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112TH CONGRESS
1ST SESSION

H. R. 800

To make the E–Verify program permanent, and to provide for penalties to enforce compliance with the program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 2011

Mr. CARTER (for himself, Mr. SHULER, Mr. MCINTYRE, and Mr. GOHMERT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce and the Judiciary, 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 make the E–Verify program permanent, and to provide for penalties to enforce compliance with the program, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Jobs Recovery by Ensuring a Legal American Workforce Act of 2011''.

SEC. 2. E–VERIFY MADE PERMANENT AND MANDATORY.

(a) PROGRAM MADE PERMANENT.—Section 401(b) of the Illegal Immigration Reform and Immigrant Respon-

sibility Act of 1996 (8 U.S.C. 1324a note) is amended by adding before the period at the end of the last sentence the following: ", except that the basic pilot program described in section 403(a) shall be a permanent program".

(b) PROGRAM MADE MANDATORY.—Section 402 of such Act is amended—

(1) in subsection (a) by inserting "or subsection (g)" after "in subsection (e)";

(2) in subsection (e) by inserting after "require under this subsection" the following: "or under subsection (g)"; and

(3) by adding at the end the following:

"(g) E–VERIFY PROGRAM MADE MANDATORY.—Subject to subsection (c)(3), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which the E–Verify program described under section 403(a) is operating shall elect to participate in such program. The Secretary of Homeland Security shall ensure that verification by means of a toll-free telephone line is an available option in complying with the preceding sentence.".

(c) TRANSITION PERIOD; EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (b)

shall take effect beginning on the date that is 2 years after the date of enactment of this Act.

(2) CERTAIN ENTITIES.—The amendments made by subsection (b) shall take effect beginning on the date that is—

(A) 540 days after the date of enactment of this Act, in the case of a person or entity that employs 100 or more individuals in the United States; and

(B) 1 year after the date of enactment of this Act, in the case of—

(i) a contractor that—

(I) has entered into a contract with the Federal Government to which section 2(b)(1) of the Service Contract Act of 1965 (41 U.S.C. 351(b)(1)) applies, and any subcontractor under such contract; or

(II) has entered into a contract exempted from the application of such Act by section 6 of such Act (41 U.S.C. 356), and any subcontractor under such contract; or

(ii) any person or entity that employs more than 250 individuals in the United States.

(d) APPLICATION TO CURRENT EMPLOYEES.—Every person or entity that employs one or more persons in the United States shall verify through the E–Verify program by not later than the applicable effective date in (c) that each employee is authorized to work in the United States.

(e) RULE OF CONSTRUCTION.—Nothing in the amendments made by this section shall be construed to prevent a person or other entity that is not required to participate in the E–Verify program described in section 403(a) from voluntarily participating in such program.

(f) NO LIMITATION ON PARTICIPATION BY STATE OR LOCAL LAW.—No State or local government may prohibit a person or other entity from using the E-verify program to verify the employment authorization of new hires or current employees.

(g) DOCUMENT FRAUD STUDY.—The Government Accountability Office shall conduct a study to examine methods to combat document fraud, theft and forgery in the use and expansion of the E–Verify program. The report shall make recommendations to the appropriate agencies on ways to reduce instances of document fraud, theft,

and forgery. The report shall be published within six months after enactment of this Act.

SEC. 3. ENHANCING MONITORING OF AND COMPLIANCE WITH E–VERIFY PROGRAM.

The Secretary of the Department of Homeland Security is authorized to take the following actions to increase the capability and effectiveness of the E–Verify employer Monitoring and Compliance team within the Citizenship and Immigration Services:

(1) Increase by no more than 6 the number of fulltime employees dedicated to the development of thresholds and algorithms and quality assurance procedures for the monitoring of employer adherence to the conditions that are currently outlined in the E–Verify Memorandum of Understanding.

(2) Increase as necessary the number of fulltime employees dedicated to outreach to employers using the E–Verify program and the creation of informational tools and corrective action procedures that will provide compliance assistance to these employers. These employees may also be utilized in the operation of the toll-free compliance assistance call center.

(3) Establish procedures for the identification of cases of potential fraud or misuse of the E–Verify program.

(4) Establish procedures for the sharing of information on these selected cases with Immigration and Customs Enforcement for further investigation as necessary.

(5) Report to the Congress within one year of the date of enactment of this Act on the activities of the Office of Monitoring and Compliance which shall include—

(A) a description of the types of fraud and misuse being detected by the thresholds and algorithms used for employee monitoring within the Office;

(B) the number and type of cases flagged by the Office and referred to Immigration and Customs Enforcement, as well as the outcome of these cases; and

(C) an assessment of the number and the nature of calls received by the compliance assistance call center.

SEC. 4. MANDATORY NOTIFICATION OF SSN MISMATCHES AND MULTIPLE USES.

(a) NOTIFICATION OF MULTIPLE USES OF INDIVIDUAL SOCIAL SECURITY ACCOUNT NUMBERS.—Prior to crediting any individual with concurrent wages from more than one employer, the Commissioner of Social Security shall notify the individual that wages from two or more employers are being reported under the individual's social security account number (hereinafter in this Act referred to as ''SSN''). Such notice shall include, at a minimum—

(1) the name and location of each employer reporting benefits for an individual;

(2) a warning that any inaccuracies in this information could indicate that the individual's SSN is being fraudulently used by another individual;

(3) an explanation of any potential risk that an individual is subject to if his or her SSN has been used or is being used by someone else; and

(4) a toll-free telephone number that an individual may call to report inaccuracies in the use of their SSN.

(b) INFORMATION SHARING WITH THE DEPARTMENT OF HOMELAND SECURITY.—

(1) Not later than 180 days following the date of enactment of this Act, the Commissioner of Social Security shall promulgate regulations in accord with

section 1106 of the Social Security Act (42 U.S.C. 1306), to require that information regarding all multiple use notifications that lead to the identification of an unauthorized user of a SSN be shared with the Secretary of the Department of Homeland Security on a timely basis.

(2) Information to be shared with the Secretary shall include, at a minimum, the name and mailing address of all employees who are the subject of an unresolved mismatch notification or who are unauthorized users of another individual's SSN. The names and addresses of the employers of these employees must also be provided.

(3) The Secretary shall report to the Congress annually the number of cases that the Commissioner of Social Security has shared with the Department of Homeland Security regarding unauthorized users of an SSN and the actions that have been taken to resolve these cases. The Secretary shall submit the first report to the Congress not later than 1 year after the date of enactment of this Act.

(c) INFORMATION SHARING WITH THE STATES.—The Department of Homeland Security shall report to the agency within each State that administers unemployment benefits of jobs that have potentially been made available

by evidence of an employee being dismissed for non-confirmation through the E–Verify program. Such notification shall include the name and address of the employer, a job description if available, and shall be made within 3 business days of final non-confirmation.

(d) INFORMATION SHARING WITH THE PUBLIC.—The Department of Homeland Security shall prominently display on the Internet home page of the E–Verify program as ''Recovered Jobs'' the total number of jobs by month and year reported to the states under (c); and a link to the total number of jobs reported to each state by month and year.

SEC. 5. PENALTY FOR FAILURE TO FILE CORRECT INFORMATION RETURNS.

(a) IN GENERAL.—Section 6721 of the Internal Revenue Code of 1986 (26 U.S.C. 6721) is amended by adding at the end the following:

''(g) MOST EGREGIOUS NONCOMPLIANT EMPLOYER.—Notwithstanding any other provision of this section, in the case of a most egregious noncompliant employer, as designated for any taxable year by the Social Security Administration, the penalty for any failure described in this subsection with respect to an information return with respect to such taxable year shall be the maximum allowable penalty under this section for such failure.

"(h) PENALTY STRUCTURE WITH RESPECT TO EMPLOYING AN ALIEN NOT AUTHORIZED TO BE EMPLOYED.—In the case of a failure described in subsection (a)(2) with respect to any person employing an alien not authorized to be so employed, the penalty under this section shall be determined in accordance with the following table:

"In the case of—	Not less than—	Not more than—
The first offense	$2,500	$5,000
The second offense	$7,500	$15,000
The third and subsequent offenses	$25,000	$50,000.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to failures occurring after the date of the enactment of this Act.

SEC. 6. CLARIFICATION THAT WAGES PAID TO UNAUTHORIZED ALIENS MAY NOT BE DEDUCTED FROM GROSS INCOME.

(a) DENIAL OF DEDUCTION.—Subsection (c) of section 162 of the Internal Revenue Code of 1986 (relating to illegal bribes, kickbacks, and other payments) is amended by adding at the end the following new paragraph:

"(4) WAGES PAID TO OR ON BEHALF OF UNAUTHORIZED ALIENS.—

"(A) IN GENERAL.—No deduction shall be allowed under subsection (a) for any wage paid to or on behalf of an unauthorized alien, as de-

fined under section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)).

"(B) WAGES.—For the purposes of this paragraph, the term wages means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash.

"(C) SAFE HARBOR.—If a person or other entity is participating in the basic pilot program described in section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) and obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an employee, subparagraph (A) shall not apply with respect to wages paid to such employee.".

(b) SIX-YEAR LIMITATION ON ASSESSMENT AND COLLECTION.—Subsection (c) of section 6501 of such Code (relating to exceptions) is amended by adding at the end the following new paragraph:

"(12) DEDUCTION CLAIMED FOR WAGES PAID TO UNAUTHORIZED ALIENS.—In the case of a return

of tax on which a deduction is shown in violation of section 162(c)(4), any tax under chapter 1 may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.''.

(c) USE OF DOCUMENTATION FOR ENFORCEMENT PURPOSES.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subparagraph (b)(5), by inserting '', section 162(c)(4) of the Internal Revenue Code of 1986,'' after ''enforcement of this Act'';

(2) in subparagraph (d)(2)(F), by inserting '', section 162(c)(4) of the Internal Revenue Code of 1986,'' after ''enforcement of this Act''; and

(3) in subparagraph (d)(2)(G), by inserting ''section 162(c)(4) of the Internal Revenue Code of 1986 or'' after ''or enforcement of''.

(d) AVAILABILITY OF INFORMATION.—

(1) IN GENERAL.—The Commissioner of Social Security, the Secretary of the Department of Homeland Security, and the Secretary of the Treasury, shall jointly establish a program to share information among such agencies that may or could lead to the identification of unauthorized aliens (as defined under section 274A(h)(3) of the Immigration and

Nationality Act), including any no-match letter, any information in the earnings suspense file, and any information in the investigation and enforcement of section 162(c)(4) of the Internal Revenue Code of 1986.

(2) DISCLOSURE BY SECRETARY OF THE TREASURY.—

(A) IN GENERAL.—Subsection (i) of section 6103 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

"(9) PAYMENT OF WAGES TO UNAUTHORIZED ALIENS.—Upon request from the Commissioner of the Social Security Administration or the Secretary of the Department of Homeland Security, the Secretary shall disclose to officers and employees of such Administration or Department—

"(A) taxpayer identity information of employers who paid wages with respect to which a deduction was not allowed by reason of section 162(c)(4), and

"(B) taxpayer identity information of individuals to whom such wages were paid, for purposes of carrying out any enforcement activities

of such Administration or Department with respect to such employers or individuals.''.

(B) RECORDKEEPING.—Paragraph (4) of section 6103(p) of such Code is amended—

(i) by striking ''(5), or (7)'' in the matter preceding subparagraph (A) and inserting ''(5), (7), or (9)'', and

(ii) by striking ''(5) or (7)'' in subparagraph (F)(ii) and inserting ''(5), (7), or (9)''.

(e) EFFECTIVE DATE.—

(1) DENIAL OF DEDUCTION.—The amendment made by subsection (a) shall apply to amounts paid or incurred in taxable years beginning after December 31, 2010.

(2) SIX-YEAR LIMITATION ON ASSESSMENT AND COLLECTION.—The amendment made by subsection (b) shall apply with respect to returns for taxable years beginning after December 31, 2010.

(3) USE OF DOCUMENTATION FOR ENFORCEMENT PURPOSES.—The amendments made by subsection (c) shall take effect on the date of the enactment of this Act.

(4) AVAILABILITY OF INFORMATION.—The amendments made by subsection (d) shall apply with

respect to requests made for taxable years beginning after December 31, 2010.

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