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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 2011

Mr. Smith of Texas (for himself, Mr. Calvert, Mr. Gallegly, Mr. Miller of Florida, Mr. Terry, Mrs. Blackburn, Mr. Lewis of California, Mr. Westmoreland, Mr. Kingston, Mr. Ross of Florida, Mr. Burgess, Mr. Latham, Mr. Franks of Arizona, Mr. Gary G. Miller of California, and Mrs. Myrick) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

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

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 ‘‘Legal Workforce Act’’. 
SEC. 2. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

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

“(b) EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.—

“(1) NEW HIRES, RECRUITMENT, AND REFERRAL.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the following:

“(A) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

“(i) ATTESTATION.—On the date of hire (as defined in subsection (h)(4)), the person or entity shall attest, under penalty of perjury and on a form, including electronic and telephonic formats, designated or established by the Secretary by regulation not later than 6 months after the date of the enactment of the Legal Workforce Act, 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 nationality under subparagraph (B), 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) examining—

“(aa) a document relating to the individual presenting it described in clause (ii); or

“(bb) a document relating to the individual presenting it described in clause (iii) and a document relating to the individual presenting it described in clause (iv).
“(ii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION AND ESTABLISHING IDENTITY.—A document described in this subparagraph is an individual’s—

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

“(II) unexpired permanent resident card that contains a photograph;

“(III) unexpired employment authorization card that contains a photograph;

“(IV) in the case of a non-immigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I–94 or Form I–94A, or other documentation as designated by the Secretary specifying the alien’s non-immigrant status as long as the period of status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;
“(V) passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I–94 or Form I–94A, or other documentation as designated by the Secretary, indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI; or

“(VI) other document designated by the Secretary of Homeland Security, if the document—

“(aa) contains a photograph of the individual and biometric identification data from the individual and such other personal identifying information relating to the individual as the Secretary of Homeland Security finds, by regulation, sufficient for purposes of this clause;

“(bb) is evidence of authorization of employment in the United States; and
“(cc) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

“(iii) Documents evidencing employment authorization.—A document described in this subparagraph is an individual’s social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States).

“(iv) Documents establishing identity of individual.—A document described in this subparagraph is—

“(I) an individual’s unexpired State issued driver’s license or identification card if it contains a photograph and information such as name, date of birth, gender, height, eye color, and address;

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

“(III) an individual’s unexpired Native American tribal identification
document issued by a tribal entity rec-
ognized by the Bureau of Indian Af-
fairs; or

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

“(v) AUTHORITY TO PROHIBIT USE OF
CERTAIN DOCUMENTS.—If the Secretary of
Homeland Security finds, by regulation,
that any document described in clause (i),
(ii), or (iii) as establishing employment au-
thorization or identity does not reliably es-
tablish such authorization or identity or is
being used fraudulently to an unacceptable
degree, the Secretary may prohibit or place
conditions on its use for purposes of this
paragraph.

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

“(B) INDIVIDUAL ATTESTATION OF EM-
PLOYMENT AUTHORIZATION.—
“(i) IN GENERAL.—During the verification period (as defined in subparagraph (F)), the individual shall attest, under penalty of perjury on the form designated or established for purposes of subparagraph (A), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary of Homeland Security to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or electronic signature. The individual shall 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 nationality under this subparagraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.

“(ii) CRIMINAL PENALTY.—
“(I) Offenses.—Any individual who, pursuant to clause (i), provides a social security account number or an identification or authorization number established by the Secretary of Homeland Security that belongs to another person, knowing that the number does not belong to the individual providing the number, shall be fined under title 18, United States Code, imprisoned not less than 1 year and not more than 15 years, or both. Any individual who, pursuant to clause (i), provides, during and in relation to any felony violation enumerated in section 1028A(c) of title 18, United States Code, a social security account number or an identification or authorization number established by the Secretary of Homeland Security that belongs to another person, knowing that the number does not belong to the individual providing the number, in addition to the punishment provided for such felony, shall be fined under title...
18, United States Code, imprisoned for a term of 2 years, or both.

“(II) CONSECUTIVE SENTENCE.—Notwithstanding any other provision of law—

“(aa) a court shall not place on probation any individual convicted of a violation of this clause;

“(bb) except as provided in item (dd), no term of imprisonment imposed on an individual under this section shall run concurrently with any other term of imprisonment imposed on the individual under any other provision of law, including any term of imprisonment imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this section occurred;

“(cc) in determining any term of imprisonment to be imposed for the felony enumerated
in section 1028A(e) of title 18, United States Code, during which the violation of this clause occurred, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this clause; and

“(dd) a term of imprisonment imposed on an individual for a violation of this clause may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that individual for an additional violation of this clause, except that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the United States Sen-
tencing Commission pursuant to section 994 of title 28, United States Code.

“(C) Retention of verification form and verification.—

“(i) In general.—After completion of such form in accordance with subparagraphs (A) and (B), the person or entity shall—

“(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 recruiting or referral of the individual, or, in the case of the hiring of an individual, the date on which the verification is completed, and ending—

“(aa) in the case of the recruiting or referral of an indi-
individual, 3 years after the date of the recruiting or referral; and

“(bb) in the case of the hiring of an individual, the later of 3 years after the date the verification is completed or one year after the date the individual’s employment is terminated; and

“(II) during the verification period (as defined in subparagraph (F)), make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of an individual.

“(ii) CONFIRMATION.—

“(I) CONFIRMATION RECEIVED.—If the person or other entity receives an appropriate confirmation of an individual’s identity and work eligibility under the verification system within the time period specified, the person or entity shall record on the form an appropriate code that is
provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

“(II) Tentative Nonconfirmation Received.—If the person or other entity receives a tentative nonconfirmation of an individual’s identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does not contest the nonconfirmation within the time period specified, the nonconfirmation shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a final nonconfirmation. If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under subsection (d). The non-
confirmation will remain tentative until a final confirmation or nonconfirmation is provided by the verification system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure. In no case shall an employer rescind the offer of employment to an individual because of a failure of the individual to have identity and work eligibility confirmed under this subsection until a nonconfirmation becomes final. Nothing in this subclause shall apply to a recission of the offer of employment for any reason other than because of such a failure.

“(III) Final confirmation or nonconfirmation received.—If a
final confirmation or nonconfirmation is provided by the verification system regarding an individual, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

“(IV) EXTENSION OF TIME.—If the person or other entity in good faith attempts to make an inquiry during the time period specified and the verification system has registered that not all inquiries were received during such time, the person or entity may make an inquiry in the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous
sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

“(V) Consequences of Non-confirmation.—

“(aa) Termination or Notification of Continued Employment.—If the person or other entity has received a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

“(bb) Failure to Notify.—If the person or entity
fails to provide notice with respect to an individual as required under item (aa), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.

“(VI) CONTINUED EMPLOYMENT

AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated subsection (a)(1)(A).

“(D) CONTINUATION OF SEASONAL AGRICULTURAL EMPLOYMENT.—An individual shall not be considered a new hire subject to verification under this paragraph if the individual is engaged in seasonal agricultural employment and is returning to work for an employer that previously employed the individual.

“(E) EFFECTIVE DATES OF NEW PROCEDURES.—

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

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

“(II) With respect to employers having 500 or more employees in the United States, but less than 10,000 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 12 months after the date of the enactment of such Act.

“(III) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 18
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20 months after the date of the enactment of such Act.

“(IV) With respect to employers having 1 or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 24 months after the date of the enactment of such Act.

“(ii) Recruiting and referring.—

Except as provided in clause (iii), the provisions of this paragraph shall apply to a person or other entity recruiting or referring an individual for employment in the United States on the date that is 12 months after the date of the enactment of the Legal Workforce Act.

“(iii) Agricultural labor or services.—With respect to an employee performing agricultural labor or services (as defined for purposes of section 101(a)(15)(H)(ii)(a)), this paragraph shall not apply with respect to the verification of the employee until the date that is 36
months after the date of the enactment of
the Legal Workforce Act. An employee de-
scribed in this clause shall not be counted
for purposes of clause (i).

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

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

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

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

“(F) Verification period defined.—

“(i) In general.—For purposes of this paragraph:

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

“(II) In the case of hiring, the term ‘verification period’ means the period beginning on the date on which an offer of employment is extended and ending on the date that is 3 business days after the date of hire, except as provided in clause (iii). The offer of employment may be conditioned in accordance with clause (ii).

“(ii) Job offer may be conditional.—A person or other entity may
offer a prospective employee an employment position that is conditioned on final verification of the identity and employment eligibility of the employee using the procedures established under this paragraph.

“(iii) Special rule.—Notwithstanding clause (i)(II), in the case of an alien who is authorized for employment and who provides evidence from the Social Security Administration that the alien has applied for a social security account number, the verification period ends three business days after the alien receives the social security account number.

“(2) Reverification for individuals with limited work authorization.—

“(A) In general.—Except as provided in subparagraph (B), a person or entity shall make an inquiry, as provided in subsection (d), using the verification system to seek reverification of the identity and employment eligibility of all individuals with a limited period of work authorization employed by the person or entity during the 3 business days before the
date on which the employee’s work authorization expires as follows:

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

“(ii) With respect to employers having 500 or more employees in the United States, but less than 10,000 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 12 months after the date of the enactment of such Act.

“(iii) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 18 months after the date of the enactment of such Act.

“(iv) With respect to employers having 1 or more employees in the United
States, but less than 20 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 24 months after the date of the enactment of such Act.

“(B) AGRICULTURAL LABOR OR SERVICES.—With respect to an employee performing agricultural labor or services (as defined for purposes of section 101(a)(15)(H)(ii)(a)), or an employee recruited or referred by a farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801)), subparagraph (A) shall not apply with respect to the reverification of the employee until the date that is 36 months after the date of the enactment of the Legal Workforce Act. An employee described in this subparagraph shall not be counted for purposes of subparagraph (A).

“(C) ReVERIFICATION.—Paragraph (1)(C)(ii) shall apply to reverifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—
“(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

“(ii) 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 the period beginning on the date the reverification commences and ending on the date that is the later of 3 years after the date of such reverification or 1 year after the date the individual’s employment is terminated.

“(3) PREVIOUSLY HIRED INDIVIDUALS.—

“(A) ON A MANDATORY BASIS FOR CERTAIN EMPLOYEES.—

“(i) IN GENERAL.—Not later than the date that is 6 months after the date of the enactment of the Legal Workforce Act, an employer shall make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of
any individual described in clause (ii) employed by the employer whose employment eligibility has not been verified under the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note).

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

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

“(II) An employee who requires a Federal security clearance working in a Federal, State or local government building, a military base, a nuclear energy site, a weapons site, or an airport or other facility that requires workers to carry a Transportation Worker Identification Credential (TWIC).

“(III) An employee assigned to perform work in the United States under a Federal contract, except that this subclause—
“(aa) is not applicable to individuals who have a clearance under Homeland Security Presidential Directive 12 (HSPD 12 clearance), are administrative or overhead personnel, or are working solely on contracts that provide Commercial Off The Shelf goods or services as set forth by the Federal Acquisition Regulatory Council, unless they are subject to verification under subclause (II); and

“(bb) only applies to contracts over the simple acquisition threshold as defined in section 2.101 of title 48, Code of Federal Regulations.

“(B) ON A MANDATORY BASIS FOR MULTIPLE USERS OF SAME SOCIAL SECURITY ACCOUNT NUMBER.—In the case of an employer who is required by this subsection to use the verification system described in subsection (d), or has elected voluntarily to use such system,
the employer shall make inquiries to the system
in accordance with the following:

“(i) The Commissioner of Social Secu-

rity shall notify annually employees (at the
employee address listed on the Wage and
Tax Statement) who submit a social secu-

rity account number to which more than
one employer reports income and for which
there is a pattern of unusual multiple use.
The notification letter shall identify the
number of employers to which income is
being reported as well as sufficient infor-

mation notifying the employee of the proc-

ess to contact the Social Security Adminis-

tration Fraud Hotline if the employee be-

lieves the employee’s identity may have
been stolen. The notice shall not share in-

formation protected as private, in order to
avoid any recipient of the notice from
being in the position to further commit or
begin committing identity theft.

“(ii) If the person to whom the social
security account number was issued by the
Social Security Administration has been
identified and confirmed by the Commis-
sioner, and indicates that the social security account number was used without their knowledge, the Secretary and the Commissioner shall lock the social security account number for employment eligibility verification purposes and shall notify the employers of the individuals who wrongfully submitted the social security account number that the employee may not be work eligible.

“(iii) Each employer receiving such notification of an incorrect social security account number under clause (ii) shall use the verification system described in subsection (d) to check the work eligibility status of the applicable employee within 10 business days of receipt of the notification.

“(C) ON A MANDATORY BASIS FOR CERTAIN MISMATCHED WAGE AND TAX STATEMENTS.—

“(i) IN GENERAL.—In the case of an employer who is required by this subsection to use the verification system described in subsection (d), or has elected voluntarily to use such system, and who re-
receives a notice described in clause (ii) identifying an individual employee, the employer shall, not later than 30 calendar days after receipt of such notice, use the verification system described in subsection (d) to verify the employment eligibility of the employee in accordance with the instructions in such notice if the individual is still on the payroll of the employer.

“(ii) NOTICE.—The Commissioner of Social Security shall issue a notice to an employer submitting one or more mismatched wage and tax statements or corrected wage and tax statements containing the following:

“(I) A description of the mismatched information.

“(II) An explanation of the steps that the employer is required to take to correct the mismatched information.

“(III) An explanation of the employment eligibility verification requirement described in clause (i).
“(D) On a voluntary basis.—Subject to paragraph (2), and subparagraphs (A) through (C) of this paragraph, beginning on the date that is 30 days after the date of the enactment of the Legal Workforce Act, an employer may make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of any individual employed by the employer. If an employer chooses voluntarily to seek verification of any individual employed by the employer, the employer shall seek verification of all individuals so employed. An employer’s decision about whether or not voluntarily to seek verification of its current workforce under this subparagraph may not be considered by any government agency in any proceeding, investigation, or review provided for in this Act.

“(E) Verification.—Paragraph (1)(C)(ii) shall apply to verifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—
“(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

“(ii) 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 the period beginning on the date the verification commences and ending on the date that is the later of 3 years after the date of such verification or 1 year after the date the individual’s employment is terminated.

“(4) Early Compliance.—

“(A) Former E-Verify Required Users, Including Federal Contractors.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of the Legal Workforce Act, the Secretary is authorized to commence requiring employers required to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility
Act of 1996 (8 U.S.C. 1324a note), including employers required to participate in such program by reason of Federal acquisition laws (and regulations promulgated under those laws, including the Federal Acquisition Regulation), to commence compliance with the requirements of this subsection (and any additional requirements of such Federal acquisition laws and regulation) in lieu of any requirement to participate in the E-Verify Program.

“(B) Former e-verify voluntary users and others desiring early compliance.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of the Legal Workforce Act, the Secretary shall provide for the voluntary compliance with the requirements of this subsection by employers voluntarily electing to participate in the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) before such date, as well as by other employers seeking voluntary early compliance.
“(5) Copying of documentation permitted.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

“(6) Limitation on use of forms.—A form designated or established by the Secretary of Homeland Security under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and any other provision of Federal criminal law.

“(7) Good faith compliance.—

“(A) In general.—Except as otherwise provided in this subsection, a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

“(B) Exception if failure to correct after notice.—Subparagraph (A) shall not apply if—
“(i) the failure is not de minimus;

“(ii) the Secretary of Homeland Security has explained to the person or entity the basis for the failure and why it is not de minimus;

“(iii) the person or entity has been provided a period of not less than 30 calendar days (beginning after the date of the explanation) within which to correct the failure; and

“(iv) the person or entity has not corrected the failure voluntarily within such period.

“(C) Exception for Pattern or Practice Violators.—Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

“(8) Single Extension of Deadlines Upon Certification.—In a case in which the Secretary of Homeland Security has certified to the Congress that the employment eligibility verification system required under subsection (d) will not be fully operational by the date that is 6 months after the date of the enactment of the Legal Workforce Act, each
deadline established under this section for an em-
ployer to make an inquiry using such system shall
be extended by 6 months. No other extension of such
a deadline shall be made.”.

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

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

SEC. 3. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

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

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

“(1) IN GENERAL.—Patterned on the employ-
ment eligibility conﬁrmation system established
under section 404 of the Illegal Immigration Reform
1324a note), the Secretary of Homeland Security
shall establish and administer a veriﬁcation system
through which the Secretary (or a designee of the
Secretary, which may be a nongovernmental entity)—

“(A) 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

“(B) 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.

“(2) Initial response.—The verification system shall provide confirmation or a tentative nonconfirmation of an individual’s identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the verification system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

“(3) Secondary confirmation process in case of tentative nonconfirmation.—In cases of tentative noneconfirmation, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification
process to confirm the validity of information pro-
vided and to provide a final confirmation or noncon-
firmation not later than 10 working days after the
date on which the notice of the tentative noncon-
firmation is received by the employee. The Secretary,
in consultation with the Commissioner, may extend
this deadline on a case-by-case basis, and if the time
is extended, shall document such extension within
the verification system. When final confirmation or
nonconfirmation is provided, the verification system
shall provide an appropriate code indicating such
confirmation or nonconfirmation.

“(4) Design and Operation of System.—
The verification system shall be designed and oper-
ated—

“(A) 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;

“(B) to respond to all inquiries made by
such persons and entities on whether individ-
uals are authorized to be employed and to reg-
ister all times when such inquiries are not re-
ceived;
“(C) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

“(D) 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; or

“(ii) 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; and

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

“(i) Individuals hired, referred, or recruited, in accordance with paragraph (1) or (4) of subsection (b).

“(ii) Employees and prospective employees, in accordance with paragraph (1), (2), (3), or (4) of subsection (b).
“(iii) Individuals seeking to confirm their own employment eligibility on a voluntary basis.

“(5) Responsibilities of 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 paragraphs (2) and (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 confirmation or nonconfirmation) under the verification system except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.
“(6) Responsibilities of Secretary of Homeland Security.—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 paragraphs (2) and (3), compares the name and alien identification or authorization number (or any other information as determined relevant by the Secretary) which are provided in an inquiry against such information maintained or accessed by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, whether the alien is authorized to be employed in the United States, or to the extent that the Secretary determines to be feasible and appropriate, whether the records available to the Secretary verify the identity or status of a national of the United States.

“(7) Offenses.—

“(A) In general.—Any person or entity that, in making an inquiry under subsection (b)(1)(C)(i)(II), provides to the verification system a social security account number or an identification or authorization number estab-
lished by the Secretary of Homeland Security that belongs to a person other than the individual whose identity and employment authorization are being verified, knowing that the number does not belong to the individual whose identity and employment authorization are being verified, shall be fined under title 18, United States Code, imprisoned not less than 1 year and not more than 15 years, or both. If the person or entity, in making an inquiry under subsection (b)(1)(C)(i)(II), during and in relation to any felony violation enumerated in section 1028A(c) of title 18, United States Code, provides to the verification system a social security account number or an identification or authorization number established by the Secretary of Homeland Security that belongs to a person other than the individual whose identity and employment authorization are being verified, knowing that the number does not belong to the individual whose identity and work authorization are being verified, in addition to the punishment provided for such felony, shall be fined under title 18, United States Code, imprisoned for a term of 2 years, or both.
“(B) Consecutive sentence.—Notwithstanding any other provision of law—

“(i) a court shall not place on probation any person or entity convicted of a violation of this paragraph;

“(ii) except as provided in clause (iv), no term of imprisonment imposed on a person or entity under this section shall run concurrently with any other term of imprisonment imposed on the person or entity under any other provision of law, including any term of imprisonment imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this paragraph occurred;

“(iii) in determining any term of imprisonment to be imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this section occurred, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment im-
posed or to be imposed for a violation of this paragraph; and

“(iv) a term of imprisonment imposed on a person or entity for a violation of this paragraph may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person or entity for an additional violation of this paragraph, except that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the United States Sentencing Commission pursuant to section 994 of title 28, United States Code.

“(8) 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).
“(9) Limitation on use of the verification system and any related systems.—

“(A) No national identification card.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

“(B) Critical infrastructure.—The Secretary may authorize or direct any person or entity responsible for granting access to, protecting, securing, operating, administering, or regulating part of the critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))) to use the verification system to the extent the Secretary determines that such use will assist in the protection of the critical infrastructure.

“(10) Remedies.—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 ac-
tion may be brought under this paragraph.”.

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

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

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

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

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

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

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

(b) DEFINITION.—Section 274A(h) of the Immigra-
tion and Nationality Act (8 U.S.C. 1324a(h)), as amended
by section 2(b) of this Act, is further amended by adding
at the end the following:
“(5) Definition of recruit or refer.—As used in this section, the term ‘refer’ means the act of sending or directing a person who is in the United States or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or non-union individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section, the term ‘recruit’ means the act of soliciting a person who is in the United States, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who
pay union membership dues are included in this defi-
nition whether or not they receive remuneration, as
are labor service entities or labor service agencies,
whether public, private, for-profit, or nonprofit that
recruit, dispatch, or otherwise facilitate the hiring of
laborers for any period of time by a third party.”

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

SEC. 5. GOOD FAITH DEFENSE.

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

“(3) GOOD FAITH DEFENSE.—

“(A) DEFENSE.—An employer (or person
or entity that hires, employs, recruits, or refers
(as defined in subsection (h)(5)), or is otherwise
obligated to comply with this section) who es-
tablishes that it has complied in good faith with
the requirements of subsection (b)—
“(i) shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law for any employment-related action taken with respect to a job applicant or employee in good-faith reliance on information provided through the system established under subsection (d); and

“(ii) has established compliance with its obligations under subparagraphs (A) and (B) of paragraph (1) and subsection (b) absent a showing by the Secretary of Homeland Security, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien.

“(B) Failure to seek and obtain verification.—Subject to the effective dates and other deadlines applicable under subsection (b), 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 (d) and in accordance with the timeframes established under subsection (b), seeking verification of the identity and work eligibility of the individual, 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 eligi-
bility under such mechanism within the
time period specified under subsection
(d)(2) after the time the verification in-
quiry was received, the defense under sub-
paragraph (A) shall not be considered to
apply with respect to any employment after
the end of such time period.”.

SEC. 6. PREEMPTION.

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

“(2) Preemption.—The provisions of this sec-
tion preempt any State or local law, ordinance, pol-
icy, or rule, including any criminal or civil fine or
penalty structure, insofar as they may now or here-
after relate to the hiring, continued employment, or
status verification for employment eligibility pur-
poses, of unauthorized aliens. A State, locality, munici-

pality, or political subdivision may exercise its au-

thority over business licensing and similar laws as a penalty for failure to use the verification system described in subsection (d) to verify employment elig-

ibility when and as required under subsection (b).”.

SEC. 7. REPEAL.

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

(b) REFERENCES.—Any reference in any Federal law, Executive order, rule, regulation, or delegation of au-

thority, or any document of, or pertaining to, the Depart-

ment of Homeland Security, Department of Justice, or the Social Security Administration, to the employment elig-

bility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Respon-

sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to refer to the employment eligibility confirmation system est-

lished under section 274A(d) of the Immigration and Nationality Act, as amended by section 3 of this Act.

(c) EFFECTIVE DATE.—This section shall take effect on the date that is 36 months after the date of the enact-

ment of this Act.
SEC. 8. PENALTIES.

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

(1) in subsection (e)(1)—

(A) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”; and

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

(2) in subsection (e)(4)—

(A) in subparagraph (A), in the matter before clause (i), by inserting “, subject to paragraph (10),” 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 $2,500 and not more than $5,000”;

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

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

(3) in subsection (c)(5)—

(A) in the paragraph heading, strike “PAPERWORK”;

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

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

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

(E) by adding at the end the following:

“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).”; 

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

“(10) EXEMPTION FROM PENALTY FOR 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 hir-
ing or continuation of employment or recruitment or
referral by person or entity and in the case of impos-
sition of a civil penalty under paragraph (5) for a
violation of subsection (a)(1)(B) for hiring or re-
cruitment or referral by a person or entity, the pen-
alty otherwise imposed may be waived or reduced if
the violator establishes that the violator acted in
good faith.

“(11) Authority to debar employers for
certain violations.—

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

“(B) Does not have contract, grant,
agreement.—If the Secretary of Homeland
Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such an person or entity does not hold a Federal contract, grant or cooperative agreement, the Secretary or Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

“(C) HAS CONTRACT, GRANT, AGREEMENT.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government’s interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney
General may refer the matter to any appropriate lead agency to determine whether to list
the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for
what duration and under what scope.

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

“(12) OFFICE FOR STATE AND LOCAL GOVERNMENT COMPLAINTS.—The Secretary of Homeland Security shall establish an office—

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

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

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

“(D) that is required to notify the complaining State or local agency of the results of any such investigation conducted; and

“(E) that is required to report to the Congress annually the number of complaints received under this paragraph, the States and localities that filed such complaints, and the resolution of the complaints investigated by the Secretary.”; and

(5) 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 $15,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year and not more than 10 years, or both, notwithstanding the provisions of any other Federal law relating to fine levels.”.

SEC. 9. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

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

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

(A) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the Commissioner under such section 274A(d), but only that portion of such costs that are attributable exclusively to such responsibilities; and

(B) responding to individuals who contest a tentative nonconfirmation provided by the employment eligibility verification system established under such section;

(2) provide such funds annually in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and
(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Inspectors General of the Social Security Administration and the Department of Homeland Security.

(b) Continuation of Employment Verification in Absence of Timely Agreement.—In any case in which the agreement required under subsection (a) for any fiscal year beginning on or after October 1, 2012, has not been reached as of October 1 of such fiscal year, the latest agreement between the Commissioner and the Secretary of Homeland Security providing for funding to cover the costs of the responsibilities of the Commissioner under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)) shall be deemed in effect on an interim basis for such fiscal year until such time as an agreement required under subsection (a) is subsequently reached, except that the terms of such interim agreement shall be modified by the Director of the Office of Management and Budget to adjust for inflation and any increase or decrease in the volume of requests under the employment eligibility verification system. In any case in which an interim agreement applies for any fiscal year under this subsection, the Commissioner and the Secretary shall, not
later than October 1 of such fiscal year, notify the Committee on Ways and Means, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Finance, the Committee on the Judiciary, and the Committee on Appropriations of the Senate of the failure to reach the agreement required under subsection (a) for such fiscal year. Until such time as the agreement required under subsection (a) has been reached for such fiscal year, the Commissioner and the Secretary shall, not later than the end of each 90-day period after October 1 of such fiscal year, notify such Committees of the status of negotiations between the Commissioner and the Secretary in order to reach such an agreement.

SEC. 10. FRAUD PREVENTION.

(a) Blocking Misused Social Security Account Numbers.—The Secretary of Homeland Security, in consultation with the Commissioner of Social Security, shall establish a program in which social security account numbers that have been identified to be subject to unusual multiple use in the employment eligibility verification system established under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 3 of this Act, or that are otherwise suspected or determined to have been compromised by identity fraud
or other misuse, shall be blocked from use for such system
purposes unless the individual using such number is able
to establish, through secure and fair additional security
procedures, that the individual is the legitimate holder of
the number.

(b) Allowing Suspension of Use of Certain Social Security Account Numbers.—The Secretary of
Homeland Security, in consultation with the Commiss-
ioner of Social Security, shall establish a program which
shall provide a reliable, secure method by which victims
of identity fraud and other individuals may suspend or
limit the use of their social security account number or
other identifying information for purposes of the employ-
ment eligibility verification system established under sec-
tion 274A(d) of the Immigration and Nationality Act (8
U.S.C. 1324a(d)), as amended by section 3 of this Act.
The Secretary may implement the program on a limited
pilot program basis before making it fully available to all
individuals.

SEC. 11. BIOMETRIC EMPLOYMENT ELIGIBILITY
VERIFICATION PILOT PROGRAM.

Not later than 48 months after the date of the enact-
ment of the Legal Workforce Act, the Secretary of Home-
land Security, after consultation with the Commissioner
of Social Security and the Director of the National Insti-
tute of Standards and Technology, shall establish by regu-
lation a Biometric Employment Eligibility Verification
pilot program (the “Biometric Pilot”). The purpose of the
Biometric Pilot shall be to provide for identity authentica-
tion and employment eligibility verification with respect to
enrolled new employees which shall be available to subject
employers who elect to participate in the Biometric Pilot.
Any subject employer may cancel the employer’s participa-
tion in the Biometric Pilot after one year after electing
to participate without prejudice to future participation.