

112TH CONGRESS
1ST SESSION

H. R. 2885

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

SEPTEMBER 12, 2011

Mr. SMITH of Texas (for himself, Mr. CALVERT, Mr. GALLEGLY, Mr. MILLER of Florida, Mr. TERRY, Mrs. BLACKBURN, Mr. LEWIS of California, Mr. WESTMORELAND, Mr. KINGSTON, Mr. ROSS of Florida, Mr. BURGESS, Mr. LATHAM, Mr. FRANKS of Arizona, Mr. GARY G. MILLER of California, and Mrs. MYRICK) 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

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.—On the date of
17 hire (as defined in subsection (h)(4)), the
18 person or entity shall attest, under penalty
19 of perjury and on a form, including elec-
20 tronic and telephonic formats, designated
21 or established by the Secretary by regula-
22 tion not later than 6 months after the date
23 of the enactment of the Legal Workforce
24 Act, that it has verified that the individual
25 is not an unauthorized 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.—

1 “(i) IN GENERAL.—During the
2 verification period (as defined in subpara-
3 graph (F)), the individual shall attest,
4 under penalty of perjury on the form des-
5 ignated or established for purposes of sub-
6 paragraph (A), that the individual is a cit-
7 izen or national of the United States, an
8 alien lawfully admitted for permanent resi-
9 dence, or an alien who is authorized under
10 this Act or by the Secretary of Homeland
11 Security to be hired, recruited, or referred
12 for such employment. Such attestation may
13 be manifested by either a hand-written or
14 electronic signature. The individual shall
15 also provide that individual’s social secu-
16 rity account number (if the individual
17 claims to have been issued such a number),
18 and, if the individual does not attest to
19 United States nationality under this sub-
20 paragraph, such identification or author-
21 ization number established by the Depart-
22 ment of Homeland Security for the alien
23 as the Secretary may specify.

24 “(ii) CRIMINAL PENALTY.—

1 “(I) OFFENSES.—Any individual
2 who, pursuant to clause (i), provides a
3 social security account number or an
4 identification or authorization number
5 established by the Secretary of Home-
6 land Security that belongs to another
7 person, knowing that the number does
8 not belong to the individual providing
9 the number, shall be fined under title
10 18, United States Code, imprisoned
11 not less than 1 year and not more
12 than 15 years, or both. Any individual
13 who, pursuant to clause (i), provides,
14 during and in relation to any felony
15 violation enumerated in section
16 1028A(c) of title 18, United States
17 Code, a social security account num-
18 ber or an identification or authoriza-
19 tion number established by the Sec-
20 retary of Homeland Security that be-
21 longs to another person, knowing that
22 the number does not belong to the in-
23 dividual providing the number, in ad-
24 dition to the punishment provided for
25 such felony, shall be fined under title

1 18, United States Code, imprisoned
2 for a term of 2 years, or both.

3 “(II) CONSECUTIVE SEN-
4 TENCE.—Notwithstanding any other
5 provision of law—

6 “(aa) a court shall not place
7 on probation any individual con-
8 victed of a violation of this
9 clause;

10 “(bb) except as provided in
11 item (dd), no term of imprison-
12 ment imposed on an individual
13 under this section shall run con-
14 currently with any other term of
15 imprisonment imposed on the in-
16 dividual under any other provi-
17 sion of law, including any term of
18 imprisonment imposed for the
19 felony enumerated in section
20 1028A(c) of title 18, United
21 States Code, during which the
22 violation of this section occurred;

23 “(cc) in determining any
24 term of imprisonment to be im-
25 posed for the felony enumerated

1 in section 1028A(c) of title 18,
2 United States Code, during
3 which the violation of this clause
4 occurred, a court shall not in any
5 way reduce the term to be im-
6 posed for such crime so as to
7 compensate for, or otherwise take
8 into account, any separate term
9 of imprisonment imposed or to be
10 imposed for a violation of this
11 clause; and

12 “(dd) a term of imprison-
13 ment imposed on an individual
14 for a violation of this clause may,
15 in the discretion of the court, run
16 concurrently, in whole or in part,
17 only with another term of impris-
18 onment that is imposed by the
19 court at the same time on that
20 individual for an additional viola-
21 tion of this clause, except that
22 such discretion shall be exercised
23 in accordance with any applicable
24 guidelines and policy statements
25 issued by the United States Sen-

1 tencing Commission pursuant to
2 section 994 of title 28, United
3 States Code.

4 “(C) RETENTION OF VERIFICATION FORM
5 AND VERIFICATION.—

6 “(i) IN GENERAL.—After completion
7 of such form in accordance with subpara-
8 graphs (A) and (B), the person or entity
9 shall—

10 “(I) retain a paper, microfiche,
11 microfilm, or electronic version of the
12 form and make it available for inspec-
13 tion by officers of the Department of
14 Homeland Security, the Special Coun-
15 sel for Immigration-Related Unfair
16 Employment Practices, or the Depart-
17 ment of Labor during a period begin-
18 ning on the date of the recruiting or
19 referral of the individual, or, in the
20 case of the hiring of an individual, the
21 date on which the verification is com-
22 pleted, and ending—

23 “(aa) in the case of the re-
24 cruiting or referral of an indi-

1 vidual, 3 years after the date of
2 the recruiting or referral; and

3 “(bb) in the case of the hir-
4 ing of an individual, the later of
5 3 years after the date the
6 verification is completed or one
7 year after the date the individ-
8 ual’s employment is terminated;
9 and

10 “(II) during the verification pe-
11 riod (as defined in subparagraph (F)),
12 make an inquiry, as provided in sub-
13 section (d), using the verification sys-
14 tem to seek verification of the identity
15 and employment eligibility of an indi-
16 vidual.

17 “(ii) CONFIRMATION.—

18 “(I) CONFIRMATION RE-
19 CEIVED.—If the person or other entity
20 receives an appropriate confirmation
21 of an individual’s identity and work
22 eligibility under the verification sys-
23 tem within the time period specified,
24 the person or entity shall record on
25 the form an appropriate code that is

1 provided under the system and that
2 indicates a final confirmation of such
3 identity and work eligibility of the in-
4 dividual.

5 “(II) TENTATIVE NONCONFIRMA-
6 TION RECEIVED.—If the person or
7 other entity receives a tentative non-
8 confirmation of an individual’s iden-
9 tity or work eligibility under the
10 verification system within the time pe-
11 riod specified, the person or entity
12 shall so inform the individual for
13 whom the verification is sought. If the
14 individual does not contest the non-
15 confirmation within the time period
16 specified, the nonconfirmation shall be
17 considered final. The person or entity
18 shall then record on the form an ap-
19 propriate code which has been pro-
20 vided under the system to indicate a
21 final nonconfirmation. If the indi-
22 vidual does contest the nonconfirma-
23 tion, the individual shall utilize the
24 process for secondary verification pro-
25 vided under subsection (d). The non-

1 confirmation will remain tentative
2 until a final confirmation or noncon-
3 firmation is provided by the
4 verification system within the time pe-
5 riod specified. In no case shall an em-
6 ployer terminate employment of an in-
7 dividual because of a failure of the in-
8 dividual to have identity and work eli-
9 gibility confirmed under this section
10 until a nonconfirmation becomes final.
11 Nothing in this clause shall apply to a
12 termination of employment for any
13 reason other than because of such a
14 failure. In no case shall an employer
15 rescind the offer of employment to an
16 individual because of a failure of the
17 individual to have identity and work
18 eligibility confirmed under this sub-
19 section until a nonconfirmation be-
20 comes final. Nothing in this subclause
21 shall apply to a rescission of the offer
22 of employment for any reason other
23 than because of such a failure.

24 “(III) FINAL CONFIRMATION OR
25 NONCONFIRMATION RECEIVED.—If a

1 final confirmation or nonconfirmation
2 is provided by the verification system
3 regarding an individual, the person or
4 entity shall record on the form an ap-
5 propriate code that is provided under
6 the system and that indicates a con-
7 firmation or nonconfirmation of iden-
8 tity and work eligibility of the indi-
9 vidual.

10 “(IV) EXTENSION OF TIME.—If
11 the person or other entity in good
12 faith attempts to make an inquiry
13 during the time period specified and
14 the verification system has registered
15 that not all inquiries were received
16 during such time, the person or entity
17 may make an inquiry in the first sub-
18 sequent working day in which the
19 verification system registers that it
20 has received all inquiries. If the
21 verification system cannot receive in-
22 quires at all times during a day, the
23 person or entity merely has to assert
24 that the entity attempted to make the
25 inquiry on that day for the previous

1 sentence to apply to such an inquiry,
2 and does not have to provide any ad-
3 ditional proof concerning such inquiry.

4 “(V) CONSEQUENCES OF NON-
5 CONFIRMATION.—

6 “(aa) TERMINATION OR NO-
7 TIFICATION OF CONTINUED EM-
8 PLOYMENT.—If the person or
9 other entity has received a final
10 nonconfirmation regarding an in-
11 dividual, the person or entity
12 may terminate employment of the
13 individual (or decline to recruit
14 or refer the individual). If the
15 person or entity does not termi-
16 nate employment of the indi-
17 vidual or proceeds to recruit or
18 refer the individual, the person or
19 entity shall notify the Secretary
20 of Homeland Security of such
21 fact through the verification sys-
22 tem or in such other manner as
23 the Secretary may specify.

24 “(bb) FAILURE TO NO-
25 TIFY.—If the person or entity

1 fails to provide notice with re-
2 spect to an individual as required
3 under item (aa), the failure is
4 deemed to constitute a violation
5 of subsection (a)(1)(A) with re-
6 spect to that individual.

7 “(VI) CONTINUED EMPLOYMENT
8 AFTER FINAL NONCONFIRMATION.—If
9 the person or other entity continues to
10 employ (or to recruit or refer) an indi-
11 vidual after receiving final noncon-
12 firmation, a rebuttable presumption is
13 created that the person or entity has
14 violated subsection (a)(1)(A).

15 “(D) CONTINUATION OF SEASONAL AGRI-
16 CULTURAL EMPLOYMENT.—An individual shall
17 not be considered a new hire subject to
18 verification under this paragraph if the indi-
19 vidual is engaged in seasonal agricultural em-
20 ployment and is returning to work for an em-
21 ployer that previously employed the individual.

22 “(E) EFFECTIVE DATES OF NEW PROCE-
23 DURES.—

24 “(i) HIRING.—Except as provided in
25 clause (iii), the provisions of this para-

1 graph shall apply to a person or other enti-
2 ty hiring an individual for employment in
3 the United States as follows:

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

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

19 “(III) With respect to employers
20 having 20 or more employees in the
21 United States, but less than 500 em-
22 ployees in the United States, on the
23 date of the enactment of the Legal
24 Workforce Act, on the date that is 18

1 months after the date of the enact-
2 ment of such Act.

3 “(IV) With respect to employers
4 having 1 or more employees in the
5 United States, but less than 20 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 24
9 months after the date of the enact-
10 ment of such Act.

11 “(ii) RECRUITING AND REFERRING.—
12 Except as provided in clause (iii), the pro-
13 visions of this paragraph shall apply to a
14 person or other entity recruiting or refer-
15 ring an individual for employment in the
16 United States on the date that is 12
17 months after the date of the enactment of
18 the Legal Workforce Act.

19 “(iii) AGRICULTURAL LABOR OR SERV-
20 ICES.—With respect to an employee per-
21 forming agricultural labor or services (as
22 defined for purposes of section
23 101(a)(15)(H)(ii)(a)), this paragraph shall
24 not apply with respect to the verification of
25 the employee until the date that is 36

1 months after the date of the enactment of
2 the Legal Workforce Act. An employee de-
3 scribed in this clause shall not be counted
4 for purposes of clause (i).

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

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

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

21 “(III) Any other provision of
22 Federal law requiring the person or
23 entity to participate in the E-Verify
24 Program described in section 403(a)
25 of the Illegal Immigration Reform and

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

8 “(F) VERIFICATION PERIOD DEFINED.—

9 “(i) IN GENERAL.—For purposes of
10 this paragraph:

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

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

24 “(ii) JOB OFFER MAY BE CONDI-
25 TIONAL.—A person or other entity may

1 offer a prospective employee an employ-
2 ment position that is conditioned on final
3 verification of the identity and employment
4 eligibility of the employee using the proce-
5 dures established under this paragraph.

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

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

17 “(A) IN GENERAL.—Except as provided in
18 subparagraph (B), a person or entity shall
19 make an inquiry, as provided in subsection (d),
20 using the verification system to seek
21 reverification of the identity and employment
22 eligibility of all individuals with a limited period
23 of work authorization employed by the person
24 or entity during the 3 business days before the

1 date on which the employee’s work authoriza-
2 tion expires as follows:

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)), or an
10 employee recruited or referred by a farm labor
11 contractor (as defined in section 3 of the Mi-
12 grant and Seasonal Agricultural Worker Protec-
13 tion Act (29 U.S.C. 1801)), subparagraph (A)
14 shall not apply with respect to the reverification
15 of the employee until the date that is 36
16 months after the date of the enactment of the
17 Legal Workforce Act. An employee described in
18 this subparagraph shall not be counted for pur-
19 poses of subparagraph (A).

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

1 “(i) use a form designated or estab-
2 lished by the Secretary by regulation for
3 purposes of this paragraph; and

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

16 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

17 “(A) ON A MANDATORY BASIS FOR CER-
18 TAIN EMPLOYEES.—

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

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

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

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

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

22 “(III) An employee assigned to
23 perform work in the United States
24 under a Federal contract, except that
25 this subclause—

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

14 “(bb) only applies to con-
15 tracts over the simple acquisition
16 threshold as defined in section
17 2.101 of title 48, Code of Federal
18 Regulations.

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 income is
12 being reported as well as sufficient infor-
13 mation notifying the employee of the proc-
14 ess to contact the Social Security Adminis-
15 tration Fraud Hotline if the employee be-
16 lieves the employee’s identity may have
17 been stolen. The notice shall not share in-
18 formation protected as private, in order to
19 avoid any recipient of the notice from
20 being in the position to further commit or
21 begin committing 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 the Commis-

1 sioner, and indicates that the social secu-
2 rity account number was used without
3 their knowledge, the Secretary and the
4 Commissioner shall lock the social security
5 account number for employment eligibility
6 verification purposes and shall notify the
7 employers of the individuals who wrong-
8 fully submitted the social security account
9 number that the employee may not be
10 work eligible.

11 “(iii) Each employer receiving such
12 notification of an incorrect social security
13 account number under clause (ii) shall use
14 the verification system described in sub-
15 section (d) to check the work eligibility sta-
16 tus of the applicable employee within 10
17 business days of receipt of the notification.

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

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

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

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

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

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

22 “(III) An explanation of the em-
23 ployment eligibility verification re-
24 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—

1 “(i) use a form designated or estab-
2 lished by the Secretary by regulation for
3 purposes of this paragraph; and

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

16 “(4) EARLY COMPLIANCE.—

17 “(A) FORMER E-VERIFY REQUIRED USERS,
18 INCLUDING FEDERAL CONTRACTORS.—Notwith-
19 standing the deadlines in paragraphs (1) and
20 (2), beginning on the date of the enactment of
21 the Legal Workforce Act, the Secretary is au-
22 thorized to commence requiring employers re-
23 quired to participate in the E-Verify Program
24 described in section 403(a) of the Illegal Immi-
25 gration Reform and Immigrant Responsibility

1 Act of 1996 (8 U.S.C. 1324a note), including
2 employers required to participate in such pro-
3 gram by reason of Federal acquisition laws
4 (and regulations promulgated under those laws,
5 including the Federal Acquisition Regulation),
6 to commence compliance with the requirements
7 of this subsection (and any additional require-
8 ments of such Federal acquisition laws and reg-
9 ulation) in lieu of any requirement to partici-
10 pate in the E-Verify Program.

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

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

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

15 “(7) GOOD FAITH COMPLIANCE.—

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

23 “(B) EXCEPTION IF FAILURE TO CORRECT
24 AFTER NOTICE.—Subparagraph (A) shall not
25 apply if—

1 “(i) the failure is not de minimus;

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

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

11 “(iv) the person or entity has not cor-
12 rected the failure voluntarily within such
13 period.

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

19 “(8) SINGLE EXTENSION OF DEADLINES UPON
20 CERTIFICATION.—In a case in which the Secretary
21 of Homeland Security has certified to the Congress
22 that the employment eligibility verification system
23 required under subsection (d) will not be fully oper-
24 ational by the date that is 6 months after the date
25 of the enactment of the Legal Workforce Act, each

1 deadline established under this section for an em-
2 ployer to make an inquiry using such system shall
3 be extended by 6 months. No other extension of such
4 a deadline shall be made.”.

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

8 “(4) DEFINITION OF DATE OF HIRE.—As used
9 in this section, the term ‘date of hire’ means the
10 date of actual commencement of employment for
11 wages or other remuneration, unless otherwise speci-
12 fied.”.

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

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

16 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
17 TEM.—

18 “(1) IN GENERAL.—Patterned on the employ-
19 ment eligibility confirmation system established
20 under section 404 of the Illegal Immigration Reform
21 and Immigrant Responsibility Act of 1996 (8 U.S.C.
22 1324a note), the Secretary of Homeland Security
23 shall establish and administer a verification system
24 through which the Secretary (or a designee of the

1 Secretary, which may be a nongovernmental enti-
2 ty)—

3 “(A) responds to inquiries made by per-
4 sons at any time through a toll-free telephone
5 line and other toll-free electronic media con-
6 cerning an individual’s identity and whether the
7 individual is authorized to be employed; and

8 “(B) maintains records of the inquiries
9 that were made, of verifications provided (or
10 not provided), and of the codes provided to in-
11 quirers as evidence of their compliance with
12 their obligations under this section.

13 “(2) INITIAL RESPONSE.—The verification sys-
14 tem shall provide confirmation or a tentative non-
15 confirmation of an individual’s identity and employ-
16 ment eligibility within 3 working days of the initial
17 inquiry. If providing confirmation or tentative non-
18 confirmation, the verification system shall provide an
19 appropriate code indicating such confirmation or
20 such nonconfirmation.

21 “(3) SECONDARY CONFIRMATION PROCESS IN
22 CASE OF TENTATIVE NONCONFIRMATION.—In cases
23 of tentative nonconfirmation, the Secretary shall
24 specify, in consultation with the Commissioner of
25 Social Security, an available secondary verification

1 process to confirm the validity of information pro-
2 vided and to provide a final confirmation or noncon-
3 firmation not later than 10 working days after the
4 date on which the notice of the tentative noncon-
5 firmation is received by the employee. The Secretary,
6 in consultation with the Commissioner, may extend
7 this deadline on a case-by-case basis, and if the time
8 is extended, shall document such extension within
9 the verification system. When final confirmation or
10 nonconfirmation is provided, the verification system
11 shall provide an appropriate code indicating such
12 confirmation or nonconfirmation.

13 “(4) DESIGN AND OPERATION OF SYSTEM.—
14 The verification system shall be designed and oper-
15 ated—

16 “(A) to maximize its reliability and ease of
17 use by persons and other entities consistent
18 with insulating and protecting the privacy and
19 security of the underlying information;

20 “(B) to respond to all inquiries made by
21 such persons and entities on whether individ-
22 uals are authorized to be employed and to reg-
23 ister all times when such inquiries are not re-
24 ceived;

1 “(C) with appropriate administrative, tech-
2 nical, and physical safeguards to prevent unau-
3 thorized disclosure of personal information;

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

8 “(i) the selective or unauthorized use
9 of the system to verify eligibility; or

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

16 “(E) to limit the subjects of verification to
17 the following individuals:

18 “(i) Individuals hired, referred, or re-
19 cruited, in accordance with paragraph (1)
20 or (4) of subsection (b).

21 “(ii) Employees and prospective em-
22 ployees, in accordance with paragraph (1),
23 (2), (3), or (4) of subsection (b).

1 “(iii) Individuals seeking to confirm
2 their own employment eligibility on a vol-
3 untary basis.

4 “(5) RESPONSIBILITIES OF COMMISSIONER OF
5 SOCIAL SECURITY.—As part of the verification sys-
6 tem, the Commissioner of Social Security, in con-
7 sultation with the Secretary of Homeland Security
8 (and any designee of the Secretary selected to estab-
9 lish and administer the verification system), shall es-
10 tablish a reliable, secure method, which, within the
11 time periods specified under paragraphs (2) and (3),
12 compares the name and social security account num-
13 ber provided in an inquiry against such information
14 maintained by the Commissioner in order to validate
15 (or not validate) the information provided regarding
16 an individual whose identity and employment eligi-
17 bility must be confirmed, the correspondence of the
18 name and number, and whether the individual has
19 presented a social security account number that is
20 not valid for employment. The Commissioner shall
21 not disclose or release social security information
22 (other than such confirmation or nonconfirmation)
23 under the verification system except as provided for
24 in this section or section 205(c)(2)(I) of the Social
25 Security Act.

1 “(6) RESPONSIBILITIES OF SECRETARY OF
2 HOMELAND SECURITY.—As part of the verification
3 system, the Secretary of Homeland Security (in con-
4 sultation with any designee of the Secretary selected
5 to establish and administer the verification system),
6 shall establish a reliable, secure method, which, with-
7 in the time periods specified under paragraphs (2)
8 and (3), compares the name and alien identification
9 or authorization number (or any other information
10 as determined relevant by the Secretary) which are
11 provided in an inquiry against such information
12 maintained or accessed by the Secretary in order to
13 validate (or not validate) the information provided,
14 the correspondence of the name and number, wheth-
15 er the alien is authorized to be employed in the
16 United States, or to the extent that the Secretary
17 determines to be feasible and appropriate, whether
18 the records available to the Secretary verify the
19 identity or status of a national of the United States.

20 “(7) OFFENSES.—

21 “(A) IN GENERAL.—Any person or entity
22 that, in making an inquiry under subsection
23 (b)(1)(C)(i)(II), provides to the verification sys-
24 tem a social security account number or an
25 identification or authorization number estab-

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

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

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

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

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

1 posed or to be imposed for a violation of
2 this paragraph; and

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

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

1 “(9) LIMITATION ON USE OF THE
2 VERIFICATION SYSTEM AND ANY RELATED SYS-
3 TEMS.—

4 “(A) NO NATIONAL IDENTIFICATION
5 CARD.—Nothing in this section shall be con-
6 strued to authorize, directly or indirectly, the
7 issuance or use of national identification cards
8 or the establishment of a national identification
9 card.

10 “(B) CRITICAL INFRASTRUCTURE.—The
11 Secretary may authorize or direct any person or
12 entity responsible for granting access to, pro-
13 tecting, securing, operating, administering, or
14 regulating part of the critical infrastructure (as
15 defined in section 1016(e) of the Critical Infra-
16 structure Protection Act of 2001 (42 U.S.C.
17 5195c(e))) to use the verification system to the
18 extent the Secretary determines that such use
19 will assist in the protection of the critical infra-
20 structure.

21 “(10) REMEDIES.—If an individual alleges that
22 the individual would not have been dismissed from
23 a job but for an error of the verification mechanism,
24 the individual may seek compensation only through
25 the mechanism of the Federal Tort Claims Act, and

1 injunctive relief to correct such error. No class ac-
2 tion may be brought under this paragraph.”.

3 **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**
4 **EMPLOYMENT.**

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

- 9 (1) in paragraph (1)(A), by striking “for a fee”;
10 (2) in paragraph (1), by amending subpara-
11 graph (B) to read as follows:

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

16 (3) in paragraph (2), by striking “after hiring
17 an alien for employment in accordance with para-
18 graph (1),” and inserting “after complying with
19 paragraph (1),”; and

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

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

1 “(5) DEFINITION OF RECRUIT OR REFER.—As
2 used in this section, the term ‘refer’ means the act
3 of sending or directing a person who is in the United
4 States or transmitting documentation or information
5 to another, directly or indirectly, with the intent of
6 obtaining employment in the United States for such
7 person. Only persons or entities referring for remun-
8 eration (whether on a retainer or contingency
9 basis) are included in the definition, except that
10 union hiring halls that refer union members or non-
11 union individuals who pay union membership dues
12 are included in the definition whether or not they re-
13 ceive remuneration, as are labor service entities or
14 labor service agencies, whether public, private, for-
15 profit, or nonprofit, that refer, dispatch, or other-
16 wise facilitate the hiring of laborers for any period
17 of time by a third party. As used in this section, the
18 term ‘recruit’ means the act of soliciting a person
19 who is in the United States, directly or indirectly,
20 and referring the person to another with the intent
21 of obtaining employment for that person. Only per-
22 sons or entities referring for remuneration (whether
23 on a retainer or contingency basis) are included in
24 the definition, except that union hiring halls that
25 refer union members or nonunion individuals who

1 pay union membership dues are included in this defi-
2 nition whether or not they receive remuneration, as
3 are labor service entities or labor service agencies,
4 whether public, private, for-profit, or nonprofit that
5 recruit, dispatch, or otherwise facilitate the hiring of
6 laborers for any period of time by a third party.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date that is 1 year
9 after the date of the enactment of this Act, except that
10 the amendments made by subsection (a) shall take effect
11 6 months after the date of the enactment of this Act inso-
12 far as such amendments relate to continuation of employ-
13 ment.

14 **SEC. 5. GOOD FAITH DEFENSE.**

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

18 “(3) GOOD FAITH DEFENSE.—

19 “(A) DEFENSE.—An employer (or person
20 or entity that hires, employs, recruits, or refers
21 (as defined in subsection (h)(5)), or is otherwise
22 obligated to comply with this section) who es-
23 tablishes that it has complied in good faith with
24 the requirements of subsection (b)—

1 “(i) shall not be liable to a job appli-
2 cant, an employee, the Federal Govern-
3 ment, or a State or local government,
4 under Federal, State, or local criminal or
5 civil law for any employment-related action
6 taken with respect to a job applicant or
7 employee in good-faith reliance on informa-
8 tion provided through the system estab-
9 lished under subsection (d); and

10 “(ii) has established compliance with
11 its obligations under subparagraphs (A)
12 and (B) of paragraph (1) and subsection
13 (b) absent a showing by the Secretary of
14 Homeland Security, by clear and con-
15 vincing evidence, that the employer had
16 knowledge that an employee is an unau-
17 thorized alien.

18 “(B) FAILURE TO SEEK AND OBTAIN
19 VERIFICATION.—Subject to the effective dates
20 and other deadlines applicable under subsection
21 (b), in the case of a person or entity in the
22 United States that hires, or continues to em-
23 ploy, an individual, or recruits or refers an indi-
24 vidual for employment, the following require-
25 ments apply:

1 “(i) FAILURE TO SEEK
2 VERIFICATION.—

3 “(I) IN GENERAL.—If the person
4 or entity has not made an inquiry,
5 under the mechanism established
6 under subsection (d) and in accord-
7 ance with the timeframes established
8 under subsection (b), seeking
9 verification of the identity and work
10 eligibility of the individual, the de-
11 fense under subparagraph (A) shall
12 not be considered to apply with re-
13 spect to any employment, except as
14 provided in subclause (II).

15 “(II) SPECIAL RULE FOR FAIL-
16 URE OF VERIFICATION MECHANISM.—
17 If such a person or entity in good
18 faith attempts to make an inquiry in
19 order to qualify for the defense under
20 subparagraph (A) and the verification
21 mechanism has registered that not all
22 inquiries were responded to during the
23 relevant time, the person or entity can
24 make an inquiry until the end of the
25 first subsequent working day in which

1 the verification mechanism registers
2 no nonresponses and qualify for such
3 defense.

4 “(ii) FAILURE TO OBTAIN
5 VERIFICATION.—If the person or entity
6 has made the inquiry described in clause
7 (i)(I) but has not received an appropriate
8 verification of such identity and work eligi-
9 bility under such mechanism within the
10 time period specified under subsection
11 (d)(2) after the time the verification in-
12 quiry was received, the defense under sub-
13 paragraph (A) shall not be considered to
14 apply with respect to any employment after
15 the end of such time period.”.

16 **SEC. 6. PREEMPTION.**

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

20 “(2) PREEMPTION.—The provisions of this sec-
21 tion preempt any State or local law, ordinance, pol-
22 icy, or rule, including any criminal or civil fine or
23 penalty structure, insofar as they may now or here-
24 after relate to the hiring, continued employment, or
25 status verification for employment eligibility pur-

1 poses, of unauthorized aliens. A State, locality, mu-
2 nicipality, or political subdivision may exercise its
3 authority over business licensing and similar laws as
4 a penalty for failure to use the verification system
5 described in subsection (d) to verify employment eli-
6 gibility when and as required under subsection (b).”.

7 **SEC. 7. REPEAL.**

8 (a) **IN GENERAL.**—Subtitle A of title IV of the Illegal
9 Immigration Reform and Immigrant Responsibility Act of
10 1996 (8 U.S.C. 1234a note) is repealed.

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

22 (c) **EFFECTIVE DATE.**—This section shall take effect
23 on the date that is 36 months after the date of the enact-
24 ment of this Act.

1 **SEC. 8. PENALTIES.**

2 Section 274A of the Immigration and Nationality Act
3 (8 U.S.C. 1324a) is amended—

4 (1) in subsection (e)(1)—

5 (A) by striking “Attorney General” each
6 place such term appears and inserting “Sec-
7 retary of Homeland Security”; and

8 (B) by striking “Service” and inserting
9 “Department of Homeland Security”;

10 (2) in subsection (e)(4)—

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

14 (B) in subparagraph (A)(i), by striking
15 “not less than \$250 and not more than
16 \$2,000” and inserting “not less than \$2,500
17 and not more than \$5,000”;

18 (C) in subparagraph (A)(ii), by striking
19 “not less than \$2,000 and not more than
20 \$5,000” and inserting “not less than \$5,000
21 and not more than \$10,000”;

22 (D) in subparagraph (A)(iii), by striking
23 “not less than \$3,000 and not more than
24 \$10,000” and inserting “not less than \$10,000
25 and not more than \$25,000”; and

1 (E) by amending subparagraph (B) to read
2 as follows:

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

6 (3) in subsection (e)(5)—

7 (A) in the paragraph heading, strike “PA-
8 PERWORK”;

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

11 (C) by striking “\$100” and inserting
12 “\$1,000”;

13 (D) by striking “\$1,000” and inserting
14 “\$25,000”;

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

22 (4) by adding at the end of subsection (e) the
23 following:

24 “(10) EXEMPTION FROM PENALTY FOR GOOD
25 FAITH VIOLATION.—In the case of imposition of a

1 civil penalty under paragraph (4)(A) with respect to
2 a violation of subsection (a)(1)(A) or (a)(2) for hir-
3 ing or continuation of employment or recruitment or
4 referral by person or entity and in the case of impo-
5 sition of a civil penalty under paragraph (5) for a
6 violation of subsection (a)(1)(B) for hiring or re-
7 cruitment or referral by a person or entity, the pen-
8 alty otherwise imposed may be waived or reduced if
9 the violator establishes that the violator acted in
10 good faith.

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

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

24 “(B) DOES NOT HAVE CONTRACT, GRANT,
25 AGREEMENT.—If the Secretary of Homeland

1 Security or the Attorney General wishes to have
2 a person or entity considered for debarment in
3 accordance with this paragraph, and such an
4 person or entity does not hold a Federal con-
5 tract, grant or cooperative agreement, the Sec-
6 retary or Attorney General shall refer the mat-
7 ter to the Administrator of General Services to
8 determine whether to list the person or entity
9 on the List of Parties Excluded from Federal
10 Procurement, and if so, for what duration and
11 under what scope.

12 “(C) HAS CONTRACT, GRANT, AGREE-
13 MENT.—If the Secretary of Homeland Security
14 or the Attorney General wishes to have a per-
15 son or entity considered for debarment in ac-
16 cordance with this paragraph, and such person
17 or entity holds a Federal contract, grant or co-
18 operative agreement, the Secretary or Attorney
19 General shall advise all agencies or departments
20 holding a contract, grant, or cooperative agree-
21 ment with the person or entity of the Govern-
22 ment’s interest in having the person or entity
23 considered for debarment, and after soliciting
24 and considering the views of all such agencies
25 and departments, the Secretary or Attorney

1 General may refer the matter to any appro-
2 priate lead agency to determine whether to list
3 the person or entity on the List of Parties Ex-
4 cluded from Federal Procurement, and if so, for
5 what duration and under what scope.

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

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

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

19 “(B) that is required to indicate to the
20 complaining State or local agency within 5 busi-
21 ness days of the filing of such a complaint by
22 identifying whether the Secretary will further
23 investigate the information provided;

24 “(C) that is required to investigate those
25 complaints filed by State or local government

1 agencies that, on their face, have a substantial
2 probability of validity;

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

6 “(E) that is required to report to the Con-
7 gress annually the number of complaints re-
8 ceived under this paragraph, the States and lo-
9 calities that filed such complaints, and the reso-
10 lution of the complaints investigated by the Sec-
11 retary.”; and

12 (5) by amending paragraph (1) of subsection (f)
13 to read as follows:

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

22 **SEC. 9. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
23 **TION PROGRAMS.**

24 (a) FUNDING UNDER AGREEMENT.—Effective for
25 fiscal years beginning on or after October 1, 2012, the

1 Commissioner of Social Security and the Secretary of
2 Homeland Security shall enter into and maintain an
3 agreement which shall—

4 (1) provide funds to the Commissioner for the
5 full costs of the responsibilities of the Commissioner
6 under section 274A(d) of the Immigration and Na-
7 tionality Act (8 U.S.C. 1324a(d)), as amended by
8 section 3 of this Act, including (but not limited
9 to)—

10 (A) acquiring, installing, and maintaining
11 technological equipment and systems necessary
12 for the fulfillment of the responsibilities of the
13 Commissioner under such section 274A(d), but
14 only that portion of such costs that are attrib-
15 utable exclusively to such responsibilities; and

16 (B) responding to individuals who contest
17 a tentative nonconfirmation provided by the em-
18 ployment eligibility verification system estab-
19 lished under such section;

20 (2) provide such funds annually in advance of
21 the applicable quarter based on estimating method-
22 ology agreed to by the Commissioner and the Sec-
23 retary (except in such instances where the delayed
24 enactment of an annual appropriation may preclude
25 such quarterly payments); and

1 (3) require an annual accounting and reconcili-
2 ation of the actual costs incurred and the funds pro-
3 vided under the agreement, which shall be reviewed
4 by the Inspectors General of the Social Security Ad-
5 ministration and the Department of Homeland Secu-
6 rity.

7 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
8 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
9 which the agreement required under subsection (a) for any
10 fiscal year beginning on or after October 1, 2012, has not
11 been reached as of October 1 of such fiscal year, the latest
12 agreement between the Commissioner and the Secretary
13 of Homeland Security providing for funding to cover the
14 costs of the responsibilities of the Commissioner under
15 section 274A(d) of the Immigration and Nationality Act
16 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
17 terim basis for such fiscal year until such time as an
18 agreement required under subsection (a) is subsequently
19 reached, except that the terms of such interim agreement
20 shall be modified by the Director of the Office of Manage-
21 ment and Budget to adjust for inflation and any increase
22 or decrease in the volume of requests under the employ-
23 ment eligibility verification system. In any case in which
24 an interim agreement applies for any fiscal year under this
25 subsection, the Commissioner and the Secretary shall, not

1 later than October 1 of such fiscal year, notify the Com-
2 mittee on Ways and Means, the Committee on the Judici-
3 ary, and the Committee on Appropriations of the House
4 of Representatives and the Committee on Finance, the
5 Committee on the Judiciary, and the Committee on Ap-
6 propriations of the Senate of the failure to reach the
7 agreement required under subsection (a) for such fiscal
8 year. Until such time as the agreement required under
9 subsection (a) has been reached for such fiscal year, the
10 Commissioner and the Secretary shall, not later than the
11 end of each 90-day period after October 1 of such fiscal
12 year, notify such Committees of the status of negotiations
13 between the Commissioner and the Secretary in order to
14 reach such an agreement.

15 **SEC. 10. FRAUD PREVENTION.**

16 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
17 **NUMBERS.**—The Secretary of Homeland Security, in con-
18 sultation with the Commissioner of Social Security, shall
19 establish a program in which social security account num-
20 bers that have been identified to be subject to unusual
21 multiple use in the employment eligibility verification sys-
22 tem established under section 274A(d) of the Immigration
23 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
24 section 3 of this Act, or that are otherwise suspected or
25 determined to have been compromised by identity fraud

1 or other misuse, shall be blocked from use for such system
2 purposes unless the individual using such number is able
3 to establish, through secure and fair additional security
4 procedures, that the individual is the legitimate holder of
5 the number.

6 (b) ALLOWING SUSPENSION OF USE OF CERTAIN SO-
7 CIAL SECURITY ACCOUNT NUMBERS.—The Secretary of
8 Homeland Security, in consultation with the Commis-
9 sioner of Social Security, shall establish a program which
10 shall provide a reliable, secure method by which victims
11 of identity fraud and other individuals may suspend or
12 limit the use of their social security account number or
13 other identifying information for purposes of the employ-
14 ment eligibility verification system established under sec-
15 tion 274A(d) of the Immigration and Nationality Act (8
16 U.S.C. 1324a(d)), as amended by section 3 of this Act.
17 The Secretary may implement the program on a limited
18 pilot program basis before making it fully available to all
19 individuals.

20 **SEC. 11. BIOMETRIC EMPLOYMENT ELIGIBILITY**
21 **VERIFICATION PILOT PROGRAM.**

22 Not later than 48 months after the date of the enact-
23 ment of the Legal Workforce Act, the Secretary of Home-
24 land Security, after consultation with the Commissioner
25 of Social Security and the Director of the National Insti-

1 tute of Standards and Technology, shall establish by regu-
2 lation a Biometric Employment Eligibility Verification
3 pilot program (the “Biometric Pilot”). The purpose of the
4 Biometric Pilot shall be to provide for identity authentica-
5 tion and employment eligibility verification with respect to
6 enrolled new employees which shall be available to subject
7 employers who elect to participate in the Biometric Pilot.
8 Any subject employer may cancel the employer’s participa-
9 tion in the Biometric Pilot after one year after electing
10 to participate without prejudice to future participation.

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