

LEGAL WORKFORCE ACT

DECEMBER 16, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1772]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1772) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

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.—During the verification period (as defined in subparagraph (E)), 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 nonimmigrant 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 nonimmigrant 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 recognized by the Bureau of Indian Affairs; 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 authorization or identity does not reliably establish 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-written or electronic signature.

“(B) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—During the verification period (as defined in subparagraph (E)), 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.

“(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 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 (E)), 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 nonconfirmation 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 rescission 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 NONCONFIRMATION.—

“(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) EFFECTIVE DATES OF NEW PROCEDURES.—

“(i) HIRING.—Except as provided in clause (iii), the provisions of this paragraph 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 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, this paragraph shall not apply with respect to the verification of the employee until the date that is 24 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term ‘agricultural labor or services’ has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish in aquaculture facilities. An employee described 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 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.

“(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).

“(E) 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 condi-

tioned 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 after 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, 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 24 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term ‘agricultural labor or services’ has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing, or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish in aquaculture facilities. 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 Security shall notify annually employees (at the employee address listed on the Wage and Tax Statement) who submit a social security 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 information notifying the employee of the process to contact the Social Security Administration Fraud Hotline if the employee believes the employee’s identity may have been stolen. The notice shall not share information 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 Commissioner, 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 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 employed at the same geographic location or, at the option of the employer, all individuals employed within the same job category, as the employee with respect to whom the employer seeks voluntarily to use the verification system. 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.

“(D) 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 employer 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 Immigration 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 specified.”.

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 SYSTEM.—

“(1) IN GENERAL.—Patterned on the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 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 nonconfirmation, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation not later than 10 working days after the date on which the notice of the tentative nonconfirmation is received by the employee. The Secretary, in consultation with the Commissioner, may extend this deadline once on a case-by-case basis for a period of 10 working days, and if the time is extended, shall document such extension within the verification system. The Secretary, in consultation with the Commissioner, shall notify the employee and employer of such extension. The Secretary, in consultation with the Commissioner, shall create a standard process of such extension and notification and shall make a description of such process available to the public. 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 operated—

“(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 individuals are authorized to be employed and to register all times when such inquiries are not received;

“(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;

“(E) to maximize the prevention of identity theft use in the system; and

“(F) 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) 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).

“(8) 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.

“(9) 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 action may be brought under this paragraph.”

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

(a) ADDITIONAL CHANGES TO RULES FOR RECRUITMENT, REFERRAL, AND CONTINUATION OF EMPLOYMENT.—Section 274A(a) of the Immigration and Nationality 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 subparagraph (B) to read as follows:

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

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

(b) DEFINITION.—Section 274A(h) of the Immigration 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 nonunion 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 definition 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 insofar as such amendments relate to continuation of employment.

SEC. 5. GOOD FAITH DEFENSE.

Section 274A(a)(3) of the Immigration and Nationality 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 establishes 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) MITIGATION ELEMENT.—For purposes of subparagraph (A)(i), if an employer proves by a preponderance of the evidence that the employer uses a reasonable, secure, and established technology to authenticate the identity of the new employee, that fact shall be taken into account for purposes of determining good faith use of the system established under subsection (d).

“(C) 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 enti-

ty can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no non-responses and qualify for such defense.

“(ii) FAILURE TO OBTAIN VERIFICATION.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (d)(2) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.”.

SEC. 6. PREEMPTION AND STATES' RIGHTS.

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

“(2) PREEMPTION.—

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

“(B) STATE ENFORCEMENT OF FEDERAL LAW.—

“(i) BUSINESS LICENSING.—A State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the verification system described in subsection (d) to verify employment eligibility when and as required under subsection (b).

“(ii) GENERAL RULES.—A State, at its own cost, may enforce the provisions of this section, but only insofar as such State follows the Federal regulations implementing this section, applies the Federal penalty structure set out in this section, and complies with all Federal rules and guidance concerning implementation of this section. Such State may collect any fines assessed under this section. An employer may not be subject to enforcement, including audit and investigation, by both a Federal agency and a State for the same violation under this section. Whichever entity, the Federal agency or the State, is first to initiate the enforcement action, has the right of first refusal to proceed with the enforcement action. The Secretary must provide copies of all guidance, training, and field instructions provided to Federal officials implementing the provisions of this section to each State.”.

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. 1324a note) is repealed.

(b) REFERENCES.—Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of, or pertaining to, the Department of Homeland Security, Department of Justice, or the Social Security Administration, to the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is deemed to refer to the employment eligibility confirmation system established 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 enactment of this Act.

(d) CLERICAL AMENDMENT.—The table of sections, in section 1(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, is amended by striking the items relating to subtitle A of title IV.

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) in subparagraph (D), 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”;

(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 moving the margin of the continuation text following subparagraph (B) two ems to the left and 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 (e)(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”; and

(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 hiring or continuation of employment or recruitment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed 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 Security 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 cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition 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 a 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 paragraph 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 potential 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 business 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 \$5,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not more than 18 months, or both, notwithstanding the provisions of any other Federal law relating to fine levels.”.

SEC. 9. FRAUD AND MISUSE OF DOCUMENTS.

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

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

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

SEC. 10. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

(a) FUNDING UNDER AGREEMENT.—Effective for fiscal years beginning on or after October 1, 2013, 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, 2013, 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. 11. 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 Commissioner 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 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. The Secretary may implement the program on a limited pilot program basis before making it fully available to all individuals.

(c) **ALLOWING PARENTS TO PREVENT THEFT OF THEIR CHILD'S IDENTITY.**—The Secretary of Homeland Security, in consultation with the Commissioner of Social Security, shall establish a program which shall provide a reliable, secure method by which parents or legal guardians may suspend or limit the use of the social security account number or other identifying information of a minor under their care for the purposes of the employment eligibility verification system established under 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. 12. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION PHOTO TOOL.

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

SEC. 13. IDENTITY AUTHENTICATION EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROGRAMS.

Not later than 48 months after the date of the enactment of this Act, the Secretary of Homeland Security, after consultation with the Commissioner of Social Security and the Director of the National Institute of Standards and Technology, shall establish by regulation not less than 2 Identity Authentication Employment Eligibility Verification pilot programs, each using a separate and distinct technology (the "Authentication Pilots"). The purpose of the Authentication Pilots shall be to provide for identity authentication and employment eligibility verification with respect to enrolled new employees which shall be available to subject employers who elect to participate in either of the Authentication Pilots. Any subject employer may cancel the employer's participation in the Authentication Pilot after one year after electing to participate without prejudice to future participation. The Secretary shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Secretary's findings on the Authentication Pilots, including the authentication technologies chosen, not later than 12 months after commencement of the Authentication Pilots.

SEC. 14. INSPECTOR GENERAL AUDITS.

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

- (1) Workers who dispute wages reported on their social security account number when they believe someone else has used such number and name to report wages.

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

(3) Employers whose workers present significant numbers of mismatched social security account numbers or names for wage reporting.

(b) SUBMISSION.—The Inspector General of the Social Security Administration shall submit the audits completed under subsection (a) to the Committee on Ways and Means of the House of Representative and the Committee on Finance of the Senate for review of the evidence of individuals who are not authorized to work in the United States. The Chairmen of those Committees shall then determine information to be shared with the Secretary of Homeland Security so that such Secretary can investigate the unauthorized employment demonstrated by such evidence.

Purpose and Summary

H.R. 1772 reforms the employment eligibility verification process and requires all employers hiring or employing individuals in the United States to use the E-Verify system to check the employment eligibility of their new hires.

Background and Need for the Legislation

The Immigration Reform and Control Act of 1986 ("IRCA") made it unlawful for employers to knowingly hire or employ aliens not eligible to work and required employers to check the identity and work eligibility documents of all new employees.¹ This was designed to end the "job magnet" for illegal immigrants and thus finally control illegal immigration into the U.S.

If the documents provided by an employee reasonably appear on their face to be genuine, the employer has met their document review obligation. The employer and employee must then fill out the Form I-9 with the employee's identifying information and the employer must attest under penalty of perjury that 1) the employer has examined the document(s) presented by the employee, 2) the document(s) appear to be genuine and to relate to the employee named, and 3) to the best of the employer's knowledge the employee is authorized to work in the United States.² Certain documents, such as passports and resident alien cards, establish both identity and work eligibility. Others, such as most Social Security cards, establish work eligibility. And still others, such as drivers' licenses, establish identity.

If a new hire produces the required documents, the employer is not required to solicit the production of additional documents and the employee is not required to produce additional documents. In fact, an employer's request for more or different documents than are required, or refusal to honor documents that reasonably appear to be genuine, shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual because of such individual's national origin or citizenship status.³

The easy availability of counterfeit documents has made a mockery of IRCA. Fake documents are produced by the millions and can be obtained cheaply.⁴ Thus, the IRCA system both benefits unscrupulous employers who do not mind hiring illegal immigrants but want to allege that they have met legal requirements, and harms

¹ See, generally, section 274A of the Immigration and Nationality Act.

² U.S. Citizenship and Immigration Services Form I-9 at 8.

³ See, generally, section 274B of the INA.

⁴ See, i.e., *Verification of Eligibility for Employment and Benefits: Hearing Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 104th Cong., 1st Sess. (March 30, 1995).

employers who don't want to hire illegal immigrants but have no choice but to accept documents they know have a good likelihood of being counterfeit.

In response to the deficiencies of IRCA, title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") instituted three employment eligibility confirmation pilot programs for volunteer employers that were to last for 4 years. Under the "basic pilot program," the proffered Social Security numbers and alien identification numbers of new hires would be checked against Social Security Administration (SSA) and Immigration and Naturalization Service records in order to help ensure that new hires are genuinely eligible to work.⁵ The pilot was available to employers having locations in California, Florida, Illinois, Nebraska, New York and Texas.

Congress extended the operation of the program in 2002. In 2003, Congress extended its operation through November 2008 and required that it be made available to employers nationwide no later than December 1, 2004.⁶ It was subsequently renewed several times, most recently in the September 2012—passed S. 3245, which extended the program until September 30, 2015.⁷ In 2007 the basic pilot program became known as the E-Verify Program.

Over 470,000 employers representing over 1.4 million worksites are currently participating in E-Verify.⁸ So far in FY 2013, there have been more than 20 million queries run through the system.⁹ Employers required to use E-Verify include the Federal Government and Legislative Branch,¹⁰ certain Federal contractors,¹¹ and employers of certain immigrant students who study science, technology, engineering, or mathematics engaged in Optional Practical Training.¹² In addition, some state governments, such as those in Arizona, Idaho, Minnesota and Georgia, have required certain employers to use E-Verify.¹³

A May 2011, Rasmussen poll found that 82% of likely voters "think businesses should be required to use the Federal Government's E-Verify system to determine if a potential employee is in the country legally."¹⁴

E-Verify works as follows for the vast majority of users:¹⁵

- Before beginning to use E-Verify, an employer must enter into a Memorandum of Understanding with DHS and SSA. As under current law, once an applicant has accepted a job offer, they present certain identification and work authorization documents to the employer. The employer, within three business days after the hire, must examine the documents to determine whether they reasonably appear on their face to

⁵ P.L. 104–208, Division C, § 403.

⁶ Pub. L. Nos. 107–128 and 108–156.

⁷ Pub. L. No. 112–176.

⁸ U.S. Citizenship and Immigration Services data (as of Aug. 3, 2013).

⁹ *Id.*

¹⁰ Illegal Immigration Reform and Immigrant Responsibility Act of 1996 § 402(e).

¹¹ Executive Order 12989, as amended on June 6, 2008.

¹² 8 C.F.R. § 214.2 (f)(10)(ii)(C)(3).

¹³ *See, e.g.*, H.B. 2779, "The Legal Arizona Workers Act," enacted July 2, 2007 (Arizona).

¹⁴ Rasmussen Reports, *61% Favor A State Law That Would Shut Down Repeat Offenders Who Hire Illegal Immigrants*, http://www.rasmussenreports.com/public_content/politics/current_events/immigration/61_favor_a_state_law_that_would_shut_down_repeat_offenders_who_hire_illegal_immigrants.

¹⁵ *See, generally*, sections 403(a) and 404 of IIRIRA and information provided by USCIS. Note that certain Federal contractors are subject to some different processes such as verifying existing employees.

be genuine and must complete an I-9 form attesting to this examination.

- Within the same 3 days, but after the I-9 is completed, the employer must make an E-Verify query. If the new hire claims to be a citizen, the employer will transmit his or her name and Social Security number. If the new hire claims to be a non-citizen, the employer will transmit his or her name, DHS-issued number, and Social Security number.
- The E-Verify confirmation office will compare the name and Social Security number provided against information contained in SSA records and, if necessary, will compare the name and DHS-issued number provided against information contained in DHS records.
- If, in checking the records, the confirmation office ascertains that the new hire is eligible to work, the operator will within 3 days so inform the employer and provide a confirmation number.
- If the confirmation office cannot confirm the work eligibility of the new hire, it will within 3 days so inform the employer of a tentative nonconfirmation (TNC) and provide a SSA Referral Letter which includes a TNC number.
- If the new hire wishes to contest a TNC, they must do so within eight Federal Government workdays of the date on the Referral Letter. This process, called secondary verification, is an expedited procedure set up to confirm the validity of information contained in the government records and provided by the new hire. Under this process, the new hire contacts or visits SSA and/or DHS to see why the government records disagree with the information they have provided. If the new hire requests secondary verification, they cannot be fired on the basis of the TNC.
- If the discrepancy can be reconciled within 10 days, then confirmation of work eligibility and a confirmation number will be given to the employer by the end of this period.
- If the discrepancy cannot be reconciled within 10 days, final denial of confirmation and a final nonconfirmation (FNC) number will be given by the end of this period. The employer then has two options:
 - 1) The employer can dismiss the new hire as being ineligible to work in the United States.
 - 2) The employer can continue to employ the new hire. The employer must notify DHS of this decision. If action is brought by the government, the employer has the burden of proof in showing the new hire is eligible to work. If the employer fails to so prove, the employer will be deemed to have knowingly hired an illegal immigrant.
- If the employee believes that the FNC has been issued in error, DHS and SSA will continue working with the employee to help resolve the situation. In these cases, DHS or SSA will notify the employer asking that they not terminate

the employee until the review is complete. The average time it takes to resolve one of these situations is 2.7 days.¹⁶

SSA and DHS agree, as part of the E-Verify system, to safeguard the information provided to them by employers and to limit access to the information as appropriate by law. An employer must agree not to use the pilot for pre-employment screening of job applicants or for support of any unlawful employment practice, not to verify selectively, and to ensure that the information it receives from the government is used only to confirm employment eligibility and is not otherwise disseminated.

Over the years, DHS, through U.S. Citizenship and Immigration Services (USCIS) (which runs E-Verify) has made continual improvements to the program.

In 2010, USCIS incorporated State Department passport data into E-Verify in order to help reduce the number of mismatches among foreign-born citizens.¹⁷ E-Verify had been criticized because naturalized U.S. citizens had a higher rate of TNC than did native-born U.S. citizens. This occurred many times because the naturalized citizen did not update their record with SSA once they became a citizen. In May 2008, USCIS addressed this problem by updating the E-Verify system to “automatically check U.S. Citizenship and Immigration Services (USCIS) naturalization data” and passport photos.¹⁸ According to USCIS, this step “reduced citizenship status mismatches by approximately 39 percent.”¹⁹

USCIS continues to add new features to E-Verify in an attempt to improve the program’s accuracy, effectiveness and to make it more user friendly. For instance,²⁰

- In September 2007, USCIS introduced the photo-matching tool in which USCIS included the photos from immigrant visas and employment authorization documents in the E-Verify database. Employers can now match the photo in E-Verify to the photo on the identity document presented by the employee.
- USCIS instituted a system that automatically prompts an employer to double-check the information entered into E-Verify when a query is about to result in a mismatch.²¹
- In March 2011, USCIS began the Self-Check program which allows an individual to run an E-Verify query on themselves so that they can ensure that if they are run through the system, they are correctly confirmed as work authorized. To date there have been over 143,000 Self-Check queries completed.
- In order to ensure the authenticity of a state-issued driver’s license or identification card, USCIS has begun pilot pro-

¹⁶ Information provided by U.S. Citizenship and Immigration Services.

¹⁷ USCIS Press Release, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b33c436d5f2df110VgnVCM1000004718190aRCRD&vgnnextchannel=c94e6d26d17df110VgnVCM1000004718190aRCRD>.

¹⁸ USCIS, DHS, *USCIS Announces Enhancements to E-Verify Program* (2008).

¹⁹ *Id.*

²⁰ Information provided to Committee staff by USCIS, Feb. 22, 2013.

²¹ Information provided by U.S. Citizenship and Immigration Services. <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD>, visited Feb. 1, 2011.

grams with Mississippi, Florida and Idaho in which the driver's license or identification card number is sent to the state's licensing agency and the state confirms whether or not such a license has been issued.

- USCIS is working with SSA to create a SSN “self-lock” program in which individuals can “lock” their SSN so that if it is submitted for work authorization purposes the employer who submitted it receives a TNC. This mechanism is aimed at preventing the unauthorized use of another individual's SSN.
- USCIS, through its website, launched a searchable database of employers who use E-Verify.
- In June 2013, USCIS announced the addition of the ability for an employer to enter an employee's email address into the system when making a query so that both the employer and the employee can be notified of a TNC concurrently. This is a voluntary entry and does not relieve the employer of his or her obligation to notify the employee of a TNC.
- USCIS has worked with the Office of Civil Rights and Civil Liberties at the Department of Homeland Security to update existing, and create new, employee rights materials.
- In September 2012, USCIS made E-Verify available through all web browsers to ensure that the system can be accessed by any smartphone user. This is one way to make the system more user friendly for employers who may not have regular access to a personal computer (such as agricultural employers). USCIS is also working on an E-Verify application for smartphones.
- During FY 2012, the USCIS Monitoring and Compliance Office referred three cases regarding misuse of E-Verify to Immigration and Customs Enforcement and 51 cases to the Office of Special Counsel for Immigration-Related Unfair Employment Practices at the Department of Justice for investigation. USCIS also conducted 35 employer compliance site visits. For FY 2013, as of August 5, 2013, the Monitoring and Compliance Office had referred eleven E-Verify misuse cases to Immigration and Customs Enforcement, referred 185 cases to the Office of Special Counsel for Immigration-Related Unfair Employment Practices and conducted 53 employer compliance site visits.²²

ACCURACY, EFFICIENCY AND CUSTOMER SATISFACTION

The accuracy rate has improved dramatically over the years. As USCIS testified at a February 2013 hearing of the Immigration and Border Security Subcommittee, “the rate of (work) authorized employees who need to follow up (undergo secondary verification) with SSA or DHS has declined from 0.7 percent to 0.3 percent when comparing data from similar time periods in 2005 and

²²Information provided by U.S. Citizenship and Immigration Services.

2010.”²³ This means that 99.7 percent of work eligible individuals receive immediate confirmation. This accuracy rate was determined by a study released in July 2012 that was conducted by an independent consulting company. The report looked at data for the 8.2 million E-Verify queries in FY 2009 as well as other information such as interviews with Federal staff and contractors, information from the Department of Justice’s Office of Special Counsel for Immigration-Related Unfair Employment Practices, E-Verify manuals, and information from USCIS, and the SSA.²⁴

Westat found that “approximately 94 percent of FNCs were accurately issued to unauthorized workers.”²⁵ And Westat went on to estimate that “if employers informed all workers of their TNCs and how to contest them in ways the worker understood . . . the FNC accuracy rate would have been almost 99 percent instead of 94 percent.”²⁶

Recent internal USCIS accuracy and efficiency data shows that in FY 2012, 98.65 percent of queries resulted in a confirmation of work eligibility immediately or within 24 hours.²⁷ The other 1.35 percent of queries includes those that resulted in a TNC or FNC for one of several different reasons including that the individual was not eligible to work, the employee made a mistake in filling out the I-9 form, the employer entered incorrect information into the E-Verify system, or the employee has not updated information (such as a name change after marriage) with the Social Security Administration. Thus, it is important to understand that a TNC issued to an individual who is work eligible is not necessarily or even likely an “error” committed by the government.

According to USCIS:²⁸

Of the 1.35% of employees who receive initial system mismatches:

1. 0.26 percent of employees are confirmed as work authorized after contesting and resolving an initial mismatch.
2. 1.09 percent of employees are not found work authorized.

Of the 1.09% of employees not found to be work authorized:

- 0.90 percent of employees receive initial mismatches and do not contest the mismatch either because they do not choose to or are unaware of the opportunity to contest and as a result are not found work authorized. The E-Verify program closely monitors uncontested mismatches and actively reaches out to employers to ensure that they are aware of their re-

²³ Testimony of Soraya Correa, Associate Director of the Enterprise Services Directorate, U.S. Citizenship and Immigration Services, *Subcomm. on Immigration and Border Security, House Comm. on the Judiciary*, 113th Cong. (2013).

²⁴ Westat, *Evaluation of the Accuracy of E-Verify Findings*, July 2012 at 1.

²⁵ *Id.* at 2

²⁶ *Id.*

²⁷ Testimony of Soraya Correa, Associate Director of the Enterprise Services Directorate, U.S. Citizenship and Immigration Services, *Subcomm. on Immigration and Border Security, House Comm. on the Judiciary*, 113th Cong. (2013).

²⁸ U.S. Citizenship and Immigration Services website, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=7c579589cdb76210VgnVCM100000b92ca60aRCRD&vgnnextchannel=7c579589cdb76210VgnVCM100000b92ca60aRCRD>.

sponsibility to inform employees of the right to contest.

- 0.01 percent of employees receive initial mismatches, contest the mismatch and are not found work authorized.
- 0.18 percent of employees receive initial mismatches which remain unresolved because the employer closed the cases as “self-terminated” or as requiring further action by either the employer or employee at the end of FY11.

In a January 2013 USCIS Customer Satisfaction Survey, E-Verify received an 86 out of 100 in the American Customer Satisfaction Index scale.²⁹ The 86 scored by E-Verify is 19 points higher than the Federal Government’s satisfaction index of 67.³⁰

A July 2011 Westat report found that “The large majority of employers continued to report that E-Verify is a highly accurate (94 percent) and effective (94 percent) tool for employment verification.”³¹ And an October 2012 National Restaurant Association and ImmigrationWorks USA survey found that eighty percent of restaurant operators who use E-Verify would recommend it to a colleague.³²

CRITICISMS OF THE CURRENT E-VERIFY PROGRAM

The E-Verify Program currently has an unreasonably high number of erroneous hits, which will negatively impact the ability of citizens and lawful residents to work.

Secondary verification is required whenever employee-provided information does not match that in the database. Secondary verification is not necessarily caused by database error. It most often means that a non work-authorized alien has been caught providing erroneous information or that an employee had mistakenly provided erroneous information to, or has failed to update information with, the SSA or with U.S. Citizenship and Immigration Services.

E-Verify leads to discrimination in hiring.

In the past, because the basic pilot program was used by a limited number of employers, a small number of employers did not follow the requirement that the program be used on every new employee, and instead used it selectively. U.S. Citizenship and Immigration Services recognized that problem and improved education and training for employers who use the program.

A previous study determined that expanding E-Verify would be far too costly.

A Temple University Institute for Survey Research and an early Westat study estimated the annual cost of operating the basic pilot program as mandatory for all employers at over \$11 billion. However, the U.S. Government Accountability Office found that the cost

²⁹ USCIS Customer Satisfaction Survey, Jan. 2012 at 5.

³⁰ *Id.*

³¹ Westat, *Findings of the E-Verify User Survey*, July 2011 at 29.

³² National Restaurant Association and ImmigrationWorksUSA, *2012 E-Verify Survey*, Apr. 2013 at 2.

would be less because the study had evaluated the costs of the system when it was telephone-based, rather than web-based (as it is now).³³

The system is prone to the use of identity theft to gain employment verification.

Critics cite a 2009 Westat evaluation regarding vulnerability of E-Verify to identify theft, as evidence that E-Verify will not work. However, while E-Verify is vulnerable to identity theft, the 2009 Westat report estimate that about half of the illegal immigrants processed through E-Verify were not detected as unauthorized to work, has been misrepresented. The evaluation did not identify one single instance in which an illegal immigrant was not detected by E-Verify. Its estimate was based entirely on the evaluation's speculation as to the number of illegal immigrants expected to be in the workforce. The evaluation even admits that "it is important to recognize that without direct evidence of the true employment-authorization status of the workers with cases submitted to E-Verify, any estimate [of the level of identity theft] will be very imprecise." H.R. 1772, the "Legal Workforce Act," contains provisions aimed at preventing the use of stolen identities to gain work authorization through E-Verify.

For instance, the bill requires DHS to "lock" for employment verification purposes a SSN that is subject to a pattern of unusual multiple use so that if the owner attempts to get a job, they are alerted that the SSN may have been compromised. And the bill requires DHS to allow individuals to "lock" their own SSN so that it cannot be used to verify work eligibility. H.R. 1772 also requires that if SSA determines a SSN shows a pattern of unusual multiple use, SSA must send those employees who have submitted that SSN a letter alerting them that their SSN may have been compromised. The Legal Workforce Act creates criminal penalties if an individual 1) knowingly provides to an employer for E-Verify use a SSN that belongs to another individual, or 2) knowingly provides to E-Verify a SSN that the individual knows does not belong to the person who provided them the number. Finally the bill requires DHS to conduct at least two pilot programs to provide for identity authentication within employment eligibility verification.

Hearings

The Committee's Subcommittee on Immigration and Border Security held 1 day of hearings on H.R. 1772 on May 16, 2013. Testimony was received from Angelo Amador, Vice-President for Labor and Workforce Policy, National Restaurant Association; Jill Blitstein, College and University Professional Association for Human Resources; Julie Myers Wood, President, Compliance, Federal Practice and Software Solution, Guidepost Solutions; and Dominick Mondri, Executive Director, New Jersey Nursery and Landscape Association. Additional material was submitted by the National Restaurant Association, the Associated Builders and Contractors, the Essential Worker Immigrant Coalition, the National

³³U.S. Government Accountability Office, *Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts* 24 (2005) (GAO-05-813).

Retail Federation, Darden Restaurants, ImmigrationWorks USA and NumbersUSA.

Committee Consideration

On June 26, 2013, the Committee met in open session and ordered the bill H.R. 1772 favorably reported, with an amendment, by a vote of 22 to 9, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 1772.

1. The amendment offered by Mr. Conyers makes various violations of employee protections in the bill violations of the Immigration and Nationality Act § 274A(a)(1)(A) and § 274B. The amendment was defeated by a rollcall vote of 13–18.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)			
Mr. Poe (TX)			
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)			
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	13	18	

2. The amendment offered by Ms. Lofgren requires that employers who use E-Verify prior to the first day of an employee's work must notify the DHS Secretary and do so for all new hires. The amendment was defeated by a rollcall of 8–20.

ROLLCALL NO. 2

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)			
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)			
Mr. Johnson (GA)			

ROLLCALL NO. 2—Continued

	Ayes	Nays	Present
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)			
Mr. Gutierrez (IL)			
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)			
Total	8	20	

3. An amendment offered by Ms. Lofgren eliminates verification requirements for labor unions, hiring halls and day labor centers. The amendment was defeated by a rollcall vote of 14–21.

ROLLCALL NO. 3

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)			
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)	X		
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)	X		
Mr. Johnson (GA)	X		

ROLLCALL NO. 3—Continued

	Ayes	Nays	Present
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	14	21	

4. An amendment offered by Ms. Jackson Lee requires DHS to hire and train 500 full-time information technology employees to the purposes of executing the employment eligibility verification requirements of the bill. The amendment was defeated by a rollcall vote of 12–20.

ROLLCALL NO. 4

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)			
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)	X		

ROLLCALL NO. 4—Continued

	Ayes	Nays	Present
Mr. Cohen (TN)			
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	12	20	

5. An amendment offered by Ms. Jackson Lee establishes an ombudsman to resolve questions by employers and employees regarding nonconfirmations of work eligibility. The amendment was defeated by a rollcall vote of 12–20.

ROLLCALL NO. 5

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)			
Mr. Forbes (VA)		X	
Mr. King (IA)			
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)	X		
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)			

ROLLCALL NO. 5—Continued

	Ayes	Nays	Present
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	12	20	

6. An amendment offered by Ms. Jackson Lee authorizes random employer audits, including the use of testers, by the DHS Office of Civil Rights and Civil Liberties (CRCL); to authorize periodic audits of employers for whom CRCL and the DOJ Office of Special Counsel for Immigration-Related Unfair Employment Practices receive information, complaints or charges of discrimination or document abuse. The amendment was defeated a rollcall vote of 12–21.

ROLLCALL NO. 6

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)			
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		

ROLLCALL NO. 6—Continued

	Ayes	Nays	Present
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	12	21	

7. An amendment offered by Ms. Chu increases penalties for unfair immigration-related employment practice violations. The amendment was defeated by a rollcall vote of 12–20.

ROLLCALL NO. 7

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)			
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		

ROLLCALL NO. 7—Continued

	Ayes	Nays	Present
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)	X		
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Pierluisi (PR)	X		
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)	X		
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	12	20	

8. Two amendments offered en bloc by Ms. Chu to require the DHS Secretary to submit an annual report to Congress regarding the financial burden of the bill's requirements on small businesses and to create a grant program for small businesses to comply with the bill's requirements. Defeated 9–21.

ROLLCALL NO. 8

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)		X	
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)			
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)		X	
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	

ROLLCALL NO. 8—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Pierluisi (PR)			
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)	X		
Ms. Bass (CA)			
Mr. Richmond (LA)	X		
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	9	21	

9. An amendment by Mr. Deutch strikes the Act's prohibition on class actions lawsuits regarding employment eligibility verification. The amendment was defeated by a rollcall vote of 7–20.

ROLLCALL NO. 9

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)			
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)			
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)		X	
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)		X	
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	

ROLLCALL NO. 9—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Pierluisi (PR)			
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	7	20	

10. An amendment by Ms. DelBene delays the use of the employment eligibility verification procedures by agricultural employers until such time as the DHS Secretary certifies that the requirements will not cause a significant shortage of workers to perform agricultural labor or services in the United States. The amendment was defeated by a rollcall vote of 8–19.

ROLLCALL NO. 10

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman		X	
Mr. Sensenbrenner, Jr. (WI)		X	
Mr. Coble (NC)			
Mr. Smith (TX)		X	
Mr. Chabot (OH)		X	
Mr. Bachus (AL)		X	
Mr. Issa (CA)		X	
Mr. Forbes (VA)		X	
Mr. King (IA)		X	
Mr. Franks (AZ)			
Mr. Gohmert (TX)			
Mr. Jordan (OH)		X	
Mr. Poe (TX)			
Mr. Chaffetz (UT)		X	
Mr. Marino (PA)		X	
Mr. Gowdy (SC)		X	
Mr. Amodei (NV)		X	
Mr. Labrador (ID)		X	
Ms. Farenthold (TX)		X	
Mr. Holding (NC)		X	
Mr. Collins (GA)		X	

ROLLCALL NO. 10—Continued

	Ayes	Nays	Present
Mr. DeSantis (FL)		X	
Mr. Smith (MO)		X	
Mr. Conyers, Jr. (MI), Ranking Member	X		
Mr. Nadler (NY)			
Mr. Scott (VA)	X		
Mr. Watt (NC)			
Ms. Lofgren (CA)			
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)			
Mr. Johnson (GA)	X		
Mr. Pierluisi (PR)			
Ms. Chu (CA)	X		
Mr. Deutch (FL)	X		
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)	X		
Mr. Garcia (FL)	X		
Mr. Jeffries (NY)	X		
Total	8	19	

11. The bill was reported favorably by a rollcall vote of 22–9.

ROLLCALL NO. 11

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X		
Mr. Sensenbrenner, Jr. (WI)	X		
Mr. Coble (NC)	X		
Mr. Smith (TX)	X		
Mr. Chabot (OH)	X		
Mr. Bachus (AL)	X		
Mr. Issa (CA)	X		
Mr. Forbes (VA)	X		
Mr. King (IA)	X		
Mr. Franks (AZ)	X		
Mr. Gohmert (TX)			
Mr. Jordan (OH)	X		
Mr. Poe (TX)	X		
Mr. Chaffetz (UT)	X		
Mr. Marino (PA)	X		
Mr. Gowdy (SC)	X		
Mr. Amodei (NV)	X		
Mr. Labrador (ID)	X		
Ms. Farenthold (TX)	X		
Mr. Holding (NC)	X		
Mr. Collins (GA)	X		
Mr. DeSantis (FL)	X		
Mr. Smith (MO)	X		

ROLLCALL NO. 11—Continued

	Ayes	Nays	Present
Mr. Conyers, Jr. (MI), Ranking Member		X	
Mr. Nadler (NY)			
Mr. Scott (VA)		X	
Mr. Watt (NC)			
Ms. Lofgren (CA)		X	
Ms. Jackson Lee (TX)			
Mr. Cohen (TN)			
Mr. Johnson (GA)			
Mr. Pierluisi (PR)		X	
Ms. Chu (CA)		X	
Mr. Deutch (FL)		X	
Mr. Gutierrez (IL)			
Ms. Bass (CA)			
Mr. Richmond (LA)			
Ms. DelBene (WA)		X	
Mr. Garcia (FL)		X	
Mr. Jeffries (NY)		X	
Total	22	9	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1772, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 17, 2013.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1772, the "Legal Workforce Act."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 1772—Legal Workforce Act.

As ordered reported by the House Committee on the Judiciary
on June 26, 2013.

SUMMARY

H.R. 1772 would replace the Federal Government’s existing voluntary system for verifying the employment eligibility of individuals in the United States with a mandatory system. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1772 would cost about \$635 million over the 2014–2018 period and a similar amount in the subsequent 5-year period.

In addition, CBO and staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would decrease direct spending and increase on-budget revenues but decrease off-budget revenues. (Payroll taxes for Social Security are classified as off-budget revenues.) Summing those budgetary impacts, CBO and JCT estimate that enacting H.R. 1772 would increase budget deficits as measured by the unified Federal budget by about \$30 billion over the 10-year period.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues. CBO and JCT estimate that enacting the bill would increase on-budget revenues by about \$49 billion over the 2014–2023 period and would decrease direct spending by \$9 billion over the same period. Thus, we estimate that enacting H.R. 1772 would decrease the on-budget deficit by about \$58 billion over the 10-year period. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

H.R. 1772 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on employers and other entities that hire, recruit, or refer individuals for employment. CBO estimates that the aggregate annual cost to comply with those mandates on public entities would exceed the intergovernmental threshold (\$75 million in 2013, adjusted annually for inflation) in fiscal year 2014. In addition, CBO estimates that the aggregate annual compliance costs for private entities would exceed the private-sector threshold (\$150 million in 2013, adjusted annually for inflation) beginning in 2016 once the mandates are fully in effect.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1772 is shown in the following table. The costs of this legislation fall within budget functions 750 (administration of justice) and 800 (general government).

	By Fiscal Year, in Millions of Dollars											2014-	2014-
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2018	2023	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION													
Costs to DHS													
Estimated Authorization Level	68	88	96	102	105	99	100	102	104	106	459	970	
Estimated Outlays	64	87	96	102	105	99	100	102	104	106	454	965	
Costs to SSA													
Estimated Authorization Level	43	47	27	23	22	22	21	22	22	23	162	272	
Estimated Outlays	39	47	29	24	22	22	21	22	22	23	161	271	
Costs to Other Federal Agencies													
Estimated Authorization Level	15	3	*	*	*	0	0	0	0	0	20	20	
Estimated Outlays	15	3	*	*	*	0	0	0	0	0	20	20	
Total Changes													
Estimated Authorization Level	126	138	124	126	127	121	121	124	126	129	641	1,262	
Estimated Outlays	118	137	125	126	127	121	121	124	126	129	634	1,255	
CHANGES IN DIRECT SPENDING													
Estimated Budget Authority	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854	
Estimated Outlays	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854	
CHANGES IN REVENUES													
On-Budget Revenues	1,396	3,392	4,499	4,765	5,042	5,326	5,619	5,920	6,227	6,546	19,094	48,732	
Off-Budget Revenues	-2,510	-8,097	-8,087	-8,566	-9,065	-9,578	-10,106	-10,648	-11,202	-11,777	-34,325	-87,637	
Total Changes	-1,115	-2,705	-3,588	-3,801	-4,023	-4,252	-4,487	-4,728	-4,975	-5,231	-15,232	-38,905	
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND RECEIPTS													
Impact on Deficit	1,125	1,928	2,576	2,750	2,933	3,322	3,527	3,740	3,959	4,190	11,311	30,050	

Notes: DHS = Department of Homeland Security; SSA = Social Security Administration; * = less than \$500,000.

Positive changes in spending or revenues indicate an increase, and negative changes in spending or revenues indicate a reduction. Components may not sum to totals because of rounding.

BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted late in 2013, the necessary amounts will be provided each year, and spending will follow historical patterns for operating the government's employment verification system.

Spending Subject to Appropriation

H.R. 1772 would replace the Federal Government's existing voluntary system for verifying the employment eligibility of individuals with a mandatory system. (The existing system is known as E-Verify and is administered by the Department of Homeland Security—DHS.) The requirement for employers to use the system would be phased in over several years, with different deadlines for employers of different sizes. Within 30 months of the bill's enact-

ment, all employers would be required to use the system for all employees newly hired in the United States.

Costs to DHS. Based on information from DHS about the costs to hire new employees and upgrade computer systems, CBO estimates that it would cost \$454 million over the 2014–2018 period to implement the new system. CBO expects that most of the additional funding would be used to pay for staff, technological components, and overhead to handle the increased workload. The E-Verify program has received funding of about \$100 million annually in recent years, and the current system handled roughly 20 million cases in 2012. DHS expects that the caseload under the bill would more than double. Because the current system has some excess capacity, initial costs to ramp up capacity under the bill would be reduced by the use of that existing capacity. Estimated costs also include expenses for a new office to address state and local government issues, programs to prevent fraud involving social security numbers, and pilot programs to improve identity authentication and verification of employment eligibility.

Costs to the Social Security Administration (SSA). Based on information from SSA, CBO estimates that it would cost \$161 million over the 2014–2018 period to implement the new system. CBO estimates that the additional funding would be needed for additional staff to handle the increased fallout rate (the number of individuals who are initially not verified as eligible for employment) under the mandatory system and for additional technological components.

Costs to Other Federal Agencies. H.R. 1772 would require Federal agencies to verify the employment eligibility of current employees. Federal agencies are now required to verify the employment eligibility of new employees, but those hired before 2007 were not required to be verified. Currently, there are just over 4.5 million Federal Government employees (including military personnel), and the employment eligibility of about 3.5 million of those employees would need to be verified under H.R. 1772. CBO estimates that verifying those employees would cost Federal agencies about \$20 million over 2014–2018 period.

Direct Spending

CBO and JCT estimate that enacting H.R. 1772 would decrease net direct spending by about \$9 billion over the 2014–2023 period.

Refundable Tax Credits. JCT estimates that enacting H.R. 1772 would reduce outlays for refundable credits by about \$9 billion over the 2014–2023 period. JCT expects that implementing the proposed system of mandatory verification for employment eligibility would cause more workers to be paid outside of the tax system. As a result, fewer workers would claim refundable income tax credits, primarily the child tax credit. (If refundable tax credits exceed a taxpayer's other income tax liability, the excess may be refunded to the taxpayer, with the amount of the refund classified as outlays in the Federal budget.)

Compensation for Errors. H.R. 1772 would require employers to fire employees who are determined to be ineligible for employment by the new verification system. Under the bill, individuals who lost their employment because of an error in the new system could seek compensation through the Federal Tort Claims Act

(FTCA). (Under FTCA, the Federal Government waives its sovereign immunity and consents to being sued in Federal courts in certain cases.)

CBO expects that the size of compensation awards for such errors would primarily stem from employees' lost wages. We expect that affected employees would be compensated for about 3 months' salary. Payments would probably be higher in the initial years and decline over the 10-year period. Those amounts would be paid through the government's Judgment Fund (which is a permanent, indefinite appropriation for claims and judgments against the United States). Based on information from SSA about the system's likely error rate and data on wages from the Bureau of Labor Statistics and using an average of about 3 months of lost wages per successful claim, CBO expects that the Judgment Fund would pay claims totaling about \$70 million over the 2014–2023 period.

Revenues

CBO and JCT estimate that enacting H.R. 1772 would increase on-budget revenues from income and payroll taxes and civil penalties by about \$49 billion over the 2014–2023 period and would decrease off-budget (Social Security payroll tax) revenues by about \$88 billion over that period. Thus, we estimate that the net revenue loss to the unified budget would total \$39 billion over the 10-year period.

Income and Payroll Tax Revenues. Almost all of the total estimated effect on revenues of H.R. 1772 reflects JCT's expectation that the mandatory verification of employment authorization would result in some undocumented workers being paid outside of the tax system—that is, they would move into the underground economy.

Under current law, some employers withhold income and payroll taxes from the wages of unauthorized workers and deposit those amounts in the Treasury, where they are classified as Federal revenues. Under H.R. 1772, some employers would decrease those tax withholdings as some workers move outside of the tax system. A substantial portion of those estimated revenue reductions—\$88 billion over 10 years, JCT estimates—is attributed to lower off-budget revenues from Social Security payroll taxes. Those revenue losses would be partially offset because employers whose workers move outside the tax system would have fewer wage deductions and therefore higher taxable business profits on their income-tax returns, boosting their income taxes. On net, JCT estimates that on-budget revenues would increase by about \$49 billion.

Civil Penalties. H.R. 1772 would increase the minimum and maximum civil fines imposed under current law on employers who violate requirements for verifying the identity and authority to work of individuals that they hire. As a result of those changes, CBO estimates that civil penalties, which are recorded in the budget as revenues, would increase by about \$0.1 billion over the 2014–2023 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the

following table. Only on-budget changes to outlays or revenues are subject to pay-as-you-go procedures.

CBO Estimate of Pay-As-You-Go Effects for H.R. 1772 as ordered reported by the House Committee on the Judiciary on June 26, 2013

	By Fiscal Year, in Millions of Dollars											2014-	2014-	
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2018	2023		
NET INCREASE OR DECREASE (-) IN THE ON-BUDGET DEFICIT														
Statutory Pay-As-You-Go Impact	-1,386	-4,169	-5,511	-5,816	-6,132	-6,256	-6,579	-6,908	-7,243	-7,587	-23,014	-57,587		
Memorandum:														
Changes in Outlays	10	-777	-1,012	-1,052	-1,090	-929	-960	-988	-1,016	-1,040	-3,921	-8,854		
Changes in Revenues	1,396	3,392	4,499	4,765	5,042	5,326	5,619	5,920	6,227	6,546	19,094	48,732		

INTERGOVERNMENTAL AND THE PRIVATE SECTOR IMPACT

H.R. 1772 would impose intergovernmental and private-sector mandates, as defined in UMRA. The bill would require employers and other entities that hire, recruit, or refer individuals for employment to verify the employment eligibility of potential employees and some current employees. In some cases, the same mandate would apply to both public and private-sector entities; in other cases, only one sector would face the mandate. Because of the number of public employees that would need to be verified in a short amount of time, CBO estimates that the aggregate annual cost for those entities would exceed the intergovernmental threshold (\$75 million in 2013) in fiscal year 2014. Many private-sector entities also would be affected by the bill, and CBO estimates that the aggregate annual costs of the mandates imposed on those entities would exceed the private-sector threshold (\$150 million in 2013) beginning in 2016.

MANDATES THAT APPLY TO BOTH PUBLIC AND PRIVATE ENTITIES

Verifying Work Eligibility. The bill would impose intergovernmental and private-sector mandates on many employers and other entities that hire, recruit, or refer individuals for employment in the United States by requiring them to participate in the electronic verification system to confirm the work authorization of those individuals. Some employers would need to verify all current employees as well as future hires, while others would only be required to verify future hires.

Current Employees. All public and some private employers would be required to confirm, within 6 months after the bill is enacted, the work authorization of current employees who have not been verified under the current employment verification program. Based on Census data and information from organizations representing state governments, CBO estimates that about 18 million current public employees would need to be verified. CBO estimates that the average cost would be about \$5 per person and the total cost for public entities to comply with the mandate would be about \$90 million in fiscal year 2014.

Current employees working for private employers that would need to be verified include certain employees who require a Federal security clearance. According to the Department of Homeland Security and the National Infrastructure Advisory Council, employers that are generally considered part of the critical infrastructure already participate in the current employment verification program. Many of those employers are likely to employ workers with a Federal security clearance. Future regulations would determine the number of current employees who would be required to have their work authorization confirmed. Therefore, the incremental costs of the additional verifications are uncertain but would probably be small relative to the annual threshold for private-sector mandates.

Newly Hired Employees. The bill would require all public and private employers to verify the work eligibility of newly hired employees as well as those whose temporary employment authorization was expiring. In addition, employers would have to maintain a record of the verification for such employees for a specific amount of time in a form that would be available for government inspection. The requirements would begin 6 months after the bill is enacted for some employers and would be phased-in over 2 years for other employers depending on the number of their employees. Entities that recruit or refer workers would have to verify job candidates within 1 year of enactment, and employers that employ agricultural workers would have to verify new employees within 2 years of enactment.

Currently, 20 states require some public entities to verify work eligibility of new hires. CBO estimates that once all public entities are subject to the verification requirements, about 2 million public employees that are not currently required by state law to be verified would need to meet the new requirements each year. We estimate that the average cost for verifying work eligibility would be about \$5 per person, so the cost for public entities to comply with this mandate would be about \$10 million annually.

Based on data from the Bureau of Labor Statistics, CBO expects that for private entities the number of verifications for newly hired employees and employees requiring repeat verifications would rise to about 50 million in 2016. Also, based on that data, CBO estimates that the direct costs to comply with the verification requirement could total \$200 million or more annually from 2016 through 2018 and, thus, would exceed the annual threshold for private-sector entities in those years.

Mandates Affecting Only State, Local, or Tribal Entities

The bill would preempt state and local laws related to work verification. Although the preemption would limit the application of state and local laws, it would impose no duty on state or local governments that would result in significant spending or loss of revenues.

Mandates Affecting Only Private-Sector Entities

Under the bill, individuals would be required to provide specific documentation to establish their identity for use when verifying employment eligibility. The documents required would include most standard forms of identification including passports, permanent residence cards, state drivers' licenses, and military identification

cards. CBO estimates that the cost to comply with that mandate would be relatively small.

ESTIMATE PREPARED BY:

Federal Spending: Mark Grabowicz (DHS); Matthew Pickford (SSA, other Federal agencies)

Federal Revenues: Barbara Edwards and staff of the Joint Committee on Taxation

Impact on State, Local, and Tribal Governments: Melissa Merrell
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

Duplication of Federal Programs

No provision of H.R.1772 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in

any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R.1772 specifically directs the U.S. Secretary of Homeland Security to conduct one rule making proceedings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R.1772 reforms the employment eligibility verification process and requires all employers hiring or employing individuals in the United States to use E-Verify to check the employment eligibility of their new hires.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1772 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title.

Section 1 sets forth the short title of the bill as the “Legal Workforce Act.

Sec. 2. Employment Eligibility Verification Process.

Section 2(a) requires that an employer attest, in an electronic or paper form, that they have verified the employment eligibility of

the individual seeking employment by obtaining the individual's Social Security number (SSN) and/or immigrant identification number and examining acceptable documents presented by the individual to establish work eligibility and identity. This section also requires that the employer use E-Verify to check the work eligibility of the individual and reduces the number of acceptable documents for proof of work eligibility and identity. Section 2 also requires that the employer retain a paper, microfiche or electronic copy of the attestation form for the later of 3 years or 1 year after the date of employment termination. And the section requires the employer to record the E-Verify verification code for employees who receive a confirmation or final nonconfirmation of work authorization. It also allows an employee who receives a tentative nonconfirmation to use the secondary verification process in place under E-Verify. The section provides that an employer may terminate employment of an individual who receives a final nonconfirmation and if they do not terminate employment they must notify DHS of the decision not to do so (which creates a rebuttable presumption of noncompliance if the employer does not terminate employment). In addition, Section 2(a) allows an employer to check the employment eligibility of a prospective employee between the date of the offer of a job and 3 days after the date of hire and allows the employer to condition a job offer on an E-Verify confirmation.

The section phases-in mandatory E-Verify participation for new hires in 6-month increments beginning on the date 6 months after enactment, for businesses having more than 10,000 employees; 12 months after enactment for employers having between 500 and 9,999 employees and for as are recruiters and referrers; 18 months after enactment for employers having between 20 and 499 employees; and 24 months after enactment for employers having between 1 and 19 employees.

On the date of enactment, those employers who are currently required by Federal law to use E-Verify (for example certain Federal contractors, the Executive Branch, the Legislative Branch) will continue to be required to use E-Verify. This section requires that employers must use E-Verify for employees performing "agricultural labor or services," as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), within 24 months of the date of enactment. The section retains the requirements of the Federal Acquisition Rule (FAR) as set out by Executive Order 13465 regarding certain Federal contractors who must currently use E-Verify. Section 2 also requires employers to verify the work eligibility of aliens with temporary work authorization at some point within the three business days after the date on which their work authorization expires. This requirement is phased-in according to the size of an employer over a 24-month period.

Regarding previously hired individuals, this section requires the work eligibility of a current employee to be verified if they 1) work for the Federal Government, a State or local government, a critical infrastructure site, or on a Federal or State contract (though if such an employee has already been checked by the current employer using E-Verify, then the employee does not have to be rechecked); or 2) submit a SSN that DHS determines has a pattern of unusual multiple use. The section allows employers to voluntarily verify the work authorization of their current workforce as

long as all employees in the same geographic location or employed within the same job category as the employee for whom verification is sought are also verified. Section 2 also allows an employer using, or who wants to use, the E-Verify pilot program established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, to use the new system created by the bill in lieu of the pilot program even if not yet required to use the new system.

The section prohibits the information provided under the employment eligibility confirmation process from being used for any reason other than the enforcement of the bill's provisions and certain criminal provisions. In addition, this section provides that an employer has complied with the requirements set out in this section if there was a good faith attempt to comply with the requirements. The safe harbor does not apply when the employer is engaging in a pattern or practice of violations. This section allows the DHS Secretary a one-time 6-month extension of the implementation deadlines if the Secretary certifies to Congress that the employment eligibility verification system will not be ready within 6 months of the date of enactment of the Legal Workforce Act. The Committee believes that franchising is a method of doing business where an independent entrepreneur pays a fee for the right to use a brand name and a business model. Franchisees make their own independent decisions about hiring employees and are required to use E-Verify, and franchisors have no responsibility or liability for those decisions and are not obligated to use E-Verify for employees of their franchisees.

Section 2(b) defines the "date of hire" as the date of actual commencement of employment for wages or other remuneration.

Sec. 3. Employment Eligibility Verification System.

Section 3 requires the DHS Secretary to create an employment eligibility verification system (patterned on the current E-Verify pilot program) that is accessible by telephone and Internet. The system must provide a confirmation or tentative nonconfirmation within three working days of the employer's initial inquiry. The system must provide a secondary process in cases of a tentative nonconfirmation so that the employer receives a final confirmation or nonconfirmation within ten working days of the notice to the employee that there is a tentative nonconfirmation. This section also allows the Secretary to extend that deadline once on a case by case basis for a period of ten working days, but the Secretary must notify the employer and employee of such extension and requires the Secretary in consultation with Commissioner to create a standard process for such extension and notification. The system must include safeguards for privacy, against unlawful discriminatory practices and against unauthorized disclosure of personal information.

Section 3 also reiterates that nothing in the bill shall be determined to authorize a national identification card. This section also requires that SSA and DHS update E-Verify database information in a prompt manner to promote maximum accuracy, allows the DHS Secretary to require certain entities associated with critical infrastructure to use E-Verify if the use will assist in the protection of the critical infrastructure and provides that if a work eligible individual claims that they were wrongly fired due to an incorrect E-

Verify non-confirmation, they may seek remedies under the Federal Tort Claims Act. Lastly this section prohibits class action lawsuits by individuals who allege that they would not have been dismissed from a job but for an error of the system.

Sec. 4. Recruitment and Referral.

Section 4 requires union hiring halls, day labor sites and State workforce agencies to use E-Verify when recruiting or referring an individual for employment. This provision ensures that employers won't have to waste resources hiring persons through these mechanisms who are not legally eligible to work. This provision protects employers in instances in which they maintain a collective bargaining agreement with a union and the union hiring hall refers an individual for employment but the individual is found by through an E-Verify check not to be work authorized. In such an instance, the employer would otherwise be faced with the choice of either having to violate the law by knowingly employing an individual who is not work authorized, or violate the collective bargaining agreement by not hiring the individual.

Sec. 5. Good Faith Defense.

This section provides a safe harbor for employers who use E-Verify in good faith. It also provides that if an employer proves that the employer uses a reasonable, secure and established technology to authenticate the identity of a new employee, that fact shall be taken into consideration for purposes of determining good faith use of the system.

Sec. 6. Preemption and States' Rights.

In order to shield businesses from having to comply with multiple and possibly inconsistent E-Verify laws, section 6 creates one Federal law requiring E-Verify use by preempting State laws mandating E-Verify use for employment eligibility purposes. However the section promotes States' rights by giving States a specific role in helping to enforce the E-Verify requirements. The States are allowed to investigate violations of this Act and enforce the provisions pursuant to the Federal structure. This in turn incentivizes States to help enforce E-Verify requirements by allowing the States to retain the fines assessed under this Act. This section clarifies that an employer may be subject only to a State investigation and enforcement action *or* a Federal investigation and enforcement action for the same violation of E-Verify laws. Section 6 also retains the ability under current law for States and localities to condition business licenses on the requirement that the employer use E-Verify in accordance with the requirements of this Act (274A(h)(2) of the INA). This provision, a balancing of many competing interests, would allow State and local governments to exercise their authority over business licensing (and similar laws) as a penalty upon a business after confirming that such business has not enrolled in E-Verify when mandated to do so under Federal law. However, States and localities do not have their own enforcement or investigative authority regarding employment verification obligations. While State (or local) business licensing authority does not allow States to set up an enforcement scheme parallel to the Federal Government's regarding employment verification obligations, State

(and local) business licensing applications, renewals or other related or similar processes may require confirmation of whether or not an employer is participating in the electronic verification system (E-Verify). Additionally, a State (or local) government can restrict business licenses after receiving confirmation from the Secretary of Homeland Security that a business under its licensing jurisdiction has been found by DHS to be in violation of the Legal Workforce Act. While States are prohibited from enacting a parallel enforcement or penalties scheme, they may choose, at their own expense, to apply the Federal enforcement scheme, as described in Federal implementing rules and regulations.

Sec. 7. Repeal of Current Law.

This section repeals Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, in which E-Verify was created as a pilot. It is actually placed in the notes to 8 U.S.C. § 1324A and because this bill places E-Verify in the actual text of 1324A, there is no longer a need for Subtitle A of title IV of IIRIRA.

Sec. 8. Penalties.

This section increases the civil and criminal penalties for employers who violate the laws prohibiting illegal hiring and employment. Since the current low fines are often seen by bad actors who want to hire illegal immigrant employees as “the cost of doing business,” higher fines are a priority for the Committee in order to discourage intentional illegal immigrant hiring and employment. Section 8 also allows, as a penalty, DHS to bar a business from receiving Federal contracts, grants or other cooperative agreements, if they repeatedly violate the requirements in this bill or if they are convicted of a crime under this bill. If the business has a contract, grant or agreement at the time, then DHS and the Attorney General must consider the views of the agency with which the business has a contract, grant or agreement to determine whether the business should be debarred. Finally, this section creates an office within Immigration and Customs Enforcement (ICE), whose sole purpose is to respond to (within five business days of the complaint), and investigate, State and local governmental agency complaints about businesses hiring and/or employing illegal immigrants.

Sec. 9. Fraud and Misuse of Documents.

This section amends U.S. criminal code, at 18 U.S.C. § 1546(b), to clarify that employers or prospective employees who submit for work eligibility purposes a Social Security number or documents related to identity or work authorization, knowing that the Social Security number or documents do not belong to the person presenting them, are subject to criminal penalties.

Sec. 10. Protection of Social Security Administration Programs.

Section 10(a) requires DHS to enter into an annual agreement with the SSA to reimburse, in a timely manner, SSA for the costs SSA incurs in operating their part of E-Verify. In previous years, interagency negotiations over such agreements stalled and the Committee believes that fair and reasonable reimbursement should take place each year.

Section 10(b) provides that if such an agreement is not reached during the fiscal year, then the agreement in place for the prior fiscal year remains in effect until a new agreement is reached.

Sec. 11. Fraud Prevention.

Given the propensity of identity theft in the realm of hiring and employment, the Committee believes that it is important to provide individuals avenues to help protect their identities from being used by unscrupulous individuals to find and engage in employment. This Section provides such avenues through which to “lock” SSNs for work eligibility purposes.

Section 11(a) requires DHS to “lock” a SSN that is subject to unusual multiple use so that if the owner attempts to get a job, they are alerted that the SSN may have been compromised. The phrase “unusual multiple use” does not mean simply that a number is used multiple times, as many legitimate SSN owners have more than one job. Instead, the phrase covers situations that present clear evidence of illegal SSN use—for instance, use of a SSN multiple times in different geographic regions and different employment industries.

Section 11(b) requires DHS to allow individuals to voluntarily “lock” their own SSN so that it cannot be used to verify work eligibility, in order to combat identity theft.

Section 11(c) requires DHS to allow parents or legal guardians to “lock” the SSN of their minor child so that it cannot be used for employment eligibility purposes, in order to combat theft of the minor child’s identity. Such theft of children’s identities is on the rise.

Sec. 12. Use of Employment Eligibility Verification Photo Tool.

This section requires that an employer who utilizes the photo matching tool that is part of E-Verify, to match the photo tool photograph to both the photograph on the identity or employment eligibility document provided by the employee and to the face of the employee submitting the document for employment verification purposes. Current USCIS procedures only allow the employer to match the photo matching tool photograph to the photograph on the document submitted to the employee, not to the actual face of the employee. This is nonsensical if the goal is to actually prevent identity theft.

Sec. 13. Identity Authentication Employment Eligibility Verification Pilot Programs.

This section requires DHS to conduct at least two pilot programs that allow employers to use an identity-authentication-based technology for work eligibility check purposes. The programs must each use a separate and distinct technology. This section also requires DHS to report to the House and Senate Judiciary Committees on the findings of the pilot programs within 12 months of the programs’ completions.

Sec. 14. Inspector General Audits.

Section 14(a) requires, in order to help identify misuse of SSNs within the current workforce, the SSA Inspector General to com-

plete audits of certain categories of SSNs for which there is a likelihood of use by unauthorized workers.

Section 14(b) requires such audits to be submitted to the House Committee on Ways and Means and the Senate Finance Committee who will determine the appropriate information to be given to DHS in order to investigate incidents of SSN misuse and unauthorized employment.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * *

TITLE II—IMMIGRATION

* * * * *

CHAPTER 8—GENERAL PENALTY PROVISIONS

* * * * *

UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

(1) IN GENERAL.—It is unlawful for a person or other entity—

(A) to hire, or to recruit or refer **【for a fee】**, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or

【(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of subsection (b).】

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

(2) CONTINUING EMPLOYMENT.—It is unlawful for a person or other entity, **【after hiring an alien for employment in accordance with paragraph (1),】** *after complying with paragraph (1),* to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.

【(3) DEFENSE.—A person or entity that establishes that it has complied in good faith with the requirements of subsection (b) with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.】

(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 establishes 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) MITIGATION ELEMENT.—*For purposes of subparagraph (A)(i), if an employer proves by a preponderance of the evidence that the employer uses a reasonable, secure, and established technology to authenticate the identity of the new employee, that fact shall be taken into account for purposes of determining good faith use of the system established under subsection (d).*

(C) 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 eligibility under such mechanism within the time period specified under subsection (d)(2) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.

* * * * *

[(b) EMPLOYMENT VERIFICATION SYSTEM.—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 requirements specified in the following three paragraphs:

[(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

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

[(i) a document described in subparagraph (B), or

[(ii) a document described in subparagraph (C)

and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

[(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual's—

[(i) United States passport;

[(ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document—

[(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

[(II) is evidence of authorization of employment in the United States, and

[(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

[(C) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual's—

[(i) 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); or

[(ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

[(D) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is an individual's—

[(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

[(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

[(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

[(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), 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 Attorney General to be hired, recruited, or referred for such employment.

[(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

[(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

[(B) in the case of the hiring of an individual—

[(i) three years after the date of such hiring, or

[(ii) one year after the date the individual's employment is terminated, whichever is later.

[(4) 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.

[(5) LIMITATION ON USE OF ATTESTATION FORM.—A form designated or established by the Attorney General 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 sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

[(6) GOOD FAITH COMPLIANCE.—

[(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), 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 Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

[(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

[(iii) 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).]

(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.—During the verification period (as defined in subparagraph (E)), 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 nonimmigrant 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 nonimmigrant 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 recognized by the Bureau of Indian Affairs; 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 authorization or identity does not reliably establish 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-written or electronic signature.

(B) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—During the verification period (as defined in subparagraph (E)), 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.

(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 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 (E)), 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 sub-

section (d). The nonconfirmation 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 rescission 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 NONCONFIRMATION.—

(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) *EFFECTIVE DATES OF NEW PROCEDURES.*—

(i) *HIRING.*—Except as provided in clause (iii), the provisions of this paragraph 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 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, this paragraph shall not apply with respect to the verification of the employee until the date that is 24 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term “agricultural labor or services” has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined

in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish in aquaculture facilities. An employee described 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 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.

(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).

(E) **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 after 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, 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 24 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term "agricultural labor or services" has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the*

preparation, processing, or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish in aquaculture facilities. 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 Security shall notify annually employees (at the employee address listed on the Wage and Tax Statement) who submit a social security 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 information notifying the employee of the process to contact the Social Security Administration Fraud Hotline if the employee believes the employee's identity may have been stolen. The notice shall not share information 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 Commissioner, 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 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 employed at the same geographic location or, at the option of*

the employer, all individuals employed within the same job category, as the employee with respect to whom the employer seeks voluntarily to use the verification system. 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.

(D) 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 employer to make an inquiry using such system shall be extended by 6 months. No other extension of such a deadline shall be made.

* * * * *

[(d) EVALUATION AND CHANGES IN EMPLOYMENT VERIFICATION SYSTEM.—

[(1) PRESIDENTIAL MONITORING AND IMPROVEMENTS IN SYSTEM.—

[(A) MONITORING.—The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suitability of existing Federal and State identification systems for use for this purpose.

[(B) IMPROVEMENTS TO ESTABLISH SECURE SYSTEM.—To the extent that the system established under subsection

(b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

[(2) RESTRICTIONS ON CHANGES IN SYSTEM.—Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

[(A) RELIABLE DETERMINATION OF IDENTITY.—The system must be capable of reliably determining whether—

[(i) a person with the identity claimed by an employee or prospective employee is eligible to work, and

[(ii) the employee or prospective employee is claiming the identity of another individual.

[(B) USING OF COUNTERFEIT-RESISTANT DOCUMENTS.—If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

[(C) LIMITED USE OF SYSTEM.—Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

[(D) PRIVACY OF INFORMATION.—The system must protect the privacy and security of personal information and identifiers utilized in the system.

[(E) LIMITED DENIAL OF VERIFICATION.—A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

[(F) LIMITED USE FOR LAW ENFORCEMENT PURPOSES.—The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

[(G) RESTRICTION ON USE OF NEW DOCUMENTS.—If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

[(3) NOTICE TO CONGRESS BEFORE IMPLEMENTING CHANGES.—

[(A) IN GENERAL.—The President may not implement any change under paragraph (1) unless at least—

[(i) 60 days,

[(ii) one year, in the case of a major change described in subparagraph (D)(iii), or

[(iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

[(B) CONTENTS OF REPORT.—In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

[(C) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—

[(i) HEARINGS AND REVIEW.—The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

[(ii) CONGRESSIONAL ACTION.—No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

[(D) MAJOR CHANGES DEFINED.—As used in this paragraph, the term “major change” means a change which would—

[(i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,

[(ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or

[(iii) require any change in any card used for accounting purposes under the Social Security Act, including any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such

cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

【(E) GENERAL REVENUE FUNDING OF SOCIAL SECURITY CARD CHANGES.—Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

【(4) DEMONSTRATION PROJECTS.—

【(A) AUTHORITY.—The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than five years.

【(B) REPORTS ON PROJECTS.—The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.】

(d) *EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.*—

(1) *IN GENERAL.*—*Patterned on the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 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 nonconfirmation, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation not later than 10 working days after the date on which the notice of the tentative nonconfirmation is received by the employee. The Secretary, in consultation with the Commissioner, may extend this deadline once on a case-by-case basis for a period of 10 working days, and if the time is extended, shall document such extension within the verification system. The Secretary, in consultation with the Commissioner, shall notify the employee and employer of such extension. The Secretary, in consultation with the Commissioner, shall create a standard process of such extension and*

notification and shall make a description of such process available to the public. 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 operated—

(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 individuals are authorized to be employed and to register all times when such inquiries are not received;

(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;

(E) to maximize the prevention of identity theft use in the system; and

(F) 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) *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).

(8) *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.

(9) *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 action may be brought under this paragraph.

(e) *COMPLIANCE.*—

(1) *COMPLAINTS AND INVESTIGATIONS.*—The [Attorney General] Secretary of Homeland Security shall establish procedures—

(A) * * *

* * * * *

(C) for the investigation of such other violations of subsection (a) or (g)(1) as the [Attorney General] Secretary of Homeland Security determines to be appropriate, and

(D) for the designation in the **Service** *Department of Homeland Security* of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) under this subsection.

* * * * *

(4) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount, *subject to paragraph (10)*, of—

(i) **not less than \$250 and not more than \$2,000** *not less than \$2,500 and not more than \$5,000* for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) **not less than \$2,000 and not more than \$5,000** *not less than \$5,000 and not more than \$10,000* for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) **not less than \$3,000 and not more than \$10,000** *not less than \$10,000 and not more than \$25,000* for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity—

(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.]

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

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) ORDER FOR CIVIL MONEY PENALTY FOR **PAPERWORK** VIOLATIONS.—With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount, *subject to paragraphs (10) through (12)*, of not less than **[\$100]** *\$1,000* and not more than **[\$1,000]** *\$25,000* for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations. *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).

* * * * *

(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 hiring or continuation of employment or recruitment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed 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 Security 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 cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition 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 a 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 paragraph 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 potential 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 business 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.

(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

[(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than \$3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.]

(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 \$5,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not more than 18 months, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

* * * * *

(h) MISCELLANEOUS PROVISIONS.—

(1) * * *

[(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.]

(2) PREEMPTION.—

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

(B) STATE ENFORCEMENT OF FEDERAL LAW.—

(i) BUSINESS LICENSING.—A State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the verification system de-

scribed in subsection (d) to verify employment eligibility when and as required under subsection (b).

(ii) *GENERAL RULES.*—A State, at its own cost, may enforce the provisions of this section, but only insofar as such State follows the Federal regulations implementing this section, applies the Federal penalty structure set out in this section, and complies with all Federal rules and guidance concerning implementation of this section. Such State may collect any fines assessed under this section. An employer may not be subject to enforcement, including audit and investigation, by both a Federal agency and a State for the same violation under this section. Whichever entity, the Federal agency or the State, is first to initiate the enforcement action, has the right of first refusal to proceed with the enforcement action. The Secretary must provide copies of all guidance, training, and field instructions provided to Federal officials implementing the provisions of this section to each State.

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(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 specified.

(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 nonunion 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 definition 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.

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ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

DIVISION C—ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996

SEC. 1. SHORT TITLE OF DIVISION; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; APPLICATION OF DEFINITIONS OF SUCH ACT; TABLE OF CONTENTS OF DIVISION; SEVERABILITY.

(a) **SHORT TITLE.**—This division may be cited as the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996”.

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(d) **TABLE OF CONTENTS OF DIVISION.**—The table of contents of this division is as follows:

Sec. 1. Short title of division; amendments to Immigration and Nationality Act; application of definitions of such Act; table of contents of division; severability.

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TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT

[Subtitle A—Pilot Programs for Employment Eligibility Confirmation

- [Sec. 401. Establishment of programs.**
- [Sec. 402. Voluntary election to participate in a pilot program.**
- [Sec. 403. Procedures for participants in pilot programs.**
- [Sec. 404. Employment eligibility confirmation system.**
- [Sec. 405. Reports.]**

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TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT

[Subtitle A—Pilot Programs for Employment Eligibility Confirmation

[SEC. 401. ESTABLISHMENT OF PROGRAMS.

[(a) IN GENERAL.—The Secretary of Homeland Security shall conduct 3 pilot programs of employment eligibility confirmation under this subtitle.

[(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Secretary of Homeland Security shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act. Unless the Congress otherwise provides, the Secretary of Homeland Security shall terminate a pilot program on September 30, 2015.

[(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The Secretary of Homeland Security shall provide for the operation—

[(1) of the E-Verify Program (described in section 403(a) of this division) in, at a minimum, 5 of the 7 States with the

highest estimated population of aliens who are not lawfully present in the United States, and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004;

[(2) of the citizen attestation pilot program (described in section 403(b) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(b)(2)(A) of this division; and

[(3) of the machine-readable-document pilot program (described in section 403(c) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(c)(2) of this division.

[(d) REFERENCES IN SUBTITLE.—In this subtitle—

[(1) PILOT PROGRAM REFERENCES.—The terms “program” or “pilot program” refer to any of the 3 pilot programs provided for under this subtitle.

[(2) CONFIRMATION SYSTEM.—The term “confirmation system” means the confirmation system established under section 404 of this division.

[(3) REFERENCES TO SECTION 274A.—Any reference in this subtitle to section 274A (or a subdivision of such section) is deemed a reference to such section (or subdivision thereof) of the Immigration and Nationality Act.

[(4) I-9 OR SIMILAR FORM.—The term “I-9 or similar form” means the form used for purposes of section 274A(b)(1)(A) or such other form as the Secretary of Homeland Security determines to be appropriate.

[(5) LIMITED APPLICATION TO RECRUITERS AND REFERRERS.—Any reference to recruitment or referral (or a recruiter or referrer) in relation to employment is deemed a reference only to such recruitment or referral (or recruiter or referrer) that is subject to section 274A(a)(1)(B)(ii).

[(6) UNITED STATES CITIZENSHIP.—The term “United States citizenship” includes United States nationality.

[(7) STATE.—The term “State” has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

[SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.

[(a) VOLUNTARY ELECTION.—Subject to subsection (c)(3)(B), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which a pilot program is operating may elect to participate in that pilot program. Except as specifically provided in subsection (e), the Secretary of Homeland Security may not require any person or other entity to participate in a pilot program.

[(b) BENEFIT OF REBUTTABLE PRESUMPTION.—

[(1) IN GENERAL.—If a person or other entity is participating in a pilot program and obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable presumption that the person or entity has not violated sec-

tion 274A(a)(1)(A) with respect to such hiring (or such recruitment or referral).

[(2) CONSTRUCTION.—Paragraph (1) shall not be construed as preventing a person or other entity that has an election in effect under subsection (a) from establishing an affirmative defense under section 274A(a)(3) if the person or entity complies with the requirements of section 274A(a)(1)(B) but fails to obtain confirmation under paragraph (1).

[(c) GENERAL TERMS OF ELECTIONS.—

[(1) IN GENERAL.—An election under subsection (a) shall be in such form and manner, under such terms and conditions, and shall take effect, as the Secretary of Homeland Security shall specify. The Secretary of Homeland Security may not impose any fee as a condition of making an election or participating in a pilot program.

[(2) SCOPE OF ELECTION.—

[(A) IN GENERAL.—Subject to paragraph (3), any electing person or other entity may provide that the election under subsection (a) shall apply (during the period in which the election is in effect)—

[(i) to all its hiring (and all recruitment or referral) in the State (or States) in which the pilot program is operating, or

[(ii) to its hiring (or recruitment or referral) in one or more pilot program States or one or more places of hiring (or recruitment or referral, as the case may be) in the pilot program States.

[(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES.—In addition, the Secretary of Homeland Security may permit a person or entity electing the citizen attestation pilot program (described in 403(b) of this division) or the machine-readable-document pilot program (described in section 403(c) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2) of this division, respectively.

[(3) TERMINATION OF ELECTIONS.—The Secretary of Homeland Security may terminate an election by a person or other entity under this section because the person or entity has substantially failed to comply with its obligations under the pilot program. A person or other entity may terminate an election in such form and manner as the Secretary of Homeland Security shall specify.

[(d) CONSULTATION, EDUCATION, AND PUBLICITY.—

[(1) CONSULTATION.—The Secretary of Homeland Security shall closely consult with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs.

[(2) PUBLICITY.—The Secretary of Homeland Security shall widely publicize the election process and pilot programs, including the voluntary nature of the pilot programs and the ad-

vantages to employers (and recruiters and referrers) of making an election under this section.

[(3) ASSISTANCE THROUGH DISTRICT OFFICES.—The Secretary of Homeland Security shall designate one or more individuals in each District office of the Immigration and Naturalization Service for a Service District in which a pilot program is being implemented—

[(A) to inform persons and other entities that seek information about pilot programs of the voluntary nature of such programs, and

[(B) to assist persons and other entities in electing and participating in any pilot programs in effect in the District, in complying with the requirements of section 274A, and in facilitating confirmation of the identity and employment eligibility of individuals consistent with such section.

[(e) SELECT ENTITIES REQUIRED TO PARTICIPATE IN A PILOT PROGRAM.—

[(1) FEDERAL GOVERNMENT.—

[(A) EXECUTIVE DEPARTMENTS.—

[(i) IN GENERAL.—Each Department of the Federal Government shall elect to participate in a pilot program and shall comply with the terms and conditions of such an election.

[(ii) ELECTION.—Subject to clause (iii), the Secretary of each such Department—

[(I) shall elect the pilot program (or programs) in which the Department shall participate, and

[(II) may limit the election to hiring occurring in certain States (or geographic areas) covered by the program (or programs) and in specified divisions within the Department, so long as all hiring by such divisions and in such locations is covered.

[(iii) ROLE OF ATTORNEY GENERAL.—The Secretary of Homeland Security shall assist and coordinate elections under this subparagraph in such manner as assures that—

[(I) a significant portion of the total hiring within each Department within States covered by a pilot program is covered under such a program, and

[(II) there is significant participation by the Federal Executive branch in each of the pilot programs.

[(B) LEGISLATIVE BRANCH.—Each Member of Congress, each officer of Congress, and the head of each agency of the legislative branch, that conducts hiring in a State in which a pilot program is operating shall elect to participate in a pilot program, may specify which pilot program or programs (if there is more than one) in which the Member, officer, or agency will participate, and shall comply with the terms and conditions of such an election.

[(2) APPLICATION TO CERTAIN VIOLATORS.—An order under section 274A(e)(4) or section 274B(g) of the Immigration and

Nationality Act may require the subject of the order to participate in, and comply with the terms of, a pilot program with respect to the subject's hiring (or recruitment or referral) of individuals in a State covered by such a program.

[(3) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If a person or other entity is required under this subsection to participate in a pilot program and fails to comply with the requirements of such program with respect to an individual—

[(A) such failure shall be treated as a violation of section 274A(a)(1)(B) with respect to that individual, and

[(B) a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A).

Subparagraph (B) shall not apply in any prosecution under section 274A(f)(1).

[(f) CONSTRUCTION.—This subtitle shall not affect the authority of the Secretary of Homeland Security under any other law (including section 274A(d)(4)) to conduct demonstration projects in relation to section 274A.

[SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.

[(a) E-VERIFY PROGRAM.—A person or other entity that elects to participate in the E-Verify Program described in this subsection agrees to conform to the following procedures in the case of the hiring (or recruitment or referral) for employment in the United States of each individual covered by the election:

[(1) PROVISION OF ADDITIONAL INFORMATION.—The person or entity shall obtain from the individual (and the individual shall provide) and shall record on the I-9 or similar form—

[(A) the individual's social security account number, if the individual has been issued such a number, and

[(B) if the individual does not attest to United States citizenship under section 274A(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Secretary of Homeland Security shall specify,

and shall retain the original form and make it available for inspection for the period and in the manner required of I-9 forms under section 274A(b)(3).

[(2) PRESENTATION OF DOCUMENTATION.—

[(A) IN GENERAL.—The person or other entity, and the individual whose identity and employment eligibility are being confirmed, shall, subject to subparagraph (B), fulfill the requirements of section 274A(b) with the following modifications:

[(i) A document referred to in section 274A(b)(1)(B)(ii) (as redesignated by section 412(a) of this division) must be designated by the Secretary of Homeland Security as suitable for the purpose of identification in a pilot program.

[(ii) A document referred to in section 274A(b)(1)(D) must contain a photograph of the individual.

[(iii) The person or other entity has complied with the requirements of section 274A(b)(1) with respect to examination of a document if the document reasonably

appears on its face to be genuine and it reasonably appears to pertain to the individual whose identity and work eligibility is being confirmed.

[(B) LIMITATION OF REQUIREMENT TO EXAMINE DOCUMENTATION.—If the Secretary of Homeland Security finds that a pilot program would reliably determine with respect to an individual whether—

[(i) the person with the identity claimed by the individual is authorized to work in the United States, and

[(ii) the individual is claiming the identity of another person,

if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B) or (D) of such section, the Secretary of Homeland Security may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1)(A) to a verification that an individual is not an unauthorized alien shall be deemed to be a verification of the individual's identity.

[(3) SEEKING CONFIRMATION.—

[(A) IN GENERAL.—The person or other entity shall make an inquiry, as provided in section 404(a)(1) of this division, using the confirmation system to seek confirmation of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring (or recruitment or referral, as the case may be).

[(B) EXTENSION OF TIME PERIOD.—If the person or other entity in good faith attempts to make an inquiry during such 3 working days and the confirmation system has registered that not all inquiries were received during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation system registers that it has received all inquiries. If the confirmation 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.

[(4) CONFIRMATION OR NONCONFIRMATION.—

[(A) CONFIRMATION UPON INITIAL INQUIRY.—If the person or other entity receives an appropriate confirmation of an individual's identity and work eligibility under the confirmation system within the time period specified under section 404(b) of this division, the person or entity shall record on the I-9 or similar 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.

[(B) NONCONFIRMATION UPON INITIAL INQUIRY AND SECONDARY VERIFICATION.—

【(i) NONCONFIRMATION.—If the person or other entity receives a tentative nonconfirmation of an individual's identity or work eligibility under the confirmation system within the time period specified under 404(b) of this division, the person or entity shall so inform the individual for whom the confirmation is sought.

【(ii) NO CONTEST.—If the individual does not contest the nonconfirmation within the time period specified in section 404(c) of this division, the nonconfirmation shall be considered final. The person or entity shall then record on the I-9 or similar form an appropriate code which has been provided under the system to indicate a tentative nonconfirmation.

【(iii) CONTEST.—If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under section 404(c) of this division. The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the confirmation system within the time period specified in such section. 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.

【(iv) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 404(c) of this division regarding an individual, the person or entity shall record on the I-9 or similar 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.

【(C) CONSEQUENCES OF NONCONFIRMATION.—

【(i) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

【(ii) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the amounts specified in such section) no less

than \$500 and no more than \$1,000 for each individual with respect to whom such violation occurred.

[(iii) CONTINUED EMPLOYMENT AFTER FINAL NON-CONFIRMATION.—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 section 274A(a)(1)(A). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

[(b) CITIZEN ATTESTATION PILOT PROGRAM.—

[(1) IN GENERAL.—Except as provided in paragraphs (3) through (5), the procedures applicable under the citizen attestation pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

[(2) RESTRICTIONS.—

[(A) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the citizen attestation pilot program in a State unless each driver's license or similar identification document described in section 274A(b)(1)(D)(i) issued by the State—

[(i) contains a photograph of the individual involved, and

[(ii) has been determined by the Secretary of Homeland Security to have security features, and to have been issued through application and issuance procedures, which make such document sufficiently resistant to counterfeiting, tampering, and fraudulent use that it is a reliable means of identification for purposes of this section.

[(B) AUTHORIZATION TO LIMIT EMPLOYER PARTICIPATION.—The Secretary of Homeland Security may restrict the number of persons or other entities that may elect to participate in the citizen attestation pilot program under this subsection as the Secretary of Homeland Security determines to be necessary to produce a representative sample of employers and to reduce the potential impact of fraud.

[(3) NO CONFIRMATION REQUIRED FOR CERTAIN INDIVIDUALS ATTESTING TO U.S. CITIZENSHIP.—In the case of a person or other entity hiring (or recruiting or referring) an individual under the citizen attestation pilot program, if the individual attests to United States citizenship (under penalty of perjury on an I-9 or similar form which form states on its face the criminal and other penalties provided under law for a false representation of United States citizenship)—

[(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B)(i) or (D) of such section; and

[(B) the person or other entity is not required to comply with respect to such individual with the procedures described in paragraphs (3) and (4) of subsection (a), but only

if the person or entity retains the form and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3).

[(4) WAIVER OF DOCUMENT PRESENTATION REQUIREMENT IN CERTAIN CASES.—

[(A) IN GENERAL.—In the case of a person or entity that elects, in a manner specified by the Secretary of Homeland Security consistent with subparagraph (B), to participate in the pilot program under this paragraph, if an individual being hired (or recruited or referred) attests (in the manner described in paragraph (3)) to United States citizenship and the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3), the person or entity is not required to comply with the procedures described in section 274A(b).

[(B) RESTRICTION.—The Secretary of Homeland Security shall restrict the election under this paragraph to no more than 1,000 employers and, to the extent practicable, shall select among employers seeking to make such election in a manner that provides for such an election by a representative sample of employers.

[(5) NONREVIEWABLE DETERMINATIONS.—The determinations of the Secretary of Homeland Security under paragraphs (2) and (4) are within the discretion of the Secretary of Homeland Security and are not subject to judicial or administrative review.

[(c) MACHINE-READABLE-DOCUMENT PILOT PROGRAM.—

[(1) IN GENERAL.—Except as provided in paragraph (3), the procedures applicable under the machine-readable-document pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

[(2) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the machine-readable-document pilot program in a State unless driver's licenses and similar identification documents described in section 274A(b)(1)(D)(i) issued by the State include a machine-readable social security account number.

[(3) USE OF MACHINE-READABLE DOCUMENTS.—If the individual whose identity and employment eligibility must be confirmed presents to the person or entity hiring (or recruiting or referring) the individual a license or other document described in paragraph (2) that includes a machine-readable social security account number, the person or entity must make an inquiry through the confirmation system by using a machine-readable feature of such document. If the individual does not attest to United States citizenship under section 274A(b)(2), the individual's identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

[(d) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE CONFIRMATION SYSTEM.—

No person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

[SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

[(a) IN GENERAL.—The Secretary of Homeland Security shall establish a pilot program confirmation system through which the Secretary of Homeland Security (or a designee of the Secretary of Homeland Security, which may be a nongovernmental entity)—

[(1) responds to inquiries made by electing persons and other entities (including those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) at any time through a toll-free telephone line or other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed, and

[(2) maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under the pilot programs.

To the extent practicable, the Secretary of Homeland Security shall seek to establish such a system using one or more nongovernmental entities.

[(b) INITIAL RESPONSE.—The confirmation 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 confirmation system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

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

[(d) DESIGN AND OPERATION OF SYSTEM.—The confirmation system shall be designed and operated—

[(1) to maximize its reliability and ease of use by persons and other entities making elections under section 402(a) of this division consistent with insulating and protecting the privacy and security of the underlying information;

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

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

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

[(A) the selective or unauthorized use of the system to verify eligibility;

[(B) the use of the system prior to an offer of employment; or

[(C) 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.

[(e) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the confirmation system, the Commissioner of Social Security, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of 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).

[(f) RESPONSIBILITIES OF THE COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE.—As part of the confirmation system, the Commissioner of the Immigration and Naturalization Service, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 403(a)(1)(B) of this division which are provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

[(g) UPDATING INFORMATION.—The Commissioners of Social Security and the Immigration and Naturalization Service 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 subsection (c).

[(h) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.—

[(1) IN GENERAL.—Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subtitle for any other purpose other than as provided for under this subtitle.

[(2) NO NATIONAL IDENTIFICATION CARD.—Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

[SEC. 405. REPORTS.

[(a) IN GENERAL.—The Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate reports on the pilot programs within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall—

[(1) assess the degree of fraudulent attesting of United States citizenship,

[(2) include recommendations on whether or not the pilot programs should be continued or modified, and

[(3) assess the benefits of the pilot programs to employers and the degree to which they assist in the enforcement of section 274A.

[(b) REPORT ON EXPANSION.—Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

[(1) evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

[(2) describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the E-Verify Program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a).]

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

* * * * *

CHAPTER 75—PASSPORTS AND VISAS

* * * * *

§ 1546. Fraud and misuse of visas, permits, and other documents

(a) * * *

(b) Whoever uses—

(1) an **[identification document,]** *identification document or document meant to establish work authorization (including the documents described in section 274A(b) of the Immigration and Nationality Act)*, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an **[identification document]** *identification document or document meant to establish work authorization (including the documents described in section 274A(b) of the Immigration and*

Nationality Act), knowing (or having reason to know) that the document is false, or

* * * * *

Dissenting Views

If H.R. 1772, the “Legal Workforce Act,” were to become law, every employer in the United States within 2 years from the date of enactment would be required to verify the employment authorization of new hires using E-Verify, the Department of Homeland Security’s Electronic Employment Verification System. Employers also would be required to use E-Verify to reverify the employment authorization of many existing employees. Although the expanded use of E-Verify is widely understood to be an important part of any top-to-bottom fix of our broken immigration system, in the absence of such reforms it would be devastating to our nation’s economy. And because errors in the E-Verify process will prevent American citizens and employment-authorized noncitizens from getting or retaining jobs, it is critical that any mandatory expansion of the system contain procedural safeguards to protect against such harms.

In the 112th Congress, the Judiciary Committee marked up H.R. 2885, a version of the Legal Workforce Act similar in nearly every respect to H.R. 1772. The Committee voted on a party-line basis to report H.R. 2885 to the Floor over strong opposition from a broad coalition of interests comprised of organized labor, agricultural associations and growers, small businesses, civil liberties groups, religious organizations, libertarians, privacy advocates, and supporters of immigration reform. Most, but not all, of these groups opposed the bill primarily because it was offered in the absence of broader reforms to fix our broken immigration system. Those groups recognized that every serious comprehensive immigration reform proposal since 2006 has mandated the use of E-Verify by all employers. S. 2611, the “Comprehensive Immigration Reform Act of 2006,” passed the Senate in May 2006 by vote of 62–36 with just such a requirement. The same is true of S. 744, the “Border Security, Economic Opportunity, and Immigration Modernization Act,” which passed the Senate in June 2013 by a vote of 68–32. But those groups also recognized that mandating the use of E-Verify by all employers without reforming our immigration system more broadly would destroy entire industries and weaken our recovering economy.

Ignoring the lessons from the 112th Congress, the Legal Workforce Act once again mandates the use of E-Verify without taking other necessary actions. H.R. 1772 has few due process protections for American workers who are wrongfully denied job opportunities or are terminated as a result of E-Verify errors. This legislation will also likely increase employment discrimination and worker abuse, because of the manner in which it permits E-Verify to be used and the lack of meaningful penalties for employers who abuse the system. Even further, because it is offered in the absence of broader reforms to our broken immigration reform, H.R. 1772 will result in billions of dollars in lost government revenue, harm American workers, and stifle economic growth. In fact, the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) have concluded that H.R. 1772 would result in a net

revenue loss to the unified budget of \$39 billion over 10 years and increase budget deficits over that period by about \$30 billion.¹ Contrast that with CBO and JCT's finding that S. 744 would reduce budget deficits by \$158 billion over the first 10 years and by about \$685 billion over the next 10 years.² For these reasons, and those discussed below, the bill is opposed by a broad cross-section of organizations.³ We respectfully dissent and urge our colleagues to reject this proven job-killing measure.

DESCRIPTION AND BACKGROUND

SUMMARY OF H.R. 1772

H.R. 1772 requires all employers to use E-Verify on all new hires and greatly expands the category of existing employees who must be reverified under the system. E-Verify was created in 1996 under the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) as a voluntary electronic employment eligibility confirmation program called the Basic Pilot Program.⁴ The Basic Pilot Program, which was renamed "E-Verify" in 2007 by the Department of Homeland Security (DHS), was intended to supplement the I-9 process created by Congress in 1986 under the Immigration Reform and Control Act (IRCA). IRCA, for the first time, made it illegal for employers to knowingly hire, recruit, or continue to employ undocumented workers. Prior to IRCA, employers were not prohibited from hiring undocumented workers and were not required to verify the immigration or citizenship status of the workers they hired.⁵

Under current federal law, only a small percentage of employers are required to use E-Verify to check the employment eligibility of their new hires and an even smaller percentage are required to use the system to check existing employees.⁶ According to the National Conference of State Legislatures, 20 states require at least some public and/or private employers to use E-Verify, as of November 30, 2012.⁷

SECTION-BY-SECTION ANALYSIS

Sec. 2. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

Sec. 2(a)—Employment Eligibility Verification Process. Section 2(a) replaces section 274A(b) of the Immigration and Nationality

¹ Congressional Budget Office, Cost Estimate, H.R. 1772 (Dec. 17, 2013), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/hr1772.pdf>.

² Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to Hon. Patrick J. Leahy, Chairman (July 3, 2013), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/s744aspassed.pdf>.

³ Letter from American Federation of State, County and Municipal Employees, American Friends Service Committee, American Civil Liberties Union, *et al.*, to Hon. John Boehner, Speaker, and Nancy Pelosi, Minority Leader (Oct. 22, 2013) (on file with the H. Comm. on the Judiciary, Democratic Staff).

⁴ Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (enacted as Division C of Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009).

⁵ *Problems in the Current Employment Confirmation and Worksite Enforcement System: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security, and International Law of the H. Comm. on the Judiciary*, 110th Cong. 45 (Apr. 24, 2007) (statement of Stephen Yale-Loehr, Adjunct Professor, Cornell Law School).

⁶ In 2007, the Office of Management and Budget (OMB) instructed federal agencies to use E-Verify for all new hires. Since September 8, 2009, a Federal Acquisition Regulation (FAR) final rule has required federal contractors and subcontractors—with certain exceptions—to use E-Verify for both new hires and existing employees working directly under the contract. See Federal Acquisition Regulation subpt. 22.18.

⁷ See National Conference of State Legislatures, *E-Verify*, <http://www.ncsl.org/research/immigration/everify-faq.aspx> (last visited Dec. 9, 2014).

Act (INA) with new provisions governing the verification of individuals for employment. The following describes INA § 274A(b) as amended by the bill:

INA § 274A(b)(1) New Hires, Recruitment, Referral

INA § 274A(b)(1)(A): Attestation After Examination of Documentation

Clause (i) requires that during the “verification period,” defined in the bill as the period between the date on which an offer of employment is extended and the date that is three days after the date of hire, the employer must sign and attest on a DHS form that the employer has verified that the individual is not unauthorized to work by:

- obtaining and recording the prospective employee’s social security number if he or she claims to have one, or if the individual does not claim to be a U.S. citizen, obtaining and recording the identification number designated by DHS; and
- examining the prescribed documents that establish identity and employment authorization.

Whereas employers are currently prohibited from using E-Verify until after an employee’s date of hire, this provision authorizes employers to pre-screen job applicants before such date.

Clause (ii) identifies the documents that demonstrate both employment authorization and identity (List A on the Form I–9 “List of Acceptable Documents”).

Clause (iii) limits the documents that demonstrate employment authorization only (List C on the Form I–9 “List of Acceptable Documents”) to an SSN card unless that card specifies on its face that it does not authorize employment in the United States. Under current law, other acceptable documents include, among other things, a Native American tribal document, Certification of Birth Abroad issued by the State Department (Form FS–545), and an original or certified copy of a birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal.

Clause (iv) limits the documents that demonstrate identity only (List B on the Form I–9 “List of Acceptable Documents”) by omitting various documents accepted under current law, including, but not limited to, a Federal, state, or local government-issued ID card, a school ID card bearing a photograph, and a voter’s registration card.

Clause (v) retains DHS authority to restrict the use of documents it finds unreliable.

Clause (vi) permits employers to provide their attestation by hand-written or electronic signature.

INA § 274A(b)(1)(B): Individual Attestation of Employment Authorization

Requires that during the verification period the individual being verified attest by signature that he or she is a U.S. citizen or national, lawful permanent resident, or noncitizen authorized to work in the United States. The individual must provide information

demonstrating identity and employment authorization as specified above, as well as his or her SSN, if he or she claims to have one.

INA § 274A(b)(1)(C): Retention of Verification Form and Verification

Clause (i) requires employers to verify identity and employment eligibility during the verification period and retain a copy of the verification form for a specified period of time and make it available for inspection.

Clause (ii) provides information about initial responses from the verification system.

Confirmation: Subclause (I) requires employers who receive confirmation of an individual's identity and work authorization to record it on the verification form.

Tentative Nonconfirmation (TNC): Subclause (II) requires employers to notify the individual in question if the verification system returns a TNC. If the individual does not contest the TNC within the specified time period, the TNC is considered final. The bill prescribes a process for individuals who contest the TNC. Until nonconfirmation becomes final, the bill prohibits employers from rescinding an offer of employment or terminating an employee.

Final Confirmation or Nonconfirmation: Subclause (III) requires employers to record final confirmations and nonconfirmations.

Extension of Time: Subclause (IV) provides an extension of one working day if an employer makes a good faith effort to make an inquiry but the verification system registers that not all inquiries were received within the required time frame.

Consequences of Final Nonconfirmation (FNC): Subclause (V) states that an employer who receives an FNC must either terminate employment (or decline to recruit or refer the individual) or notify DHS that the employer will not do so. Failure to notify DHS is deemed a violation of the existing prohibition on unlawful employment of aliens at INA § 274A(a)(1)(A).

Continued Employment After FNC: Subclause (VI) creates a rebuttable presumption that an employer who continues to employ or recruit or refer a person after an FNC has violated the existing prohibition on unlawful employment of aliens at INA § 274A(a)(1)(A).

INA § 274A(b)(1)(D): Effective Dates of New Procedure

Clause (i) establishes effective dates for the new verification system for new hires based upon the size and type of employer as follows:

- Employers with 10,000 or more employees: 6 months after enactment
- Employers with 500–9,999 employees: 12 months after enactment

- Employers with 20–499 employees: 18 months after enactment
- Employers with 1–19 employees: 24 months after enactment

Clause (ii) requires use of the new verification system 12 months after enactment by companies or other entities that recruit or refer workers.

Clause (iii) requires use of the new verification system 24 months after enactment for employees performing agricultural labor or services or recruited or referred by a farm labor contractor.

Clause (iv) states that until the verification system takes effect on the above effective dates for each employer or other entity, existing E-Verify requirements will remain in effect.

INA § 274A(b)(1)(E): Verification Period Defined

Clause (i) expands the period of time during which an employer may use E-Verify to include the period of time between the extension of an offer of employment and the actual date of hire.

Clause (ii) authorizes employers to condition offers of employment on final confirmation.

Clause (iii) provides for an extended verification period for persons who have applied to the Social Security Administration for an SSN.

INA § 274A(b)(2) Reverification for Individuals with Limited Work Authorization

Subparagraphs (A) and (B) require that existing employees with a limited period of work authorization be reverified during the three business days following the expiration of such authorization.

Subparagraph (C) specifies that the reverification process is the same as for verification of new hires, recruits, or referrals, except that employers shall use a specific form designated by DHS regulations and retain electronic or paper copies for 3 years after reverification or 1 year after termination, whichever is later. Although the bill requires DHS to notify employers of the date on which limited work authorization expires, it provides employers neither a grace period, nor a reduced penalty, for a failure by DHS to issue this notice.

INA § 274A(b)(3) Previously Hired Individuals

Subparagraph (A): On a Mandatory Basis for Certain Employees

Provides that within 6 months of enactment, the following existing employees must have their employment authorization reverified if it has not already been verified through E-Verify:

- any Federal, State and local government employee;
- any employee who requires Federal security clearance working in any government building, military base, nuclear energy or weapons site, airport or other site that requires Transportation Worker Identification Credential; and
- any employee assigned to perform work in the U.S. under federal or state contracts over \$100,000, with the exception of the following: (1) those who have clearance under Home-

land Security Presidential Directive 12; (2) administrative or overhead personnel; and (3) those working solely on contracts that provide Commercial Off The Shelf goods or services as defined in the FAR.

INA § 274A(b)(3)(B): On a Mandatory Basis for Multiple Users of Same Social Security Account Number

Clause (i) requires SSA to notify annually all employees who submit a SSN to which more than one employer reports income if there is a pattern of unusual multiple use. The notice shall provide sufficient information to allow such persons to contact the SSA Fraud Hotline if the person believes his or her identity has been stolen.

Clause (ii) requires SSA to lock a SSN for employment eligibility purposes if a person confirms that the number was used without his or her knowledge. In such a case, SSA also must notify each employer of such a person that the person who submitted the SSN may not be work eligible.

Clause (iii) requires employers receiving such notices to verify the employee within ten business days of receipt of the notice.

INA § 274A(b)(3)(C): On a Voluntary Basis

Permits an employer to voluntarily reverify the employment eligibility of an existing employee so long as the employer re verifies all employees at that employee's geographic location or in that employee's job category. An employer's decision whether to voluntarily reverify shall not be considered by a government agency in any proceedings, investigation or review.

INA § 274A(b)(3)(D): Verification

Specifies that the reverification process is the same as for verifications of new hires except that employers shall use a specific form designated by DHS regulations and retain electronic or paper copies for 3 years after reverification or 1 year after termination, whichever is later.

INA § 274A(b)(4) Early Compliance

INA § 274A(b)(4)(A): Former E-Verify Required Users, Including Federal Contractors

Authorizes DHS to require certain employers to comply with the verification system while complying with any additional requirements of the Federal Acquisition laws and regulations. During this time these employers would no longer be required to comply with the current E-Verify system. The specified employers are those that are required to participate in E-Verify as described in IIRIRA § 403(a) and employers who are required to participate in E-Verify under the Federal Acquisition laws and regulations.

INA § 274A(b)(4)(B): Former E-Verify Voluntary Users and Others Desiring Early Compliance

Requires DHS to permit employers who have voluntarily used E-Verify under the existing system to voluntarily comply early with the verification system established in the bill.

INA § 274A(b)(5) Copying of Documentation Permitted

Permits employers to copy documents presented by employees or prospective employees only for the purpose of complying with the verification system.

INA § 274A(b)(6) Limitation on Use of Forms

Provides that the forms DHS designates for use with the verification system may be used only for the purpose of enforcing the INA and any provision of Federal criminal law.

INA § 274A(b)(7) Good Faith Compliance

Provides a safe harbor for employers who made a good faith effort to comply with the law, but were unable to do so as a result of technical or procedural failures. The good faith defense does not apply if: (1) the failure to comply was not *de minimus*; (2) DHS explained the basis for the failure and how it was not a *de minimus* error; and (3) the employer did not correct the failure voluntarily within 30 days after being given an opportunity to do so. The good faith protection also does not apply to employers engaging in a pattern or practice of violating existing prohibitions against unlawful hiring or employment of authorized aliens.

INA § 274A(b)(8) Single Extension of Deadlines Upon Certification

Provides that if DHS certifies to Congress that the verification system will not be fully operational 6 months after enactment of the bill, each deadline for an employer to make an inquiry under the system shall be extended by 6 months. No other extensions may be made.

Sec. 2(b)—Date of Hire. Section 2(b). Amends INA § 274A(h) to define “date of hire” to mean the date of actual commencement of employment for wages.

Sec. 3. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

Section 3 replaces section 274A(d) of the INA with new provisions describing the system to be used to verify employment eligibility. The following describes INA § 274A(d) as amended by the bill:

Section 274A(d) Employment Eligibility Verification System

Paragraph (1) establishes a verification system “patterned” on the existing E-Verify system that will respond to telephonic and other electronic inquiries at any time concerning an individual’s identity and work authorization and maintain records of inquiries made and responses provided to employers.

Paragraph (2) requires the verification system to respond to an inquiry with a confirmation or TNC within three working days of submission.

Paragraph (3) states that where a TNC is issued, DHS and SSA shall specify a secondary verification process to provide final confirmation or nonconfirmation within ten working days of the date on which the notice of the TNC is received by the employee. The deadline may be extended on a case-by-case basis.

Paragraph (4) states that the verification system is to be designed and operated to maximize reliability and ease of use, to re-

spond to all inquiries, to prevent unauthorized disclosures of information, to protect against unlawful discrimination based on national origin or citizenship status, to maximize the prevention of identity theft use in the system, and to limit verification to persons being hired, referred or recruited, existing employees, potential employees, and persons who wish to confirm their own authorization to work.

Paragraph (5) details program requirements for the Commissioner of Social Security.

Paragraph (6) details program requirements for the Secretary of Homeland Security.

Paragraph (7) requires the Commissioner of Social Security and Secretary of Homeland Security to update data in order to maximize accuracy and provide a process to correct erroneous information.

Paragraph (8) states that nothing in this section shall be construed as creating a national identification card and permits DHS to authorize or direct employers working on critical infrastructure to use the verification system if it will help protect critical infrastructure.

Paragraph (9) limits the remedies available to workers who are dismissed from a job due to a verification error to claims under the Federal Tort Claims Act and injunctive relief. Class actions also are prohibited.

Sec. 4. RECRUITMENT AND REFERRAL.

Defines the terms “recruit” and “refer” for purposes of the verification requirements under the bill. Although each definition specifies that the term applies only to persons or entities that recruit or refer for remuneration, each definition contains an exception to the rule that requires union hiring halls and day labor centers that assist workers to find jobs to use the verification system even if they receive no remuneration for their services.

Sec. 5. GOOD FAITH DEFENSE.

Amends INA §274A(a)(3) to provide employers a good faith defense when they take an employment-related action based on information provided by E-Verify. Absent a showing of clear and convincing evidence by DHS that the employer had knowledge that the employee is unauthorized to work, the employer would not be liable to a job applicant or the Federal, local, or state government under civil or criminal law. If the employer demonstrates by a preponderance of the evidence that the employer used a reasonable, secure, and established technology for identity authentication purposes of a new employee, that fact shall be considered when making a determination regarding an employer’s good faith.

An employer who fails to seek verification and continues to employ an individual may not use the good faith defense. If the verification system registers that not all inquiries were responded to within the required timeframe, the employer can submit another inquiry the next working day to preserve the good faith defense.

Sec. 6. PREEMPTION OF STATE AND LOCAL LAWS.

Preempts any State or local law, ordinance, policy or rule, including any criminal or civil fine or penalty structure, as they relate

to the hiring, continued employment, or status verification for employment eligibility of unauthorized aliens. Section 6 also authorizes State or political subdivisions to exercise their authority over business licensing and similar laws in order to impose a penalty for failure to use E-Verify. This is consistent with the Supreme Court's holding in *Chamber of Commerce v. Whiting*.⁸

This section contains a new provision permitting States, at their own expense, to enforce all of the civil and criminal provisions for unauthorized hiring in section 274A of the INA. The provision requires that in doing so, States must follow federal regulations, apply the federal penalty structure, and comply with all federal rules and guidelines. The section attempts to protect employers from overlapping audits, investigations, and other enforcement actions by giving the right of first refusal to whichever governmental entity first initiated the action.

Sec. 7. REPEAL.

Repeals Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act. Any reference to the E-Verify program is deemed to refer to the verification system established under the INA as amended in this Act. This section takes effect 3 years after the date of enactment.

Sec. 8. PENALTIES.

Amends the penalties in INA § 274A. As amended:

INA § 274A(e)(4) and (e)(5) contain substantially higher civil penalties for the unlawful hiring or employment of unauthorized persons. The new language also makes it a violation of the prohibition on the employment of unauthorized workers for an employer to fail to use the verification system or to enter information into the system that a person reasonably believes to be false.

INA § 274A(e)(10) authorizes DHS to waive or reduce such civil monetary penalties if the violator acted in good faith.

INA § 274A(e)(11) authorizes the Secretary of Homeland Security to debar repeat offenders of prohibitions against the unlawful employment of aliens or those convicted of a crime under section 274A of the INA from the receipt of Federal contracts, grants, or cooperative agreements under the Federal Acquisition Regulation. If an entity does not have a federal contract, the Secretary of Homeland Security or the Attorney General can refer the matter to GSA to determine whether the entity should be placed on the list of those excluded from federal procurement.

INA § 274A(e)(12) creates a new DHS Office for State and Local Government Complaints to which State and local governments can report suspected violations of the prohibitions on unauthorized hiring and employment. Such reports must be investigated by the office and State and local governments and Congress must be informed of the results of such investigations.

INA § 274A(f)(1) contains increased penalties for employers who engage in a pattern or practice of hiring unauthorized workers by raising the fine from \$3,000 to \$5,000 and the maximum length of imprisonment from 6 months to 18 months.

⁸Chamber of Commerce of the United States v. Whiting, 563 U.S. ___ (U.S. May 26, 2011).

Sec. 9. FRAUD AND MISUSE OF DOCUMENTS.

Amends 18 U.S.C. § 1546(b) to make it a crime for a person to use in the verification system an identification document or any document meant to establish work authorization if the person knows or has reason to know that the document was not issued to the person or is false.

Sec. 10. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

Requires DHS and SSA to enter into an agreement providing SSA the funds it needs to establish, carry out, and maintain its duties and responsibilities under the INA as amended in this Act.

Sec. 11. FRAUD PREVENTION.

Subsection (a) requires DHS and SSA to create a program that allows SSNs that have been identified as subject to unusual multiple use or suspected or determined to have been compromised by identity fraud, to be blocked from use in the verification system, unless the user of the SSN is able to show that the SSN is his or hers.

Subsection (b) requires DHS and SSA to create a program to allow victims of identity fraud to suspend the use of their SSNs in the verification system. The Secretary of Homeland Security may make this a pilot program before making it available to all individuals.

Subsection (c) requires DHS and SSA to create a program to allow parents or legal guardians to suspend or limit, for verification purposes, the use of an SSN or other identifying information belonging to a minor child under such person's care. This program also may be initiated as a pilot program.

Sec. 12. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION PHOTO TOOL.

Requires employers who match a photograph contained on a document presented by an employee to a photograph contained on a stored digital image of that document presented by the photo matching tool in the verification system to additionally match those photos to the face of the employee presenting the document for employment verification purposes.

Sec. 13. IDENTITY AUTHENTICATION EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROGRAM.

Requires the Secretary of Homeland Security, in consultation with the Commissioner of Social Security and the Director of the National Institute of Standards and Technology, to create two identity authentication pilot programs within 48 months of enactment.

Sec. 14. SSA OFFICE OF INSPECTOR GENERAL AUDITS.

Requires the SSA OIG to complete audits of: (1) workers who dispute wages reported on their social security account number when they believe someone else has used such number and name to report wages; (2) children's SSNs used for work purposes; and (3) employers whose workers present significant numbers of mismatched social security account numbers or names for wage reporting.

CONCERNS WITH H.R. 1772

I. WITHOUT TOP-TO-BOTTOM REFORMS OF OUR IMMIGRATION SYSTEM,
H.R. 1772 WILL DECIMATE AMERICA'S AGRICULTURAL INDUSTRYA. *H.R. 1772 Will Decimate the U.S. Agricultural Industry*

Enacting the Legal Workforce Act without also reforming our broken immigration system will decimate American farms by drastically reducing the pool of available farm workers. The U.S. agricultural industry currently depends upon the work of undocumented immigrants, who make up more than 50 percent of the on-the-farm labor force. Losing those 1 to 1.25 million workers would be devastating, because there are nowhere near that many U.S. workers who are willing and able to fill these jobs. Comprehensive immigration reform would avoid this damage by providing current undocumented farmworkers with a path to earned permanent legal status and creating a fair and workable agricultural guestworker program to meet our future labor needs.

According to the American Farm Bureau and dozens of major growers' associations who wrote to the Committee in the 112th Congress to oppose the Legal Workforce Act in the absence of broader reforms, "[m]andatory E-Verify legislation for farmers threatens \$5 to \$9 billion in *annual* agricultural production. This is wealth—in fruits, vegetables, dairy, livestock and other commodities—that will leave U.S. soil, be grown outside our country, then shipped to the U.S. by our competitors and sold to American consumers"⁹ A separate Farm Bureau study found that mandatory E-Verify could lead to a decrease of between \$1.5 and \$3 billion per year in net farm income.¹⁰ Although the American Farm Bureau Federation has taken no position on H.R. 1772, the Farm Bureau is clear that "[i]f the mandatory E-Verify program goes forward by itself, without providing producers a source of legal workers, it would present a potentially insurmountable challenge for many agricultural employers."¹¹

This is not mere speculation. In Georgia, within 2 months of enacting an enforcement-only immigration bill that requires all employers to use E-Verify,¹² Georgia farmers found it impossible to recruit enough workers to harvest their crops. According to a state survey, farmers were unable to fill more than 11,000 farm jobs.¹³ In order to fill this shortage, Governor Nathan Deal sent probationers into the fields to pick fruits and vegetables.¹⁴ Unsurprisingly, that effort failed and the Georgia Agribusiness Council estimates that Georgia's farmers lost \$300 million and

⁹Letter from Agriculture Coalition for Immigration Reform, American Farm Bureau Federation, *et al.* to Hon. Lamar Smith, Chairman, (July 27, 2011) (emphasis in original) (on file with the H. Comm. on the Judiciary, Democratic Staff).

¹⁰The Voice of Agriculture, *E-Verify is E-normous Problem for Agriculture*, American Farm Bureau Federation, June 20, 2011, available at <http://www.fb.org/index.php?action=newsroom.newsclip&id=69608>.

¹¹American Farm Bureau Federation, *Agricultural Labor—E-Verify*, Sept. 2013, available at <http://www.fb.org/issues/docs/everify13.pdf>.

¹²H.B. 87, Gen. Assem., 2011 Sess. (Ga. 2011).

¹³Jeremy Redmon, *State Survey: 11,080 farm jobs unfilled*, Atlanta J-Const., June 14, 2011, available at <http://www.ajc.com/news/news/local-govt-politics/state-survey-11080-farm-jobs-unfilled/nQwPH>.

¹⁴*Id.*

could lose \$1 billion.¹⁵ Predicting that farmers in the state might respond to the labor shortage by shifting from lucrative handpicked crops to mechanically harvested crops like peanuts and cotton, the Center for American Progress and the Immigration Policy Center estimated that the state would lose \$800 million per year in farm gate value.¹⁶

In Alabama, some farmers reported losing half of their workforce as a result of that state's decision to enact an anti-immigrant law mandating the use of E-Verify.¹⁷ Notwithstanding Georgia's failed experiment sending probationers into the fields, Alabama also turned to its prison work-release program to provide farmers with necessary labor.¹⁸ Some growers, like Jerry Spencer, chief executive of the Birmingham-based Grow Alabama, attempted to recruit unemployed Americans to fill the worker void created by Alabama's law.¹⁹ After two weeks, Spencer declared the effort a failure, because "of more than 50 people he recruited for the work, only a few worked more than two or three days, and just one stuck with the job for the last two weeks."²⁰

Seasoned farmers know that the work currently performed by migrant workers cannot easily be replaced. Kay Hollabaugh of Hollabaugh Bros. Farm in Adams County, Pennsylvania, rejected the idea that the work could be performed just as well by probationers or a random cross-section of the unemployed. According to one article, "The insinuation that just anybody can do this work is not true," Hollabaugh said, and when a harvest hits, 'we don't have time' for training."²¹

B. The Disintegration of the Agricultural Industry Will Lead To The Elimination of Millions of American Jobs

Destroying the U.S. agricultural industry will put millions of Americans out of work at a time when everyone in government should be focusing on putting Americans back to work. Although more than 50 percent of on-the-farm workers lack immigration status, this means that nearly half of the workers are U.S. citizens and non-citizens with employment authorization. Hundreds of thousands of these people will lose their jobs when farms begin to go under.

Unfortunately, the massive job losses caused by enactment of the Legal Workforce Act in the absence of broader reforms will not be limited to on-the-farm jobs. According to U.S. Department of Agriculture studies, every on-the-farm job creates and supports about

¹⁵ Reid J. Epstein, *Georgia Immigrant Crackdown Backfires*, Politico, June 22, 2011, available at <http://www.politico.com/news/stories/0611/57551.html>.

¹⁶ Tom Baxter, *How Georgia's Anti-Immigration Law Could Hurt the State's (and the Nation's) Economy*, Center for American Progress and Immigration Policy Center, Oct. 4, 2011, <http://www.americanprogress.org/issues/2011/10/georgia-immigration.html>.

¹⁷ M.J. Ellington, *Immigration Law Already Hurting Farms*, (Florence) TimesDaily, Aug. 8, 2011, available at <http://www.tuscaloosaneews.com/article/20110808/NEWS/110809782>.

¹⁸ Mary Sell, *McMillan: Inmates short-term option for farmers desperate for help*, Montgomery Advertiser, Oct. 7, 2011, available at <http://www.montgomeryadvertiser.com/article/20111007/NEWS02/110070314>.

¹⁹ Jay Reeves, *Efforts to Replace Immigrant Workers in Alabama Fields Coming Up Short*, Associated Press, Oct. 17, 2011, available at http://blog.al.com/wire/2011/10/state_program_to_replace_immig.html.

²⁰ *Id.*

²¹ Michael Matza, *Farmers Say Stricter Immigration Screening Could Hurt Their Businesses*, Phil. Inquirer, Oct. 10, 2011, available at http://articles.philly.com/2011-10-10/news/30263542_1_e-verify-legal-workforce-act-illegal-immigration.

3.1 “upstream” and “downstream” jobs.²² These are jobs typically held by American citizens in food processing, packaging, transportation, marketing, and retail sectors. Eliminating more than a million on-the-farm jobs through mandatory E-Verify will eliminate three times as many jobs for U.S. citizens in other sectors.

In order to prevent significant damage to the industry and to millions of upstream and downstream jobs, Representative Suzan DelBene (D-WA) offered an amendment to delay implementation of mandatory E-Verify in the agricultural industry until the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, certifies that such implementation will not cause a significant shortage of persons available to perform necessary farmwork in the country. The amendment was defeated on a party-line vote of 8–19.²³

C. Off-Shoring Our Food Production Would Decrease Product Safety and Increase U.S. Reliance on Foreign Imports

Destroying our agricultural industry will also jeopardize America’s long-term security, which depends on being able to produce a safe, stable, domestic food supply. Increasing our reliance on foreign imports necessarily decreases our ability to ensure adequate product safety. Moreover, the more we rely on imported food, the more we increase the chance of food-borne illnesses and terrorist attacks through our food supply. In Fiscal Year 2011, the Food and Drug Administration (FDA) was only able to physically examine “about 243,000 food and feed import lines, or about 2 percent of the total number of food import lines imported during the year.”²⁴ The Congressional Research Service (CRS) reports that “[a]mong the cited reasons for this low incidence of inspections were limited and declining resources, including too few inspectors to cover the more than 360 U.S. ports of entry despite ever-increasing import volumes.”²⁵ An increased reliance on imported food could increase our risk of food contamination, such as E. coli or Salmonella.

Our broken immigration system is one reason that growers have already begun to move their farms to Mexico where they can find sufficient workers to harvest their crops. According to Phil Glaize, Virginia apple grower and former U.S. Apple Association Chairman, farms have been leaving the United States for years as a result of the inability of farmers to find workers. In 2010, Glaize testified that:

In the 1950’s, colleagues tell me there was a thriving greenhouse vegetable industry southwest of Toledo, Ohio. It is gone, largely to Canada. Colleagues in the West report that at least 80,000 acres of high-value vegetable production has left southern Arizona and California for Mexico. Florida tomatoes and citrus are leaving for Mexico and Brazil. In 2008, Texas A&M University noted that 77% of Texas vegetable producers surveyed had reduced the size

²² *The Labor Needs of American Agriculture: Hearing Before the H. Comm. on Agriculture*, 110th Cong. 16 (2007) (statement of James S. Holt, Ph.D., President and Principal, James S. Holt & Co., LLC).

²³ Tr. of Markup of H.R. 1772, the Legal Workforce Act, by the H. Comm. on Judiciary, 113th Cong. 225 (2013) [hereinafter Markup Tr.]

²⁴ Renee Johnson, *Food Safety Issues for the 113th Congress*, Congressional Research Service, Jan. 9, 2013 (R42885), 17.

²⁵ *Id.* n. 58.

or scope of their business due to lack of employees. One quarter reported moving some of their operations out of the U.S. Another third were considering such a move.²⁶

Glaize's experience is reflected in our trade deficit in fresh and processed fruits and vegetables. In 2011, U.S. fruit and vegetable imports exceeded exports by \$11.2 billion.²⁷ The trade deficit has widened significantly and rapidly over the years, such that the country went from having a net trade balance in the mid-1990s to being a net importer today.²⁸

Writing in opposition to the Legal Workforce Act in the 112th Congress, Laurie Fischer, Executive Director, Dairy Business Association noted, "Without American farms, you can bet more food production would continue to move overseas, forcing America to rely on foreign countries for food. That's a foreign policy nightmare making us vulnerable to a number of threats."²⁹ The Agriculture Coalition for Immigration Reform also warns that China, one of the leading importers of fruits and vegetables into the United States, is frequently cited for "food and product contamination that leads to illness and death."³⁰ As Glaize noted in testimony before the Committee, "China has requested access to our market for fresh apples and they are the world's largest producer. If the U.S. apple industry were to go out of business, the Chinese are ready to step in and supply our apples."³¹

II. H.R. 1772 WILL HARM AMERICAN WORKERS

A. *Authorized Workers Will be Wrongfully Denied the Right to Work Due to Database Errors and Employer Misuse*

Few people argue with the idea that employers should have a cheap, quick, and easy way to confirm the employment authorization of people they intend to hire. That is precisely what E-Verify promises to be. Unfortunately we know from years of experience that E-Verify is not infallible; the databases that are checked to confirm U.S. citizenship or employment authorization contain errors and employers entering data into the system make mistakes and sometimes fail to give workers an opportunity to correct errors. Because the law prohibits employers from knowingly hiring or employing a person who is not authorized to work, mistakes such as these can prevent U.S. citizens and employment authorized noncitizens from getting or retaining jobs.

In the 110th Congress, the Immigration Subcommittee held several hearings on the need to protect U.S. workers who may be erroneously identified as unauthorized to work by E-Verify. In December 2006, the Inspector General of the SSA found that 17.8 million SSA records (4.1 percent) contained errors that could result in "in-

²⁶ *Protecting America's Harvest: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security, and International Law of the H. Comm. on the Judiciary*, 111th Cong. 22 (Sept. 24, 2010) (statement of Phil B. Glaize, Chairman, U.S. Apple Association).

²⁷ Renée Johnson, *The U.S. Trade Situation for Fruit and Vegetable Products*, Congressional Research Service, Dec. 17, 2012 (RL34468), 1.

²⁸ *Id.*

²⁹ Laurie Fischer, *E-Verify Proposal a Bad Idea for Dairy State*, *The Cap Times*, Aug. 13, 2011, available at http://host.madison.com/ct/news/opinion/column/article_2ff44f54-a5f4-5ef4-9d40-4d8d678990db.html.

³⁰ *E-Verify—Preserving Jobs for American Workers: Hearing Before the Subcomm. on Immigration Policy and Enforcement of the H. Comm. on the Judiciary*, 112th Cong. 107 (2011) (statement of the Agriculture Coalition for Immigration Reform).

³¹ Glaize testimony, *supra* note 26, at 22.

correct feedback: when those workers are queried through the E-Verify system.³² At one such hearing, the Service Employees International Union testified that “[u]nless database errors are cured, 24,000 of the estimated 300,000 workers in each congressional district would be required to spend several hours attempting to straighten out SSA of USCIS records in order to continue their employment.”³³

In December 2009, an independent study of E-Verify performed by the Westat Corporation used modeling to demonstrate that 0.8 percent of authorized workers could receive erroneous Tentative Nonconfirmations (TNCs) of their employment eligibility.³⁴ A more recent Westat study published in July 2012 concluded that the percentage of erroneous TNCs issued to authorized workers in FY 2009 had been reduced to 0.3 percent.³⁵ Since employers do not always notify employees of TNCs, each of these authorized workers faces the possibility of wrongful termination—in any event, each of these people would have to spend time contesting the erroneous TNC.

Although a 0.3 percent error rate sounds small, the real-world impact on new and existing hires would be quite dramatic. The Legal Workforce Act would require verification of all newly hired workers (approximately 54 million each year)³⁶ and would permit reverification of all current workers (approximately 156 million),³⁷ meaning that the 0.3 percent error rate would be between 162,000 to 468,000 authorized workers. Hundreds of thousands of American citizens and authorized non-citizens would therefore be at risk of losing their jobs or job opportunities due to erroneous TNCs.

³² Office of the Inspector General, Social Security Administration, *Congressional Response Report: Accuracy of the Social Security Administration’s Numident File*, December 2006, A-08-06-26100, 5 available at <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-08-06-26100.pdf>.

³³ *Proposals for Improving the Electronic Employment Verification and Worksite Enforcement System: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security, and International Law of the H. Comm. on the Judiciary*, 110th Cong. 59 (2007) (statement of Robert H. Gibbs, Service Employees International Union). Because of the increased workload that mandatory E-Verify will place on the Social Security Administration, AARP, the National Committee to Protect Social Security and Medicare, and the Strengthen Social Security Campaign, which is comprised of over 320 organizations representing more than 50 million members, opposed the Legal Workforce Act in the 112th Congress. These groups feared that given the lengthy SSA hearing backlogs that already keep hundreds of thousands of Americans, including low income persons who are blind, elderly, or disabled, from receiving the benefits they are due, greatly increasing the workload of the SSA amidst continuing funding cuts for the agency would hinder the SSA’s ability to carry out its core mission of serving America’s seniors and disabled workers. See Letter from David P. Sloane, Senior Vice President, Government Relations and Advocacy, AARP, to Hon. Sam Johnson, Chairman & Hon. Xavier Becerra, Ranking Member (Apr. 14, 2011) (on file with the H. Comm. on the Judiciary, Democratic Staff); *The Social Security Administration’s Role in Verifying Employment Eligibility: Hearing Before the Subcomm. on Social Security of the H. Comm. on Ways and Means*, 112th Cong. (2011) (statement of Barbara B. Kennelly, President and CEO, National Committee to Preserve Social Security and Medicare); Letter from Nancy Altman, Campaign Co-Chair, Strengthen Social Security Campaign, et al. to Hon. Dave Camp, Chairman & Hon. Sander Levin, Ranking Member (Sept. 14, 2011) (on file with the H. Comm. on the Judiciary, Democratic Staff); Letter from Nancy Altman, Campaign Co-Chair, Strengthen Social Security Campaign, et al. to Hon. Lamar Smith, Chairman & Hon. John Conyers, Jr., Ranking Member (July 25, 2011) (on file with the H. Comm. on the Judiciary, Democratic Staff).

³⁴ *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), 117, www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09%202.pdf.

³⁵ *Evaluation of the Accuracy of E-Verify Findings* (Westat, July 2012), 22, <http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify%20Native%20Documents/EVerify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20EVerify%20Findings.pdf>.

³⁶ See Bureau of Labor Statistics, *Hires, Quits, Layoffs, and Other Job Separations in 2013*, U.S. Dept. of Labor, July 1, 2014, http://www.bls.gov/opub/ted/2014/ted_20140701.htm (last visited Dec. 9, 2014).

³⁷ See Bureau of Labor Statistics, *Table A-1. Employment Status of the Civilian Population by Sex and Age*, U.S. Dept. of Labor, Dec. 5, 2014, <http://www.bls.gov/news.release/empst.t01.htm> (last visited Dec. 9, 2014).

Not all people would share this burden equally. Although Westat found that the TNC error rate for U.S. citizens had decreased from 0.6 percent to 0.2 percent from 2005 to 2010, the error rate for non-citizens remained unchanged over that period and significantly higher.³⁸ For LPRs and other noncitizens, the error rate was 1.5 percent in 2005 and 2.0 percent in 2010.³⁹ That means that a non-citizen in 2010 was approximately ten times more likely to receive an erroneous TNC than a U.S. citizen.

The danger that authorized workers may ultimately be terminated as a result of these verification errors is not speculative. Westat recently estimated that while 94 percent of Final Nonconfirmations (FNCs) issued in Fiscal Year 2009 were correctly provided to persons not authorized to work, 6 percent were inaccurately issued to employment-authorized workers, including U.S. citizens and lawful permanent residents.⁴⁰ But as the National Immigration Law Center points out in its recent report, *Verification Nation*, “Westat 2012 assumes that 70 percent of employment-authorized workers who received a TNC were properly informed of the TNC by their employer. However, the percentage of workers who are informed by their employer of a TNC is likely *significant lower* than 70 percent.”⁴¹ As a result, the FNC inaccuracy rate is likely higher than 6 percent. As more employers are required to use E-Verify over the aggressive 2-year period in the Legal Workforce Act and employers are permitted to use E-Verify in ways that are currently prohibited by law, we can expect to see more erroneous FNCs caused by user error and employer abuse. The end result will be greater numbers of authorized workers denied job opportunities or wrongfully terminated from employment.

B. Permitting Employers to Pre-Screen Job Applicants and Selectively Reverify Existing Employees Will Increase Discrimination and Employer Abuse

The possibility of erroneous TNCs is particularly troubling when combined with important changes made by the Legal Workforce Act to E-Verify. Under current law, employers are prohibited from pre-screening job applicants with E-Verify before the date of hire. Nevertheless, Westat recently identified a “significant increase” in the percentage of employers who violate this rule—from 2008 to 2013, the percentage of employers who reported practices that constitute pre-screening increased from 4 percent to 9 percent.⁴²

The Legal Workforce Act eliminates the current prohibition—which is intended to protect American workers—and explicitly authorizes pre-screening of workers. When a job applicant is pre-screened and receives a TNC, an employer may make a business decision to not notify the applicant of the TNC and to withdraw the offer of employment. The employer would know that the time and resources that they and their new hire will have to expend to correct erroneous records may be substantial. Failure to notify workers about TNCs already accounts for the vast majority of FNCs

³⁸ 2012 Westat Report, *supra* note 35 at 24.

³⁹ *Id.*

⁴⁰ *Id.* at 22.

⁴¹ National Immigration Law Center, *Verification Nation*, Aug. 2013, 4.

⁴² *Findings of the E-Verify User Survey* (Westat, April 30, 2014), 47, http://www.uscis.gov/sites/default/files/USCIS/Verification/E-Verify/E-Verify_Native_Documents/EVerify%20Studies/E-Verify_User_Survey_Report_April2014.pdf.

issued to employment-authorized persons; Westat recently concluded that although 94 percent of FNCs were issued correctly to unauthorized workers in Fiscal Year 2009, that figure would have been 99 percent if all employment-authorized workers had been informed of their TNCs and how to correct them.⁴³ U.S. Citizenship and Immigration Services is currently working to provide notification of TNCs directly to workers, but that process is only just beginning and will likely face practical hurdles along the way. Permitting employers to pre-screen job applicants will exacerbate the problem of U.S. workers being denied job opportunities because of database and user errors.

Allowing for pre-screening also increases the risk that job applicants will be selectively verified in a discriminatory manner based on their race or national origin. After Georgia enacted HB 87, its controversial immigration law, one Atlanta chef admitted that when he received 50 applications for a job posting he “threw out all the ones that looked to be Mexican. . . . I don’t know if those folks are legal or not, but I just didn’t want to even have to think about it.”⁴⁴ Such discriminatory conduct would effectively be sanctioned by the Legal Workforce Act, because it would permit an employer to selectively pre-screen “all the ones that looked to be Mexican” and verify all other applicants only after the date of hire.

In order to protect American workers and reduce the risk of discrimination, Representative Zoe Lofgren (D-CA) introduced an amendment that would have required employers to notify the Secretary of Homeland Security in advance of using E-Verify to pre-screen job applicants in much the same way that federal contractors currently must notify DHS before verifying the employment authorization of current employees. The amendment also would have required employers who choose to verify a person prior to the date of hire to do so for all such hires. The amendment was intended to ensure proper oversight in order to prevent employers from taking adverse or discriminatory actions against job applicants. The amendment was defeated on a party-line vote of 8–20.⁴⁵

The Legal Workforce Act also weakens an important protection in current law that prohibits employers from targeting particular employees or classes of employees for reverification. As introduced, the bill required that an employer who chooses to voluntarily reverify an existing employee only do so if the employer reverifies all persons so employed. This protection, which applies even for those employers who are currently permitted to reverify existing employees, is intended to prevent employers from discriminating on the basis of race, ethnicity, or real or perceived national origin by selectively forcing some employees to be reverified. By requiring employers to use E-Verify in a consistent manner for all employees, this also makes it more difficult for employers to target particular employees for harassment or intimidation; this is particularly important where authorized and unauthorized workers are susceptible to retaliation and abuse on account of their advocacy for better wages and working conditions.

⁴³ 2012 Westat Report, *supra* note 35 at 39.

⁴⁴ Beshia Rodell, *Georgia’s Immigration Law and the Restaurant Industry*, Creative Loafing, July 11, 2011, <http://clatl.com/atlanta/georgias-immigration-law-and-the-restaurant-industry/Content?oid=3526518>.

⁴⁵ Markup Tr. at 60.

During the markup of H.R. 1772, Representative Steve King (R-IA) offered an amendment designed to weaken protections against selective reverification. The amendment required that in order for an employer to reverify an existing employee, the employer would only have to reverify all other employees at the same geographic location or within the same job category as that employee. The amendment was adopted by voice vote.⁴⁶ As a result, the bill as reported by the Committee gives employers a new and powerful tool to retaliate against employees at particular job sites or in certain job categories that are organizing for better worker protections.

C. H.R. 1772 Conspicuously Fails to Include Any Penalties for Employers Who Violate the Bill's Protections for American Workers and Authorized Non-Citizens

While H.R. 1772 does include various protections for American workers and authorized non-citizens, the legislation fails to include any associated penalties for employers who fail to follow these guidelines. Specifically, the bill requires employers to notify workers when the verification system provides a TNC, but it imposes no penalty if the employer violates this requirement. The bill prohibits employers from terminating employees or rescinding job offers based on TNCs until such employers receive FNCs, but the bill again imposes no penalty for violating that protection. The bill permits employers to reverify existing employees only under certain conditions, but imposes no penalties on employers who do otherwise. Further yet, the bill does not prohibit employers from taking adverse employment actions short of termination—such as withholding pay, delaying training, or reducing work hours—based on a TNC.

It is worth noting that while an employer would not face penalties for violating worker protections, they may face penalties if they violate the mandates that employers verify new hires, reverify current employees in certain circumstances, notify DHS if they choose not to terminate an employee after receiving an FNC, and refrain from putting false information into the verification system.

In order to correct this serious imbalance, Ranking Member John Conyers, Jr. (D-MI) offered an amendment that would have applied the existing penalty structure for employment of unauthorized workers to violations of worker protections. The amendment also would have protected workers from adverse employment actions on the basis of a TNC and made the willful misuse of the verification system an unfair immigration-related employment practice. This would have empowered the Office of Special Counsel of the U.S. Department of Justice to investigate such abuses and would have helped ensure persons harmed by unlawful conduct could obtain relief. The amendment was defeated on a party-line vote of 13–18.⁴⁷

Representative Judy Chu (D-CA) offered an additional amendment to increase the penalties on employers who engage in unfair immigration-related employment practices, as defined by section 274B of the INA. The amendment highlighted that while the underlying bill increases the penalties related to unlawful hiring or

⁴⁶*Id.* at 59.

⁴⁷*Id.* at 35.

employment of persons not authorized to work, it does nothing to increase the penalties related to discrimination and other unlawful immigration-related employment practices. The amendment failed by a party-line vote of 12–20.⁴⁸

D. American Workers Wrongfully Terminated Because of E-Verify Will Have Few Due Process Protections and Limited Access to Relief

In addition to lacking meaningful provisions to protect workers from wrongfully being terminated as a result of employer abuse or E-Verify error, H.R. 1772 also restricts the ability of workers to seek redress. The bill does this in two important ways.

First, the Legal Workforce Act makes the Federal Tort Claims Act (FTCA) the sole remedy for a job loss caused by an E-Verify error. An FTCA lawsuit against the federal government in our crowded federal courts will take months or years. Before filing a suit, the worker would first have to file an administrative claim and wait for either a denial of that claim or the passage of 6 months. In these tough economic times, the worker would likely be jobless and without pay for this entire period.

Moreover, the FTCA is an inadequate remedy, because workers who lose their jobs due to E-Verify errors will get nothing if they cannot prove that the error resulted from a “negligent or wrongful act or omission of any employee of the Government.”⁴⁹ In some instances, the wrongful termination may have resulted from typographic errors made by the employer inputting the employee’s information into the system. In other instances an error by a government employee simply might not have risen to the level of negligence required to justify relief under the FTCA. The government also can argue that claims may be barred by various exceptions to government liability under the FTCA. In an FTCA case alleging that a government employee negligently maintained the database that resulted in an erroneous final nonconfirmation, the government would likely invoke the “discretionary function exception” of the FTCA.⁵⁰

During the markup, Representative Hakeem Jeffries (D-NY) offered an amendment that would add meaningful due process protections for workers who receive FNCs and would ensure that wrongfully terminated authorized workers have access to appropriate remedies. The amendment created an administrative appeals process and authorized judicial review for FNCs, permitted workers to remain employed during this appeals process, and ensured that back pay and attorney’s fees will be provided to persons who lose their jobs due to system or employer error. The amendment would have satisfied Westat’s 2011 recommendation that USCIS “[c]onsider adding a formal appeal process that employers or their workers could use if they disagree with the final E-Verify finding.”⁵¹ The amendment was rejected by voice vote.⁵²

Second, the legislation prohibits wrongfully terminated American workers from bringing class action lawsuits under the FTCA. As

⁴⁸ *Id.* at 154.

⁴⁹ 28 U.S.C. § 1346(b)(1).

⁵⁰ 28 U.S.C. § 2680(a).

⁵¹ 2014 *Westat Report*, *supra* note 42 at xxviii.

⁵² Markup Tr. at 242.

Representative Ted Deutch stated in support of his amendment to strike this language in the bill, “[c]lass actions . . . are an essential means by which courts can effectively manage their dockets and address claims that impact a large number of people in a similar manner.”⁵³ Because of the great cost involved in bringing any lawsuit, let alone a suit against the United States Government, class action lawsuits are often essential for persons who lack the means to bring an individual lawsuit. By prohibiting class actions, the Legal Workforce Act creates a barrier that will prevent American workers and authorized non-citizens who have been wrongfully terminated from having their day in court. The amendment offered by Representative Deutch was defeated on a party-line vote of 7 to 20.⁵⁴

III. H.R. 1772 WILL DRIVE WORKERS OFF-THE-BOOKS, UNDERCUTTING AMERICAN WORKERS AND DECREASING FEDERAL REVENUES

During the Committee’s consideration of the Legal Workforce Act, the Majority frequently argued that because every job held by an undocumented worker is a job that could and would be held by an American worker, E-Verify actually would free up jobs for millions of American workers. That claim, which has been a favorite of Roy Beck, founder and CEO of NumbersUSA,⁵⁵ is belied by the fact that all major labor unions, as well as labor economists of every political stripe, opposed the bill during the 112th Congress because of the detrimental effect it would have on workers, employment relationships, and government revenues.⁵⁶

Rather than free up jobs for American workers, in places where E-Verify has been mandated we have seen employers simply take workers off-the-books entirely and into the underground, cash economy. When Arizona mandated the use of E-Verify under state law, the self-employment rate in the state doubled, while the rate of wage and salary work decreased.⁵⁷ Testifying before the Pennsylvania legislature in opposition to a measure that would have mandated the use of E-Verify for employers in the state, Kay Hollabaugh of Hollabaugh Bros. Farm “cited a fellow farmer in Arizona, where E-Verify is mandatory, who stopped checking workers against the database because it took too long when ripe fruit needed to be plucked. The Arizona farmer stopped issuing paychecks and withholding taxes, and began paying cash under the table.”⁵⁸

Driving workers off-the-books and into the cash economy—which is what could happen to millions of the undocumented workers already in our workforce if we mandate the use of E-Verify outside of comprehensive immigration reform—would have several pernicious effects. First, according to the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT), it would de-

⁵³ *Id.* at 194.

⁵⁴ *Id.* at 210.

⁵⁵ Roy Beck, *Obama’s Immigration Opportunity*, Politico, Feb. 3, 2011, <http://www.politico.com/news/stories/0211/48748.html>.

⁵⁶ See, e.g., American Federation of Labor and Congress of Industrial Organizations, American Federation of State, County and Municipal Employees, Service Employees International Union; Letter from John W. Wilhelm, President, UNITE Here! to Hon. Lamar Smith, Chairman and Members of the Judiciary Committee (Sept. 21, 2011) (on file with the H. Comm. on the Judiciary, Democratic Staff).

⁵⁷ Magnus Lofstrom, Sarah Bohn, & Stephen Raphael, *Lessons from the 2007 Legal Arizona Workers Act*, Public Policy Institute of Arizona, Mar. 2011, 24–25.

⁵⁸ Matza, *Farmers Say Stricter Immigrant Screening Could Hurt Their Businesses*, *supra* note 21.

crease net federal revenues by \$39 billion over a 10-year period.⁵⁹ Second, it would cheat workers out of critical protections such as the right to minimum wage and the availability of employer-provided health insurance, retirement benefits, or paid leave. It would also strip the right to workers' compensation if a person is injured or killed on the job and eliminate the availability of unemployment insurance if the worker is laid off. By incentivizing a shift to off-the-books arrangements, H.R. 1772 would further reduce the wages and working conditions of all workers, including American workers, at a time when such workers can least afford it.

IV. H.R. 1772 IMPOSES ADDITIONAL GOVERNMENT REGULATIONS AND UNFUNDED MANDATES ON SMALL BUSINESSES

E-Verify is often described as “free to use,” but this fails to account for the money that businesses must spend on training, equipment, and maintenance, as well as the staff time that goes into managing these aspects of the system. According to a study by Bloomberg Government, mandating the use of E-Verify for new hires alone would cost small businesses with fewer than 500 employees about \$2.6 billion every year to verify new hires through the system.⁶⁰ But because H.R. 1772 requires checks on many existing employees as well all new hires, the costs to small businesses would be even greater. Small businesses will be shouldered with a more significant cost burden than larger businesses because as Bloomberg reports, “large firms are able to spread the set-up and maintenance costs across a larger number of queries, tapping into the program’s economies of scale.”⁶¹ Small businesses, by contrast, are not be able to absorb the cost of outsourcing the new requirements and they often do not even have a dedicated human resources department that specializes in such matters. In 2008, for example, it cost small businesses that had just enrolled in E-Verify an average of \$127 to run a new hire query, compared to \$63 for all firms.⁶²

The disproportionate burden that E-Verify places on small businesses is an important explanation of why large employers are far more likely than small businesses to participate in the current E-Verify system. According to a December 2010 report by the Westat Corporation, “[w]hile 58 percent of E-Verify users were large employers (with 100 or more employees), only 2 percent of all employers nationally are in this size category. . . . Similarly, while 8 percent of E-Verify users were small employers (with 2–14 employees), 89 percent of all U.S. employers were small.”⁶³ Nearly half of the non-participating employers surveyed by Westat reported that participating would be too costly and burdensome.⁶⁴

The Main Street Alliance—a national network of small business leaders that creates opportunities for Main Street business owners to speak for themselves on issues that matter to businesses and

⁵⁹ See Congressional Budget Office, Cost Estimate, *supra* note 1.

⁶⁰ Jason Arvelo, *Free’ E-Verify May Cost Small Business \$2.6 Billion*, Bloomberg Government, Jan. 27, 2011.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *The Practices and Opinions of Employers Who Do Not Participate in E-Verify* (Westat, Dec. 2010), 29, available at <http://www.uscis.gov/USCIS/Resources/Reports/E-Verify/e-verify-non-user-dec-2010.pdf>.

⁶⁴ *Id.* at 21.

local economies—opposed the Legal Workforce Act in the 112th Congress, in part, because it was a threat to small business and local economies.⁶⁵ The National Small Business Association, representing more than 150,000 small businesses, also opposed the bill for these reasons.⁶⁶ Their opposition is important, since small businesses make up 99.7 percent of all American employer firms and created 64 percent of all new net jobs between 1993 and 2011.⁶⁷ H.R. 1772 could impose crippling costs on these businesses, the engines of job creation in America, just when we most need those businesses to create jobs.

Representative Chu offered two amendments *en bloc* to help us understand the financial burdens that H.R. 1772 would impose on small businesses and to empower DHS to make grants available to small businesses to offset some of the costs of complying with the bill's requirements. The amendments were defeated on a party-line vote of 9–21.⁶⁸

CONCLUSION

There is little disagreement among Members of Congress that all employers in the country should be required to verify the employment authorization of their new hires and that E-Verify will likely play an important role in making sure this happens. However, we have learned through years of hearings and markups on the subject that without top-to-bottom reform of our immigration laws, expanding E-Verify would decrease federal revenues by billions of dollars each year and devastate the agricultural industry, leading to the mass off-shoring of millions of U.S. jobs.

We have also learned that while E-Verify is getting more accurate over time, errors do persist. Some of these errors are the result of mistakes in government databases or user error by employers inputting the data. Other errors are the result of employers who intentionally or unintentionally fail to abide by the law by, among other things, terminating employees without providing an opportunity to challenge a tentative non-confirmation of employment authorization. In order to avoid serious consequences for innumerable American workers, it is critical that any bill mandating the use of E-Verify contain meaningful due process protections and substantial penalties for employers who break the rules. H.R. 1772 fails on both counts.

For all of these reasons, we respectfully dissent and urge our colleagues to reject this dangerous legislation.

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 JERROLD NADLER.
 ROBERT C. "BOBBY" SCOTT.
 ZOE LOFGREN.
 SHEILA JACKSON LEE.
 STEVE COHEN.

⁶⁵ Letter from the Main Street Alliance to Hon. Lamar Smith, Chairman & Hon. John Conyers, Jr., Ranking Member (Sept. 14, 2011), *available at* <http://mainstreetalliance.org/wp-content/uploads/2011/09/MSA-letter-to-House-Judiciary-Committee-on-HR-2885-Sept-14-2011.pdf>.

⁶⁶ *House Committee Approves Bill to Mandate E-Verify*, National Small Business Association, Sept. 27, 2011, <http://www.nsbabiz/content/4212.shtml>.

⁶⁷ Small Business Association, Office of Advocacy, *Frequently Asked Questions*, updated Sept. 2012, http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.

⁶⁸ Markup Tr. at 163.

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