  
23 age of the individual.

24 “(v) AUTHORITY TO PROHIBIT USE OF  
25 CERTAIN DOCUMENTS.—If the Secretary of

1 Homeland Security finds, by regulation,  
2 that any document described in clause (i),  
3 (ii), or (iii) as establishing employment au-  
4 thorization or identity does not reliably es-  
5 tablish such authorization or identity or is  
6 being used fraudulently to an unacceptable  
7 degree, the Secretary may prohibit or place  
8 conditions on its use for purposes of this  
9 paragraph.

10 “(vi) SIGNATURE.—Such attestation  
11 may be manifested by either a hand-writ-  
12 ten or electronic signature.

13 “(B) INDIVIDUAL ATTESTATION OF EM-  
14 PLOYMENT AUTHORIZATION.—

15 “(i) IN GENERAL.—During the  
16 verification period (as defined in subpara-  
17 graph (F)), the individual shall attest,  
18 under penalty of perjury on the form des-  
19 ignated or established for purposes of sub-  
20 paragraph (A), that the individual is a cit-  
21 izen or national of the United States, an  
22 alien lawfully admitted for permanent resi-  
23 dence, or an alien who is authorized under  
24 this Act or by the Secretary of Homeland  
25 Security to be hired, recruited, or referred

1 for such employment. Such attestation may  
2 be manifested by either a hand-written or  
3 electronic signature. The individual shall  
4 also provide that individual's social secu-  
5 rity account number (if the individual  
6 claims to have been issued such a number),  
7 and, if the individual does not attest to  
8 United States citizenship under this sub-  
9 paragraph, such identification or author-  
10 ization number established by the Depart-  
11 ment of Homeland Security for the alien  
12 as the Secretary may specify.

13 “(ii) CRIMINAL PENALTY.—

14 “(I) OFFENSES.—Any individual  
15 who, pursuant to clause (i), provides a  
16 social security account number or an  
17 identification or authorization number  
18 established by the Secretary of Home-  
19 land Security that belongs to another  
20 person, knowing that the number does  
21 not belong to the individual providing  
22 the number, shall be fined under title  
23 18, United States Code, imprisoned  
24 not less than 1 year and not more  
25 than 15 years, or both. Any individual



1 who, pursuant to clause (i), provides,  
2 during and in relation to any felony  
3 violation enumerated in section  
4 1028A(c) of title 18, United States  
5 Code, a social security account num-  
6 ber or an identification or authoriza-  
7 tion number established by the Sec-  
8 retary of Homeland Security that be-  
9 longs to another person, knowing that  
10 the number does not belong to the in-  
11 dividual providing the number, in ad-  
12 dition to the punishment provided for  
13 such felony, shall be fined under title  
14 18, United States Code, imprisoned  
15 for a term of 2 years, or both.

16 “(II) CONSECUTIVE SEN-  
17 TENCE.—Notwithstanding any other  
18 provision of law—

19 “(aa) a court shall not place  
20 on probation any individual con-  
21 victed of a violation of this  
22 clause;

23 “(bb) except as provided in  
24 item (dd), no term of imprison-  
25 ment imposed on an individual

1 under this section shall run con-  
2 currently with any other term of  
3 imprisonment imposed on the in-  
4 dividual under any other provi-  
5 sion of law, including any term of  
6 imprisonment imposed for the  
7 felony enumerated in section  
8 1028A(c) of title 18, United  
9 States Code, during which the  
10 violation of this section occurred;

11 “(cc) in determining any  
12 term of imprisonment to be im-  
13 posed for the felony enumerated  
14 in section 1028A(c) of title 18,  
15 United States Code, during  
16 which the violation of this clause  
17 occurred, a court shall not in any  
18 way reduce the term to be im-  
19 posed for such crime so as to  
20 compensate for, or otherwise take  
21 into account, any separate term  
22 of imprisonment imposed or to be  
23 imposed for a violation of this  
24 clause; and

1           “(dd) a term of imprison-  
2           ment imposed on an individual  
3           for a violation of this clause may,  
4           in the discretion of the court, run  
5           concurrently, in whole or in part,  
6           only with another term of impris-  
7           onment that is imposed by the  
8           court at the same time on that  
9           individual for an additional viola-  
10          tion of this clause, except that  
11          such discretion shall be exercised  
12          in accordance with any applicable  
13          guidelines and policy statements  
14          issued by the United States Sen-  
15          tencing Commission pursuant to  
16          section 994 of title 28, United  
17          States Code.

18                   “(C) RETENTION OF VERIFICATION FORM  
19                   AND VERIFICATION.—

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

24                   “(I) retain a paper, microfiche,  
25                   microfilm, or electronic version of the

1 form and make it available for inspec-  
2 tion by officers of the Department of  
3 Homeland Security, the Special Coun-  
4 sel for Immigration-Related Unfair  
5 Employment Practices, or the Depart-  
6 ment of Labor during a period begin-  
7 ning on the date of the hiring, recruit-  
8 ing, or referral of the individual and  
9 ending—

10 “(aa) in the case of the re-  
11 cruiting or referral of an indi-  
12 vidual, 3 years after the date of  
13 the recruiting or referral; and

14 “(bb) in the case of the hir-  
15 ing of an individual, the later of  
16 3 years after the date of such  
17 hire or one year after the date  
18 the individual’s employment is  
19 terminated; and

20 “(II) during the verification pe-  
21 riod (as defined in subparagraph (F)),  
22 make an inquiry, as provided in sub-  
23 section (d), using the verification sys-  
24 tem to seek verification of the identity

1 and employment eligibility of an indi-  
2 vidual.

3 “(ii) VERIFICATION.—

4 “(I) VERIFICATION RECEIVED.—

5 If the person or other entity receives  
6 an appropriate verification of an indi-  
7 vidual’s identity and work eligibility  
8 under the verification system within  
9 the time period specified, the person  
10 or entity shall record on the form an  
11 appropriate code that is provided  
12 under the system and that indicates a  
13 final verification of such identity and  
14 work eligibility of the individual.

15 “(II) TENTATIVE

16 NONVERIFICATION RECEIVED.—If the  
17 person or other entity receives a ten-  
18 tative nonverification of an individ-  
19 ual’s identity or work eligibility under  
20 the verification system within the time  
21 period specified, the person or entity  
22 shall so inform the individual for  
23 whom the verification is sought. If the  
24 individual does not contest the  
25 nonverification within the time period

1 specified, the nonverification shall be  
2 considered final. The person or entity  
3 shall then record on the form an ap-  
4 propriate code which has been pro-  
5 vided under the system to indicate a  
6 tentative nonverification. If the indi-  
7 vidual does contest the nonverifica-  
8 tion, the individual shall utilize the  
9 process for secondary verification pro-  
10 vided under subsection (d). The  
11 nonverification will remain tentative  
12 until a final verification or nonverifi-  
13 cation is provided by the verification  
14 system within the time period speci-  
15 fied. In no case shall an employer ter-  
16 minate employment of an individual  
17 because of a failure of the individual  
18 to have identity and work eligibility  
19 confirmed under this section until a  
20 nonverification becomes final. Nothing  
21 in this clause shall apply to a termi-  
22 nation of employment for any reason  
23 other than because of such a failure.  
24 In no case shall an employer rescind  
25 the offer of employment to an indi-

1           vidual because of a failure of the indi-  
2           vidual to have identity and work eligi-  
3           bility confirmed under this subsection  
4           until a nonconfirmation becomes final.  
5           Nothing in this subclause shall apply  
6           to a rescission of the offer of employ-  
7           ment for any reason other than be-  
8           cause of such a failure.

9                   “(III) FINAL VERIFICATION OR  
10           NONVERIFICATION RECEIVED.—If a  
11           final verification or nonverification is  
12           provided by the verification system re-  
13           garding an individual, the person or  
14           entity shall record on the form an ap-  
15           propriate code that is provided under  
16           the system and that indicates a  
17           verification or nonverification of iden-  
18           tity and work eligibility of the indi-  
19           vidual.

20                   “(IV) EXTENSION OF TIME.—If  
21           the person or other entity in good  
22           faith attempts to make an inquiry  
23           during the time period specified and  
24           the verification system has registered  
25           that not all inquiries were received

1 during such time, the person or entity  
2 may make an inquiry in the first sub-  
3 sequent working day in which the  
4 verification system registers that it  
5 has received all inquiries. If the  
6 verification system cannot receive in-  
7 quiries at all times during a day, the  
8 person or entity merely has to assert  
9 that the entity attempted to make the  
10 inquiry on that day for the previous  
11 sentence to apply to such an inquiry,  
12 and does not have to provide any ad-  
13 ditional proof concerning such inquiry.

14 “(V) CONSEQUENCES OF  
15 NONVERIFICATION.—

16 “(aa) TERMINATION OR NO-  
17 TIFICATION OF CONTINUED EM-  
18 PLOYMENT.—If the person or  
19 other entity has received a final  
20 nonverification regarding an indi-  
21 vidual, the person or entity may  
22 terminate employment of the in-  
23 dividual (or decline to recruit or  
24 refer the individual). If the per-  
25 son or entity does not terminate



1 employment of the individual or  
2 proceeds to recruit or refer the  
3 individual, the person or entity  
4 shall notify the Secretary of  
5 Homeland Security of such fact  
6 through the verification system  
7 or in such other manner as the  
8 Secretary may specify.

9 “(bb) FAILURE TO NO-  
10 TIFY.—If the person or entity  
11 fails to provide notice with re-  
12 spect to an individual as required  
13 under item (aa), the failure is  
14 deemed to constitute a violation  
15 of subsection (a)(1)(A) with re-  
16 spect to that individual.

17 “(VI) CONTINUED EMPLOYMENT  
18 AFTER FINAL NONVERIFICATION.—If  
19 the person or other entity continues to  
20 employ (or to recruit or refer) an indi-  
21 vidual after receiving final nonverifica-  
22 tion, a rebuttable presumption is cre-  
23 ated that the person or entity has vio-  
24 lated subsection (a)(1)(A).

1           “(D) CONTINUATION OF SEASONAL AGRI-  
2 CULTURAL EMPLOYMENT.—An individual shall  
3 not be considered a new hire subject to  
4 verification under this paragraph if the indi-  
5 vidual is engaged in seasonal agricultural em-  
6 ployment and is returning to work for an em-  
7 ployer that previously employed the individual.

8           “(E) EFFECTIVE DATES OF NEW PROCE-  
9 DURES.—

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

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

22           “(II) With respect to employers  
23 having 500 or more employees in the  
24 United States, but less than 10,000  
25 employees in the United States, on

1 the date of the enactment of the  
2 Legal Workforce Act, on the date that  
3 is 12 months after the date of the en-  
4 actment of such Act.

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

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

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

1 United States on the date that is 12  
2 months after the date of the enactment of  
3 the Legal Workforce Act.

4 “(iii) AGRICULTURAL LABOR OR SERV-  
5 ICES.—With respect to an employee per-  
6 forming agricultural labor or services (as  
7 defined for purposes of section  
8 101(a)(15)(H)(ii)(a)), this paragraph shall  
9 not apply with respect to the verification of  
10 the employee until the date that is 36  
11 months after the date of the enactment of  
12 the Legal Workforce Act. An employee de-  
13 scribed in this clause shall not be counted  
14 for purposes of clause (i).

15 “(iv) TRANSITION RULE.—Subject to  
16 paragraph (4), the following shall apply to  
17 a person or other entity hiring, recruiting,  
18 or referring an individual for employment  
19 in the United States until the effective  
20 date or dates applicable under clauses (i)  
21 through (iii):

22 “(I) This subsection, as in effect  
23 before the enactment of the Legal  
24 Workforce Act.

1           “(II) Subtitle A of title IV of the  
2           Illegal Immigration Reform and Im-  
3           migrant Responsibility Act of 1996 (8  
4           U.S.C. 1324a note), as in effect be-  
5           fore the effective date in section 7(c)  
6           of the Legal Workforce Act.

7           “(III) Any other provision of  
8           Federal law requiring the person or  
9           entity to participate in the E-Verify  
10          Program described in section 403(a)  
11          of the Illegal Immigration Reform and  
12          Immigrant Responsibility Act of 1996  
13          (8 U.S.C. 1324a note), as in effect be-  
14          fore the effective date in section 7(c)  
15          of the Legal Workforce Act, including  
16          Executive Order 13465 (8 U.S.C.  
17          1324a note; relating to Government  
18          procurement).

19          “(F) VERIFICATION PERIOD DEFINED.—

20                 “(i) IN GENERAL.—For purposes of  
21                 this paragraph:

22                         “(I) In the case of recruitment or  
23                         referral, the term ‘verification period’  
24                         means the period ending on the date  
25                         recruiting or referring commences.

1                   “(II) In the case of hiring, the  
2                   term ‘verification period’ means the  
3                   period beginning on the date on which  
4                   an offer of employment is extended  
5                   and ending on the date that is 3 busi-  
6                   ness days after the date of hiring. The  
7                   offer of employment may be condi-  
8                   tioned in accordance with clause (ii).

9                   “(ii) JOB OFFER MAY BE CONDI-  
10                  TIONAL.—A person or other entity may  
11                  offer a prospective employee an employ-  
12                  ment position that is conditioned on final  
13                  verification of the identity and employment  
14                  eligibility of the employee using the proce-  
15                  dures established under this paragraph.

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

18                  “(A) IN GENERAL.—Except as provided in  
19                  subparagraph (B), a person or entity shall  
20                  make an inquiry, as provided in subsection (d),  
21                  using the verification system to seek reverifica-  
22                  tion of the identity and employment eligibility  
23                  of all individuals with a limited period of work  
24                  authorization employed by the person or entity  
25                  during the 30-day period ending on the date the

1 employee's work authorization expires as fol-  
2 lows:

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

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

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

24 “(iv) With respect to employers hav-  
25 ing 1 or more employees in the United

1 States, but less than 20 employees in the  
2 United States, on the date of the enact-  
3 ment of the Legal Workforce Act, begin-  
4 ning on the date that is 24 months after  
5 the date of the enactment of such Act.

6 “(B) AGRICULTURAL LABOR OR SERV-  
7 ICES.—With respect to an employee performing  
8 agricultural labor or services (as defined for  
9 purposes of section 101(a)(15)(H)(ii)(a)), sub-  
10 paragraph (A) shall not apply with respect to  
11 the reverification of the employee until the date  
12 that is 36 months after the date of the enact-  
13 ment of the Legal Workforce Act. An employee  
14 described in this subparagraph shall not be  
15 counted for purposes of subparagraph (A).

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

21 “(i) use a form designated or estab-  
22 lished by the Secretary by regulation for  
23 purposes of this paragraph in lieu of the  
24 verification form under paragraph (1); and



1           “(ii) retain a paper, microfiche, micro-  
2           film, or electronic version of the form and  
3           make it available for inspection by officers  
4           of the Department of Homeland Security,  
5           the Special Counsel for Immigration-Related  
6           Unfair Employment Practices, or the  
7           Department of Labor during the period be-  
8           ginning on the date the reverification com-  
9           mences and ending on the date that is the  
10          later of 3 years after the date of such  
11          reverification or 1 year after the date the  
12          individual’s employment is terminated.

13           “(D) NOTICE.—The Secretary of Home-  
14          land Security shall notify a person or entity em-  
15          ploying a person with limited work authoriza-  
16          tion of the date on which the limited work au-  
17          thorization expires.

18           “(3) PREVIOUSLY HIRED INDIVIDUALS.—

19           “(A) ON A MANDATORY BASIS FOR CER-  
20          TAIN EMPLOYEES.—

21           “(i) IN GENERAL.—Not later than the  
22          date that is 6 months after the date of the  
23          enactment of the Legal Workforce Act, an  
24          employer shall make an inquiry, as pro-  
25          vided in subsection (d), using the

1 verification system to seek verification of  
2 the identity and employment eligibility of  
3 any individual described in clause (ii) em-  
4 ployed by the employer whose employment  
5 eligibility has not been verified under the  
6 E-Verify Program described in section  
7 403(a) of the Illegal Immigration Reform  
8 and Immigrant Responsibility Act of 1996  
9 (8 U.S.C. 1324a note).

10 “(ii) INDIVIDUALS DESCRIBED.—An  
11 individual described in this clause is any of  
12 the following:

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

15 “(II) An employee who requires a  
16 Federal security clearance working in  
17 a Federal, State or local government  
18 building, a military base, a nuclear  
19 energy site, a weapons site, or an air-  
20 port or other facility that requires  
21 workers to carry a Transportation  
22 Worker Identification Credential  
23 (TWIC).

24 “(III) An employee assigned to  
25 perform work in the United States

1 under a Federal or State contract, ex-  
2 cept that this subclause—

3 “(aa) is not applicable to in-  
4 dividuals who have a clearance  
5 under Homeland Security Presi-  
6 dential Directive 12 (HSPD 12  
7 clearance), are administrative or  
8 overhead personnel, or are work-  
9 ing solely on contracts that pro-  
10 vide Commercial Off The Shelf  
11 goods or services as set forth by  
12 the Federal Acquisition Regu-  
13 latory Council, unless they are  
14 subject to verification under sub-  
15 clause (II); and

16 “(bb) only applies to con-  
17 tacts over the simple acquisition  
18 threshold.

19 “(B) ON A MANDATORY BASIS FOR MUL-  
20 TIPLE USERS OF SAME SOCIAL SECURITY AC-  
21 COUNT NUMBER.—In the case of an employer  
22 who is required by this subsection to use the  
23 verification system described in subsection (d),  
24 or has elected voluntarily to use such system,

1 the employer shall make inquiries to the system  
2 in accordance with the following:

3 “(i) The Commissioner of Social Secu-  
4 rity shall notify annually employees (at the  
5 employee address listed on the Wage and  
6 Tax Statement) who submit a social secu-  
7 rity account number to which more than  
8 one employer reports income and for which  
9 there is a pattern of unusual multiple use.  
10 The notification letter shall identify the  
11 number of employers to which, and the  
12 States in which, income is being reported  
13 as well as sufficient information notifying  
14 the employee of the process to contact the  
15 Social Security Administration Fraud Hot-  
16 line if the employee believes the employee’s  
17 identity may have been stolen. The notice  
18 shall not share information protected as  
19 private, in order to avoid any recipient of  
20 the notice being in the position to further  
21 identity theft.

22 “(ii) If the person to whom the social  
23 security account number was issued by the  
24 Social Security Administration has been  
25 identified and confirmed by Commissioner,

1 and indicates that the social security ac-  
2 count number was used without their  
3 knowledge, the Secretary and the Commis-  
4 sioner shall lock the social security account  
5 number for employment eligibility verifica-  
6 tion purposes and shall notify the employ-  
7 ers of the individuals who wrongfully sub-  
8 mitted the social security account number  
9 that the employee may not be work eligi-  
10 ble.

11 “(iii) Each employer receiving such  
12 notification of invalid social security ac-  
13 count number shall use the verification  
14 system described in subsection (d) to check  
15 the work eligibility status of the applicable  
16 employee within 10 business days of re-  
17 ceipt of the notification of invalid social se-  
18 curity account number under clause (ii).

19 “(C) ON A MANDATORY BASIS FOR CER-  
20 TAIN MISMATCHED WAGE AND TAX STATE-  
21 MENTS.—

22 “(i) IN GENERAL.—In the case of an  
23 employer who is required by this sub-  
24 section to use the verification system de-  
25 scribed in subsection (d), or has elected

1 voluntarily to use such system, and who re-  
2 ceives a notice described in clause (ii) iden-  
3 tifying an individual employee, the em-  
4 ployer shall, not later than 30 calendar  
5 days after receipt of such notice, use the  
6 verification system described in subsection  
7 (d) to verify the employment eligibility of  
8 the employee in accordance with the in-  
9 structions in such notice if the individual is  
10 still on the payroll of the employer.

11 “(ii) NOTICE.—The Commissioner of  
12 Social Security shall issue a notice to an  
13 employer submitting one or more mis-  
14 matched wage and tax statements or cor-  
15 rected wage and tax statements containing  
16 the following:

17 “(I) A description of the mis-  
18 matched information.

19 “(II) An explanation of the steps  
20 that the employer is required to take  
21 to correct the mismatched informa-  
22 tion.

23 “(III) An explanation of the em-  
24 ployment eligibility verification re-  
25 quirement described in clause (i).

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

19           “(E)           VERIFICATION.—Paragraph  
20 (1)(C)(ii) shall apply to verifications pursuant  
21 to this paragraph on the same basis as it ap-  
22 plies to verifications pursuant to paragraph (1),  
23 except that employers shall—

24                   “(i) use a form designated or estab-  
25                   lished by the Secretary by regulation for

1 purposes of this paragraph in lieu of the  
2 verification form under paragraph (1); and

3 “(ii) retain a paper, microfiche, micro-  
4 film, or electronic version of the form and  
5 make it available for inspection by officers  
6 of the Department of Homeland Security,  
7 the Special Counsel for Immigration-Related  
8 Unfair Employment Practices, or the  
9 Department of Labor during the period be-  
10 ginning on the date the verification com-  
11 mences and ending on the date that is the  
12 later of 3 years after the date of such  
13 verification or 1 year after the date the in-  
14 dividual’s employment is terminated.

15 “(4) EARLY COMPLIANCE.—

16 “(A) FORMER E-VERIFY REQUIRED USERS,  
17 INCLUDING FEDERAL CONTRACTORS.—Notwith-  
18 standing the deadlines in paragraphs (1) and  
19 (2), beginning on the earlier of the date that is  
20 6 months after the date of the enactment of the  
21 Legal Workforce Act and the date on which the  
22 Secretary implements the system under sub-  
23 section (d), the Secretary is authorized to com-  
24 mence requiring employers required to partici-  
25 pate in the E-Verify Program described in sec-



1           tion 403(a) of the Illegal Immigration Reform  
2           and Immigrant Responsibility Act of 1996 (8  
3           U.S.C. 1324a note), including employers re-  
4           quired to participate in such program by reason  
5           of Federal acquisition laws (and regulations  
6           promulgated under those laws, including the  
7           Federal Acquisition Regulation), to commence  
8           compliance with the requirements of this sub-  
9           section (and any additional requirements of  
10          such Federal acquisition laws and regulation) in  
11          lieu of any requirement to participate in the E-  
12          Verify Program.

13                 “(B)   FORMER   E-VERIFY   VOLUNTARY  
14                 USERS AND OTHERS DESIRING EARLY COMPLI-  
15                 ANCE.—Notwithstanding the deadlines in para-  
16                 graphs (1) and (2), beginning 30 days after the  
17                 date of the enactment of the Legal Workforce  
18                 Act, the Secretary shall provide for the vol-  
19                 untary compliance with the requirements of this  
20                 subsection by employers voluntarily electing to  
21                 participate in the E-Verify Program described  
22                 in section 403(a) of the Illegal Immigration Re-  
23                 form and Immigrant Responsibility Act of 1996  
24                 (8 U.S.C. 1324a note) before such date, as well

1 as by other employers seeking voluntary early  
2 compliance.

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

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

17 “(7) GOOD FAITH COMPLIANCE.—

18 “(A) IN GENERAL.—Except as otherwise  
19 provided in this subsection, a person or entity  
20 is considered to have complied with a require-  
21 ment of this subsection notwithstanding a tech-  
22 nical or procedural failure to meet such require-  
23 ment if there was a good faith attempt to com-  
24 ply with the requirement.

1           “(B) EXCEPTION IF FAILURE TO CORRECT  
2 AFTER NOTICE.—Subparagraph (A) shall not  
3 apply if—

4           “(i) the failure is not de minimus;

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

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

14           “(iv) the person or entity has not cor-  
15 rected the failure voluntarily within such  
16 period.

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

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

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

1       “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-  
2 TEM.—

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

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

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

22           “(2) INITIAL RESPONSE.—The verification sys-  
23 tem shall provide verification or a tentative  
24 nonverification of an individual’s identity and em-  
25 ployment eligibility within 3 working days of the ini-

1 tial inquiry. If providing verification or tentative  
2 nonverification, the verification system shall provide  
3 an appropriate code indicating such verification or  
4 such nonverification.

5 “(3) SECONDARY VERIFICATION PROCESS IN  
6 CASE OF TENTATIVE NONVERIFICATION.—In cases  
7 of tentative nonverification, the Secretary shall  
8 specify, in consultation with the Commissioner of  
9 Social Security, an available secondary verification  
10 process to confirm the validity of information pro-  
11 vided and to provide a final verification or  
12 nonverification within 10 working days after the  
13 date of the tentative nonverification. When final  
14 verification or nonverification is provided, the  
15 verification system shall provide an appropriate code  
16 indicating such verification or nonverification.

17 “(4) DESIGN AND OPERATION OF SYSTEM.—  
18 The verification system shall be designed and oper-  
19 ated—

20 “(A) to maximize its reliability and ease of  
21 use by persons and other entities consistent  
22 with insulating and protecting the privacy and  
23 security of the underlying information;

24 “(B) to respond to all inquiries made by  
25 such persons and entities on whether individ-

1 uals are authorized to be employed and to reg-  
2 ister all times when such inquiries are not re-  
3 ceived;

4 “(C) with appropriate administrative, tech-  
5 nical, and physical safeguards to prevent unau-  
6 thorized disclosure of personal information;

7 “(D) to have reasonable safeguards against  
8 the system’s resulting in unlawful discrimina-  
9 tory practices based on national origin or citi-  
10 zenship status, including—

11 “(i) the selective or unauthorized use  
12 of the system to verify eligibility; or

13 “(ii) the exclusion of certain individ-  
14 uals from consideration for employment as  
15 a result of a perceived likelihood that addi-  
16 tional verification will be required, beyond  
17 what is required for most job applicants;  
18 and

19 “(E) to limit the subjects of verification to  
20 the following individuals:

21 “(i) Individuals hired, referred, or re-  
22 cruited, in accordance with paragraph (1)  
23 or (4) of subsection (b).

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

4                   “(iii) Individuals seeking to confirm  
5                   their own employment eligibility on a vol-  
6                   untary basis.

7                   “(5) RESPONSIBILITIES OF COMMISSIONER OF  
8                   SOCIAL SECURITY.—As part of the verification sys-  
9                   tem, the Commissioner of Social Security, in con-  
10                  sultation with the Secretary of Homeland Security  
11                  (and any designee of the Secretary selected to estab-  
12                  lish and administer the verification system), shall es-  
13                  tablish a reliable, secure method, which, within the  
14                  time periods specified under paragraphs (2) and (3),  
15                  compares the name and social security account num-  
16                  ber provided in an inquiry against such information  
17                  maintained by the Commissioner in order to validate  
18                  (or not validate) the information provided regarding  
19                  an individual whose identity and employment eligi-  
20                  bility must be confirmed, the correspondence of the  
21                  name and number, and whether the individual has  
22                  presented a social security account number that is  
23                  not valid for employment. The Commissioner shall  
24                  not disclose or release social security information  
25                  (other than such verification or nonverification) ex-

1       cept as provided for in this section or section  
2       205(c)(2)(I) of the Social Security Act.

3           “(6) RESPONSIBILITIES OF SECRETARY OF  
4       HOMELAND SECURITY.—As part of the verification  
5       system, the Secretary of Homeland Security (in con-  
6       sultation with any designee of the Secretary selected  
7       to establish and administer the verification system),  
8       shall establish a reliable, secure method, which, with-  
9       in the time periods specified under paragraphs (2)  
10      and (3), compares the name and alien identification  
11      or authorization number which are provided in an  
12      inquiry against such information maintained by the  
13      Secretary in order to validate (or not validate) the  
14      information provided, the correspondence of the  
15      name and number, and whether the alien is author-  
16      ized to be employed in the United States.

17           “(7) OFFENSES.—

18           “(A) IN GENERAL.—Any person or entity  
19      that, in making an inquiry under subsection  
20      (b)(1)(C)(i)(II), provides to the verification sys-  
21      tem a social security account number or an  
22      identification or authorization number estab-  
23      lished by the Secretary of Homeland Security  
24      that belongs to a person other than the indi-  
25      vidual whose identity and employment author-



1           ization are being verified, knowing that the  
2           number does not belong to the individual whose  
3           identity and employment authorization are  
4           being verified, shall be fined under title 18,  
5           United States Code, imprisoned not less than 1  
6           year and not more than 15 years, or both. If  
7           the person or entity, in making an inquiry  
8           under subsection (b)(1)(C)(i)(II), during and in  
9           relation to any felony violation enumerated in  
10          section 1028A(c) of title 18, United States  
11          Code, provides to the verification system a so-  
12          cial security account number or an identifica-  
13          tion or authorization number established by the  
14          Secretary of Homeland Security that belongs to  
15          a person other than the individual whose iden-  
16          tity and employment authorization are being  
17          verified, knowing that the number does not be-  
18          long to the individual whose identity and work  
19          authorization are being verified, in addition to  
20          the punishment provided for such felony, shall  
21          be fined under title 18, United States Code, im-  
22          prisoned for a term of 2 years, or both.

23                   “(B) CONSECUTIVE SENTENCE.—Notwith-  
24                   standing any other provision of law—

1           “(i) a court shall not place on proba-  
2           tion any person or entity convicted of a  
3           violation of this paragraph;

4           “(ii) except as provided in clause (iv),  
5           no term of imprisonment imposed on a  
6           person or entity under this section shall  
7           run concurrently with any other term of  
8           imprisonment imposed on the person or en-  
9           tity under any other provision of law, in-  
10          cluding any term of imprisonment imposed  
11          for the felony enumerated in section  
12          1028A(c) of title 18, United States Code,  
13          during which the violation of this para-  
14          graph occurred;

15          “(iii) in determining any term of im-  
16          prisonment to be imposed for the felony  
17          enumerated in section 1028A(c) of title 18,  
18          United States Code, during which the vio-  
19          lation of this section occurred, a court  
20          shall not in any way reduce the term to be  
21          imposed for such crime so as to com-  
22          pensate for, or otherwise take into account,  
23          any separate term of imprisonment im-  
24          posed or to be imposed for a violation of  
25          this paragraph; and

1           “(iv) a term of imprisonment imposed  
2           on a person or entity for a violation of this  
3           paragraph may, in the discretion of the  
4           court, run concurrently, in whole or in  
5           part, only with another term of imprison-  
6           ment that is imposed by the court at the  
7           same time on that person or entity for an  
8           additional violation of this paragraph, ex-  
9           cept that such discretion shall be exercised  
10          in accordance with any applicable guide-  
11          lines and policy statements issued by the  
12          United States Sentencing Commission pur-  
13          suant to section 994 of title 28, United  
14          States Code.

15           “(8) UPDATING INFORMATION.—The Commis-  
16          sioner of Social Security and the Secretary of Home-  
17          land Security shall update their information in a  
18          manner that promotes the maximum accuracy and  
19          shall provide a process for the prompt correction of  
20          erroneous information, including instances in which  
21          it is brought to their attention in the secondary  
22          verification process described in paragraph (3).

23           “(9) LIMITATION ON USE OF THE  
24          VERIFICATION SYSTEM AND ANY RELATED SYS-  
25          TEMS.—

1           “(A) IN GENERAL.—Notwithstanding any  
2 other provision of law, nothing in this section  
3 shall be construed to permit or allow any de-  
4 partment, bureau, or other agency of the  
5 United States Government to utilize any infor-  
6 mation, data base, or other records assembled  
7 under this subsection for any other purpose  
8 other than as provided for under this section.

9           “(B) NO NATIONAL IDENTIFICATION  
10 CARD.—Nothing in this section shall be con-  
11 strued to authorize, directly or indirectly, the  
12 issuance or use of national identification cards  
13 or the establishment of a national identification  
14 card.

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

22 **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**  
23 **EMPLOYMENT.**

24           (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-  
25 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-

1 MENT.—Section 274A(a) of the Immigration and Nation-  
2 ality Act (8 U.S.C. 1324a(a)) is amended—

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

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

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

10 (3) in paragraph (2), by striking “after hiring  
11 an alien for employment in accordance with para-  
12 graph (1),” and inserting “after complying with  
13 paragraph (1),”; and

14 (4) in paragraph (3), by striking “hiring,” and  
15 inserting “hiring, employing,” each place it appears.

16 (b) DEFINITION.—Section 274A(h) of the Immigra-  
17 tion and Nationality Act (8 U.S.C. 1324a(h)) is amended  
18 by adding at the end the following:

19 “(4) DEFINITION OF RECRUIT OR REFER.—As  
20 used in this section, the term ‘refer’ means the act  
21 of sending or directing a person or transmitting doc-  
22 umentation or information to another, directly or in-  
23 directly, with the intent of obtaining employment in  
24 the United States for such person. Only persons or  
25 entities referring for remuneration (whether on a re-

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

24 (c) EFFECTIVE DATE.—The amendments made by  
25 this section shall take effect on the date that is 1 year

1 after the date of the enactment of this Act, except that  
2 the amendments made by subsection (a) shall take effect  
3 6 months after the date of the enactment of this Act inso-  
4 far as such amendments relate to continuation of employ-  
5 ment.

6 **SEC. 5. GOOD FAITH DEFENSE.**

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

10 “(3) GOOD FAITH DEFENSE.—

11 “(A) DEFENSE.—An employer (or person  
12 or entity that hires, employs, recruits or refers  
13 for fee, or is otherwise obligated to comply with  
14 this section) who establishes that it has com-  
15 plied in good faith with the requirements of  
16 subsection (b)—

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

1           “(ii) has established compliance with  
2           its obligations under subparagraphs (A)  
3           and (B) of paragraph (1) and subsection  
4           (b) absent a showing by the Secretary of  
5           Homeland Security, by clear and con-  
6           vincing evidence, that the employer had  
7           knowledge that an employee is an unau-  
8           thorized alien.

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

17                 “(i)         FAILURE         TO         SEEK  
18                 VERIFICATION.—

19                 “(I) IN GENERAL.—If the person  
20                 or entity has not made an inquiry,  
21                 under the mechanism established  
22                 under subsection (d) and in accord-  
23                 ance with the timeframes established  
24                 under subsection (b), seeking  
25                 verification of the identity and work



1 eligibility of the individual, the de-  
2 fense under subparagraph (A) shall  
3 not be considered to apply with re-  
4 spect to any employment, except as  
5 provided in subclause (II).

6 “(II) SPECIAL RULE FOR FAIL-  
7 URE OF VERIFICATION MECHANISM.—

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

20 “(ii) FAILURE TO OBTAIN  
21 VERIFICATION.—If the person or entity  
22 has made the inquiry described in clause  
23 (i)(I) but has not received an appropriate  
24 verification of such identity and work eligi-  
25 bility under such mechanism within the

1           time period specified under subsection  
2           (d)(2) after the time the verification in-  
3           quiry was received, the defense under sub-  
4           paragraph (A) shall not be considered to  
5           apply with respect to any employment after  
6           the end of such time period.”.

7 **SEC. 6. PREEMPTION.**

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

11                 “(2) PREEMPTION.—The provisions of this sec-  
12           tion preempt any State or local law, ordinance, pol-  
13           icy, or rule, including any criminal or civil fine or  
14           penalty structure, insofar as they may now or here-  
15           after relate to the hiring, continued employment, or  
16           status verification for employment eligibility pur-  
17           poses, of unauthorized aliens. A State, locality, mu-  
18           nicipality, or political subdivision may exercise its  
19           authority over business licensing and similar laws as  
20           a penalty for failure to use the verification system  
21           described in subsection (d) to verify employment eli-  
22           gibility when and as required under subsection (b).”.

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. 1234a 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 or the Social Security Admin-  
9 istration, to the employment eligibility confirmation sys-  
10 tem established under section 404 of the Illegal Immigra-  
11 tion Reform and Immigrant Responsibility Act of 1996  
12 (8 U.S.C. 1324a note) is deemed to refer to the employ-  
13 ment eligibility confirmation system established under sec-  
14 tion 274A(d) of the Immigration and Nationality Act, as  
15 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)(4)—

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

1 (B) in subparagraph (A)(i), by striking  
2 “not less than \$250 and not more than  
3 \$2,000” and inserting “not less than \$2,500  
4 and not more than \$5,000”;

5 (C) in subparagraph (A)(ii), by striking  
6 “not less than \$2,000 and not more than  
7 \$5,000” and inserting “not less than \$5,000  
8 and not more than \$10,000”;

9 (D) in subparagraph (A)(iii), by striking  
10 “not less than \$3,000 and not more than  
11 \$10,000” and inserting “not less than \$10,000  
12 and not more than \$25,000”; and

13 (E) by amending subparagraph (B) to read  
14 as follows:

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

18 (2) in subsection (e)(5)—

19 (A) in the paragraph heading, strike “PA-  
20 PERWORK”;

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

23 (C) by striking “\$100” and inserting  
24 “\$1,000”;

1 (D) by striking “\$1,000” and inserting  
2 “\$25,000”;

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

10 (3) by adding at the end of subsection (e) the  
11 following:

12 “(10) EXEMPTION FROM PENALTY FOR GOOD  
13 FAITH VIOLATION.—In the case of imposition of a  
14 civil penalty under paragraph (4)(A) with respect to  
15 a violation of subsection (a)(1)(A) or (a)(2) for hir-  
16 ing or continuation of employment or recruitment or  
17 referral by person or entity and in the case of im-  
18 position of a civil penalty under paragraph (5) for a  
19 violation of subsection (a)(1)(B) for hiring or re-  
20 cruitment or referral by a person or entity, the pen-  
21 alty otherwise imposed may be waived or reduced if  
22 the violator establishes that the violator acted in  
23 good faith.

24 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR  
25 CERTAIN VIOLATIONS.—

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

12           “(B) DOES NOT HAVE CONTRACT, GRANT,  
13 AGREEMENT.—If the Secretary of Homeland  
14 Security or the Attorney General wishes to have  
15 a person or entity considered for debarment in  
16 accordance with this paragraph, and such an  
17 person or entity does not hold a Federal con-  
18 tract, grant or cooperative agreement, the Sec-  
19 retary or Attorney General shall refer the mat-  
20 ter to the Administrator of General Services to  
21 determine whether to list the person or entity  
22 on the List of Parties Excluded from Federal  
23 Procurement, and if so, for what duration and  
24 under what scope.

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

20                 “(D) REVIEW.—Any decision to debar a  
21                 person or entity under in accordance with this  
22                 paragraph shall be reviewable pursuant to part  
23                 9.4 of the Federal Acquisition Regulation.”;

24                 (4) by amending paragraph (1) of subsection (f)  
25                 to read as follows:

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

9           (5) in subsection (f)(2), by striking “Attorney  
10          General” each place it appears and inserting “Sec-  
11          retary of Homeland Security”.

12 **SEC. 9. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**  
13 **TION PROGRAMS.**

14          (a) FUNDING UNDER AGREEMENT.—Effective for  
15          fiscal years beginning on or after October 1, 2012, the  
16          Commissioner of Social Security and the Secretary of  
17          Homeland Security shall enter into and maintain an  
18          agreement which shall—

19               (1) provide funds to the Commissioner for the  
20               full costs of the responsibilities of the Commissioner  
21               under section 274A(d) of the Immigration and Na-  
22               tionality Act (8 U.S.C. 1324a(d)), as amended by  
23               section 3 of this Act, including (but not limited  
24               to)—



1 (A) acquiring, installing, and maintaining  
2 technological equipment and systems necessary  
3 for the fulfillment of the responsibilities of the  
4 Commissioner under such section 274A(d), but  
5 only that portion of such costs that are attrib-  
6 utable exclusively to such responsibilities; and

7 (B) responding to individuals who contest  
8 a tentative nonconfirmation provided by the em-  
9 ployment eligibility verification system estab-  
10 lished under such section;

11 (2) provide such funds quarterly in advance of  
12 the applicable quarter based on estimating method-  
13 ology agreed to by the Commissioner and the Sec-  
14 retary (except in such instances where the delayed  
15 enactment of an annual appropriation may preclude  
16 such quarterly payments); and

17 (3) require an annual accounting and reconcili-  
18 ation of the actual costs incurred and the funds pro-  
19 vided under the agreement, which shall be reviewed  
20 by the Office of Inspector General of the Social Se-  
21 curity Administration and the Department of Home-  
22 land Security.

23 (b) CONTINUATION OF EMPLOYMENT VERIFICATION  
24 IN ABSENCE OF TIMELY AGREEMENT.—In any case in  
25 which the agreement required under subsection (a) for any

1 fiscal year beginning on or after October 1, 2012, has not  
2 been reached as of October 1 of such fiscal year, the latest  
3 agreement between the Commissioner and the Secretary  
4 of Homeland Security providing for funding to cover the  
5 costs of the responsibilities of the Commissioner under  
6 section 274A(d) of the Immigration and Nationality Act  
7 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-  
8 terim basis for such fiscal year until such time as an  
9 agreement required under subsection (a) is subsequently  
10 reached, except that the terms of such interim agreement  
11 shall be modified by the Director of the Office of Manage-  
12 ment and Budget to adjust for inflation and any increase  
13 or decrease in the volume of requests under the employ-  
14 ment eligibility verification system. In any case in which  
15 an interim agreement applies for any fiscal year under this  
16 subsection, the Commissioner and the Secretary shall, not  
17 later than October 1 of such fiscal year, notify the Com-  
18 mittee on Ways and Means, the Committee on the Judici-  
19 ary, and the Committee on Appropriations of the House  
20 of Representatives and the Committee on Finance, the  
21 Committee on the Judiciary, and the Committee on Ap-  
22 propriations of the Senate of the failure to reach the  
23 agreement required under subsection (a) for such fiscal  
24 year. Until such time as the agreement required under  
25 subsection (a) has been reached for such fiscal year, the

1 Commissioner and the Secretary shall, not later than the  
2 end of each 90-day period after October 1 of such fiscal  
3 year, notify such Committees of the status of negotiations  
4 between the Commissioner and the Secretary in order to  
5 reach such an agreement.

6 **SEC. 10. FRAUD PREVENTION.**

7 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**  
8 **NUMBERS.**—The Secretary of Homeland Security and the  
9 Commissioner of Social Security shall establish a program  
10 in which social security account numbers that have been  
11 identified to be subject to unusual multiple use in the em-  
12 ployment eligibility verification system established under  
13 section 274A(d) of the Immigration and Nationality Act  
14 (8 U.S.C. 1324a(d)), as amended by section 3 of this Act,  
15 or that are otherwise suspected or determined to have been  
16 compromised by identity fraud or other misuse, shall be  
17 blocked from use for such system purposes unless the indi-  
18 vidual using such number is able to establish, through se-  
19 cure and fair additional security procedures, that the indi-  
20 vidual is the legitimate holder of the number.

21 (b) **ALLOWING SUSPENSION OF USE OF CERTAIN SO-**  
22 **CIAL SECURITY ACCOUNT NUMBERS.**—The Secretary of  
23 Homeland Security, in consultation with the Commis-  
24 sioner of Social Security, shall establish a program which  
25 shall provide a reliable, secure method by which victims

1 of identity fraud and other individuals may suspend or  
2 limit the use of their social security account number or  
3 other identifying information for purposes of the employ-  
4 ment eligibility verification system established under sec-  
5 tion 274A(d) of the Immigration and Nationality Act (8  
6 U.S.C. 1324a(d)), as amended by section 3 of this Act.  
7 The Secretary may implement the program on a limited  
8 pilot program basis before making it fully available to all  
9 individuals.

10 (c) BLOCKING USE OF CERTAIN SOCIAL SECURITY  
11 ACCOUNT NUMBERS.—

12 (1) IN GENERAL.—The Secretary of Homeland  
13 Security shall establish a program in which the so-  
14 cial security account numbers of an alien described  
15 in paragraph (2) shall be blocked from use for pur-  
16 poses of the employment eligibility verification sys-  
17 tem established under section 274A(d) of the Immi-  
18 gration and Nationality Act (8 U.S.C. 1324a(d)), as  
19 amended by section 3 of this Act, unless the alien  
20 is subsequently admitted lawfully to the United  
21 States in, or the Secretary has subsequently changed  
22 the alien's status lawfully to, a status that permits  
23 employment as a condition of the alien's admission  
24 or subsequent change of status, or the Secretary has

1 subsequently granted work authorization lawfully to  
2 the alien.

3 (2) ALIENS DESCRIBED.—An alien is described  
4 in this paragraph if the alien—

5 (A) has a final order of removal from the  
6 United States;

7 (B) voluntarily departs the United States;

8 (C) is voluntarily returned; or

9 (D) is a nonimmigrant described in section  
10 101(a)(15) of the Immigration and Nationality  
11 Act (8 U.S.C. 1101(a)(15)) whose work author-  
12 ization has expired and who is not the subject  
13 of an application or petition that would author-  
14 ize the alien’s employment.

15 **SEC. 11. BIOMETRIC EMPLOYMENT ELIGIBILITY**  
16 **VERIFICATION PILOT PROGRAM.**

17 (a) IN GENERAL.—Not later than 18 months after  
18 the date of the enactment of the Legal Workforce Act,  
19 the Secretary of Homeland Security, after consultation  
20 with the Commissioner of Social Security and the Director  
21 of the National Institute of Standards and Technology,  
22 shall establish by regulation a Biometric Employment Eli-  
23 gibility Verification pilot program (the “Biometric Pilot”).  
24 The purpose of the Biometric Pilot shall be to provide for  
25 identity authentication and employment eligibility

1 verification with respect to enrolled new employees which  
2 shall be available to subject employers who elect to partici-  
3 pate in the Biometric Pilot. Any subject employer may  
4 cancel the employer’s participation in the Biometric Pilot  
5 after one year after electing to participate without preju-  
6 dice to future participation.

7 (b) MINIMUM REQUIREMENTS.—In accordance with  
8 the regulations prescribed by the Secretary pursuant to  
9 subsection (a), the following shall apply:

10 (1) IDENTITY AUTHENTICATION AND EMPLOY-  
11 MENT ELIGIBILITY VERIFICATION BY ENROLLMENT  
12 PROVIDERS.—The Biometric Pilot shall utilize the  
13 services of private sector entities (“enrollment pro-  
14 viders”), with appropriate expertise, which shall be  
15 subject to initial and periodic certification by the  
16 Secretary, to provide—

17 (A) enrollment under the Biometric Pilot  
18 of new employees by means of identity authen-  
19 tication in a manner that provides a high level  
20 of certainty as to their true identities, using im-  
21 migration and identifying information main-  
22 tained by the Social Security Administration  
23 and the Department of Homeland Security, re-  
24 view of identity documents, and background

1 screening verification techniques using publicly  
2 available information;

3 (B) protection of the authenticated infor-  
4 mation through biometric technology; and

5 (C) verification of employment eligibility of  
6 such new employees.

7 (2) DATABASE MANAGEMENT.—The Biometric  
8 Pilot shall provide for databases of identifying infor-  
9 mation which may be retained by the enrollment  
10 providers. Databases controlled by the Commissioner  
11 and Secretary of Homeland Security shall be main-  
12 tained in a manner to capture new entries and new  
13 status information in a timely manner and to inter-  
14 act with the private enrollment databases to keep  
15 employment authorization status and identifying in-  
16 formation current on a daily basis. The information  
17 maintained in such databases shall be subject to the  
18 requirements established pursuant to subsection (e),  
19 except that—

20 (A) use of the data shall be limited to ob-  
21 taining employment eligibility verification only,  
22 unless the new employee consents to use the  
23 data for other purposes, as provided in regula-  
24 tions prescribed by the Secretary; and

1 (B) other identifying traits of the new em-  
2 ployees shall be stored through an encoding  
3 process that keeps their accurate names, dates  
4 of birth, social security numbers, and immigra-  
5 tion identification numbers (if any) separate,  
6 except during electronic verification.

7 (3) ACCESSIBILITY TO EMPLOYERS.—Avail-  
8 ability of data maintained in the Biometric Pilot  
9 shall be managed so that any subject employer who  
10 participates in the Biometric Pilot can obtain  
11 verification with respect to any new employee en-  
12 rolled with any enrollment provider serving in the  
13 Biometric Pilot.

14 (4) LIMITATIONS RELATING TO BIOMETRIC  
15 DATA.—Any biometric data maintained in the Bio-  
16 metric Pilot relating to any new employee shall be—

17 (A) encrypted and segregated from identi-  
18 fying information relating to the new employee,  
19 and

20 (B) maintained and linked to identifying  
21 information relating to the new employee only  
22 by consent of the new employee for the purpose  
23 of verifying employment eligibility or approved  
24 correction processes or for other purposes spe-



1           cifically authorized by the employee as provided  
2           in regulations prescribed by the Secretary.

3           (5) ACCURACY OF ASSOCIATION OF DATA WITH  
4           ENROLLED NEW EMPLOYEES.—The enrollment proc-  
5           ess under the Biometric Pilot shall be managed, in  
6           the case of each new employee enrolled in the Bio-  
7           metric Pilot, so as to result in the accurate associa-  
8           tion of data consisting of name, date of birth, social  
9           security number, and immigration identification  
10          number (if any) with the established identity of the  
11          new employee.

12          (6) LIMITATIONS ON ACCESSIBILITY OF INFOR-  
13          MATION.—Data stored in Biometric Pilot relating to  
14          any enrolled new employee shall not be accessible to  
15          any person other than those operating the Biometric  
16          Pilot and for the sole purpose of identity authentica-  
17          tion and employment eligibility verification in con-  
18          nection with the new employee, except—

19                 (A) by the written consent of the new em-  
20                 ployee given specifically for each instance or  
21                 category of disclosure for any other purpose as  
22                 provided in regulations prescribed by the Sec-  
23                 retary; or

1 (B) in response to a warrant issued by a  
2 judicial authority of competent jurisdiction in a  
3 criminal proceeding.

4 (7) PUBLIC EDUCATION.—The Secretary shall  
5 conduct a program of ongoing, comprehensive public  
6 education campaign relating to the Biometric Pilot.

7 (c) EMPLOYER RESPONSIBILITIES.—In accordance  
8 with the regulations prescribed by the Secretary pursuant  
9 to subsection (a), the following shall apply:

10 (1) USE LIMITED TO ENROLLED NEW EMPLOY-  
11 EES.—Use of the Biometric Pilot by subject employ-  
12 ers participating in the Biometric Pilot shall be lim-  
13 ited to use in connection with the hiring of new em-  
14 ployees occurring after their enrollment in the Bio-  
15 metric Pilot.

16 (2) USE FOR LIMITED PERIOD.—Use of the Bi-  
17 ometric Pilot by any subject employer participating  
18 in the Biometric Pilot in connection with any new  
19 employee may occur only during the period begin-  
20 ning on the date of hire and ending at the end of  
21 the third business day after the employee has re-  
22 ported for duty. Use of the Biometric Pilot with re-  
23 spect to recruitment or referral for a fee may occur  
24 only until the first day of such recruitment or refer-  
25 ral.

1           (3) RESPONSIBILITY OF EMPLOYERS TO EN-  
2           ROLL NEW EMPLOYEES.—In connection with the hir-  
3           ing by any subject employer of a new employee who  
4           has not been previously enrolled in the Biometric  
5           Pilot, enrollment of the new employee shall occur  
6           only upon application by the subject employer sub-  
7           mitted to an enrollment provider, together with pay-  
8           ment of any costs associated with the enrollment.

9           (4) LIMITATIONS ON SELECTIVE USE.—No sub-  
10          ject employer may use the Biometric Pilot selectively  
11          to verify any class, level, or category of new employ-  
12          ees. Nothing in this subparagraph shall be construed  
13          to preclude subject employers from utilizing the Bio-  
14          metric Pilot in connection with hiring at selected  
15          employment locations without implementing such  
16          usage at all locations of the employer.

17          (d) EMPLOYEE PROTECTIONS.—In accordance with  
18          the regulations prescribed by the Secretary pursuant to  
19          subsection (a), the following shall apply:

20               (1) ACCESS FOR EMPLOYEES TO CORRECT AND  
21               UPDATE INFORMATION.—Employees enrolled in the  
22               Biometric Pilot shall be provided access to the Bio-  
23               metric Pilot to verify information relating to their  
24               employment authorization and readily available proc-  
25               esses to correct and update their enrollment infor-

1       mation and information relating to employment au-  
2       thorization.

3           (2) RIGHT TO CANCEL ENROLLMENT.—Each  
4       employee enrolled in the Biometric Pilot shall have  
5       the right to cancel such employee’s enrollment at  
6       any time after the identity authentication and em-  
7       ployment eligibility verification processes are com-  
8       pleted by the subject employer described in sub-  
9       section (c)(3). Such cancellation shall remove from  
10      the Biometric Pilot all identifying information and  
11      biometrics in connection with such employee without  
12      prejudice to future enrollments.

13       (e) MAINTENANCE OF SECURITY AND CONFIDEN-  
14      TIALITY OF INFORMATION.—

15           (1) IN GENERAL.—Every person who is a sub-  
16      ject employer participating in the Biometric Pilot or  
17      an officer or contractor of such a subject employer  
18      and who has access to any information obtained at  
19      any time from the Department of Homeland Secu-  
20      rity shall maintain the security and confidentiality of  
21      such information. No such person may disclose any  
22      file, record, report, paper, or other item containing  
23      information so obtained at any time by any such  
24      person from the Secretary or from any officer or em-  
25      ployee of the Department of Homeland Security ex-

1       cept as the Secretary may by regulations prescribe  
2       or as otherwise provided by Federal law.

3           (2) PENALTY FOR DISCLOSURE IN VIOLATION  
4       OF SUBPARAGRAPH (A).—Any person described in  
5       paragraph (1) who knowingly violates paragraph (1)  
6       shall be guilty of a felony and, upon conviction  
7       thereof, shall be punished by a fine not exceeding  
8       \$10,000 for each occurrence of a violation, or by im-  
9       prisonment not exceeding 5 years, or both.

10          (3) PENALTY FOR KNOWING DISCLOSURE OF  
11       FRAUDULENT INFORMATION.—Any person who will-  
12       fully and knowingly accesses, discloses, or uses any  
13       information which such person purports to be infor-  
14       mation obtained as described in paragraph (1)  
15       knowing such information to be false shall be guilty  
16       of a felony and, upon conviction thereof, shall be  
17       punished by a fine not exceeding \$10,000 for each  
18       occurrence of a violation, or by imprisonment not ex-  
19       ceeding 5 years, or both.

20          (4) RESTITUTION.—

21           (A) IN GENERAL.—Any Federal court,  
22       when sentencing a defendant convicted of an of-  
23       fense under this paragraph, may order, in addi-  
24       tion to or in lieu of any other penalty author-  
25       ized by law, that the defendant make restitution

1 to the victims of such offense specified in sub-  
2 paragraph (B). Sections 3612, 3663, and 3664  
3 of title 18, United States Code, shall apply with  
4 respect to the issuance and enforcement of or-  
5 ders of restitution to victims of such offense  
6 under this subparagraph. If the court does not  
7 order restitution, or orders only partial restitu-  
8 tion, under this subsection, the court shall state  
9 on the record the reasons therefor.

10 (B) VICTIMS SPECIFIED.—The victims  
11 specified in this clause are the following:

12 (i) Any individual who suffers a finan-  
13 cial loss as a result of the disclosure de-  
14 scribed in paragraph (2) or (3).

15 (ii) The Secretary of Homeland Secu-  
16 rity, to the extent that the disclosure de-  
17 scribed in paragraph (2) or (3) results in  
18 the inappropriate payment of a benefit by  
19 the Commissioner of Social Security.

20 (C) DEPOSIT IN THE TRUST FUNDS OF  
21 AMOUNTS PAID AS RESTITUTION TO THE COM-  
22 MISSIONER.—Funds paid to the Commissioner  
23 as restitution pursuant to a court order under  
24 this subparagraph shall be deposited in the  
25 Federal Old-Age and Survivors Insurance Trust

- 1 Fund or the Federal Disability Insurance Trust
- 2 Fund, as appropriate.

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