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113TH CONGRESS
1ST SESSION

H. R. 502

To create an electronic employment eligibility verification system to ensure that all workers in the United States are legally able to work, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2013

Mr. DEFAZIO introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To create an electronic employment eligibility verification system to ensure that all workers in the United States are legally able to work, 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 ''Electronic Employment Eligibility Verification and Illegal Immigration Control Act''.

SEC. 2. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

(a) IN GENERAL.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended by adding at the end the following:

"(7) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary)—

"(i) responds to inquiries made by persons at any time through a toll-free telephone line and other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed; and

"(ii) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.

"(B) DESIGN AND OPERATION OF SYSTEM.—The verification system shall be designed and operated—

"(i) to maximize its reliability and ease of use by persons and other entities consistent with insulating and protecting the privacy and security of the underlying information;

"(ii) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

"(iii) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

"(iv) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

"(I) the selective or unauthorized use of the system to verify eligibility;

"(II) the use of the system prior to an offer of employment; or

"(III) the exclusion of certain individuals from consideration for employment as a result of a perceived

likelihood that additional verification will be required, beyond what is required for most job applicants.

"(C) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the verification system, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security (and any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C) of paragraph (3), compares the name and Social Security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a Social Security account number that is not valid for employment. The Commissioner shall not disclose or release Social Security information (other than such verification or nonverification) except as pro-

vided for in this section or section 205(c)(2)(I) of the Social Security Act.

"(D) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—

"(i) As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C) of paragraph (3), compares the name and alien identification or authorization number which are provided in an inquiry against such information maintained by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

"(ii) When a single employer has submitted to the verification system pursuant to subparagraphs (B) and (C) of paragraph (3) the identical Social Security account number in more than one instance,

or when multiple employers have submitted to the verification system pursuant to such paragraph the identical Social Security account number, in a manner which indicates the possible fraudulent use of that number, the Secretary of Homeland Security shall conduct an investigation, within the time periods specified in such subparagraphs, in order to ensure that no fraudulent use of a Social Security account number has taken place. If the Secretary has selected a designee to establish and administer the verification system, the designee shall notify the Secretary when a single employer has submitted to the verification system pursuant to such subparagraphs the identical Social Security account number in more than one instance, or when multiple employers have submitted to the verification system pursuant to such paragraph the identical Social Security account number, in a manner which indicates the possible fraudulent use of that number. The designee shall also provide the Secretary with all pertinent information, in-

cluding the name and address of the employer or employers who submitted the relevant Social Security account number, the relevant Social Security account number submitted by the employer or employers, and the relevant name and date of birth of the employee submitted by the employer or employers.

''(iii) The Secretary in consultation with the Commissioner of Social Security, shall establish procedures to permit an individual who contests a tentative or final nonverification notice, or seeks to verify the individual's own employment, to contact the appropriate agency and, in a timely manner, correct or update the information used by the system.

''(iv) The Secretary shall prescribe a system to register employer participation prior to the date the employer is required or permitted to submit information with respect to an employee.

''(E) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their

information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in paragraph (3)(C).

"(F) FEDERAL TORT CLAIMS ACT.—If an individual alleges that the individual would not have been dismissed from a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class action may be brought under this subparagraph.

"(G) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION.—No person or entity shall be civilly or criminally liable for any action taken in good faith reliance on information provided through the employment eligibility verification mechanism established under this paragraph.".

(b) REPEAL OF PROVISION RELATING TO EVALUATIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—

Section 274A(d) of such Act (8 U.S.C. 1324a(d)) is repealed.

SEC. 3. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

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

(1) in subsection (a)(3), by inserting "(A)" after "DEFENSE.—", and by adding at the end the following:

"(B) FAILURE TO SEEK AND OBTAIN VERIFICATION.—In the case of a person or entity in the United States that hires, or continues to employ, an individual, or recruits or refers an individual for employment, the following requirements apply:

"(i) FAILURE TO SEEK VERIFICATION.—

"(I) IN GENERAL.—If the person or entity has not made an inquiry, under the mechanism established under subsection (b)(7), seeking verification of the identity and work eligibility of the individual, by not later than the end of 3 working days (as specified by the Secretary of

Homeland Security) after the date of the hiring, the date specified in subsection (b)(8)(B) for previously hired individuals, or before the recruiting or referring commences, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

"(II) SPECIAL RULE FOR FAILURE OF VERIFICATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

"(ii) FAILURE TO OBTAIN VERIFICATION.—If the person or entity

has made the inquiry described in clause (i)(I) but has not received an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (b)(7)(B) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.'';

(2) by amending subparagraph (A) of subsection (b)(1) to read as follows:

''(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Secretary by regulation, that it has verified that the individual is not an unauthorized alien by—

''(i) obtaining from the individual the individual's Social Security account number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under paragraph (2), obtaining such identification or authorization number

established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

"(ii)(I) examining a document described in subparagraph (B); or

"(II) examining a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and, if the document bears an expiration date, that expiration date has not elapsed. If an individual provides a document (or combination of documents) that reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and is sufficient to meet the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to so-

licit the production of any other document or as requiring the individual to produce another document.'';

(3) in subsection (b)(1)(D)—

(A) in clause (i), by striking ''or such other personal identification information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section''; and

(B) in clause (ii), by inserting before the period ''and that contains a photograph of the individual'';

(4) in subsection (b)(2), by adding at the end the following: ''The individual must also provide that individual's Social Security account number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under this paragraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.''; and

(5) by amending paragraph (3) of subsection (b) to read as follows:

''(3) RETENTION OF VERIFICATION FORM AND VERIFICATION.—

"(A) IN GENERAL.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must—

"(i) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual or the date of the completion of verification of a previously hired individual and ending—

"(I) in the case of the recruiting or referral of an individual, 3 years after the date of the recruiting or referral;

"(II) in the case of the hiring of an individual, the later of—

"(aa) 3 years after the date of such hiring; or

"(bb) 1 year after the date the individual's employment is terminated; and

"(III) in the case of the verification of a previously hired individual, the later of—

"(aa) 3 years after the date of the completion of verification; or

"(bb) 1 year after the date the individual's employment is terminated;

"(ii) make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring or in the case of previously hired individuals, the date specified in paragraph (8)(B), or before the recruiting or referring commences; and

"(iii) not commence recruitment or referral of the individual until the person or entity receives verification under clause (i) or (ii) of subparagraph (D).

"(B) INITIAL RESPONSE.—The verification system shall provide verification or a tentative nonverification of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing verification or tentative nonverification, the verification system shall provide an appropriate code indicating such verification or such nonverification.

"(C) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONVERIFICATION.—In cases of tentative nonverification, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final verification or nonverification within 10 working days after the date of the tentative nonverification. When final verification or nonverification is provided, the verification system shall provide an appropriate code indicating such verification or nonverification.

"(D) VERIFICATION OR NONVERIFICATION.—

"(i) VERIFICATION UPON INITIAL INQUIRY.—If an employer receives a

verification notice under subparagraph (B) for an individual, the employer shall record, as described in subparagraph (A)(i), the appropriate code provided in such notice.

"(ii) TENTATIVE NONVERIFICATION.—If an employer receives a tentative nonverification notice under subparagraph (B) for an individual, the employer shall inform such individual of the issuance of such notice in writing, on a form prescribed by the Secretary not later than 3 days after receiving such notice. Such individual shall acknowledge receipt of such notice in writing as described in paragraph (1)(A). If the individual refuses to acknowledge receipt of notice, the individual's employment must be terminated immediately.

"(iii) NO CONTEST.—If the individual does not contest the tentative nonverification notice within 10 days of receiving notice from the individual's employer, the notice shall become final and the employer shall record, as described in

subparagraph (A)(i), the appropriate code provided through the system to indicate the individual did not contest the tentative nonverification. An individual's failure to contest a tentative nonverification shall not be considered an admission of guilt with respect to any violation of this Act or any other provision of law.

"(iv) CONTEST.—If the individual contests the tentative nonverification notice, the individual shall submit appropriate information to contest such notice under the procedures established in subparagraph (E) not later than 10 days after receiving the notice from the individual's employer.

"(v) EFFECTIVE PERIOD OF TENTATIVE NONVERIFICATION NOTICE.—A tentative nonverification notice shall remain in effect until such notice becomes final under clause (iii), or the earlier of—

"(I) a final verification notice or final nonverification notice is issued through the system; or

"(II) 10 working days after the individual contests a tentative nonverification under clause (iv).

"(vi) ADDITIONAL AUTHORITY.—The Secretary shall have the authority to issue a final verification notice for an individual. In such a case, the Secretary shall determine the individual's eligibility for employment in the United States and record the results of such determination in the system within 12 months.

"(vii) EFFECTIVE PERIOD OF FINAL NOTICE.—A final verification notice issued under this paragraph for an individual shall remain in effect—

"(I) during any continuous period of employment of such individual by such employer, unless the Secretary determines the final verification was the result of identity fraud; or

"(II) in the case of an alien authorized to be employed in the United States for a temporary period, during such period.

"(viii) PROHIBITION ON TERMINATION.—An employer may not terminate the employment of an individual based on a tentative nonverification notice until such notice becomes final under clause (iii), an individual refuses to acknowledge receipt of tentative nonverification under clause (ii), or a final nonverification notice is issued for the individual by the System. Nothing in this clause shall prohibit the termination of employment for any other reason other than such tentative nonverification.

"(ix) RECORDING OF CONTEST RESOLUTION.—The employer shall record the appropriate code that is provided through the system to indicate a final verification notice or final nonverification notice as described in paragraph (1)(A).

"(x) CONSEQUENCES OF NONVERIFICATION.—If the employer has received a final nonverification regarding an individual, the employer shall terminate the employment, recruitment, or referral of the individual. Such employer shall provide to the Secretary any information relating

to the individual that the Secretary determines would assist the Secretary in enforcing or administering the immigration laws. If the employer continues to employ, recruit or refer the individual after receiving final nonverification, a rebuttable presumption is created that the employer has violated subsections (a)(1)(A) and (a)(2). Such presumption may not apply to a prosecution under subsection (f)(1).

''(E) ADMINISTRATIVE REVIEW.—

''(i) IN GENERAL.—An individual who is terminated from employment as a result of a final nonverification notice may, not later than 60 days after the date of such termination, file an appeal of such notice.

''(ii) PROCEDURES.—The Secretary and Commissioner of Social Security shall develop procedures to review appeals filed under clause (i) and to make final determinations on such appeals.

''(iii) REVIEW FOR ERRORS.—If a final determination on an appeal filed under clause (i) results in verification of an individual's eligibility to work in the

United States, the administrative review process shall require the Secretary to determine if the final nonverification notice issued for the individual was the result of—

"(I) an error or negligence on the part of an employee or official operating or responsible for the System;

"(II) the decision rules, processes, or procedures utilized by the system; or

"(III) erroneous system information that was not the result of acts or omissions of the individual.

"(iv) COMPENSATION FOR ERROR.—

"(I) IN GENERAL.—If the Secretary makes a determination under clause (iii) that the final nonverification notice issued for an individual was not caused by an act or omission of the individual, the Secretary shall compensate the individual for lost wages.

"(II) CALCULATION OF LOST WAGES.—Lost wages shall be cal-

culated based on the wage rate and work schedule that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the administrative review process described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first.

"(v) LIMITATION ON COMPENSATION.—For purposes of determining an individual's compensation for the loss of employment, such compensation shall not include any period in which the individual was ineligible for employment in the United States.

"(vi) SOURCE OF FUNDS.—Compensation or reimbursement provided under this paragraph shall be provided from the Employment Verification Compensation Fund established under section 8 and shall not be provided from appropriated funds.

1 "(F) JUDICIAL REVIEW.—

2 "(i) IN GENERAL.—After the Sec-
3 retary makes a final determination on an
4 appeal filed by an individual under the ad-
5 ministrative review process described in
6 subparagraph (E), the individual may ob-
7 tain judicial review of such determination
8 by a civil action commenced not later than
9 60 days after the date of such decision, or
10 such further time as the Secretary may
11 allow.

12 "(ii) JURISDICTION.—A civil action
13 for such judicial review shall be brought in
14 the district court of the United States for
15 the judicial district in which the plaintiff
16 resides, or has a principal place of busi-
17 ness, or, if the plaintiff does not reside or
18 have a principal place of business within
19 any such judicial district, in the District
20 Court of the United States for the District
21 of Columbia.

22 "(iii) ANSWER.—As part of the Sec-
23 retary's answer to a complaint for such ju-
24 dicial review, the Secretary shall file a cer-
25 tified copy of the administrative record

compiled during the administrative review under subparagraph (E), including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming or reversing the result of that administrative review, with or without remanding the cause for a rehearing.

"(iv) COMPENSATION FOR ERROR.—

"(I) IN GENERAL.—In cases in which such judicial review reverses the final determination of the Secretary made under subparagraph (E), the court shall compensate the individual for lost wages.

"(II) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work scheduled that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the

judicial review described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first.

"(G) LIMITATION ON USE OF THE VERIFICATION SYSTEM AND ANY RELATED SYSTEMS.—Notwithstanding any other provision of law, nothing in this paragraph shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this paragraph for any other purpose other than as provided for.

"(H) LIMITATION ON COLLECTION AND USE OF DATA.—

"(i) LIMITATION ON COLLECTION OF DATA.—

"(I) IN GENERAL.—The System shall collect and maintain only the minimum data necessary to facilitate the successful operation of the System, and in no case shall the data be other than—

"(aa) information necessary to register employers under paragraph (7)(D)(iv);

"(bb) information necessary to initiate and respond to inquiries or contests under subparagraph (E);

"(cc) information necessary to establish and enforce compliance with paragraph (7)(D)(iv) and subparagraph (E);

"(dd) information necessary to detect and prevent employment related identity fraud; and

"(ee) such other information the Secretary determines is necessary, subject to a 180 day notice and comment period in the Federal Register.

"(II) PENALTIES.—Any officer, employee, or contractor who willfully and knowingly collects and maintains data in the system other than data described in clause (i) shall be guilty

of a misdemeanor and fined not more than $1,000 for each violation.

"(ii) LIMITATION ON USE OF DATA.—Whoever willfully and knowingly accesses, discloses, or uses any information obtained or maintained by the system—

"(I) for the purpose of committing identity fraud, or assisting another person in committing identity fraud, as defined in section 1028 of title 18, United States Code;

"(II) for the purpose of unlawfully obtaining employment in the United States or unlawfully obtaining employment in the United States for any other person; or

"(III) for any purpose other than as provided for under any provision of law;

shall be guilty of a felony and upon conviction shall be fined under title 18, United States Code, or imprisoned for not less than 5 years, or both.

"(iii) EXCEPTIONS.—Nothing in clauses (i) or (ii) may be construed to limit

the collection, maintenance, or use of data by the Commissioner of Internal Revenue or the Commissioner of Social Security as provided by law.''.

SEC. 4. EXPANSION OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM TO PREVIOUSLY HIRED INDIVIDUALS AND RECRUITING AND REFERRING.

(a) APPLICATION TO RECRUITING AND REFERRING.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in subsection (a)(1)(A), by striking ''for a fee'';

(2) in subsection (a)(1), by amending subparagraph (B) to read as follows:

''(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b).'';

(3) in subsection (a)(2), by striking ''after hiring an alien for employment in accordance with paragraph (1),'' and inserting ''after complying with paragraph (1),''; and

(4) in subsection (a)(3), as amended by section 3, is further amended by striking ''hiring,'' and inserting ''hiring, employing,'' each place it appears.

(b) EMPLOYMENT ELIGIBILITY VERIFICATION FOR PREVIOUSLY HIRED INDIVIDUALS.—Section 274A(b) of such Act (8 U.S.C. 1324a(b)), as amended by section 2(a), is further amended by adding at the end the following:

''(8) USE OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM FOR PREVIOUSLY HIRED INDIVIDUALS.—

''(A) ON A VOLUNTARY BASIS.—Beginning on the date that is 2 years after the date of the enactment of the Electronic Employment Eligibility Verification and Illegal Immigration Control Act and until the date specified in subparagraph (B)(iii), a person or entity may make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of any individual employed by the person or entity, as long as it is done on a nondiscriminatory basis.

''(B) ON A MANDATORY BASIS.—

''(i) A person or entity described in clause (ii) must make an inquiry as provided in paragraph (7), using the

verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date 3 years after the date of enactment of the Electronic Employment Eligibility Verification and Illegal Immigration Control Act.

''(ii) A person or entity is described in this clause if it is a Federal, State, or local governmental body (including the Armed Forces of the United States), or if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, an airport, or that contains critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))), but only to the extent of such individuals.

''(iii) All persons and entities other than those described in clause (ii) must make an inquiry, as provided in paragraph

(7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date 6 years after the date of enactment of the Electronic Employment Eligibility Verification and Illegal Immigration Control Act.''.

SEC. 5. BASIC PILOT PROGRAM.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking ''on September 30, 2012'' and inserting ''2 years after the enactment of the Electronic Employment Eligibility Verification and Illegal Immigration Control Act''.

SEC. 6. HIRING HALLS.

Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following:

''(4) RECRUITMENT AND REFERRAL.—As used in this section, the term 'refer' means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in

the United States for such person. Generally, only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition. However, labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of workers for any period of time by a third party are included in the definition whether or not they receive remuneration. As used in this section the term 'recruit' means the act of soliciting a person, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Generally, only persons or entities recruiting for remunerations (whether on a retainer or contingency basis) are included in the definition. However, labor service agencies, whether public, private, for-profit, or nonprofit that refer, dispatch, or otherwise facilitate the hiring of workers for any period of time by a third party are included in the definition whether or not they receive remuneration.''.

SEC. 7. PENALTIES.

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

(1) in subsection (e)(4)—

(A) in subparagraph (A), in the matter before clause (i), by inserting ", subject to paragraphs (10) through (12)," after "in an amount";

(B) in subparagraph (A)(i), by striking "not less than $250 and not more than $2,000" and inserting "not less than $5,000 and not more than $15,000";

(C) in subparagraph (A)(ii), by striking "not less than $2,000 and not more than $5,000" and inserting "not less than $10,000 and not more than $15,000";

(D) in subparagraph (A)(iii), by striking "not less than $3,000 and not more than $10,000" and inserting "not less than $25,000 and not more than $40,000"; and

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

"(B) may require the person or entity to take such other remedial action as is appropriate.";

(2) in subsection (e)(5)—

(A) by inserting ", subject to paragraphs (10) through (12)," after "in an amount";

(B) by striking ''$100'' and inserting ''$1,000'';

(C) by striking ''$1,000'' and inserting ''$25,000'';

(D) by striking ''the size of the business of the employer being charged, the good faith of the employer'' and inserting ''the good faith of the employer being charged''; and

(E) by adding at the end the following sentence: ''Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).'';

(3) by adding at the end of subsection (e) the following new paragraphs:

''(10) MITIGATION OF CIVIL MONEY PENALTIES FOR SMALLER EMPLOYERS.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring by an employer, the dol-

lar amounts otherwise specified in the respective paragraph shall be reduced as follows:

"(A) In the case of an employer with an average of fewer than 26 full-time equivalent employees (as defined by the Secretary of Homeland Security), the amounts shall be reduced by 60 percent.

"(B) In the case of an employer with an average of at least 26, but fewer than 101, full-time equivalent employees (as so defined), the amounts shall be reduced by 40 percent.

"(C) In the case of an employer with an average of at least 101, but fewer than 251, full-time equivalent employees (as so defined), the amounts shall be reduced by 20 percent.

The last sentence of paragraph (4) shall apply under this paragraph in the same manner as it applies under such paragraph.

"(11) EXEMPTION FROM PENALTY FOR INITIAL GOOD FAITH VIOLATION.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment or recruitment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5)

for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed shall be waived if the violator establishes that it was the first such violation of such provision by the violator and the violator acted in good faith.

"(12) SAFE HARBOR FOR CONTRACTORS.—A person or other entity shall be liable for a penalty under paragraph (4)(A) with respect to the violation of subsection (a)(1)(A), (a)(1)(B), or (a)(2) with respect to the hiring or continuation of employment of an unauthorized alien by a subcontractor of that person or entity unless the person or entity verifies through the employment eligibility verification system that all subcontractor employees and entities participating in the subcontracted employment are eligible for employment prior to beginning employment for the contracting person or entity. A contracting person or entity shall not be required to verify a subcontractor if the contracting person or entity has previously verified the employment eligibility of that subcontractor. A contracting person or entity shall not be required to verify the employment eligibility of a subcontractor employee if the person or entity has previously verified the subcontractor

employee as a result of the subcontractor employee's previous employment on behalf of the person or entity as an employee of the subcontractor.";

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

"(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a) (1) or (2) shall be fined not more than $50,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than 1 year, or both, notwithstanding the provisions of any other Federal law relating to fine levels.";

(5) in subsection (f)(2), by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security";

(6) by redesignating subsection (h) as subsection (j);

(7) by inserting after subsection (g) the following:

"(h) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS AND AGREEMENTS.—

"(1) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 5 years. The Secretary or the Attorney General shall advise the Administrator of General Services of such a debarment, and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 5 years.

"(B) WAIVER.—The Administrator of General Services, in consultation with the Secretary and the Attorney General, may waive operation of this subsection or may limit the duration or scope of the debarment.

"(2) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—An employer who holds a Federal contract, grant, or cooperative agreement and is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, shall be debarred from the receipt of new

Federal contracts, grants, or cooperative agreements for a period of 5 years.

"(i) PENALTY FOR FALSE ATTESTATION BY EMPLOYEE.—An individual who falsely represents that the individual is eligible for employment in the United States in an attestation required by this shall, for each such violation, be subject to a fine of not less than $5,000, a term of imprisonment not to exceed 3 years, or both."; and

(8) by inserting after subsection (j) (as so redesignated) the following:

"(k) SPECIAL CRIMINAL PENALTIES FOR SUBCONTRACTORS AND LABOR BROKERS.—Any person or subcontracting entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not less than $100,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not less than 5 years for the entire pattern or practice, or both, notwithstanding the provisions of any other law relating to fine levels.".

SEC. 8. COMPENSATION FUND.

(a) ESTABLISHMENT.—There is established in the Treasury a separate account to be known as the "Employment Verification Compensation Fund" (in this section referred to as the "Fund").

(b) TRANSFERS TO THE FUND.—There shall be deposited in the Fund all fines and penalties collected under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a).

(c) EXPENDITURES.—Subject to appropriations Acts, amounts in the Fund shall be available for compensation pursuant to subparagraphs (E) and (F) of section 274A(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(3)), as amended by section 3 of this Act.

SEC. 9. CONTRACTOR DATABASE AND AUDITS.

(a) DATABASE.—The Secretary of Homeland Security shall create and maintain a publicly available and accessible online database of contracting and subcontracting individuals or entities which discloses the number of employment eligibility violations and employment eligibility verification rejections each contracting or subcontracting individual or entity has received. The database shall also disclose the total number of verification attempts each contracting or subcontracting individual or entity has made.

(b) AUDIT.—The Secretary of Homeland Security shall audit and investigate any contracting or subcontracting individual or entity which has a 10% or greater employment verification rejection rate.

SEC. 10. REPORT ON SOCIAL SECURITY CARD-BASED EMPLOYMENT ELIGIBILITY VERIFICATION.

(a) REPORT.—

(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of Treasury, the Secretary of Homeland Security, and the Attorney General, shall submit a report to the Congress that includes an evaluation of the following requirements and changes:

(A) A requirement that Social Security cards that are made of a durable plastic or similar material and that include an encrypted, machine-readable electronic identification strip and a digital photograph of the individual to whom the card is issued, be issued to each individual (whether or not a United States citizen) who—

(i) is authorized to be employed in the United States;

(ii) is seeking employment in the United States; and

(iii) files an application for such card, whether as a replacement of an existing Social Security card or as a card issued in

connection with the issuance of a new Social Security account number.

(B) The creation of a unified database to be maintained by the Department of Homeland Security and comprised of data from the Social Security Administration and the Department of Homeland Security specifying the work authorization of individuals (including both United States citizens and noncitizens) for the purpose of conducting employment eligibility verification.

(C) A requirement that all employers verify the employment eligibility of all new hires using the Social Security cards described in subparagraph (A) and a phone, electronic card-reading, or other mechanism to seek verification of employment eligibility through the use of the unified database described in subparagraph (B).

(2) ITEMS INCLUDED IN REPORT.—The report under paragraph (1) shall include an evaluation of each of the following:

(A) Projected cost, including the cost to the Federal Government, State and local governments, and the private sector.

(B) Administrability.

(C) Potential effects on—

(i) employers;

(ii) employees, including employees who are United States citizens as well as those that are not citizens;

(iii) tax revenue; and

(iv) privacy.

(D) The extent to which employer and employee compliance with immigration laws would be expected to improve.

(E) Any other relevant information.

(3) ALTERNATIVES.—The report under paragraph (1) also shall examine any alternatives to achieve the same goals as the requirements and changes described in paragraph (1) but that involve lesser cost, lesser burden on those affected, or greater ease of administration.

(b) INSPECTOR GENERAL REVIEW.—Not later than 3 months after the report is submitted under subsection (a), the Inspector General of the Social Security Administration, in consultation with the Inspectors General of the Department of Treasury, the Department of Homeland Security, and the Department of Justice, shall send to the Congress an evaluation of such report.

(c) CONGRESSIONAL CONSIDERATION.—Upon receipt of the Inspector General's evaluation of the Commissioner of Social Security's report, the Congress shall consider legislation enacting a plan that best meets both the objectives outlined in this section as well as ease and feasibility of implementation based on the reports presented by the Commissioner of Social Security and the Inspector General.

SEC. 11. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of enactment of this Act, except that the requirements of persons and entities to comply with the employment eligibility verification process shall take effect on the date that is 2 years after such date.

SEC. 12. LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.

The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner's responsibilities in this Act or the amendments made by this Act, but only to the extent (except for the purpose of carrying out section 8) the Secretary of Homeland Security has provided, in advance, funds to cover the Commissioner's full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability

Insurance Trust Fund be used to carry out such responsibilities.

SEC. 13. REPORT ON IMPACT ON CONTRACTING AND SUBCONTRACTING INDIVIDUALS AND ENTITIES.

Not later than 12 months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit a report to the Congress that determines whether the described employment eligibility verification system permits contracting individuals and entities to determine the eligibility of subcontracting individuals or entities without unduly burdening contractors and without freeing subcontracting individuals or entities to break employment laws.

SEC. 14. REPORT ON EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

Not later than 1 year after the implementation of the employment eligibility verification system established under this Act, and 1 year thereafter, the Secretary of Homeland Security shall submit to the Congress a report on the progress and problems associated with implementation of the system, including information relating to the most efficient use of the system by small businesses.

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