

117TH CONGRESS
1ST SESSION

H. R. 78

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

JANUARY 4, 2021

Mr. CALVERT (for himself, Mr. BABIN, Mr. BROOKS, Mr. CHABOT, Mr. ALLEN, Mr. DUNCAN, and Mrs. LESKO) 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 Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

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

16 “(II) examining—

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

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

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

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

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

23 “(i) IN GENERAL.—After completion
24 of such form in accordance with subpara-

1 graphs (A) and (B), the person or entity
2 shall—

3 “(I) retain a paper, microfiche,
4 microfilm, or electronic version of the
5 form and make it available for inspec-
6 tion by officers of the Department of
7 Homeland Security, the Department
8 of Justice, or the Department of
9 Labor during a period beginning on
10 the date of the recruiting or referral
11 of the individual, or, in the case of the
12 hiring of an individual, the date on
13 which the verification is completed,
14 and ending—

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

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

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

8 “(ii) CONFIRMATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(iii) AGRICULTURAL LABOR OR SERV-
4 ICES.—With respect to an employee per-
5 forming agricultural labor or services, this
6 paragraph shall not apply with respect to
7 the verification of the employee until the
8 date that is 30 months after the date of
9 the enactment of the Legal Workforce Act.
10 For purposes of the preceding sentence,
11 the term ‘agricultural labor or services’ has
12 the meaning given such term by the Sec-
13 retary of Agriculture in regulations and in-
14 cludes agricultural labor as defined in sec-
15 tion 3121(g) of the Internal Revenue Code
16 of 1986, agriculture as defined in section
17 3(f) of the Fair Labor Standards Act of
18 1938 (29 U.S.C. 203(f)), the handling,
19 planting, drying, packing, packaging, proc-
20 essing, freezing, or grading prior to deliv-
21 ery for storage of any agricultural or horti-
22 cultural commodity in its unmanufactured
23 state, all activities required for the prepa-
24 ration, processing or manufacturing of a
25 product of agriculture (as such term is de-

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

7 “(iv) EXTENSIONS.—Upon request by
8 an employer having 50 or fewer employees,
9 the Secretary shall allow a one-time 6-
10 month extension of the effective date set
11 out in this subparagraph applicable to such
12 employer. Such request shall be made to
13 the Secretary and shall be made prior to
14 such effective date.

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

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

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

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

19 “(E) VERIFICATION PERIOD DEFINED.—

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

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

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

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

17 “(iii) SPECIAL RULE.—Notwithstand-
18 ing clause (i)(II), in the case of an alien
19 who is authorized for employment and who
20 provides evidence from the Social Security
21 Administration that the alien has applied
22 for a social security account number, the
23 verification period ends three business days
24 after the alien receives the social security
25 account number.

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

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), a person or entity shall
5 make an inquiry, as provided in subsection (d),
6 using the verification system to seek reverifica-
7 tion of the identity and employment eligibility
8 of all individuals with a limited period of work
9 authorization employed by the person or entity
10 during the three business days after the date on
11 which the employee’s work authorization expires
12 as follows:

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

19 “(ii) With respect to employers having
20 500 or more employees in the United
21 States, but less than 10,000 employees in
22 the United States, on the date of the en-
23 actment of the Legal Workforce Act, be-
24 ginning on the date that is 12 months

1 after the date of the enactment of such
2 Act.

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

10 “(iv) With respect to employers hav-
11 ing one or more employees in the United
12 States, but less than 20 employees in the
13 United States, on the date of the enact-
14 ment of the Legal Workforce Act, begin-
15 ning on the date that is 24 months after
16 the date of the enactment of such Act.

17 “(B) AGRICULTURAL LABOR OR SERV-
18 ICES.—With respect to an employee performing
19 agricultural labor or services, or an employee
20 recruited or referred by a farm labor contractor
21 (as defined in section 3 of the Migrant and Sea-
22 sonal Agricultural Worker Protection Act (29
23 U.S.C. 1801)), subparagraph (A) shall not
24 apply with respect to the reverification of the
25 employee until the date that is 30 months after

1 the date of the enactment of the Legal Work-
2 force Act. For purposes of the preceding sen-
3 tence, the term ‘agricultural labor or services’
4 has the meaning given such term by the Sec-
5 retary of Agriculture in regulations and in-
6 cludes agricultural labor as defined in section
7 3121(g) of the Internal Revenue Code of 1986,
8 agriculture as defined in section 3(f) of the
9 Fair Labor Standards Act of 1938 (29 U.S.C.
10 203(f)), the handling, planting, drying, packing,
11 packaging, processing, freezing, or grading
12 prior to delivery for storage of any agricultural
13 or horticultural commodity in its unmanufac-
14 tured state, all activities required for the prepa-
15 ration, processing, or manufacturing of a prod-
16 uct of agriculture (as such term is defined in
17 such section 3(f)) for further distribution, and
18 activities similar to all the foregoing as they re-
19 late to fish or shellfish facilities. An employee
20 described in this subparagraph shall not be
21 counted for purposes of subparagraph (A).

22 “(C) REVERIFICATION.—Paragraph
23 (1)(C)(ii) shall apply to reverifications pursuant
24 to this paragraph on the same basis as it ap-

1 plies to verifications pursuant to paragraph (1),
2 except that employers shall—

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

6 “(ii) retain a paper, microfiche, micro-
7 film, or electronic version of the form and
8 make it available for inspection by officers
9 of the Department of Homeland Security,
10 the Department of Justice, or the Depart-
11 ment of Labor during the period beginning
12 on the date the reverification commences
13 and ending on the date that is the later of
14 3 years after the date of such reverification
15 or 1 year after the date the individual’s
16 employment is terminated.

17 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

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

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

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

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

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

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

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

1 under a Federal contract, except that
2 this subclause—

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

16 “(bb) only applies to con-
17 tracts over the simple acquisition
18 threshold as defined in section
19 2.101 of title 48, Code of Federal
20 Regulations.

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

1 or has elected voluntarily to use such system,
2 the employer shall make inquiries to the system
3 in accordance with the following:

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

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

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

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

19 “(C) ON A VOLUNTARY BASIS.—Subject to
20 paragraph (2), and subparagraphs (A) through
21 (C) of this paragraph, beginning on the date
22 that is 30 days after the date of the enactment
23 of the Legal Workforce Act, an employer may
24 make an inquiry, as provided in subsection (d),
25 using the verification system to seek verification

1 of the identity and employment eligibility of any
2 individual employed by the employer. If an em-
3 ployer chooses voluntarily to seek verification of
4 any individual employed by the employer, the
5 employer shall seek verification of all individ-
6 uals employed at the same geographic location
7 or, at the option of the employer, all individuals
8 employed within the same job category, as the
9 employee with respect to whom the employer
10 seeks voluntarily to use the verification system.
11 An employer’s decision about whether or not
12 voluntarily to seek verification of its current
13 workforce under this subparagraph may not be
14 considered by any government agency in any
15 proceeding, investigation, or review provided for
16 in this Act.

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

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

1 “(ii) retain a paper, microfiche, micro-
2 film, or electronic version of the form and
3 make it available for inspection by officers
4 of the Department of Homeland Security,
5 the Department of Justice, or the Depart-
6 ment of Labor during the period beginning
7 on the date the verification commences and
8 ending on the date that is the later of 3
9 years after the date of such verification or
10 1 year after the date the individual’s em-
11 ployment is terminated.

12 “(4) EARLY COMPLIANCE.—

13 “(A) FORMER E-VERIFY REQUIRED USERS,
14 INCLUDING FEDERAL CONTRACTORS.—Notwith-
15 standing the deadlines in paragraphs (1) and
16 (2), beginning on the date of the enactment of
17 the Legal Workforce Act, the Secretary is au-
18 thorized to commence requiring employers re-
19 quired to participate in the E-Verify Program
20 described in section 403(a) of the Illegal Immi-
21 gration Reform and Immigrant Responsibility
22 Act of 1996 (8 U.S.C. 1324a note), including
23 employers required to participate in such pro-
24 gram by reason of Federal acquisition laws
25 (and regulations promulgated under those laws,

1 including the Federal Acquisition Regulation),
2 to commence compliance with the requirements
3 of this subsection (and any additional require-
4 ments of such Federal acquisition laws and reg-
5 ulation) in lieu of any requirement to partici-
6 pate in the E-Verify Program.

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

21 “(5) COPYING OF DOCUMENTATION PER-
22 MITTED.—Notwithstanding any other provision of
23 law, the person or entity may copy a document pre-
24 sented by an individual pursuant to this subsection
25 and may retain the copy, but only (except as other-

1 wise permitted under law) for the purpose of com-
2 plying with the requirements of this subsection.

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

10 “(7) GOOD FAITH COMPLIANCE.—

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

18 “(B) EXCEPTION IF FAILURE TO CORRECT
19 AFTER NOTICE.—Subparagraph (A) shall not
20 apply if—

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

22 “(ii) the Secretary of Homeland Secu-
23 rity has explained to the person or entity
24 the basis for the failure and why it is not
25 de minimus;

1 “(iii) the person or entity has been
2 provided a period of not less than 30 cal-
3 endar days (beginning after the date of the
4 explanation) within which to correct the
5 failure; and

6 “(iv) the person or entity has not cor-
7 rected the failure voluntarily within such
8 period.

9 “(C) EXCEPTION FOR PATTERN OR PRAC-
10 TICE VIOLATORS.—Subparagraph (A) shall not
11 apply to a person or entity that has or is engag-
12 ing in a pattern or practice of violations of sub-
13 section (a)(1)(A) or (a)(2).

14 “(8) SINGLE EXTENSION OF DEADLINES UPON
15 CERTIFICATION.—In a case in which the Secretary
16 of Homeland Security has certified to the Congress
17 that the employment eligibility verification system
18 required under subsection (d) will not be fully oper-
19 ational by the date that is 6 months after the date
20 of the enactment of the Legal Workforce Act, each
21 deadline established under this section for an em-
22 ployer to make an inquiry using such system shall
23 be extended by 6 months. No other extension of such
24 a deadline shall be made except as authorized under
25 paragraph (1)(D)(iv).”.

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

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

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

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

12 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
13 TEM.—

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

23 “(A) responds to inquiries made by per-
24 sons at any time through a toll-free telephone
25 line and other toll-free electronic media con-

1 cerning an individual’s identity and whether the
2 individual is authorized to be employed; and

3 “(B) maintains records of the inquiries
4 that were made, of verifications provided (or
5 not provided), and of the codes provided to in-
6 quirers as evidence of their compliance with
7 their obligations under this section.

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

16 “(3) SECONDARY CONFIRMATION PROCESS IN
17 CASE OF TENTATIVE NONCONFIRMATION.—In cases
18 of tentative nonconfirmation, the Secretary shall
19 specify, in consultation with the Commissioner of
20 Social Security, an available secondary verification
21 process to confirm the validity of information pro-
22 vided and to provide a final confirmation or noncon-
23 firmation not later than 10 working days after the
24 date on which the notice of the tentative noncon-
25 firmation is received by the employee. The Secretary,

1 in consultation with the Commissioner, may extend
2 this deadline once on a case-by-case basis for a pe-
3 riod of 10 working days, and if the time is extended,
4 shall document such extension within the verification
5 system. The Secretary, in consultation with the
6 Commissioner, shall notify the employee and em-
7 ployer of such extension. The Secretary, in consulta-
8 tion with the Commissioner, shall create a standard
9 process of such extension and notification and shall
10 make a description of such process available to the
11 public. When final confirmation or nonconfirmation
12 is provided, the verification system shall provide an
13 appropriate code indicating such confirmation or
14 nonconfirmation.

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

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

22 “(B) to respond to all inquiries made by
23 such persons and entities on whether individ-
24 uals are authorized to be employed and to reg-

1 ister all times when such inquiries are not re-
2 ceived;

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

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

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

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

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

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

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

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

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

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

1 under the verification system except as provided for
2 in this section or section 205(c)(2)(I) of the Social
3 Security Act.

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

23 “(7) UPDATING INFORMATION.—The Commis-
24 sioner of Social Security and the Secretary of Home-
25 land Security shall update their information in a

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

6 “(8) LIMITATION ON USE OF THE
7 VERIFICATION SYSTEM AND ANY RELATED SYS-
8 TEMS.—

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

15 “(B) CRITICAL INFRASTRUCTURE.—The
16 Secretary may authorize or direct any person or
17 entity responsible for granting access to, pro-
18 tecting, securing, operating, administering, or
19 regulating part of the critical infrastructure (as
20 defined in section 1016(e) of the Critical Infra-
21 structure Protection Act of 2001 (42 U.S.C.
22 5195c(e))) to use the verification system to the
23 extent the Secretary determines that such use
24 will assist in the protection of the critical infra-
25 structure.

1 “(9) REMEDIES.—If an individual alleges that
2 the individual would not have been dismissed from
3 a job but for an error of the verification mechanism,
4 the individual may seek compensation only through
5 the mechanism of the Federal Tort Claims Act, and
6 injunctive relief to correct such error. No class ac-
7 tion may be brought under this paragraph.”.

8 **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**
9 **EMPLOYMENT.**

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

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

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

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

21 (3) in paragraph (2), by striking “after hiring
22 an alien for employment in accordance with para-
23 graph (1),” and inserting “after complying with
24 paragraph (1),”.

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

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

1 sons or entities referring for remuneration (whether
2 on a retainer or contingency basis) are included in
3 the definition, except that union hiring halls that
4 refer union members or nonunion individuals who
5 pay union membership dues are included in this defi-
6 nition whether or not they receive remuneration, as
7 are labor service entities or labor service agencies,
8 whether public, private, for-profit, or nonprofit that
9 recruit, dispatch, or otherwise facilitate the hiring of
10 laborers for any period of time by a third party.”.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date that is 1 year
13 after the date of the enactment of this Act, except that
14 the amendments made by subsection (a) shall take effect
15 6 months after the date of the enactment of this Act inso-
16 far as such amendments relate to continuation of employ-
17 ment.

18 **SEC. 5. GOOD FAITH DEFENSE.**

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

22 “(3) GOOD FAITH DEFENSE.—

23 “(A) DEFENSE.—An employer (or person
24 or entity that hires, employs, recruits, or refers
25 (as defined in subsection (h)(5)), or is otherwise

1 obligated to comply with this section) who es-
2 tablishes that it has complied in good faith with
3 the requirements of subsection (b)—

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

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

21 “(B) MITIGATION ELEMENT.—For pur-
22 poses of subparagraph (A)(i), if an employer
23 proves by a preponderance of the evidence that
24 the employer uses a reasonable, secure, and es-
25 tablished technology to authenticate the identity

1 of the new employee, that fact shall be taken
2 into account for purposes of determining good
3 faith use of the system established under sub-
4 section (d).

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

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

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

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

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

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

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

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

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

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

8 “(2) PREEMPTION.—

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

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

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

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

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

1 **SEC. 7. REPEAL.**

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

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

16 (c) **EFFECTIVE DATE.**—This section shall take effect
17 on the date that is 30 months after the date of the enact-
18 ment of this Act.

19 (d) **CLERICAL AMENDMENT.**—The table of sections,
20 in section 1(d) of the Illegal Immigration Reform and Im-
21 migrant Responsibility Act of 1996, is amended by strik-
22 ing the items relating to subtitle A of title IV.

23 **SEC. 8. PENALTIES.**

24 Section 274A of the Immigration and Nationality Act
25 (8 U.S.C. 1324a) is amended—

26 (1) in subsection (e)(1)—

1 (A) by striking “Attorney General” each
2 place such term appears and inserting “Sec-
3 retary of Homeland Security”; and

4 (B) in subparagraph (D), by striking
5 “Service” and inserting “Department of Home-
6 land Security”;

7 (2) in subsection (e)(4)—

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

11 (B) in subparagraph (A)(i), by striking
12 “not less than \$250 and not more than
13 \$2,000” and inserting “not less than \$2,500
14 and not more than \$5,000”;

15 (C) in subparagraph (A)(ii), by striking
16 “not less than \$2,000 and not more than
17 \$5,000” and inserting “not less than \$5,000
18 and not more than \$10,000”;

19 (D) in subparagraph (A)(iii), by striking
20 “not less than \$3,000 and not more than
21 \$10,000” and inserting “not less than \$10,000
22 and not more than \$25,000”; and

23 (E) by moving the margin of the continu-
24 ation text following subparagraph (B) two ems

1 to the left and by amending subparagraph (B)
2 to read 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”; and

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) MITIGATION ELEMENT.—For purposes of
12 paragraph (4), the size of the business shall be
13 taken into account when assessing the level of civil
14 money penalty.

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

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

1 ment procedures set forth in the Federal Acqui-
2 sition Regulation.

3 “(B) DOES NOT HAVE CONTRACT, GRANT,
4 AGREEMENT.—If the Secretary of Homeland
5 Security or the Attorney General wishes to have
6 a person or entity considered for debarment in
7 accordance with this paragraph, and such a
8 person or entity does not hold a Federal con-
9 tract, grant, or cooperative agreement, the Sec-
10 retary or Attorney General shall refer the mat-
11 ter to the Administrator of General Services to
12 determine whether to list the person or entity
13 on the List of Parties Excluded from Federal
14 Procurement, and if so, for what duration and
15 under what scope.

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

1 ment’s interest in having the person or entity
2 considered for debarment, and after soliciting
3 and considering the views of all such agencies
4 and departments, the Secretary or Attorney
5 General may refer the matter to any appro-
6 priate lead agency to determine whether to list
7 the person or entity on the List of Parties Ex-
8 cluded from Federal Procurement, and if so, for
9 what duration and under what scope.

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

14 “(13) OFFICE FOR STATE AND LOCAL GOVERN-
15 MENT COMPLAINTS.—The Secretary of Homeland
16 Security shall establish an office—

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

23 “(B) that is required to indicate to the
24 complaining State or local agency within five
25 business days of the filing of such a complaint

1 by identifying whether the Secretary will fur-
2 ther investigate the information provided;

3 “(C) that is required to investigate those
4 complaints filed by State or local government
5 agencies that, on their face, have a substantial
6 probability of validity;

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

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

16 (5) by amending paragraph (1) of subsection (f)
17 to read as follows:

18 “(1) CRIMINAL PENALTY.—Any person or enti-
19 ty which engages in a pattern or practice of viola-
20 tions of subsection (a) (1) or (2) shall be fined not
21 more than \$5,000 for each unauthorized alien with
22 respect to which such a violation occurs, imprisoned
23 for not more than 18 months, or both, notwith-
24 standing the provisions of any other Federal law re-
25 lating to fine levels.”.

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

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

4 (1) in paragraph (1), by striking “identification
5 document,” and inserting “identification document
6 or document meant to establish work authorization
7 (including the documents described in section
8 274A(b) of the Immigration and Nationality Act),”;
9 and

10 (2) in paragraph (2), by striking “identification
11 document” and inserting “identification document or
12 document meant to establish work authorization (in-
13 cluding the documents described in section 274A(b)
14 of the Immigration and Nationality Act),”.

15 **SEC. 10. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
16 **TION PROGRAMS.**

17 (a) **FUNDING UNDER AGREEMENT.**—Effective for
18 fiscal years beginning on or after October 1, 2020, the
19 Commissioner of Social Security and the Secretary of
20 Homeland Security shall enter into and maintain an
21 agreement which shall—

22 (1) provide funds to the Commissioner for the
23 full costs of the responsibilities of the Commissioner
24 under section 274A(d) of the Immigration and Na-
25 tionality Act (8 U.S.C. 1324a(d)), as amended by

1 section 3 of this Act, including (but not limited
2 to)—

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

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

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

19 (3) require an annual accounting and reconcili-
20 ation of the actual costs incurred and the funds pro-
21 vided under the agreement, which shall be reviewed
22 by the Inspectors General of the Social Security Ad-
23 ministration and the Department of Homeland Secu-
24 rity.

1 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
2 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
3 which the agreement required under subsection (a) for any
4 fiscal year beginning on or after October 1, 2020, has not
5 been reached as of October 1 of such fiscal year, the latest
6 agreement between the Commissioner and the Secretary
7 of Homeland Security providing for funding to cover the
8 costs of the responsibilities of the Commissioner under
9 section 274A(d) of the Immigration and Nationality Act
10 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
11 terim basis for such fiscal year until such time as an
12 agreement required under subsection (a) is subsequently
13 reached, except that the terms of such interim agreement
14 shall be modified by the Director of the Office of Manage-
15 ment and Budget to adjust for inflation and any increase
16 or decrease in the volume of requests under the employ-
17 ment eligibility verification system. In any case in which
18 an interim agreement applies for any fiscal year under this
19 subsection, the Commissioner and the Secretary shall, not
20 later than October 1 of such fiscal year, notify the Com-
21 mittee on Ways and Means, the Committee on the Judici-
22 ary, and the Committee on Appropriations of the House
23 of Representatives and the Committee on Finance, the
24 Committee on the Judiciary, and the Committee on Ap-
25 propriations of the Senate of the failure to reach the

1 agreement required under subsection (a) for such fiscal
2 year. Until such time as the agreement required under
3 subsection (a) has been reached for such fiscal year, the
4 Commissioner and the Secretary shall, not later than the
5 end of each 90-day period after October 1 of such fiscal
6 year, notify such Committees of the status of negotiations
7 between the Commissioner and the Secretary in order to
8 reach such an agreement.

9 **SEC. 11. FRAUD PREVENTION.**

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

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

15 (c) ALLOWING PARENTS TO PREVENT THEFT OF
16 THEIR CHILD'S IDENTITY.—The Secretary of Homeland
17 Security, in consultation with the Commissioner of Social
18 Security, shall establish a program which shall provide a
19 reliable, secure method by which parents or legal guard-
20 ians may suspend or limit the use of the social security
21 account number or other identifying information of a
22 minor under their care for the purposes of the employment
23 eligibility verification system established under 274A(d) of
24 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
25 as amended by section 3 of this Act. The Secretary may

1 implement the program on a limited pilot program basis
2 before making it fully available to all individuals.

3 **SEC. 12. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION**

4 **PHOTO TOOL.**

5 An employer who uses the photo matching tool used
6 as part of the E-Verify System shall match the photo tool
7 photograph to both the photograph on the identity or em-
8 ployment eligibility document provided by the employee
9 and to the face of the employee submitting the document
10 for employment verification purposes.

11 **SEC. 13. IDENTITY AUTHENTICATION EMPLOYMENT ELIGI-**

12 **BILITY VERIFICATION PILOT PROGRAMS.**

13 Not later than 24 months after the date of the enact-
14 ment of this Act, the Secretary of Homeland Security,
15 after consultation with the Commissioner of Social Secu-
16 rity and the Director of the National Institute of Stand-
17 ards and Technology, shall establish by regulation not less
18 than 2 Identity Authentication Employment Eligibility
19 Verification pilot programs, each using a separate and dis-
20 tinct technology (the “Authentication Pilots”). The pur-
21 pose of the Authentication Pilots shall be to provide for
22 identity authentication and employment eligibility verifica-
23 tion with respect to enrolled new employees which shall
24 be available to any employer that elects to participate in
25 either of the Authentication Pilots. Any participating em-

1 ployer may cancel the employer's participation in the Au-
2 thentication Pilot after one year after electing to partici-
3 pate without prejudice to future participation. The Sec-
4 retary shall report to the Committee on the Judiciary of
5 the House of Representatives and the Committee on the
6 Judiciary of the Senate the Secretary's findings on the
7 Authentication Pilots, including the authentication tech-
8 nologies chosen, not later than 12 months after com-
9 mencement of the Authentication Pilots.

10 **SEC. 14. INSPECTOR GENERAL AUDITS.**

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

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

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

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

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

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