

115TH CONGRESS  
2D SESSION

# S. 3386

To amend the Immigration and Nationality Act to provide for an electronic employment verification system, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 23, 2018

Mrs. McCASKILL (for herself and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to provide for an electronic employment verification system, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “E-Verify System Act  
5       of 2018”.

6       **SEC. 2. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED**  
7       **ALIENS.**

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

1 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

2       “(a) MAKING EMPLOYMENT OF UNAUTHORIZED  
3 ALIENS UNLAWFUL.—

4               “(1) IN GENERAL.—It is unlawful for an em-  
5 ployer—

6                       “(A) to hire, recruit, or refer for a fee an  
7 alien for employment in the United States  
8 knowing that the alien is an unauthorized alien  
9 with respect to such employment; or

10                      “(B) to hire, recruit, or refer for a fee for  
11 employment in the United States an individual  
12 without complying with the requirements under  
13 subsections (c) and (d).

14       “(2) CONTINUING EMPLOYMENT.—

15                      “(A) PROHIBITION ON CONTINUED EM-  
16 PLOYMENT OF UNAUTHORIZED ALIENS.—It is  
17 unlawful for an employer, after hiring an alien  
18 for employment, to continue to employ the alien  
19 in the United States knowing that the alien is  
20 (or has become) an unauthorized alien with re-  
21 spect to such employment.

22                      “(B) PROHIBITION ON CONSIDERATION OF  
23 PREVIOUS UNAUTHORIZED STATUS.—Nothing  
24 in this section may be construed to prohibit the  
25 employment of an individual who is authorized

1           for employment in the United States if such in-  
2           dividual was previously an unauthorized alien.

3           “(3) USE OF LABOR THROUGH CONTRACT.—

4           For purposes of this section, any employer that uses  
5           a contract, subcontract, or exchange to obtain the  
6           labor of an alien in the United States while knowing  
7           that the alien is an unauthorized alien with respect  
8           to performing such labor shall be considered to have  
9           hired the alien for employment in the United States  
10          in violation of paragraph (1)(A).

11          “(4) USE OF STATE EMPLOYMENT AGENCY  
12          DOCUMENTATION.—For purposes of paragraphs  
13          (1)(B), (5), and (6), an employer shall be deemed to  
14          have complied with the requirements under sub-  
15          section (c) with respect to the hiring of an individual  
16          who was referred for such employment by a State  
17          employment agency (as defined by the Secretary) if  
18          the employer has and retains (for the period and in  
19          the manner described in subsection (c)(3)) appro-  
20          priate documentation of such referral by such agen-  
21          cy, certifying that such agency has complied with the  
22          procedures described in subsection (c) with respect  
23          to the individual’s referral. An employer that relies  
24          on a State agency’s certification of compliance with  
25          subsection (c) under this paragraph may utilize and

1 retain the State agency's certification of compliance  
2 with the procedures described in subsection (d), if  
3 any, in the manner provided under this paragraph.

4 “(5) GOOD FAITH DEFENSE.—

5 “(A) DEFENSE.—An employer, person, or  
6 entity that hires, employs, recruits, or refers in-  
7 dividuals for employment in the United States,  
8 or is otherwise obligated to comply with the re-  
9 quirements under this section and establishes  
10 good faith compliance with the requirements  
11 under paragraphs (1) through (4) of subsection  
12 (c) and subsection (d)—

13 “(i) has established an affirmative de-  
14 fense that the employer, person, or entity  
15 has not violated paragraph (1)(A) with re-  
16 spect to hiring and employing; and

17 “(ii) has established compliance with  
18 its obligations under subparagraph (A) and  
19 (B) of paragraph (1) and subsection (c)  
20 unless the Secretary demonstrates that the  
21 employer had knowledge that an individual  
22 hired, employed, recruited, or referred by  
23 the employer, person, or entity is an unau-  
24 thorized alien.

1           “(B) EXCEPTION FOR CERTAIN EMPLOY-  
2           ERS.—An employer who is not required to par-  
3           ticipate in the System or who is participating in  
4           the System on a voluntary basis pursuant to  
5           subsection (d)(2)(J) has established an affirma-  
6           tive defense under subparagraph (A) and need  
7           not demonstrate compliance with the require-  
8           ments under subsection (d).

9           “(6) GOOD FAITH COMPLIANCE.—

10           “(A) IN GENERAL.—Except as otherwise  
11           provided in this subsection, an employer, per-  
12           son, or entity is considered to have complied  
13           with a requirement under this subsection not-  
14           withstanding a technical or procedural failure  
15           to meet such requirement if there was a good  
16           faith attempt to comply with the requirement.

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

20                   “(i) the failure is not de minimis;

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

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

5 “(iv) the employer, person, or entity  
6 has not corrected the failure voluntarily  
7 within such period.

8 “(C) EXCEPTION FOR PATTERN OR PRAC-  
9 TICE VIOLATORS.—Subparagraph (A) shall not  
10 apply to an employer, person, or entity that has  
11 engaged or is engaging in a pattern or practice  
12 of violations of paragraph (1)(A) or (2).

13 “(7) PRESUMPTION.—After the date on which  
14 an employer is required to participate in the System  
15 under subsection (d), the employer is presumed to  
16 have acted with knowledge for purposes of para-  
17 graph (1)(A) if the employer hires, employs, re-  
18 cruits, or refers an employee for a fee and fails to  
19 make an inquiry to verify the employment authoriza-  
20 tion status of the employee through the System.

21 “(8) CONTINUED APPLICATION OF WORKFORCE  
22 AND LABOR PROTECTION REMEDIES DESPITE UNAU-  
23 THORIZED EMPLOYMENT.—

24 “(A) IN GENERAL.—Subject only to sub-  
25 paragraph (B), all rights and remedies provided

under any Federal, State, or local law relating to workplace rights, including but not limited to back pay, are available to an employee despite—

“(i) the employee’s status as an unauthorized alien during or after the period of employment; or

“(ii) the employer’s or employee’s failure to comply with the requirements of this section.

“(B) REINSTATEMENT.—Reinstatement shall be available to individuals who—

“(i) are authorized to work in the United States at the time such relief is ordered or effectuated; or

“(ii) lost employment-authorized status due to the unlawful acts of the employer under this section.

“(b) DEFINITIONS.—In this section:

“(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of Social Security.

“(2) DEPARTMENT.—Except as otherwise provided, the term ‘Department’ means the Department of Homeland Security.

1           “(3) EMPLOYER.—The term ‘employer’ means  
2           any person or entity, including an agency or depart-  
3           ment of a Federal, State, or local government, an  
4           agent, or a System service provider acting on behalf  
5           of an employer, that hires, employs, recruits, or re-  
6           fers for a fee an individual for employment in the  
7           United States that is not casual, sporadic, irregular,  
8           or intermittent (as defined by the Secretary).

9           “(4) EMPLOYMENT AUTHORIZED STATUS.—The  
10          term ‘employment authorized status’ means, with re-  
11          spect to an individual, that the individual is author-  
12          ized to be employed in the United States under the  
13          immigration laws of the United States.

14          “(5) SECRETARY.—Except as otherwise specifi-  
15          cally provided, the term ‘Secretary’ means the Sec-  
16          retary of Homeland Security.

17          “(6) SYSTEM.—The term ‘System’ means the  
18          Employment Verification System established under  
19          subsection (d).

20          “(7) UNAUTHORIZED ALIEN.—The term ‘unau-  
21          thorized alien’ means an alien who, with respect to  
22          employment in the United States at a particular  
23          time—

24                 “(A) is not lawfully admitted for perma-  
25                 nent residence; or



1           “(B) is not authorized to be employed  
2           under this Act or by the Secretary.

3           “(8) WORKPLACE RIGHTS.—The term ‘work-  
4           place rights’ means rights guaranteed under Fed-  
5           eral, State, or local labor or employment laws, in-  
6           cluding laws concerning wages and hours, benefits  
7           and employment standards, labor relations, work-  
8           place health and safety, work-related injuries, non-  
9           discrimination, and retaliation for exercising rights  
10          under such laws.

11          “(c) DOCUMENT VERIFICATION REQUIREMENTS.—  
12          Any employer hiring an individual for employment in the  
13          United States shall comply with the following require-  
14          ments and the requirements under subsection (d) to verify  
15          that the individual has employment authorized status.

16          “(1) ATTESTATION AFTER EXAMINATION OF  
17          DOCUMENTATION.—

18                 “(A) IN GENERAL.—

19                         “(i) EXAMINATION BY EMPLOYER.—  
20                         An employer shall attest, under penalty of  
21                         perjury on a form prescribed by the Sec-  
22                         retary, that the employer has verified the  
23                         identity and employment authorization sta-  
24                         tus of the individual—

25                                 “(I) by examining—

1 “(aa) a document specified  
2 in subparagraph (C); or

3 “(bb) a document specified  
4 in subparagraph (D) and a docu-  
5 ment specified in subparagraph  
6 (E); and

7 “(II) by utilizing an identity au-  
8 thentication mechanism described in  
9 clause (iii) or (iv) of subparagraph  
10 (F).

11 “(ii) PUBLICATION OF DOCUMENTS.—  
12 The Secretary shall publish a picture of  
13 each document specified in subparagraphs  
14 (C) and (E) on the U.S. Citizenship and  
15 Immigration Services website.

16 “(B) REQUIREMENTS.—

17 “(i) FORM.—The form referred to in  
18 subparagraph (A)(i)—

19 “(I) shall be prescribed by the  
20 Secretary not later than 6 months  
21 after the date of the enactment of the  
22 E-Verify System Act of 2018; and

23 “(II) shall be available as—

24 “(aa) a paper form;

1 “(bb) a form that may be  
2 completed by an employer via  
3 telephone or video conference;

4 “(cc) an electronic form; or

5 “(dd) a form that is inte-  
6 grated electronically with the re-  
7 quirements under subsection (d).

8 “(ii) ATTESTATION.—Each such form  
9 shall require the employer to sign an attes-  
10 tation with a handwritten, electronic, or  
11 digital pin code signature, according to  
12 standards prescribed by the Secretary.

13 “(iii) COMPLIANCE.—An employer has  
14 complied with the requirements under this  
15 paragraph with respect to examination of  
16 the documents included in subclauses (I)  
17 and (II) of subparagraph (A)(i) if—

18 “(I) the employer has, in good  
19 faith, followed applicable regulations  
20 and any written procedures or instruc-  
21 tions provided by the Secretary; and

22 “(II) a reasonable person would  
23 conclude that the documentation is  
24 genuine and relates to the individual  
25 presenting such documentation.

1           “(C) DOCUMENTS ESTABLISHING IDEN-  
2           TITY AND EMPLOYMENT AUTHORIZED STA-  
3           TUS.—A document is specified in this subpara-  
4           graph if the document is unexpired (unless the  
5           validity of the document is extended by law)  
6           and is 1 of the following:

7                   “(i) A United States passport or pass-  
8                   port card issued to an individual pursuant  
9                   to the Secretary of State’s authority under  
10                  the Act entitled ‘An Act to regulate the  
11                  issue and validity of passports, and for  
12                  other purposes’, approved July 3, 1926 (22  
13                  U.S.C. 211a).

14                  “(ii) A document issued to an alien  
15                  evidencing that the alien is lawfully admit-  
16                  ted for permanent residence or another  
17                  document issued to an individual evidenc-  
18                  ing the individual’s employment authorized  
19                  status, as designated by the Secretary, if  
20                  the document—

21                   “(I) contains a photograph of the  
22                   individual, or such other personal  
23                   identifying information relating to the  
24                   individual as the Secretary deter-

1 mines, by regulation, to be sufficient  
2 for the purposes of this subparagraph;

3 “(II) is evidence of employment  
4 authorized status; and

5 “(III) contains security features  
6 to make the document resistant to  
7 tampering, counterfeiting, and fraudu-  
8 lent use.

9 “(iii) An enhanced driver’s license or  
10 identification card issued to a national of  
11 the United States by a State, an outlying  
12 possession of the United States, or a feder-  
13 ally recognized Indian tribe that—

14 “(I) meets the requirements  
15 under section 202 of the REAL ID  
16 Act of 2005 (division B of Public Law  
17 109–13; 49 U.S.C. 30301 note); and

18 “(II) the Secretary has certified  
19 by notice published in the Federal  
20 Register and through appropriate no-  
21 tice directly to employers registered in  
22 the System 3 months prior to publica-  
23 tion that such enhanced license or  
24 card is suitable for use under this  
25 subparagraph based upon the accu-

1 racy and security of the issuance proc-  
2 ess, security features on the docu-  
3 ment, and such other factors as the  
4 Secretary may prescribe.

5 “(iv) A passport issued by the appro-  
6 priate authority of a foreign country ac-  
7 companied by a Form I-94 or Form I-  
8 94A (or similar successor record), or other  
9 documentation as designated by the Sec-  
10 retary that specifies the individual’s status  
11 in the United States and the duration of  
12 such status if the proposed employment is  
13 not in conflict with any restriction or limi-  
14 tation specified on such form or docu-  
15 mentation.

16 “(v) A passport issued by the Fed-  
17 erated States of Micronesia or the Repub-  
18 lic of the Marshall Islands with evidence of  
19 nonimmigrant admission to the United  
20 States under the Compact of Free Associa-  
21 tion between the United States and the  
22 Federated States of Micronesia or the Re-  
23 public of the Marshall Islands.

24 “(D) DOCUMENTS ESTABLISHING IDEN-  
25 TITY OF INDIVIDUAL.—A document is specified

1 in this subparagraph if the document is unex-  
2 pired (unless the validity of the document is ex-  
3 tended by law) and is 1 of the following:

4 “(i) A driver’s license or identity card  
5 that is not described in subparagraph  
6 (C)(iii) and is issued to an individual by a  
7 State or an outlying possession of the  
8 United States, a federally recognized In-  
9 dian tribe, or an agency (including mili-  
10 tary) of the Federal Government if the  
11 driver’s license or identity card includes, at  
12 a minimum—

13 “(I) the individual’s photograph,  
14 name, date of birth, gender, and driv-  
15 er’s license or identification card num-  
16 ber; and

17 “(II) security features to make  
18 the license or card resistant to tam-  
19 pering, counterfeiting, and fraudulent  
20 use.

21 “(ii) A voter registration card.

22 “(iii) A document that complies with  
23 the requirements under section 7209(b)(1)  
24 of the Intelligence Reform and Terrorism

1 Prevention Act of 2004 (Public Law 108–  
2 458; 8 U.S.C. 1185 note).

3 “(iv) For individuals under 18 years  
4 of age who are unable to present a docu-  
5 ment listed in clause (i) or (ii), documenta-  
6 tion of personal identity of such other type  
7 as the Secretary determines will provide a  
8 reliable means of identification, which may  
9 include an attestation as to the individual’s  
10 identity by a parent or legal guardian  
11 under penalty of perjury.

12 “(E) DOCUMENTS EVIDENCING EMPLOY-  
13 MENT AUTHORIZATION.—A document is speci-  
14 fied in this subparagraph if the document is un-  
15 expired (unless the validity of the document is  
16 extended by law) and is one of the following:

17 “(i) A social security account number  
18 card issued by the Commissioner, other  
19 than a card which specifies on its face that  
20 the card is not valid to evidence employ-  
21 ment authorized status or has other simi-  
22 lar words of limitation.

23 “(ii) Any other documentation evi-  
24 dencing employment authorized status that  
25 the Secretary determines and publishes in



the Federal Register and through appropriate notice directly to employers registered within the System to be acceptable for purposes of this subparagraph if such documentation, including any electronic security measures linked to such documentation, contains security features to make such documentation resistant to tampering, counterfeiting, and fraudulent use.

“(F) IDENTITY AUTHENTICATION MECHANISM.—

“(i) DEFINITIONS.—In this subparagraph:

“(I) COVERED IDENTITY DOCUMENT.—The term ‘covered identity document’ means a valid—

“(aa) United States passport, passport card, or a document evidencing lawful permanent residence status or employment authorized status issued to an alien;

“(bb) enhanced driver’s license or identity card issued by a participating State or an outlying

possession of the United States;

or

“(cc) photograph and appropriate identifying information provided by the Secretary of State pursuant to the granting of a visa.

“(II) PARTICIPATING STATE.—

The term ‘participating State’ means a State that has an agreement with the Secretary to provide the Secretary, for purposes of identity verification in the System, with photographs and appropriate identifying information maintained by the State.

“(ii) REQUIREMENT FOR IDENTITY AUTHENTICATION.—In addition to verifying the documents specified in subparagraph (C), (D), or (E) and utilizing the System under subsection (d), each employer shall use an identity authentication mechanism described in clause (iii) or provided in clause (iv) after it becomes available to verify the identity of each individual the employer seeks to hire.

1 “(iii) PHOTO TOOL.—

2 “(I) USE REQUIREMENT.—An  
3 employer hiring an individual who has  
4 a covered identity document shall  
5 verify the identity of such individual  
6 using the photo tool described in sub-  
7 clause (II).

8 “(II) DEVELOPMENT REQUIRE-  
9 MENT.—The Secretary shall develop  
10 and maintain a photo tool that en-  
11 ables employers to match the photo on  
12 a covered identity document provided  
13 to the employer to a photo maintained  
14 by a U.S. Citizenship and Immigra-  
15 tion Services database.

16 “(iv) ADDITIONAL SECURITY MEAS-  
17 URES.—

18 “(I) USE REQUIREMENT.—An  
19 employer seeking to hire an individual  
20 whose identity may not be verified  
21 using the photo tool described in  
22 clause (iii) shall verify the identity of  
23 such individual using the additional  
24 security measures described in sub-  
25 clause (II).

1                   “(II) DEVELOPMENT REQUIRE-  
2                   MENT.—The Secretary shall develop,  
3                   after publication in the Federal Reg-  
4                   ister and an opportunity for public  
5                   comment, specific and effective addi-  
6                   tional security measures to adequately  
7                   verify the identity of an individual  
8                   whose identity may not be verified  
9                   using the photo tool described in  
10                  clause (iii). Such additional security  
11                  measures—

12                         “(aa) shall be kept up-to-  
13                         date with technological advances;  
14                         and

15                         “(bb) shall provide a means  
16                         of identity authentication in a  
17                         manner that provides a high level  
18                         of certainty as to the identity of  
19                         such individual, using immigra-  
20                         tion and identifying information  
21                         that may include review of iden-  
22                         tity documents or background  
23                         screening verification techniques  
24                         using publicly available informa-  
25                         tion.

1           “(G) AUTHORITY TO PROHIBIT USE OF  
2 CERTAIN DOCUMENTS.—If the Secretary deter-  
3 mines, after publication in the Federal Register  
4 and an opportunity for public comment, that  
5 any document or class of documents specified in  
6 subparagraph (B), (C), or (D) does not reliably  
7 establish identity or that employment author-  
8 ized status is being used fraudulently to an un-  
9 acceptable degree, the Secretary—

10           “(i) may prohibit or restrict the use of  
11 such document or class of documents for  
12 purposes of this subsection; and

13           “(ii) shall directly notify all employers  
14 registered within the System of the prohi-  
15 bition through appropriate means.

16           “(H) AUTHORITY TO ALLOW USE OF CER-  
17 TAIN DOCUMENTS.—If the Secretary has deter-  
18 mined that another document or class of docu-  
19 ments, such as a document issued by a federally  
20 recognized Indian tribe, may be used to reliably  
21 establish identity or employment authorized sta-  
22 tus, the Secretary—

23           “(i) may allow the use of that docu-  
24 ment or class of documents for purposes of  
25 this subsection after publication in the

1 Federal Register and an opportunity for  
2 public comment;

3 “(ii) shall publish a description of any  
4 such document or class of documents on  
5 the U.S. Citizenship and Immigration  
6 Services website; and

7 “(iii) shall directly notify all employ-  
8 ers registered within the System of the ad-  
9 dition through appropriate means.

10 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-  
11 MENT AUTHORIZATION.—An individual, upon com-  
12 mencing employment with an employer, shall—

13 “(A) attest, under penalty of perjury, on  
14 the form prescribed by the Secretary, that the  
15 individual is—

16 “(i) a citizen of the United States;

17 “(ii) an alien lawfully admitted for  
18 permanent residence;

19 “(iii) an alien who has employment  
20 authorized status; or

21 “(iv) otherwise authorized by the Sec-  
22 retary to be hired for such employment;

23 “(B) provide such attestation by a hand-  
24 written, electronic, or digital pin code signature;  
25 and

1           “(C) provide the individual’s social security  
 2           account number to the Secretary, unless the in-  
 3           dividual has not yet been issued such a number,  
 4           on such form as the Secretary may require.

5           “(3) RETENTION OF VERIFICATION RECORD.—

6           “(A) IN GENERAL.—After completing a  
 7           form for an individual in accordance with para-  
 8           graphs (1) and (2), the employer shall retain a  
 9           version of such completed form and make such  
 10          form available for inspection by the Secretary  
 11          or the Immigrant and Employee Rights Section  
 12          for the Civil Rights Division of the Department  
 13          of Justice during the period beginning on the  
 14          hiring date of the individual and ending on the  
 15          later of—

16                  “(i) the date that is 3 years after such  
 17                  hiring date; or

18                  “(ii) the date that is 1 year after the  
 19                  date on which the individual’s employment  
 20                  with the employer is terminated.

21           “(B) REQUIREMENT FOR ELECTRONIC RE-  
 22           TENTION.—The Secretary—

23                  “(i) shall permit an employer to retain  
 24                  the form described in subparagraph (A) in  
 25                  electronic form; and

1                   “(ii) shall permit an employer to re-  
 2                   tain such form in paper, microfiche, micro-  
 3                   film, portable document format, or other  
 4                   media.

5                   “(4) COPYING OF DOCUMENTATION AND REC-  
 6                   ORDKEEPING.—The Secretary may promulgate regu-  
 7                   lations regarding—

8                   “(A) copying documents and related infor-  
 9                   mation pertaining to employment verification  
 10                  presented by an individual under this sub-  
 11                  section; and

12                  “(B) retaining such information during a  
 13                  period not to exceed the required retention pe-  
 14                  riod set forth in paragraph (3).

15                  “(5) PENALTIES.—An employer that fails to  
 16                  comply with any requirement under this subsection  
 17                  may be penalized under subsection (e)(4)(B).

18                  “(6) PROTECTION OF CIVIL RIGHTS.—

19                  “(A) IN GENERAL.—Nothing in this sec-  
 20                  tion may be construed to diminish any rights  
 21                  otherwise protected by Federal law.

22                  “(B) PROHIBITION ON DISCRIMINATION.—  
 23                  An employer shall use the procedures for docu-  
 24                  ment verification set forth in this paragraph for  
 25                  all employees without regard to race, color, reli-



1           gion, sex, national origin, or, unless specifically  
2           permitted in this section, to citizenship status.

3           “(7) RECEIPTS.—The Secretary may authorize  
4           the use of receipts for replacement documents, and  
5           temporary evidence of employment authorization by  
6           an individual to meet a documentation requirement  
7           under this subsection on a temporary basis not to  
8           exceed 1 year, after which time the individual shall  
9           provide documentation sufficient to satisfy the docu-  
10          mentation requirements under this subsection.

11          “(8) NO AUTHORIZATION OF NATIONAL IDENTI-  
12          FICATION CARDS.—Nothing in this section may be  
13          construed to directly or indirectly authorize the  
14          issuance, use, or establishment of a national identi-  
15          fication card.

16          “(d) EMPLOYMENT VERIFICATION SYSTEM.—

17               “(1) IN GENERAL.—

18                   “(A) ESTABLISHMENT.—The Secretary, in  
19                   consultation with the Commissioner, shall es-  
20                   tablish the Employment Verification System.

21                   “(B) MONITORING.—The Secretary shall  
22                   create the necessary processes to monitor—

23                               “(i) the functioning of the System, in-  
24                               cluding the volume of the workflow, the

1 speed of processing of queries, the speed  
2 and accuracy of responses;

3 “(ii) the misuse of the System, includ-  
4 ing the prevention of fraud or identity  
5 theft;

6 “(iii) whether the use of the System  
7 results in wrongful adverse actions or dis-  
8 crimination based upon a prohibited factor  
9 against citizens or nationals of the United  
10 States or individuals who have employment  
11 authorized status; and

12 “(iv) the security, integrity, and pri-  
13 vacy of the System.

14 “(C) PROCEDURES.—The Secretary—

15 “(i) shall create processes to provide  
16 an individual with direct access to the indi-  
17 vidual’s case history in the System, includ-  
18 ing—

19 “(I) the identities of all persons  
20 or entities that have queried the indi-  
21 vidual through the System;

22 “(II) the date of each such  
23 query; and

24 “(III) the System response for  
25 each such query; and

1 “(ii) in consultation with the Commis-  
2 sioner, shall develop—

3 “(I) protocols to notify an indi-  
4 vidual, in a timely manner through  
5 the use of electronic correspondence  
6 or mail, that a query for the indi-  
7 vidual has been processed through the  
8 System; or

9 “(II) a process for the individual  
10 to submit additional queries to the  
11 System or notify the Secretary of po-  
12 tential identity fraud.

13 “(2) PARTICIPATION REQUIREMENTS.—

14 “(A) FEDERAL GOVERNMENT.—Except as  
15 provided in subparagraph (B), all agencies and  
16 departments in the executive, legislative, or ju-  
17 dicial branches of the Federal Government shall  
18 participate in the System beginning on the ear-  
19 lier of—

20 “(i) the date of the enactment of the  
21 E-Verify System Act of 2018, to the ex-  
22 tent required under section 402(e)(1) of  
23 the Illegal Immigration Reform and Immig-  
24 rant Responsibility Act of 1996 (division  
25 C of Public Law 104–208; 8 U.S.C.

1 1324a) and as already implemented by  
2 each agency or department; or

3 “(ii) the date that is 90 days after the  
4 date of the enactment of the E-Verify Sys-  
5 tem Act of 2018.

6 “(B) FEDERAL CONTRACTORS.—Federal  
7 contractors shall participate in the System as  
8 provided in the final rule relating to employ-  
9 ment eligibility verification published in the  
10 Federal Register on November 14, 2008 (73  
11 Fed. Reg. 67,651), or any similar subsequent  
12 regulation, for which purpose references to E-  
13 Verify in the final rule shall be construed to  
14 apply to the System.

15 “(C) CRITICAL INFRASTRUCTURE.—

16 “(i) IN GENERAL.—Beginning on the  
17 date that is 1 year after the date on which  
18 regulations are published implementing  
19 this subsection, the Secretary may author-  
20 ize or direct any employer, person, or enti-  
21 ty responsible for granting access to, pro-  
22 tecting, securing, operating, administering,  
23 or regulating part of the critical infrastruc-  
24 ture (as defined in section 1016(e) of the  
25 Critical Infrastructure Protection Act of

2001 (42 U.S.C. 5195c(e))) to participate in the System to the extent the Secretary determines that such participation will assist in the protection of the critical infrastructure.

“(ii) NOTIFICATION TO EMPLOYERS.—The Secretary shall notify an employer required to participate in the System under this subparagraph not later than 90 days before the date on which the employer is required to participate.

“(D) EMPLOYERS WITH MORE THAN 5,000 EMPLOYEES.—Not later than 2 years after regulations are published implementing this subsection, all employers with more than 5,000 employees shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents.

“(E) EMPLOYERS WITH MORE THAN 500 EMPLOYEES.—Not later than 3 years after regulations are published implementing this subsection, all employers with more than 500 employees shall participate in the System with respect to all newly hired employees and employ-

ees with expiring temporary employment authorization documents.

“(F) AGRICULTURAL EMPLOYMENT.—Not later than 4 years after regulations are published implementing this subsection, employers of employees performing agricultural employment shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents. An agricultural employee shall not be counted for purposes of subparagraph (D) or (E).

“(G) ALL EMPLOYERS.—Except as provided in subparagraph (H), not later than 4 years after regulations are published implementing this subsection, all employers shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents.

“(H) TRIBAL GOVERNMENT EMPLOYERS.—

“(i) RULEMAKING.—In developing regulations to implement this subsection, the Secretary shall—

1 “(I) consider the effects of this  
2 section on federally recognized Indian  
3 tribes and tribal members; and

4 “(II) consult with the govern-  
5 ments of federally recognized Indian  
6 tribes.

7 “(ii) REQUIRED PARTICIPATION.—Not  
8 later than 5 years after regulations are  
9 published implementing this subsection, all  
10 employers owned by, or entities of, the gov-  
11 ernment of a federally recognized Indian  
12 tribe shall participate in the System with  
13 respect to all newly hired employees and  
14 employees with expiring temporary employ-  
15 ment authorization documents.

16 “(I) IMMIGRATION LAW VIOLATORS.—

17 “(i) ORDERS FINDING VIOLATIONS.—  
18 An order finding any employer to have vio-  
19 lated this section or section 274C may, in  
20 the Secretary’s discretion, require the em-  
21 ployer to participate in the System with re-  
22 spect to newly hired employees and em-  
23 ployees with expiring temporary employ-  
24 ment authorization documents, if such em-  
25 ployer is not otherwise required to partici-

1           pate in the System under this section. The  
 2           Secretary shall monitor such employer's  
 3           compliance with System procedures.

4           “(ii) PATTERN OR PRACTICE OF VIO-  
 5           LATIONS.—The Secretary may require an  
 6           employer that is required to participate in  
 7           the System with respect to newly hired em-  
 8           ployees to participate in the System with  
 9           respect to the employer's current employ-  
 10          ees if the employer is determined by the  
 11          Secretary or other appropriate authority to  
 12          have engaged in a pattern or practice of  
 13          violations of the immigration laws of the  
 14          United States.

15          “(J) VOLUNTARY PARTICIPATION.—The  
 16          Secretary may permit any employer that is not  
 17          required to participate in the System under this  
 18          section to do so on a voluntary basis.

19          “(3) CONSEQUENCE OF FAILURE TO PARTICI-  
 20          PATE.—

21          “(A) IN GENERAL.—Except as provided in  
 22          subparagraph (B), the failure, other than a de  
 23          minimis or inadvertent failure, of an employer  
 24          that is required to participate in the System to



1           comply with the requirements of the System  
2           with respect to an individual—

3                   “(i) shall be treated as a violation of  
4                   subsection (a)(1)(B) with respect to that  
5                   individual; and

6                   “(ii) creates a rebuttable presumption  
7                   that the employer has violated paragraph  
8                   (1)(A) or (2) of subsection (a).

9                   “(B) EXCEPTION.—

10                   “(i) IN GENERAL.—Subparagraph (A)  
11                   shall not apply in a criminal prosecution.

12                   “(ii) USE AS EVIDENCE.—Nothing in  
13                   this paragraph may be construed to limit  
14                   the use in the prosecution of a Federal  
15                   crime, in a manner otherwise consistent  
16                   with Federal criminal law and procedure,  
17                   of evidence relating to the employer’s fail-  
18                   ure to comply with requirements of the  
19                   System.

20                   “(4) PROCEDURES FOR PARTICIPANTS IN THE  
21                   SYSTEM.—

22                   “(A) IN GENERAL.—An employer partici-  
23                   pating in the System shall register such partici-  
24                   pation with the Secretary and, when hiring any

1 individual for employment in the United States,  
2 shall comply with the following:

3 “(i) REGISTRATION OF EMPLOYERS.—

4 The Secretary, through notice in the Fed-  
5 eral Register, shall prescribe procedures  
6 that employers shall be required to follow  
7 to register with the System.

8 “(ii) UPDATING INFORMATION.—The

9 employer is responsible for providing notice  
10 of any change to the information required  
11 under subclauses (I), (II), and (III) of  
12 clause (v) before conducting any further  
13 inquiries within the System, or on such  
14 other schedule as the Secretary may pre-  
15 scribe.

16 “(iii) TRAINING.—The Secretary shall

17 require employers to undergo such training  
18 as the Secretary determines to be nec-  
19 essary to ensure proper use, protection of  
20 civil rights and civil liberties, privacy, in-  
21 tegrity, and security of the System. To the  
22 extent practicable, such training shall be  
23 made available electronically on the U.S.  
24 Citizenship and Immigration Services  
25 website.

1                   “(iv) NOTIFICATION TO EMPLOY-  
2                   EES.—The employer shall inform individ-  
3                   uals hired for employment that the Sys-  
4                   tem—

5                   “(I) will be used by the employer;

6                   “(II) may be used for immigra-  
7                   tion enforcement purposes; and

8                   “(III) may not be used to dis-  
9                   criminate or to take adverse action  
10                  against a national of the United  
11                  States or an alien who has employ-  
12                  ment authorized status.

13                  “(v) PROVISION OF ADDITIONAL IN-  
14                  FORMATION.—The employer shall obtain  
15                  from the individual (and the individual  
16                  shall provide) and shall record in such  
17                  manner as the Secretary may specify—

18                  “(I) the individual’s social secu-  
19                  rity account number;

20                  “(II) if the individual does not  
21                  attest to United States citizenship or  
22                  status as a national of the United  
23                  States under subsection (c)(2), such  
24                  identification or authorization number

1 established by the Department as the  
2 Secretary shall specify; and

3 “(III) such other information as  
4 the Secretary may require to deter-  
5 mine the identity and employment au-  
6 thorization of an individual.

7 “(vi) PRESENTATION OF DOCUMENTA-  
8 TION.—The employer, and the individual  
9 whose identity and employment authorized  
10 status are being confirmed, shall fulfill the  
11 requirements under subsection (c).

12 “(B) SEEKING CONFIRMATION.—

13 “(i) IN GENERAL.—An employer shall  
14 use the System to confirm the identity and  
15 employment authorized status of any indi-  
16 vidual during—

17 “(I) the period beginning on the  
18 date on which the individual accepts  
19 an offer of employment and ending 3  
20 business days after the date on which  
21 employment begins; or

22 “(II) such other reasonable pe-  
23 riod as the Secretary may prescribe.

24 “(ii) LIMITATION.—An employer may  
25 not make the starting date of an individ-

1           ual’s employment or training or any other  
2           term and condition of employment depend-  
3           ent on the receipt of a confirmation of  
4           identity and employment authorized status  
5           by the System.

6           “(iii) REVERIFICATION.—If an indi-  
7           vidual has a limited period of employment  
8           authorized status, the individual’s em-  
9           ployer shall reverify such status through  
10          the System not later than 3 business days  
11          after the last day of such period.

12          “(iv) OTHER EMPLOYMENT.—For em-  
13          ployers directed by the Secretary to par-  
14          ticipate in the System under paragraph  
15          (2)(C)(i) to protect critical infrastructure  
16          or otherwise specified circumstances in this  
17          section to verify their entire workforce, the  
18          System may be used for initial verification  
19          of an individual who was hired before the  
20          employer became subject to the System,  
21          and the employer shall initiate all required  
22          procedures on or before such date as the  
23          Secretary shall specify.

24          “(v) NOTIFICATION.—

1           “(I) IN GENERAL.—The Sec-  
2           retary shall provide, and the employer  
3           shall utilize, as part of the System, a  
4           method of notifying employers of a  
5           confirmation or nonconfirmation of an  
6           individual’s identity and employment  
7           authorized status, or a notice that  
8           further action is required to verify  
9           such identity or employment eligibility  
10          (referred to in this subsection as a  
11          ‘further action notice’).

12          “(II) PROCEDURES.—The Sec-  
13          retary shall—

14               “(aa) directly notify the in-  
15               dividual and the employer, by  
16               means of electronic correspond-  
17               ence, mail, text message, tele-  
18               phone, or other direct commu-  
19               nication, of a nonconfirmation or  
20               further action notice;

21               “(bb) provide information  
22               about filing an administrative ap-  
23               peal under paragraph (6) and a  
24               filing for review before an admin-

1            istrative law judge under para-  
2            graph (7); and

3            “(cc) establish procedures to  
4            directly notify the individual and  
5            the employer of a confirmation.

6            “(III) IMPLEMENTATION.—The  
7            Secretary may provide for a phased-in  
8            implementation of the notification re-  
9            quirements under this clause, as ap-  
10          propiate. The notification system  
11          shall cover all inquiries not later than  
12          1 year from the date of the enactment  
13          of the E-Verify System Act of 2018.

14          “(C) CONFIRMATION OR NONCONFIRMA-  
15          TION.—

16          “(i) INITIAL RESPONSE.—

17          “(I) IN GENERAL.—Except as  
18          provided in subclause (II), the System  
19          shall provide—

20          “(aa) a confirmation of an  
21          individual’s identity and employ-  
22          ment authorized status or a fur-  
23          ther action notice at the time of  
24          the inquiry; and

1                   “(bb) an appropriate code  
2                   indicating such confirmation or  
3                   such further action notice.

4                   “(II)     ALTERNATIVE     DEAD-  
5                   LINE.—If the System is unable to  
6                   provide immediate confirmation or  
7                   further action notice for technological  
8                   reasons or due to unforeseen cir-  
9                   cumstances, the System shall provide  
10                  a confirmation or further action notice  
11                  not later than 3 business days after  
12                  the initial inquiry.

13                  “(ii) CONFIRMATION UPON INITIAL  
14                  INQUIRY.—If the employer receives an ap-  
15                  propriate confirmation of an individual’s  
16                  identity and employment authorized status  
17                  under the System, the employer shall  
18                  record the confirmation in such manner as  
19                  the Secretary may specify.

20                  “(iii) FURTHER ACTION NOTICE AND  
21                  LATER CONFIRMATION OR NONCONFIRMA-  
22                  TION.—

23                  “(I) NOTIFICATION AND AC-  
24                  KNOWLEDGMENT THAT FURTHER AC-  
25                  TION IS REQUIRED.—Not later than 3



1 business days after an employer re-  
2 ceives a further action notice of an in-  
3 dividual's identity or employment eli-  
4 gibility under the System, or during  
5 such other reasonable time as the Sec-  
6 retary may prescribe, the employer  
7 shall notify the individual for whom  
8 the confirmation is sought of the fur-  
9 ther action notice and any procedures  
10 specified by the Secretary for address-  
11 ing such notice. The further action  
12 notice shall be given to the individual  
13 in writing and the employer shall ac-  
14 knowledge in the System under pen-  
15 alty of perjury that it provided the  
16 employee with the further action no-  
17 tice. The individual shall affirmatively  
18 acknowledge in writing, or in such  
19 other manner as the Secretary may  
20 specify, the receipt of the further ac-  
21 tion notice from the employer. If the  
22 individual refuses to acknowledge the  
23 receipt of the further action notice, or  
24 acknowledges in writing that the indi-  
25 vidual will not contest the further ac-

1           tion notice under subclause (II), the  
2           employer shall notify the Secretary in  
3           such manner as the Secretary may  
4           specify.

5           “(II) CONTEST.—Not later than  
6           10 business days after receiving noti-  
7           fication of a further action notice  
8           under subclause (I), the individual  
9           shall contact the appropriate Federal  
10          agency and, if the Secretary so re-  
11          quires, appear in person for purposes  
12          of verifying the individual’s identity  
13          and employment eligibility. The Sec-  
14          retary, in consultation with the Com-  
15          missioner and other appropriate Fed-  
16          eral agencies, shall specify an avail-  
17          able secondary verification procedure  
18          to confirm the validity of information  
19          provided and to provide a confirma-  
20          tion or nonconfirmation. Any proce-  
21          dures for reexamination shall not limit  
22          in any way an employee’s right to ap-  
23          peal a nonconfirmation.

24          “(III) NO CONTEST.—If the indi-  
25          vidual refuses to acknowledge receipt

1 of the further action notice, acknowl-  
2 edges that the individual will not con-  
3 test the further action notice as pro-  
4 vided in subclause (I), or does not  
5 contact the appropriate Federal agen-  
6 cy within the period specified in sub-  
7 clause (II), following expiration of the  
8 period specified in subclause (II), a  
9 nonconfirmation shall be issued. The  
10 employer shall record the noncon-  
11 firmation in such manner as the Sec-  
12 retary may specify and terminate the  
13 individual's employment. An individ-  
14 ual's failure to contest a further ac-  
15 tion notice shall not be considered an  
16 admission of guilt with respect to any  
17 violation of this section or any provi-  
18 sion of law.

19 “(IV) CONFIRMATION OR NON-  
20 CONFIRMATION.—Unless the period is  
21 extended in accordance with this sub-  
22 clause, the System shall provide a  
23 confirmation or nonconfirmation not  
24 later than 10 business days after the  
25 date on which the individual contests

1 the further action notice under sub-  
2 clause (II). If the Secretary deter-  
3 mines that good cause exists, after  
4 taking into account adverse impacts  
5 to the employer, and including time to  
6 permit the individual to obtain and  
7 provide needed evidence of identity or  
8 employment eligibility, the Secretary  
9 shall extend the period for providing  
10 confirmation or nonconfirmation for  
11 stated periods beyond 10 business  
12 days. When confirmation or noncon-  
13 firmation is provided, the confirma-  
14 tion system shall provide an appro-  
15 priate code indicating such confirma-  
16 tion or nonconfirmation.

17 “(V) REEXAMINATION.—Nothing  
18 in this section shall prevent the Sec-  
19 retary from establishing procedures to  
20 reexamine a case where a confirma-  
21 tion or nonconfirmation has been pro-  
22 vided if subsequently received infor-  
23 mation indicates that the confirmation  
24 or nonconfirmation may not have been  
25 correct. Any procedures for reexam-

1 ination shall not limit in any way an  
2 employee's right to appeal a noncon-  
3 firmation.

4 “(VI) EMPLOYEE PROTEC-  
5 TIONS.—An employer may not termi-  
6 nate employment or take any other  
7 adverse action against an individual  
8 solely because of a failure of the indi-  
9 vidual to have identity and employ-  
10 ment eligibility confirmed under this  
11 subsection until—

12 “(aa) a nonconfirmation has  
13 been issued;

14 “(bb) if the further action  
15 notice was contested, the period  
16 to timely file an administrative  
17 appeal has expired without an  
18 appeal or the contestation to the  
19 further action notice is with-  
20 drawn; or

21 “(cc) if an appeal before an  
22 administrative law judge under  
23 paragraph (7) has been filed, the  
24 nonconfirmation has been upheld

1 or the appeal has been withdrawn  
2 or dismissed.

3 “(iv) NOTICE OF NONCONFIRMA-  
4 TION.—Not later than 3 business days  
5 after an employer receives a nonconfirma-  
6 tion, or during such other reasonable time  
7 as the Secretary may provide, the employer  
8 shall notify the individual who is the sub-  
9 ject of the nonconfirmation, and provide  
10 information about filing an administrative  
11 appeal pursuant to paragraph (6) and a  
12 request for a hearing before an administra-  
13 tive law judge pursuant to paragraph (7).  
14 The nonconfirmation notice shall be given  
15 to the individual in writing and the em-  
16 ployer shall acknowledge in the System  
17 under penalty of perjury that it provided  
18 the notice (or adequately attempted to pro-  
19 vide notice, but was unable to do so despite  
20 reasonable efforts). The individual shall af-  
21 firmatively acknowledge in writing, or in  
22 such other manner as the Secretary may  
23 prescribe, the receipt of the nonconfirma-  
24 tion notice from the employer. If the indi-  
25 vidual refuses or fails to acknowledge the

1 receipt of the nonconfirmation notice, the  
2 employer shall notify the Secretary in such  
3 manner as the Secretary may prescribe.

4 “(D) CONSEQUENCES OF NONCONFIRMA-  
5 TION.—

6 “(i) TERMINATION OF CONTINUED  
7 EMPLOYMENT.—Except as provided in  
8 clause (iii), an employer that has received  
9 a nonconfirmation regarding an individual  
10 and has made reasonable efforts to notify  
11 the individual in accordance with subpara-  
12 graph (C)(iv) shall terminate the employ-  
13 ment of the individual upon the expiration  
14 of the time period specified in paragraph  
15 (7).

16 “(ii) CONTINUED EMPLOYMENT  
17 AFTER NONCONFIRMATION.—If the em-  
18 ployer continues to employ an individual  
19 after receiving nonconfirmation and ex-  
20 haustion of all appeals or expiration of all  
21 rights to appeal if not appealed, in viola-  
22 tion of clause (i), a rebuttable presumption  
23 is created that the employer has violated  
24 paragraphs (1)(A) and (2) of subsection

(a). Such presumption shall not apply in any prosecution under subsection (k)(1).

“(iii) EFFECT OF ADMINISTRATIVE APPEAL OR REVIEW BY ADMINISTRATIVE LAW JUDGE.—If an individual files an administrative appeal of the nonconfirmation within the time period specified in paragraph (6)(A), or files for review with an administrative law judge specified in paragraph (7)(A), the employer shall not terminate the individual’s employment under this subparagraph prior to the resolution of the administrative appeal unless the Secretary or Commissioner terminates the stay under paragraph (6)(B) or (7)(B).

“(iv) WEEKLY REPORT.—The Director of U.S. Citizenship and Immigration Services shall submit a weekly report to the Assistant Secretary for Immigration and Customs Enforcement that includes, for each individual who receives final nonconfirmation through the System—

“(I) the name of such individual;

“(II) his or her social security number or alien file number;



1 “(III) the name and contact in-  
 2 formation for his or her current em-  
 3 ployer; and

4 “(IV) any other critical informa-  
 5 tion that the Assistant Secretary de-  
 6 termines to be appropriate.

7 “(E) OBLIGATION TO RESPOND TO QUE-  
 8 RIES AND ADDITIONAL INFORMATION.—

9 “(i) IN GENERAL.—Employers shall  
 10 comply with requests for information from  
 11 the Secretary and the Immigration and  
 12 Employee Rights Section of the Civil  
 13 Rights Division of the Department of Jus-  
 14 tice, including queries concerning current  
 15 and former employees, within the time  
 16 frame during which records are required to  
 17 be maintained under this section regarding  
 18 such former employees, if such information  
 19 relates to the functioning of the System,  
 20 the accuracy of the responses provided by  
 21 the System, or any suspected misuse, dis-  
 22 crimination, fraud, or identity theft in the  
 23 use of the System. Failure to comply with  
 24 a request under this clause constitutes a  
 25 violation of subsection (a)(1)(B).

1 “(ii) ACTION BY INDIVIDUALS.—

2 “(I) IN GENERAL.—Individuals  
3 being verified through the System  
4 may be required to take further action  
5 to address questions identified by the  
6 Secretary or the Commissioner re-  
7 garding the documents relied upon for  
8 purposes of subsection (c).

9 “(II) NOTIFICATION.—Not later  
10 than 3 business days after the receipt  
11 of such questions regarding an indi-  
12 vidual, or during such other reason-  
13 able time as the Secretary may pre-  
14 scribe, the employer shall—

15 “(aa) notify the individual of  
16 any such requirement for further  
17 actions; and

18 “(bb) record the date and  
19 manner of such notification.

20 “(III) ACKNOWLEDGMENT.—The  
21 individual shall acknowledge the noti-  
22 fication received from the employer  
23 under subclause (II) in writing, or in  
24 such other manner as the Secretary  
25 may prescribe.

1 “(iii) RULEMAKING.—

2 “(I) IN GENERAL.—The Sec-  
3 retary, in consultation with the Com-  
4 missioner and the Attorney General,  
5 is authorized to issue regulations im-  
6 plementing, clarifying, and  
7 supplementing the requirements under  
8 this subparagraph—

9 “(aa) to facilitate the func-  
10 tioning, accuracy, and fairness of  
11 the System;

12 “(bb) to prevent misuse, dis-  
13 crimination, fraud, or identity  
14 theft in the use of the System; or

15 “(cc) to protect and main-  
16 tain the confidentiality of infor-  
17 mation that could be used to lo-  
18 cate or otherwise place at risk of  
19 harm victims of domestic vio-  
20 lence, dating violence, sexual as-  
21 sault, stalking, and human traf-  
22 ficking, and of the applicant or  
23 beneficiary of any petition de-  
24 scribed in section 384(a)(2) of  
25 the Illegal Immigration Reform

1 and Immigrant Responsibility  
2 Act of 1996 (8 U.S.C.  
3 1367(a)(2)).

4 “(II) NOTICE.—The regulations  
5 issued under subclause (I) shall be—

6 “(aa) published in the Fed-  
7 eral Register; and

8 “(bb) provided directly to all  
9 employers registered in the Sys-  
10 tem.

11 “(F) DESIGNATED AGENTS.—The Sec-  
12 retary shall establish a process—

13 “(i) for certifying, on an annual basis  
14 or at such times as the Secretary may pre-  
15 scribe, designated agents and other System  
16 service providers seeking access to the Sys-  
17 tem to perform verification queries on be-  
18 half of employers, based upon training,  
19 usage, privacy, and security standards pre-  
20 scribed by the Secretary;

21 “(ii) for ensuring that designated  
22 agents and other System service providers  
23 are subject to monitoring to the same ex-  
24 tent as direct access users; and

1 “(iii) for establishing standards for  
2 certification of electronic I–9 programs.

3 “(G) REQUIREMENT TO PROVIDE INFOR-  
4 MATION.—

5 “(i) IN GENERAL.—No later than 3  
6 months after the date of the enactment of  
7 the E–Verify System Act of 2018, the Sec-  
8 retary, in consultation with the Secretary  
9 of Labor, the Secretary of Agriculture, the  
10 Commissioner, the Attorney General, the  
11 Equal Employment Opportunity Commis-  
12 sion, and the Administrator of the Small  
13 Business Administration, shall commence a  
14 campaign to disseminate information re-  
15 specting the procedures, rights, and rem-  
16 edies prescribed under this section.

17 “(ii) CAMPAIGN REQUIREMENTS.—  
18 The campaign authorized under clause  
19 (i)—

20 “(I) shall be aimed at increasing  
21 the knowledge of employers, employ-  
22 ees, and the general public concerning  
23 employer and employee rights, respon-  
24 sibilities, and remedies under this sec-  
25 tion; and

1 “(II) shall be coordinated with  
2 the public education campaign con-  
3 ducted by U.S. Citizenship and Immi-  
4 gration Services.

5 “(iii) ASSESSMENT.—The Secretary  
6 shall assess the success of the campaign in  
7 achieving the goals of the campaign.

8 “(iv) AUTHORITY TO CONTRACT.—In  
9 order to carry out and assess the campaign  
10 under this subparagraph, the Secretary  
11 may, to the extent deemed appropriate and  
12 subject to the availability of appropria-  
13 tions, contract with public and private or-  
14 ganizations for outreach and assessment  
15 activities under the campaign.

16 “(v) AUTHORIZATION OF APPROPRIA-  
17 TIONS.—There are authorized to be appro-  
18 priated to carry out this paragraph  
19 \$40,000,000 for each of the fiscal years  
20 2019 through 2021.

21 “(H) AUTHORITY TO MODIFY INFORMA-  
22 TION REQUIREMENTS.—Based on a regular re-  
23 view of the System and the document  
24 verification procedures to identify misuse or  
25 fraudulent use and to assess the security of the

1 documents and processes used to establish iden-  
2 tity or employment authorized status, the Sec-  
3 retary, in consultation with the Commissioner,  
4 after publication of notice in the Federal Reg-  
5 ister and an opportunity for public comment,  
6 may modify, if the Secretary determines that  
7 the modification is necessary to ensure that the  
8 System accurately and reliably determines the  
9 identity and employment authorized status of  
10 employees and maintain existing protections  
11 against misuse, discrimination, fraud, and iden-  
12 tity theft—

13 “(i) the information that shall be pre-  
14 sented to the employer by an individual;

15 “(ii) the information that shall be pro-  
16 vided to the System by the employer; and

17 “(iii) the procedures that shall be fol-  
18 lowed by employers with respect to the  
19 process of verifying an individual through  
20 the System.

21 “(I) SELF-VERIFICATION.—Subject to ap-  
22 propriate safeguards to prevent misuse of the  
23 system, the Secretary, in consultation with the  
24 Commissioner, shall establish a secure self-  
25 verification procedure to permit an individual

1           who seeks to verify the individual's own employ-  
2           ment eligibility to contact the appropriate agen-  
3           cy and, in a timely manner, correct or update  
4           the information contained in the System.

5           “(5) PROTECTION FROM LIABILITY FOR AC-  
6           TIONS TAKEN ON THE BASIS OF INFORMATION PRO-  
7           VIDED BY THE SYSTEM.—An employer shall not be  
8           liable to a job applicant, an employee, the Federal  
9           Government, or a State or local government, under  
10          Federal, State, or local criminal or civil law for any  
11          employment-related action taken with respect to a  
12          job applicant or employee in good faith reliance on  
13          information provided by the System.

14          “(6) ADMINISTRATIVE APPEAL.—

15               “(A) IN GENERAL.—An individual who is  
16               notified of a nonconfirmation may, not later  
17               than 10 business days after the date that such  
18               notice is received, file an administrative appeal  
19               of such nonconfirmation with the Commissioner  
20               if the notice is based on records maintained by  
21               the Commissioner, or in any other case, with  
22               the Secretary. An individual who did not timely  
23               contest a further action notice timely received  
24               by that individual for which the individual ac-



1           knowledgeed receipt may not be granted a review  
2           under this paragraph.

3           “(B) ADMINISTRATIVE STAY OF NONCON-  
4           FIRMATION.—The nonconfirmation shall be  
5           automatically stayed upon the timely filing of  
6           an administrative appeal, unless the noncon-  
7           firmation resulted after the individual acknowl-  
8           edged receipt of the further action notice but  
9           failed to contact the appropriate agency within  
10          the time provided. The stay shall remain in ef-  
11          fect until the resolution of the appeal, unless  
12          the Secretary or the Commissioner terminates  
13          the stay based on a determination that the ad-  
14          ministrative appeal is frivolous or filed for pur-  
15          poses of delay.

16          “(C) REVIEW FOR ERROR.—The Secretary  
17          and the Commissioner shall develop procedures  
18          for resolving administrative appeals regarding  
19          nonconfirmations based upon the information  
20          that the individual has provided, including any  
21          additional evidence or argument that was not  
22          previously considered. Any such additional evi-  
23          dence or argument shall be filed within 10 busi-  
24          ness days of the date the appeal was originally  
25          filed. Appeals shall be resolved within 20 busi-

1           ness days after the individual has submitted all  
2           evidence and arguments the individual wishes to  
3           submit, or has stated in writing that there is no  
4           additional evidence that the individual wishes to  
5           submit. The Secretary and the Commissioner  
6           may, on a case by case basis for good cause, ex-  
7           tend the filing and submission period in order  
8           to ensure accurate resolution of an appeal be-  
9           fore the Secretary or the Commissioner.

10           “(D) PREPONDERANCE OF EVIDENCE.—  
11           Administrative appeal under this paragraph  
12           shall be limited to whether a nonconfirmation  
13           notice is supported by a preponderance of the  
14           evidence.

15           “(E) DAMAGES, FEES, AND COSTS.—No  
16           money damages, fees or costs may be awarded  
17           in the administrative appeal process under this  
18           paragraph.

19           “(7) REVIEW BY ADMINISTRATIVE LAW  
20           JUDGE.—

21           “(A) IN GENERAL.—Not later than 30  
22           days after the date an individual receives a final  
23           determination on an administrative appeal  
24           under paragraph (6), the individual may obtain  
25           review of such determination by filing a com-

1           plaint with a Department of Justice administra-  
2           tive law judge in accordance with this para-  
3           graph.

4           “(B) STAY OF NONCONFIRMATION.—The  
5           nonconfirmation related to such final deter-  
6           mination shall be automatically stayed upon the  
7           timely filing of a complaint under this para-  
8           graph, and the stay shall remain in effect until  
9           the resolution of the complaint, unless the ad-  
10          ministrative law judge determines that the ac-  
11          tion is frivolous or filed for purposes of delay.

12          “(C) SERVICE.—The respondent to com-  
13          plaint filed under this paragraph is either the  
14          Secretary or the Commissioner, but not both,  
15          depending upon who issued the administrative  
16          order under paragraph (6). In addition to serv-  
17          ing the respondent, the plaintiff shall serve the  
18          Attorney General.

19          “(D) AUTHORITY OF ADMINISTRATIVE  
20          LAW JUDGE.—

21                 “(i) RULES OF PRACTICE.—The Sec-  
22                 retary shall promulgate regulations regard-  
23                 ing the rules of practice in appeals brought  
24                 pursuant to this subsection.

1                   “(ii) AUTHORITY OF ADMINISTRATIVE  
2                   LAW JUDGE.—The administrative law  
3                   judge shall have power to—

4                   “(I) terminate a stay of a non-  
5                   confirmation under subparagraph (B)  
6                   if the administrative law judge deter-  
7                   mines that the action is frivolous or  
8                   filed for purposes of delay;

9                   “(II) adduce evidence at a hear-  
10                  ing;

11                  “(III) compel by subpoena the  
12                  attendance of witnesses and the pro-  
13                  duction of evidence at any designated  
14                  place or hearing;

15                  “(IV) resolve claims of identity  
16                  theft; and

17                  “(V) enter, upon the pleadings  
18                  and any evidence adduced at a hear-  
19                  ing, a decision affirming or reversing  
20                  the result of the agency, with or with-  
21                  out remanding the cause for a rehear-  
22                  ing.

23                  “(iii) SUBPOENA.—In case of contu-  
24                  macy or refusal to obey a subpoena law-  
25                  fully issued under this section and upon

1 application of the administrative law judge,  
2 an appropriate district court of the United  
3 States may issue an order requiring com-  
4 pliance with such subpoena and any failure  
5 to obey such order may be punished by  
6 such court as a contempt of such court.

7 “(iv) TRAINING.—An administrative  
8 law judge hearing cases shall have special  
9 training respecting employment authorized  
10 status verification.

11 “(E) ORDER BY ADMINISTRATIVE LAW  
12 JUDGE.—

13 “(i) IN GENERAL.—The administra-  
14 tive law judge shall issue and cause to be  
15 served to the parties in the proceeding an  
16 order which may be appealed as provided  
17 in subparagraph (G).

18 “(ii) CONTENTS OF ORDER.—Such an  
19 order shall uphold or reverse the final de-  
20 termination on the request for reconsider-  
21 ation and order lost wages and other ap-  
22 propriate remedies as provided in subpara-  
23 graph (F).

24 “(F) COMPENSATION FOR ERROR.—

1           “(i) IN GENERAL.—In cases in which  
2           the administrative law judge reverses the  
3           final determination of the Secretary or the  
4           Commissioner made under paragraph (6),  
5           and the administrative law judge finds  
6           that—

7                       “(I) the nonconfirmation was due  
8                       to gross negligence or intentional mis-  
9                       conduct of the employer, the adminis-  
10                      trative law judge may order the em-  
11                      ployer to pay the individual lost  
12                      wages, and reasonable costs and attor-  
13                      neys’ fees incurred during administra-  
14                      tive and judicial review; or

15                     “(II) such final determination  
16                     was erroneous by reason of the neg-  
17                     ligence of the Secretary or the Com-  
18                     missioner, the administrative law  
19                     judge may order the Secretary or the  
20                     Commissioner to pay the individual  
21                     lost wages, and reasonable costs and  
22                     attorneys’ fees incurred during the ad-  
23                     ministrative appeal and the adminis-  
24                     trative law judge review.

1                   “(ii)     CALCULATION     OF     LOST  
2                   WAGES.—Lost wages shall be calculated  
3                   based on the wage rate and work schedule  
4                   that prevailed prior to termination. The in-  
5                   dividual shall be compensated for wages  
6                   lost beginning on the first scheduled work  
7                   day after employment was terminated and  
8                   ending 120 days after completion of the  
9                   administrative law judge’s review described  
10                  in this paragraph or the day after the indi-  
11                  vidual is reinstated or obtains employment  
12                  elsewhere, whichever occurs first. If the in-  
13                  dividual obtains employment elsewhere at a  
14                  lower wage rate, the individual shall be  
15                  compensated for the difference in wages  
16                  for the period ending 120 days after com-  
17                  pletion of the administrative law judge re-  
18                  view process. No lost wages shall be award-  
19                  ed for any period of time during which the  
20                  individual was not in employment author-  
21                  ized status.

22                  “(iii) PAYMENT OF COMPENSATION.—  
23                  Notwithstanding any other law, payment of  
24                  compensation for lost wages, costs, and at-  
25                  torneys’ fees under this paragraph, or com-

1           promise settlements of the same, shall be  
2           made as provided by section 1304 of title  
3           31, United States Code. Appropriations  
4           made available to the Secretary or the  
5           Commissioner, accounts provided for under  
6           section 286, and funds from the Federal  
7           Old-Age and Survivors Insurance Trust  
8           Fund or the Federal Disability Insurance  
9           Trust Fund shall not be available to pay  
10          such compensation.

11          “(G) APPEAL.—No later than 45 days  
12          after the entry of such final order, any person  
13          adversely affected by such final order may seek  
14          review of such order in the United States Court  
15          of Appeals for the circuit in which the violation  
16          is alleged to have occurred or in which the em-  
17          ployer resides or transacts business.

18          “(8) MANAGEMENT OF THE SYSTEM.—

19          “(A) IN GENERAL.—The Secretary is au-  
20          thorized to establish, manage, and modify the  
21          System, which shall—

22                 “(i) respond to inquiries made by par-  
23                 ticipating employers at any time through  
24                 the internet, or such other means as the  
25                 Secretary may designate, concerning an in-



1           dividual's identity and whether the indi-  
2           vidual is in employment authorized status;

3           “(ii) maintain records of the inquiries  
4           that were made, of confirmations provided  
5           (or not provided), and of the codes pro-  
6           vided to employers as evidence of their  
7           compliance with their obligations under the  
8           System; and

9           “(iii) provide information to, and re-  
10          quire action by, employers and individuals  
11          using the System.

12          “(B) DESIGN AND OPERATION OF SYS-  
13          TEM.—The System shall be designed and oper-  
14          ated—

15               “(i) to maximize its reliability and  
16               ease of use by employers consistent with  
17               protecting the privacy and security of the  
18               underlying information, and ensuring full  
19               notice of such use to employees;

20               “(ii) to maximize its ease of use by  
21               employees, including direct notification of  
22               its use, of results, and ability to challenge  
23               results;

24               “(iii) to respond accurately to all in-  
25               quiries made by employers on whether in-

1 individuals are authorized to be employed  
2 and to register any times when the system  
3 is unable to receive inquiries;

4 “(iv) to maintain appropriate adminis-  
5 trative, technical, and physical safeguards  
6 to prevent unauthorized disclosure of per-  
7 sonal information, misuse by employers  
8 and employees, and discrimination;

9 “(v) to require regularly scheduled re-  
10 fresher training of all users of the System  
11 to ensure compliance with all procedures;

12 “(vi) to allow for auditing of the use  
13 of the System to detect misuse, discrimina-  
14 tion, fraud, and identity theft, to protect  
15 privacy and assess System accuracy, and  
16 to preserve the integrity and security of  
17 the information in all of the System, in-  
18 cluding—

19 “(I) to develop and use tools and  
20 processes to detect or prevent fraud  
21 and identity theft, such as multiple  
22 uses of the same identifying informa-  
23 tion or documents to fraudulently gain  
24 employment;

1                   “(II) to develop and use tools  
2                   and processes to detect and prevent  
3                   misuse of the system by employers  
4                   and employees;

5                   “(III) to develop tools and proc-  
6                   esses to detect anomalies in the use of  
7                   the system that may indicate potential  
8                   fraud or misuse of the system; and

9                   “(IV) to audit documents and in-  
10                  formation submitted by employees to  
11                  employers, including authority to con-  
12                  duct interviews with employers and  
13                  employees, and obtain information  
14                  concerning employment from the em-  
15                  ployer;

16                  “(vii) to confirm identity and employ-  
17                  ment authorization through verification  
18                  and comparison of records as determined  
19                  necessary by the Secretary;

20                  “(viii) to confirm electronically the  
21                  issuance of the employment authorization  
22                  or identity document and—

23                  “(I) if such photograph is avail-  
24                  able, to display the digital photograph  
25                  that the issuer placed on the docu-

1           ment so that the employer can com-  
2           pare the photograph displayed to the  
3           photograph on the document pre-  
4           sented by the employee; or

5           “(II) if a photograph is not avail-  
6           able from the issuer, to confirm the  
7           authenticity of the document using  
8           such alternative procedures as the  
9           Secretary may specify; and

10          “(ix) to provide appropriate notifica-  
11          tion directly to employers registered with  
12          the System of all changes made by the  
13          Secretary or the Commissioner related to  
14          allowed and prohibited documents, and use  
15          of the System.

16          “(C) SAFEGUARDS TO THE SYSTEM.—

17          “(i) REQUIREMENT TO DEVELOP.—  
18          The Secretary, in consultation with the  
19          Commissioner and other appropriate Fed-  
20          eral and State agencies, shall develop poli-  
21          cies and procedures to ensure protection of  
22          the privacy and security of personally iden-  
23          tifiable information and identifiers con-  
24          tained in the records accessed or main-  
25          tained by the System. The Secretary, in

1 consultation with the Commissioner and  
2 other appropriate Federal and State agen-  
3 cies, shall develop and deploy appropriate  
4 privacy and security training for the Fed-  
5 eral and State employees accessing the  
6 records under the System.

7 “(ii) PRIVACY AUDITS.—The Sec-  
8 retary, acting through the Chief Privacy  
9 Officer of the Department, shall conduct  
10 regular privacy audits of the policies and  
11 procedures established under clause (i), in-  
12 cluding any collection, use, dissemination,  
13 and maintenance of personally identifiable  
14 information and any associated informa-  
15 tion technology systems, as well as scope of  
16 requests for this information. The Chief  
17 Privacy Officer shall review the results of  
18 the audits and recommend to the Secretary  
19 any changes necessary to improve the pri-  
20 vacy protections of the program.

21 “(iii) ACCURACY AUDITS.—

22 “(I) IN GENERAL.—Not later  
23 than November 30 of each year, the  
24 Inspector General of the Department  
25 of Homeland Security shall submit a

1 report to the Secretary, with a copy to  
2 the President of the Senate and the  
3 Speaker of the House of Representa-  
4 tives, that sets forth the error rate of  
5 the System for the previous fiscal year  
6 and the assessments required to be  
7 submitted by the Secretary under sub-  
8 paragraphs (A) and (B) of paragraph  
9 (10). The report shall describe in de-  
10 tail the methodology employed for  
11 purposes of the report, and shall make  
12 recommendations for how error rates  
13 may be reduced.

14 “(II) ERROR RATE DEFINED.—In  
15 this clause, the term ‘error rate’  
16 means the percentage determined by  
17 dividing—

18 “(aa) the number of employ-  
19 ment authorized individuals who  
20 received further action notices,  
21 contested such notices, and were  
22 subsequently found to be employ-  
23 ment authorized; by

1 “(bb) the number of System  
2 inquiries submitted for employ-  
3 ment authorized individuals.

4 “(III) REDUCTION OF PENALTIES  
5 FOR RECORDKEEPING OR  
6 VERIFICATION PRACTICES FOLLOWING  
7 PERSISTENT SYSTEM INACCURA-  
8 CIES.—Notwithstanding subsection  
9 (e)(4)(C)(i), in any calendar year fol-  
10 lowing a report by the Inspector Gen-  
11 eral under subclause (I) that the Sys-  
12 tem had an error rate higher than 0.3  
13 percent for the previous fiscal year,  
14 the civil penalty assessable by the Sec-  
15 retary or an administrative law judge  
16 under that subsection for each first-  
17 time violation by an employer who has  
18 not previously been penalized under  
19 this section may not exceed \$1,000.

20 “(iv) RECORDS SECURITY PRO-  
21 GRAM.—Any person, including a private  
22 third party vendor, who retains document  
23 verification or System data pursuant to  
24 this section shall implement an effective  
25 records security program that—

1                   “(I) ensures that only authorized  
2                   personnel have access to document  
3                   verification or System data; and

4                   “(II) ensures that whenever such  
5                   data is created, completed, updated,  
6                   modified, altered, or corrected in elec-  
7                   tronic format, a secure and perma-  
8                   nent record is created that establishes  
9                   the date of access, the identity of the  
10                  individual who accessed the electronic  
11                  record, and the particular action  
12                  taken.

13                  “(v) RECORDS SECURITY PROGRAM.—  
14                  In addition to the security measures de-  
15                  scribed in clause (iv), a private third party  
16                  vendor who retains document verification  
17                  or System data pursuant to this section  
18                  shall implement an effective records secu-  
19                  rity program that—

20                  “(I) provides for backup and re-  
21                  covery of any records maintained in  
22                  electronic format to protect against  
23                  information loss, such as power inter-  
24                  ruptions; and



1 “(II) ensures that employees are  
2 trained to minimize the risk of unau-  
3 thorized or accidental alteration or  
4 erasure of such data in electronic for-  
5 mat.

6 “(vi) AUTHORIZED PERSONNEL DE-  
7 FINED.—In this subparagraph, the term  
8 ‘authorized personnel’ means anyone reg-  
9 istered as a System user, or anyone with  
10 partial or full responsibility for completion  
11 of employment authorization verification or  
12 retention of data in connection with em-  
13 ployment authorization verification on be-  
14 half of an employer.

15 “(D) AVAILABLE FACILITIES AND ALTER-  
16 NATIVE ACCOMMODATIONS.—The Secretary  
17 shall make appropriate arrangements and de-  
18 velop standards to allow employers or employ-  
19 ees, including remote hires, who are otherwise  
20 unable to access the System to use electronic  
21 and telephonic formats (including video confer-  
22 encing, scanning technology, and other available  
23 technologies), Federal Government facilities,  
24 public facilities, or other available locations in  
25 order to utilize the System.

1           “(E) RESPONSIBILITIES OF THE SEC-  
2           RETARY.—

3           “(i) IN GENERAL.—As part of the  
4           System, the Secretary shall maintain a re-  
5           liable, secure method, which, operating  
6           through the System and within the time  
7           periods specified, compares the name, alien  
8           identification or authorization number, or  
9           other information as determined relevant  
10          by the Secretary, provided in an inquiry  
11          against such information maintained or  
12          accessed by the Secretary in order to con-  
13          firm (or not confirm) the validity of the in-  
14          formation provided, the correspondence of  
15          the name and number, whether the alien  
16          has employment authorized status (or, to  
17          the extent that the Secretary determines to  
18          be feasible and appropriate, whether the  
19          records available to the Secretary verify  
20          the identity or status of a national of the  
21          United States), and such other information  
22          as the Secretary may prescribe.

23          “(ii) PHOTOGRAPH DISPLAY.—As part  
24          of the System, the Secretary shall establish  
25          a reliable, secure method, which, operating

1 through the System, displays the digital  
2 photograph described in subparagraph  
3 (B)(viii)(I).

4 “(iii) TIMING OF NOTICES.—The Sec-  
5 retary shall have authority to prescribe  
6 when a confirmation, nonconfirmation, or  
7 further action notice shall be issued.

8 “(iv) USE OF INFORMATION.—The  
9 Secretary shall perform regular audits  
10 under the System, as described in subpara-  
11 graph (B)(vi) and shall utilize the informa-  
12 tion obtained from such audits, as well as  
13 any information obtained from the Com-  
14 missioner pursuant to part E of title XI of  
15 the Social Security Act (42 U.S.C. 1301 et  
16 seq.), for the purposes of this section and  
17 to administer and enforce the immigration  
18 laws.

19 “(v) IDENTITY FRAUD PROTECTION.—  
20 To prevent identity fraud, not later than  
21 18 months after the date of the enactment  
22 of the E-Verify System Act of 2018, the  
23 Secretary shall—

24 “(I) in consultation with the  
25 Commissioner, establish a program to

1 provide a reliable, secure method for  
2 an individual to temporarily suspend  
3 or limit the use of the individual's so-  
4 cial security account number or other  
5 identifying information for verification  
6 by the System; and

7 “(II) for each individual being  
8 verified through the System—

9 “(aa) notify the individual  
10 that the individual has the option  
11 to limit the use of the individ-  
12 ual's social security account num-  
13 ber or other identifying informa-  
14 tion for verification by the Sys-  
15 tem; and

16 “(bb) provide instructions to  
17 the individuals for exercising the  
18 option referred to in item (aa).

19 “(vi) ALLOWING PARENTS TO PRE-  
20 VENT THEFT OF THEIR CHILD'S IDEN-  
21 TITY.—The Secretary, in consultation with  
22 the Commissioner, shall establish a pro-  
23 gram that provides a reliable, secure meth-  
24 od by which parents or legal guardians  
25 may suspend or limit the use of the social

1 security account number or other identi-  
2 fying information of a minor under their  
3 care for the purposes of the System. The  
4 Secretary may implement the program on  
5 a limited pilot program basis before mak-  
6 ing it fully available to all individuals.

7 “(vii) PROTECTION FROM MULTIPLE  
8 USE.—The Secretary and the Commis-  
9 sioner shall establish a procedure for iden-  
10 tifying and handling a situation in which a  
11 social security account number has been  
12 identified to be subject to unusual multiple  
13 use in the System or is otherwise suspected  
14 or determined to have been compromised  
15 by identity fraud.

16 “(viii) MONITORING AND COMPLIANCE  
17 UNIT.—The Secretary shall establish or  
18 designate a monitoring and compliance  
19 unit to detect and reduce identity fraud  
20 and other misuse of the System.

21 “(ix) CIVIL RIGHTS AND CIVIL LIB-  
22 RTIES ASSESSMENTS.—

23 “(I) REQUIREMENT TO CON-  
24 DUCT.—The Secretary shall conduct  
25 regular civil rights and civil liberties

1 assessments of the System, including  
2 participation by employers, other pri-  
3 vate entities, and Federal, State, and  
4 local government entities.

5 “(II) REQUIREMENT TO RE-  
6 SPOND.—Employers, other private en-  
7 tities, and Federal, State, and local  
8 entities shall timely respond to any re-  
9 quest in connection with such an as-  
10 sessment.

11 “(III) ASSESSMENT AND REC-  
12 OMMENDATIONS.—The Officer for  
13 Civil Rights and Civil Liberties of the  
14 Department shall review the results of  
15 each such assessment and recommend  
16 to the Secretary any changes nec-  
17 essary to improve the civil rights and  
18 civil liberties protections of the Sys-  
19 tem.

20 “(F) GRANTS TO STATES.—

21 “(i) IN GENERAL.—The Secretary  
22 shall create and administer a grant pro-  
23 gram to help provide funding for States  
24 that grant—

1 “(I) the Secretary access to driv-  
 2 er’s license information as needed to  
 3 confirm that a driver’s license pre-  
 4 sented under subsection (c)(1)(D)(i)  
 5 confirms the identity of the subject of  
 6 the System check, and that a driver’s  
 7 license matches the State’s records;  
 8 and

9 “(II) such assistance as the Sec-  
 10 retary may request in order to resolve  
 11 further action notices or nonconfirma-  
 12 tions relating to such information.

13 “(ii) CONSTRUCTION WITH THE DRIV-  
 14 ER’S PRIVACY PROTECTION ACT OF 1994.—  
 15 The provision of a photograph to the Sec-  
 16 retary as described in clause (i) may not be  
 17 construed as a violation of section 2721 of  
 18 title 18, United States Code, and is a per-  
 19 missible use under subsection (b)(1) of  
 20 that section.

21 “(iii) AUTHORIZATION OF APPROPRIA-  
 22 TIONS.—There is authorized to be appro-  
 23 priated to the Secretary \$250,000,000 to  
 24 carry out this subparagraph.

1           “(G) RESPONSIBILITIES OF THE SEC-  
2           RETARY OF STATE.—As part of the System, the  
3           Secretary of State shall provide to the Sec-  
4           retary access to passport and visa information  
5           as needed to confirm that a passport, passport  
6           card, or visa presented under subsection  
7           (c)(1)(C) confirms the identity of the subject of  
8           the System check, and that a passport, passport  
9           card, or visa photograph matches the Secretary  
10          of State’s records, and shall provide such assist-  
11          ance as the Secretary may request in order to  
12          resolve further action notices or nonconfirma-  
13          tions relating to such information.

14          “(H) UPDATING INFORMATION.—The  
15          Commissioner, the Secretary, and the Secretary  
16          of State shall update their information in a  
17          manner that promotes maximum accuracy and  
18          shall provide a process for the prompt correc-  
19          tion of erroneous information.

20          “(9) LIMITATION ON USE OF THE SYSTEM.—  
21          Notwithstanding any other provision of law, nothing  
22          in this subsection may be construed to permit or  
23          allow any department, bureau, or other agency of  
24          the United States Government or any other entity to  
25          utilize any information, database, or other records



1 assembled under this subsection for any purpose  
2 other than for employment verification or to ensure  
3 secure, appropriate and nondiscriminatory use of the  
4 System.

5 “(10) ANNUAL REPORT AND CERTIFICATION.—  
6 Not later than 18 months after the promulgation of  
7 regulations to implement this subsection, and annu-  
8 ally thereafter, the Secretary shall submit to Con-  
9 gress a report that includes the following:

10 “(A) An assessment, as submitted to the  
11 Secretary by the Inspector General of the De-  
12 partment of Homeland Security pursuant to  
13 paragraph (8)(C)(iii)(I), of the accuracy rates  
14 of further action notices and other System no-  
15 tices provided by employers to individuals who  
16 are authorized to be employed in the United  
17 States.

18 “(B) An assessment, as submitted to the  
19 Secretary by the Inspector General of the De-  
20 partment of Homeland Security pursuant to  
21 paragraph (8)(C)(iii)(I), of the accuracy rates  
22 of further action notices and other System no-  
23 tices provided directly (by the System) in a  
24 timely fashion to individuals who are not au-  
25 thorized to be employed in the United States.

1           “(C) An assessment of any challenges  
2           faced by small employers in utilizing the Sys-  
3           tem.

4           “(D) An assessment of the rate of em-  
5           ployer noncompliance (in addition to failure to  
6           provide required notices in a timely fashion) in  
7           each of the following categories:

8                   “(i) Taking adverse action based on a  
9                   further action notice.

10                   “(ii) Use of the System for non-  
11                   employees or other individuals before they  
12                   are offered employment.

13                   “(iii) Use of the System to reverify  
14                   employment authorized status of current  
15                   employees except if authorized to do so.

16                   “(iv) Use of the System selectively,  
17                   except in cases in which such use is au-  
18                   thorized.

19                   “(v) Use of the System to deny em-  
20                   ployment or post-employment benefits or  
21                   otherwise interfere with labor rights.

22                   “(vi) Requiring employees or appli-  
23                   cants to use any self-verification feature or  
24                   to provide self-verification results.

1                   “(vii) Discouraging individuals who  
2                   receive a further action notice from chal-  
3                   lenging the further action notice or appeal-  
4                   ing a determination made by the System.

5                   “(E) An assessment of the rate of em-  
6                   ployee noncompliance in each of the following  
7                   categories:

8                   “(i) Obtaining employment when un-  
9                   authorized with an employer complying  
10                  with the System in good faith.

11                  “(ii) Failure to provide required docu-  
12                  ments in a timely manner.

13                  “(iii) Attempting to use fraudulent  
14                  documents or documents not related to the  
15                  individual.

16                  “(iv) Misuse of the administrative ap-  
17                  peal and judicial review process.

18                  “(F) An assessment of the amount of time  
19                  taken for—

20                  “(i) the System to provide the con-  
21                  firmation or further action notice;

22                  “(ii) individuals to contest further ac-  
23                  tion notices;

1 “(iii) the System to provide a con-  
 2 firmation or nonconfirmation of a con-  
 3 tested further action notice;

4 “(iv) individuals to file an administra-  
 5 tive appeal of a nonconfirmation; and

6 “(v) resolving administrative appeals  
 7 regarding nonconfirmations.

8 “(11) ANNUAL GAO STUDY AND REPORT.—

9 “(A) REQUIREMENT.—The Comptroller  
 10 General shall, for each year, undertake a study  
 11 to evaluate the accuracy, efficiency, integrity,  
 12 and impact of the System.

13 “(B) REPORT.—Not later than 18 months  
 14 after the promulgation of regulations to imple-  
 15 ment this subsection, and yearly thereafter, the  
 16 Comptroller General shall submit to Congress a  
 17 report containing the findings of the study car-  
 18 ried out under this paragraph. Each such re-  
 19 port shall include, at a minimum, the following:

20 “(i) An assessment of System per-  
 21 formance with respect to the rate at which  
 22 individuals who are eligible for employment  
 23 in the United States are correctly approved  
 24 within the required periods, including a  
 25 separate assessment of such rate for natu-

1           ralized United States citizens, nationals of  
2           the United States, and aliens.

3           “(ii) An assessment of the privacy and  
4           confidentiality of the System and of the  
5           overall security of the System with respect  
6           to cybertheft and theft or misuse of private  
7           data.

8           “(iii) An assessment of whether the  
9           System is being implemented in a manner  
10          that is not discriminatory or used for retal-  
11          iation against employees.

12          “(iv) An assessment of the most com-  
13          mon causes for the erroneous issuance of  
14          nonconfirmations by the System and rec-  
15          ommendations to correct such causes.

16          “(v) The recommendations of the  
17          Comptroller General regarding System im-  
18          provements.

19          “(vi) An assessment of the frequency  
20          and magnitude of changes made to the  
21          System and the impact on the ability for  
22          employers to comply in good faith.

23          “(vii) An assessment of the direct and  
24          indirect costs incurred by employers in  
25          complying with the System, including costs

1 associated with retaining potential employ-  
2 ees through the administrative appeals  
3 process and receiving a nonconfirmation.

4 “(viii) An assessment of any backlogs  
5 or delays in the System providing the con-  
6 firmation or further action notice and im-  
7 pacts to hiring by employers.

8 “(e) COMPLIANCE.—

9 “(1) COMPLAINTS AND INVESTIGATIONS.—The  
10 Secretary shall establish procedures—

11 “(A) for individuals and entities to file  
12 complaints respecting potential violations of  
13 subsections (a) or (f)(1);

14 “(B) for the investigation of those com-  
15 plaints which the Secretary deems appropriate  
16 to investigate; and

17 “(C) for providing notification to the Im-  
18 migration and Employee Rights Section of the  
19 Civil Rights Division of the Department of Jus-  
20 tice of potential violations of section 274B.

21 “(2) AUTHORITY IN INVESTIGATIONS.—In con-  
22 ducting investigations and proceedings under this  
23 subsection—

1           “(A) immigration officers shall have rea-  
2           sonable access to examine evidence of the em-  
3           ployer being investigated;

4           “(B) immigration officers designated by  
5           the Secretary, and administrative law judges  
6           and other persons authorized to conduct pro-  
7           ceedings under this section, may compel by sub-  
8           poena the attendance of relevant witnesses and  
9           the production of relevant evidence at any des-  
10          ignated place in an investigation or case under  
11          this subsection. In case of refusal to fully com-  
12          ply with a subpoena lawfully issued under this  
13          paragraph, the Secretary may request that the  
14          Attorney General apply in an appropriate dis-  
15          trict court of the United States for an order re-  
16          quiring compliance with the subpoena, and any  
17          failure to obey such order may be punished by  
18          the court as contempt. Failure to cooperate  
19          with the subpoena shall be subject to further  
20          penalties, including further fines and the void-  
21          ing of any mitigation of penalties or termi-  
22          nation of proceedings under paragraph (4)(E);  
23          and

24          “(C) the Secretary, in cooperation with the  
25          Commissioner and Attorney General, and in

1 consultation with other relevant agencies, shall  
 2 establish a Joint Employment Fraud Task  
 3 Force consisting of, at a minimum—

4 “(i) the System’s compliance per-  
 5 sonnel;

6 “(ii) immigration law enforcement of-  
 7 ficers;

8 “(iii) personnel of the Immigrant and  
 9 Employee Rights Section of the Civil  
 10 Rights Division of the Department of Jus-  
 11 tice;

12 “(iv) personnel of the Office for Civil  
 13 Rights and Civil Liberties of the Depart-  
 14 ment; and

15 “(v) personnel of Office of Inspector  
 16 General of the Social Security Administra-  
 17 tion.

18 “(3) COMPLIANCE PROCEDURES.—

19 “(A) PRE-PENALTY NOTICE.—If the Sec-  
 20 retary has reasonable cause to believe that  
 21 there has been a civil violation of this section in  
 22 the previous 3 years, the Secretary shall issue  
 23 to the employer concerned a written notice of  
 24 the Department’s intention to issue a claim for



1 a monetary or other penalty. Such pre-penalty  
2 notice shall—

3 “(i) describe the violation;

4 “(ii) specify the laws and regulations  
5 allegedly violated;

6 “(iii) disclose the material facts which  
7 establish the alleged violation;

8 “(iv) describe the penalty sought to be  
9 imposed; and

10 “(v) inform such employer that such  
11 employer shall have a reasonable oppor-  
12 tunity to make representations as to why a  
13 monetary or other penalty should not be  
14 imposed.

15 “(B) EMPLOYER’S RESPONSE.—Whenever  
16 any employer receives written pre-penalty notice  
17 of a fine or other penalty in accordance with  
18 subparagraph (A), the employer may, within 60  
19 days from receipt of such notice, file with the  
20 Secretary its written response to the notice.  
21 The response may include any relevant evidence  
22 or proffer of evidence that the employer wishes  
23 to present with respect to whether the employer  
24 violated this section and whether, if so, the pen-  
25 alty should be mitigated, and shall be filed and

1 considered in accordance with procedures to be  
2 established by the Secretary.

3 “(C) RIGHT TO A HEARING.—Before  
4 issuance of an order imposing a penalty on any  
5 employer, person, or entity, the employer, per-  
6 son, or entity shall be entitled to a hearing be-  
7 fore an administrative law judge, if requested  
8 within 60 days of the notice of penalty. The  
9 hearing shall be held at the nearest location  
10 practicable to the place where the employer,  
11 person, or entity resides or of the place where  
12 the alleged violation occurred.

13 “(D) ISSUANCE OF ORDERS.—If no hear-  
14 ing is so requested, the Secretary’s imposition  
15 of the order shall constitute a final and  
16 unappealable order. If a hearing is requested  
17 and the administrative law judge determines,  
18 upon clear and convincing evidence received,  
19 that there was a violation, the administrative  
20 law judge shall issue the final determination  
21 with a written penalty claim. The penalty claim  
22 shall specify all charges in the information pro-  
23 vided under clauses (i) through (iii) of subpara-  
24 graph (A) and any mitigation of the penalty

1           that the administrative law judge deems appro-  
2           prium under paragraph (4)(E).

3           “(4) CIVIL PENALTIES.—

4                 “(A) HIRING OR CONTINUING TO EMPLOY  
5           UNAUTHORIZED ALIENS.—Any employer that  
6           violates any provision of subsection (a)(1)(A) or  
7           (a)(2) shall—

8                 “(i) pay a civil penalty of not less  
9           than \$3,500 and not more than \$7,500 for  
10          each unauthorized alien with respect to  
11          which each violation of either subsection  
12          (a)(1)(A) or (a)(2) occurred;

13                “(ii) if the employer has previously  
14          been fined as a result of a previous en-  
15          forcement action or previous violation  
16          under this paragraph, pay a civil penalty of  
17          not less than \$5,000 and not more than  
18          \$15,000 for each unauthorized alien with  
19          respect to which a violation of either sub-  
20          section (a)(1)(A) or (a)(2) occurred; and

21                “(iii) if the employer has previously  
22          been fined more than once under this para-  
23          graph, pay a civil penalty of not less than  
24          \$10,000 and not more than \$25,000 for  
25          each unauthorized alien with respect to

1           which a violation of either subsection  
2           (a)(1)(A) or (a)(2) occurred.

3           “(B) ENHANCED PENALTIES.—After the  
4           Secretary certifies to Congress that the System  
5           has been established, implemented, and made  
6           mandatory for use by all employers in the  
7           United States, the Secretary may establish an  
8           enhanced civil penalty for an employer who—

9                   “(i) fails to query the System to verify  
10           the identify and work authorized status of  
11           an individual; and

12                   “(ii) violates a Federal, State, or local  
13           law related to—

14                           “(I) the payment of wages;

15                           “(II) hours worked by employees;

16                           or

17                           “(III) workplace health and safe-  
18           ty.

19           “(C) RECORDKEEPING OR VERIFICATION  
20           PRACTICES.—Any employer that violates or fails  
21           to comply with any requirement under sub-  
22           section (a)(1)(B), other than a minor or inad-  
23           vertent failure, as determined by the Secretary,  
24           shall pay a civil penalty of—

1 “(i) not less than \$500 and not more  
2 than \$2,000 for each violation;

3 “(ii) if an employer has previously  
4 been fined under this paragraph, not less  
5 than \$1,000 and not more than \$4,000 for  
6 each violation; and

7 “(iii) if an employer has previously  
8 been fined more than once under this para-  
9 graph, not less than \$2,000 and not more  
10 than \$8,000 for each violation.

11 “(D) OTHER PENALTIES.—The Secretary  
12 may impose additional penalties for violations,  
13 including cease and desist orders, specially de-  
14 signed compliance plans to prevent further vio-  
15 lations, suspended fines to take effect in the  
16 event of a further violation, and in appropriate  
17 cases, the remedy provided by paragraph (f)(2).

18 “(E) MITIGATION.—The Secretary or, if  
19 an employer requests a hearing, the administra-  
20 tive law judge, is authorized, upon such terms  
21 and conditions as the Secretary or administra-  
22 tive law judge deems reasonable and just and in  
23 accordance with such procedures as the Sec-  
24 retary may establish or any procedures estab-  
25 lished governing the administrative law judge’s

1           assessment of penalties, to reduce or mitigate  
2           penalties imposed upon employers, based upon  
3           factors including, the employer's hiring volume,  
4           compliance history, good-faith implementation  
5           of a compliance program, the size and level of  
6           sophistication of the employer, and voluntary  
7           disclosure of violations of this subsection to the  
8           Secretary. The Secretary or administrative law  
9           judge shall not mitigate a penalty below the  
10          minimum penalty provided by this section, ex-  
11          cept that the Secretary may, in the case of an  
12          employer subject to penalty for recordkeeping  
13          or verification violations only who has not pre-  
14          viously been penalized under this section, in the  
15          Secretary's or administrative law judge's discre-  
16          tion, mitigate the penalty below the statutory  
17          minimum or remit it entirely. In any case where  
18          a civil money penalty has been imposed on an  
19          employer under section 274B for an action or  
20          omission that is also a violation of this section,  
21          the Secretary or administrative law judge shall  
22          mitigate any civil money penalty under this sec-  
23          tion by the amount of the penalty imposed  
24          under section 274B.

“(F) EFFECTIVE DATE.—The civil money penalty amounts and the enhanced penalties provided by subparagraphs (A), (B), and (C) of this paragraph and by subsection (f)(2) shall apply to violations of this section committed on or after the date that is 1 year after the date of the enactment of the E-Verify System Act of 2018. For violations committed prior to such date of enactment, the civil money penalty amounts provided by regulations implementing this section as in effect the minute before such date of enactment with respect to knowing hiring or continuing employment, verification, or indemnity bond violations, as appropriate, shall apply.

“(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

“(A) EMPLOYER COMPLIANCE.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that it is in compliance with this section, or has instituted a program to come into compliance.

“(B) EMPLOYER CERTIFICATION.—

1           “(i) REQUIREMENT.—Except as pro-  
2           vided in subparagraph (C), not later than  
3           60 days after receiving a notice from the  
4           Secretary requiring a certification under  
5           subparagraph (A), an official with respon-  
6           sibility for, and authority to bind the com-  
7           pany on, all hiring and immigration com-  
8           pliance notices shall certify under penalty  
9           of perjury that the employer is in conform-  
10          ance with the requirements of paragraphs  
11          (1) through (4) of subsection (c), per-  
12          taining to document verification require-  
13          ments, and with subsection (d), pertaining  
14          to the System (once the System is imple-  
15          mented with respect to that employer ac-  
16          cording to the requirements under sub-  
17          section (d)(2)), and with any additional re-  
18          quirements that the Secretary may promul-  
19          gate by regulation pursuant to subsection  
20          (c) or (d) or that the employer has insti-  
21          tuted a program to come into compliance  
22          with these requirements.

23          “(ii) APPLICATION.—Clause (i) shall  
24          not apply until the date that the Secretary  
25          certifies to Congress that the System has



1           been established, implemented, and made  
2           mandatory for use by all employers in the  
3           United States.

4           “(C) EXTENSION OF DEADLINE.—At the  
5           request of the employer, the Secretary may ex-  
6           tend the 60-day deadline for good cause.

7           “(D) STANDARDS OR METHODS.—The Sec-  
8           retary is authorized to publish in the Federal  
9           Register standards or methods for such certifi-  
10          cation, require specific recordkeeping practices  
11          with respect to such certifications, and audit  
12          the records thereof at any time. This authority  
13          shall not be construed to diminish or qualify  
14          any other penalty provided by this section.

15          “(6) REQUIREMENTS FOR REVIEW OF A FINAL  
16          DETERMINATION.—With respect to judicial review of  
17          a final determination or penalty order issued under  
18          paragraph (3)(D), the following requirements apply:

19               “(A) DEADLINE.—The petition for review  
20               must be filed no later than 30 days after the  
21               date of the final determination or penalty order  
22               issued under paragraph (3)(D).

23               “(B) VENUE AND FORMS.—The petition  
24               for review shall be filed with the court of ap-  
25               peals for the judicial circuit where the employ-

1 er's principal place of business was located  
2 when the final determination or penalty order  
3 was made. The record and briefs do not have  
4 to be printed. The court shall review the pro-  
5 ceeding on a typewritten or electronically filed  
6 record and briefs.

7 “(C) SERVICE.—The respondent is the  
8 Secretary. In addition to serving the respond-  
9 ent, the petitioner shall serve the Attorney Gen-  
10 eral.

11 “(D) PETITIONER’S BRIEF.—The peti-  
12 tioner shall serve and file a brief in connection  
13 with a petition for judicial review not later than  
14 40 days after the date on which the administra-  
15 tive record is available, and may serve and file  
16 a reply brief not later than 14 days after serv-  
17 ice of the brief of the respondent, and the court  
18 may not extend these deadlines, except for good  
19 cause shown. If a petitioner fails to file a brief  
20 within the time provided in this paragraph, the  
21 court shall dismiss the appeal unless a manifest  
22 injustice would result.

23 “(E) SCOPE AND STANDARD FOR RE-  
24 VIEW.—The court of appeals shall conduct a de  
25 novo review of the administrative record on

1           which the final determination was based and  
2           any additional evidence that the Court finds  
3           was previously unavailable at the time of the  
4           administrative hearing.

5           “(F) EXHAUSTION OF ADMINISTRATIVE  
6           REMEDIES.—A court may review a final deter-  
7           mination under paragraph (3)(C) only if—

8           “(i) the petitioner has exhausted all  
9           administrative remedies available to the pe-  
10          titioner as of right, including any adminis-  
11          trative remedies established by regulation,  
12          and

13          “(ii) another court has not decided  
14          the validity of the order, unless the review-  
15          ing court finds that the petition presents  
16          grounds that could not have been pre-  
17          sented in the prior judicial proceeding or  
18          that the remedy provided by the prior pro-  
19          ceeding was inadequate or ineffective to  
20          test the validity of the order.

21          “(G) ENFORCEMENT OF ORDERS.—If the  
22          final determination issued against the employer  
23          under this subsection is not subjected to review  
24          as provided in this paragraph, the Attorney  
25          General, upon request by the Secretary, may

1 bring a civil action to enforce compliance with  
2 the final determination in any appropriate dis-  
3 trict court of the United States. The court, on  
4 a proper showing, shall issue a temporary re-  
5 straining order or a preliminary or permanent  
6 injunction requiring that the employer comply  
7 with the final determination issued against that  
8 employer under this subsection. In any such  
9 civil action, the validity and appropriateness of  
10 the final determination shall not be subject to  
11 review.

12 “(7) CREATION OF LIEN.—If any employer lia-  
13 ble for a fee or penalty under this section neglects  
14 or refuses to pay such liability after demand and  
15 fails to file a petition for review (if applicable) as  
16 provided in paragraph (6), the amount of the fee or  
17 penalty shall be a lien in favor of the United States  
18 on all property and rights to property, whether real  
19 or personal, belonging to such employer. If a petition  
20 for review is filed as provided in paragraph (6), the  
21 lien shall arise upon the entry of a final judgment  
22 by the court. The lien continues for 20 years or until  
23 the liability is satisfied, remitted, set aside, or termi-  
24 nated.

25 “(8) FILING NOTICE OF LIEN.—

1           “(A) PLACE FOR FILING.—The notice of a  
2           lien referred to in paragraph (7) shall be filed  
3           as described in 1 of the following:

4           “(i) UNDER STATE LAWS.—

5           “(I) REAL PROPERTY.—In the  
6           case of real property, in 1 office with-  
7           in the State (or the county, or other  
8           governmental subdivision), as des-  
9           ignated by the laws of such State, in  
10          which the property subject to the lien  
11          is situated.

12          “(II) PERSONAL PROPERTY.—In  
13          the case of personal property, whether  
14          tangible or intangible, in 1 office with-  
15          in the State (or the county, or other  
16          governmental subdivision), as des-  
17          ignated by the laws of such State, in  
18          which the property subject to the lien  
19          is situated, except that State law  
20          merely conforming to or reenacting  
21          Federal law establishing a national fil-  
22          ing system does not constitute a sec-  
23          ond office for filing as designated by  
24          the laws of such State.

1                   “(ii) WITH CLERK OF DISTRICT  
2 COURT.—In the office of the clerk of the  
3 United States district court for the judicial  
4 district in which the property subject to  
5 the lien is situated, whenever the State has  
6 not by law designated 1 office which meets  
7 the requirements of clause (i).

8                   “(iii) WITH RECORDER OF DEEDS OF  
9 THE DISTRICT OF COLUMBIA.—In the of-  
10 fice of the Recorder of Deeds of the Dis-  
11 trict of Columbia, if the property subject to  
12 the lien is situated in the District of Co-  
13 lumbia.

14                   “(B) SITUS OF PROPERTY SUBJECT TO  
15 LIEN.—For purposes of subparagraph (A),  
16 property shall be deemed to be situated as fol-  
17 lows:

18                   “(i) REAL PROPERTY.—In the case of  
19 real property, at its physical location.

20                   “(ii) PERSONAL PROPERTY.—In the  
21 case of personal property, whether tangible  
22 or intangible, at the residence of the tax-  
23 payer at the time the notice of lien is filed.

24                   “(C) DETERMINATION OF RESIDENCE.—  
25 For purposes of subparagraph (B)(ii), the resi-

1           dence of a corporation or partnership shall be  
2           deemed to be the place at which the principal  
3           executive office of the business is located, and  
4           the residence of a taxpayer whose residence is  
5           outside the United States shall be deemed to be  
6           in the District of Columbia.

7           “(D) EFFECT OF FILING NOTICE OF  
8           LIEN.—

9           “(i) IN GENERAL.—Upon filing of a  
10          notice of lien in the manner described in  
11          this paragraph, the lien shall be valid  
12          against any purchaser, holder of a security  
13          interest, mechanic’s lien, or judgment lien  
14          creditor, except with respect to properties  
15          or transactions specified in subsection (b),  
16          (c), or (d) of section 6323 of the Internal  
17          Revenue Code of 1986 for which a notice  
18          of tax lien properly filed on the same date  
19          would not be valid.

20          “(ii) NOTICE OF LIEN.—The notice of  
21          lien shall be considered a notice of lien for  
22          taxes payable to the United States for the  
23          purpose of any State or local law providing  
24          for the filing of a notice of a tax lien. A  
25          notice of lien that is registered, recorded,

1 docketed, or indexed in accordance with  
 2 the rules and requirements relating to  
 3 judgments of the courts of the State where  
 4 the notice of lien is registered, recorded,  
 5 docketed, or indexed shall be considered  
 6 for all purposes as the filing prescribed by  
 7 this section.

8 “(iii) OTHER PROVISIONS.—The pro-  
 9 visions of section 3201(e) of title 28,  
 10 United States Code, shall apply to liens  
 11 filed as prescribed by this paragraph.

12 “(E) ENFORCEMENT OF A LIEN.—A lien  
 13 obtained through this paragraph shall be con-  
 14 sidered a debt as defined by section 3002 of  
 15 title 28, United States Code and enforceable  
 16 pursuant to chapter 176 of such title.

17 “(9) ATTORNEY GENERAL ADJUDICATION.—  
 18 The Attorney General shall have jurisdiction to adju-  
 19 dicate administrative proceedings under this sub-  
 20 section. Such proceedings shall be conducted in ac-  
 21 cordance with requirements of section 554 of title 5,  
 22 United States Code.

23 “(f) CRIMINAL AND CIVIL PENALTIES AND INJUNC-  
 24 TIONS.—



1           “(1) PROHIBITION OF INDEMNITY BONDS.—It  
2           is unlawful for an employer, in the hiring of any in-  
3           dividual, to require the individual to post a bond or  
4           security, to pay or agree to pay an amount, or other-  
5           wise to provide a financial guarantee or indemnity,  
6           against any potential liability arising under this sec-  
7           tion relating to such hiring of the individual.

8           “(2) CIVIL PENALTY.—Any employer who is de-  
9           termined, after notice and opportunity for mitigation  
10          of the monetary penalty under subsection (e), to  
11          have violated paragraph (1) shall be subject to a  
12          civil penalty of \$10,000 for each violation and to an  
13          administrative order requiring the return of any  
14          amounts received in violation of such paragraph to  
15          the employee or, if the employee cannot be located,  
16          to the general fund of the Treasury.

17          “(g) GOVERNMENT CONTRACTS.—

18          “(1) CONTRACTORS AND RECIPIENTS.—When-  
19          ever an employer who is a Federal contractor (mean-  
20          ing an employer who holds a Federal contract,  
21          grant, or cooperative agreement, or reasonably may  
22          be expected to submit an offer for or be awarded a  
23          government contract) is determined by the Secretary  
24          to have violated this section on more than 3 occa-  
25          sions or is convicted of a crime under this section,

1 the employer shall be considered for debarment from  
2 the receipt of Federal contracts, grants, or coopera-  
3 tive agreements in accordance with the procedures  
4 and standards and for the periods prescribed by the  
5 Federal Acquisition Regulation. However, any ad-  
6 ministrative determination of liability for civil pen-  
7 alty by the Secretary or the Attorney General shall  
8 not be reviewable in any debarment proceeding.

9 “(2) INADVERTENT VIOLATIONS.—Inadvertent  
10 violations of recordkeeping or verification require-  
11 ments, in the absence of any other violations of this  
12 section, shall not be a basis for determining that an  
13 employer is a repeat violator for purposes of this  
14 subsection.

15 “(3) OTHER REMEDIES AVAILABLE.—Nothing  
16 in this subsection shall be construed to modify or  
17 limit any remedy available to any agency or official  
18 of the Federal Government for violation of any con-  
19 tractual requirement to participate in the System, as  
20 provided in the final rule relating to employment eli-  
21 gibility verification published in the Federal Register  
22 on November 14, 2008 (73 Fed. Reg. 67,651), or  
23 any similar subsequent regulation.

24 “(h) PREEMPTION.—The provisions of this section  
25 preempt any State or local law, ordinance, policy, or rule,

1 including any criminal or civil fine or penalty structure,  
 2 relating to the hiring, continued employment, or status  
 3 verification for employment eligibility purposes, of unau-  
 4 thorized aliens. A State, locality, municipality, or political  
 5 subdivision may exercise its authority over business licens-  
 6 ing and similar laws as a penalty for failure to use the  
 7 System.

8 “(i) DEPOSIT OF AMOUNTS RECEIVED.—Except as  
 9 otherwise specified, civil penalties collected under this sec-  
 10 tion shall be deposited by the Secretary into the Treasury  
 11 as miscellaneous receipts.

12 “(j) CHALLENGES TO VALIDITY OF THE SYSTEM.—

13 “(1) IN GENERAL.—Any right, benefit, or claim  
 14 not otherwise waived or limited pursuant to this sec-  
 15 tion is available in an action instituted in the United  
 16 States District Court for the District of Columbia,  
 17 but shall be limited to determinations of—

18 “(A) whether this section, or any regula-  
 19 tion issued to implement this section, violates  
 20 the Constitution of the United States; or

21 “(B) whether such a regulation issued by  
 22 or under the authority of the Secretary to im-  
 23 plement this section, is contrary to applicable  
 24 provisions of this section or was issued in viola-  
 25 tion of chapter 5 of title 5, United States Code.

1           “(2) DEADLINES FOR BRINGING ACTIONS.—

2           Any action instituted under this subsection must be  
3           filed no later than 180 days after the date the chal-  
4           lenged section or regulation described in subpara-  
5           graph (A) or (B) of paragraph (1) becomes effective.

6           No court shall have jurisdiction to review any chal-  
7           lenge described in subparagraph (B) after the time  
8           period specified in this subsection expires.

9           “(k) CRIMINAL PENALTIES AND INJUNCTIONS FOR  
10          PATTERN OR PRACTICE VIOLATIONS.—

11           “(1) PATTERN AND PRACTICE.—Any employer  
12           who engages in a pattern or practice of knowing vio-  
13           lations of subsection (a)(1)(A) or (a)(2) shall be  
14           fined under title 18, United States Code, no more  
15           than \$10,000 for each unauthorized alien with re-  
16           spect to whom such violation occurs, imprisoned for  
17           not more than 2 years for the entire pattern or prac-  
18           tice, or both.

19           “(2) TERM OF IMPRISONMENT.—The maximum  
20           term of imprisonment of a person convicted of any  
21           criminal offense under the United States Code shall  
22           be increased by 5 years if the offense is committed  
23           as part of a pattern or practice of violations of sub-  
24           section (a)(1)(A) or (a)(2).

1           “(3) ENJOINING OF PATTERN OR PRACTICE  
 2       VIOLATIONS.—Whenever the Secretary or the Attor-  
 3       ney General has reasonable cause to believe that an  
 4       employer is engaged in a pattern or practice of em-  
 5       ployment in violation of subsection (a)(1)(A) or  
 6       (a)(2), the Attorney General may bring a civil action  
 7       in the appropriate district court of the United States  
 8       requesting such relief, including a permanent or  
 9       temporary injunction, restraining order, or other  
 10      order against the employer, as the Secretary or At-  
 11      torney General deems necessary.

12      “(1) CRIMINAL PENALTIES FOR UNLAWFUL AND  
 13      ABUSIVE EMPLOYMENT.—

14           “(1) IN GENERAL.—Any person who, during  
 15      any 12-month period, knowingly employs or hires,  
 16      employs, recruits, or refers for a fee for employment  
 17      10 or more individuals within the United States who  
 18      are under the control and supervision of such per-  
 19      son—

20           “(A) knowing that the individuals are un-  
 21      authorized aliens; and

22           “(B) under conditions that violate section  
 23      5(a) of the Occupational Safety and Health Act  
 24      of 1970 (29 U.S.C. 654(a) (relating to occupa-  
 25      tional safety and health), section 6 or 7 of the

1 Fair Labor Standards Act of 1938 (29 U.S.C.  
2 206 and 207) (relating to minimum wages and  
3 maximum hours of employment), section 3142  
4 of title 40, United States Code, (relating to re-  
5 quired wages on construction contracts), or sec-  
6 tions 6703 or 6704 of title 41, United States  
7 Code, (relating to required wages on service  
8 contracts),  
9 shall be fined under title 18, United States Code, or  
10 imprisoned for not more than 10 years, or both.

11 “(2) ATTEMPT AND CONSPIRACY.—Any person  
12 who attempts or conspires to commit any offense  
13 under this section shall be punished in the same  
14 manner as a person who completes the offense.”.

15 (b) REPORT ON USE OF THE SYSTEM IN THE AGRI-  
16 CULTURAL INDUSTRY.—Not later than 18 months after  
17 the date of the enactment of this Act, the Secretary of  
18 Homeland Security, in consultation with the Secretary of  
19 Agriculture, shall submit a report to Congress that as-  
20 sesses implementation of the Employment Verification  
21 System established under section 274A(d) of the Immigra-  
22 tion and Nationality Act, as amended by subsection (a),  
23 in the agricultural industry, including the use of such Sys-  
24 tem technology in agriculture industry hiring processes,  
25 user, contractor, and third-party employer employ-

1 ment practices, timing and logistics regarding employment  
2 verification and reverification processes to meet agri-  
3 culture industry practices, and identification of potential  
4 challenges and modifications to meet the unique needs of  
5 the agriculture industry. Such report shall review—

6 (1) the modality of access, training and out-  
7 reach, customer support, processes for further action  
8 notices and secondary verifications for short-term  
9 workers, monitoring, and compliance procedures for  
10 such System;

11 (2) the interaction of such System with the  
12 process to admit nonimmigrant workers pursuant to  
13 section 218 or 218A of the Immigration and Nation-  
14 ality Act (8 U.S.C. 1188 et seq.) and with enforce-  
15 ment of the immigration laws; and

16 (3) the collaborative use of processes of other  
17 Federal and State agencies that intersect with the  
18 agriculture industry.

19 (c) REPORT ON IMPACT OF THE SYSTEM ON EM-  
20 PLOYERS.—Not later than 18 months after the date of  
21 the enactment of this Act, the Secretary of Homeland Se-  
22 curity shall submit to Congress a report that assesses—

23 (1) the implementation of the Employment  
24 Verification System established under section

1       274A(d) of the Immigration and Nationality Act, as  
2       amended by subsection (a), by employers;

3           (2) any adverse impact on the revenues, busi-  
4       ness processes, or profitability of employers required  
5       to use such System; and

6           (3) the economic impact of such System on  
7       small businesses.

8       (d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY  
9       OF THE EFFECTS OF DOCUMENT REQUIREMENTS ON EM-  
10      PLOYMENT AUTHORIZED PERSONS AND EMPLOYERS.—

11           (1) STUDY.—The Comptroller General of the  
12      United States shall carry out a study of—

13           (A) the effects of the documentary require-  
14      ments of section 274A of the Immigration and  
15      Nationality Act, as amended by subsection (a),  
16      on employers, naturalized United States citi-  
17      zens, nationals of the United States, and indi-  
18      viduals with employment authorized status; and

19           (B) the challenges such employers, citizens,  
20      nationals, or individuals may face in obtaining  
21      the documentation required under that section.

22           (2) REPORT.—Not later than 4 years after the  
23      date of the enactment of this Act, the Comptroller  
24      General shall submit to Congress a report containing  
25      the findings of the study carried out under para-



1 graph (1). Such report shall include, at a minimum,  
2 the following:

3 (A) An assessment of available information  
4 regarding the number of working age nationals  
5 of the United States and individuals who have  
6 employment authorized status who lack docu-  
7 ments required for employment by such section  
8 274A.

9 (B) A description of the additional steps  
10 required for individuals who have employment  
11 authorized status and do not possess the docu-  
12 ments required by such section 274A to obtain  
13 such documents.

14 (C) A general assessment of the average fi-  
15 nancial costs for individuals who have employ-  
16 ment authorized status who do not possess the  
17 documents required by such section 274A to ob-  
18 tain such documents.

19 (D) A general assessment of the average  
20 financial costs and challenges for employers  
21 who have been required to participate in the  
22 Employment Verification System established by  
23 subsection (d) of such section 274A.

24 (E) A description of the barriers to indi-  
25 viduals who have employment authorized status

1 in obtaining the documents required by such  
 2 section 274A, including barriers imposed by the  
 3 executive branch of the Government.

4 (F) Any particular challenges facing indi-  
 5 viduals who have employment authorized status  
 6 who are members of a federally recognized In-  
 7 dian tribe in complying with the provisions of  
 8 such section 274A.

9 (e) REPEAL OF PILOT PROGRAMS AND E-VERIFY  
 10 AND TRANSITION PROCEDURES.—

11 (1) REPEAL.—Sections 401, 402, 403, 404,  
 12 and 405 of the Illegal Immigration Reform and Im-  
 13 migrant Responsibility Act of 1996 (division C of  
 14 Public Law 104–208; 8 U.S.C. 1324a note) are re-  
 15 pealed.

16 (2) TRANSITION PROCEDURES.—

17 (A) CONTINUATION OF E-VERIFY PRO-  
 18 GRAM.—Notwithstanding the repeals made by  
 19 paragraph (1), the Secretary of Homeland Se-  
 20 curity shall continue to operate the E-Verify  
 21 Program as described in section 403 of the Ille-  
 22 gal Immigration Reform and Immigrant Re-  
 23 sponsibility Act of 1996 (division C of Public  
 24 Law 104–208; 8 U.S.C. 1324a note), as in ef-  
 25 fect the minute before the date of the enact-

1           ment of this Act, until the transition to the  
2           System described in section 274A(d) of the Im-  
3           migration and Nationality Act, as amended by  
4           subsection (a), is determined by the Secretary  
5           to be complete.

6           (B) TRANSITION TO THE SYSTEM.—Any  
7           employer who was participating in the E-Verify  
8           Program described in section 403 of the Illegal  
9           Immigration Reform and Immigrant Responsi-  
10          bility Act of 1996 (division C of Public Law  
11          104–208; 8 U.S.C. 1324a note), as in effect the  
12          minute before the date of the enactment of this  
13          Act, shall participate in the System described in  
14          section 274A(d) of the Immigration and Na-  
15          tionality Act, as amended by subsection (a), to  
16          the same extent and in the same manner that  
17          the employer participated in such E-Verify Pro-  
18          gram.

19          (3) CONSTRUCTION.—The repeal made by para-  
20          graph (1) may not be construed to limit the author-  
21          ity of the Secretary to allow or continue to allow the  
22          participation in such System of employers who have  
23          participated in such E-Verify Program, as in effect  
24          on the minute before the date of the enactment of  
25          this Act.

1 (f) CONFORMING AMENDMENT.—Section 274(a) (8  
2 U.S.C. 1324(a)) is amended—

3 (1) by striking paragraph (3); and

4 (2) by redesignating paragraph (4) as para-  
5 graph (3).

6 **SEC. 3. INCREASING SECURITY AND INTEGRITY OF SOCIAL**  
7 **SECURITY CARDS.**

8 (a) FRAUD-RESISTANT, TAMPER-RESISTANT, WEAR-  
9 RESISTANT, AND IDENTITY THEFT-RESISTANT SOCIAL  
10 SECURITY CARDS.—

11 (1) ISSUANCE.—

12 (A) PRELIMINARY WORK.—Not later than  
13 180 days after the date of the enactment of this  
14 Act, the Commissioner of Social Security shall  
15 begin work to administer and issue fraud-resist-  
16 ant, tamper-resistant, wear-resistant, and iden-  
17 tity theft-resistant social security cards.

18 (B) COMPLETION.—Not later than 5 years  
19 after the date of the enactment of this Act, the  
20 Commissioner of Social Security shall issue only  
21 social security cards determined to be fraud-re-  
22 sistant, tamper-resistant, wear-resistant, and  
23 identity theft-resistant.

24 (2) AMENDMENT.—

1 (A) IN GENERAL.—Section 205(c)(2)(G) of  
 2 the Social Security Act (42 U.S.C.  
 3 405(c)(2)(G)) is amended by striking the sec-  
 4 ond sentence and inserting the following: “The  
 5 social security card shall be fraud-resistant,  
 6 tamper-resistant, wear-resistant, and identity  
 7 theft-resistant.”.

8 (B) EFFECTIVE DATE.—The amendment  
 9 made by subparagraph (A) shall take effect on  
 10 the date that is 5 years after the date of the  
 11 enactment of this Act.

12 (3) AUTHORIZATION OF APPROPRIATIONS.—  
 13 There is authorized to be appropriated such sums as  
 14 may be necessary to carry out this section and the  
 15 amendments made by this section.

16 (4) EMERGENCY DESIGNATION.—

17 (A) IN GENERAL.—The amounts author-  
 18 ized to be appropriated by this subsection are  
 19 designated by Congress as being for emergency  
 20 requirements pursuant to section  
 21 251(b)(2)(A)(i) of the Balanced Budget and  
 22 Emergency Deficit Control Act of 1985 (2  
 23 U.S.C. 901(b)(2)(A)(i)).

24 (B) SENATE DESIGNATION.—In the Sen-  
 25 ate, the amounts authorized to be appropriated

1 by this subsection are designated as for emer-  
 2 gency requirements pursuant to section 4112(a)  
 3 of H. Con. Res. 71 (115th Congress), the con-  
 4 current resolution on the budget for fiscal year  
 5 2018.

6 (b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the  
 7 Social Security Act (42 U.S.C. 405(c)(2)(G)), as amended  
 8 by subsection (a)(2), is amended—

9 (1) by inserting “(i)” after “(G)”; and

10 (2) by adding at the end the following:

11 “(ii) The Commissioner of Social Security shall re-  
 12 strict the issuance of multiple replacement social security  
 13 cards to any individual to 3 per year and 10 for the life  
 14 of the individual, except that the Commissioner may allow  
 15 for reasonable exceptions from the limits under this clause  
 16 on a case-by-case basis in compelling circumstances.”.

17 (c) CRIMINAL PENALTIES.—

18 (1) SOCIAL SECURITY FRAUD.—

19 (A) IN GENERAL.—Chapter 47 of title 18,  
 20 United States Code, is amended by inserting at  
 21 the end the following:

22 **“§ 1041. Social security fraud**

23 “Any person who—

24 “(1) knowingly possesses or uses a social secu-  
 25 rity account number or social security card knowing

1       that the number or card was obtained from the  
2       Commissioner of Social Security by means of fraud  
3       or false statement;

4           “(2) knowingly and falsely represents a number  
5       to be the social security account number assigned by  
6       the Commissioner of Social Security to him or her  
7       or to another person, when such number is known  
8       not to be the social security account number as-  
9       signed by the Commissioner of Social Security to  
10      him or her or to such other person;

11          “(3) knowingly, and without lawful authority,  
12      buys, sells, or possesses with intent to buy or sell a  
13      social security account number or a social security  
14      card that is or purports to be a number or card  
15      issued by the Commissioner of Social Security;

16          “(4) knowingly alters, counterfeits, forges, or  
17      falsely makes a social security account number or a  
18      social security card;

19          “(5) knowingly uses, distributes, or transfers a  
20      social security account number or a social security  
21      card knowing the number or card to be intentionally  
22      altered, counterfeited, forged, falsely made, or sto-  
23      len; or

24          “(6) without lawful authority, knowingly pro-  
25      duces or acquires for any person a social security ac-

1       count number, a social security card, or a number  
 2       or card that purports to be a social security account  
 3       number or social security card,  
 4 shall be fined under this title, imprisoned not more than  
 5 5 years, or both.”.

6                   (B) TABLE OF SECTIONS AMENDMENT.—

7           The table of sections for chapter 47 of title 18,  
 8           United States Code, is amended by adding after  
 9           the item relating to section 1040 the following:

“1041. Social security fraud.”.

10           (2) INFORMATION DISCLOSURE.—

11           (A) IN GENERAL.—Notwithstanding any  
 12           other provision of law and subject to subpara-  
 13           graph (B), the Commissioner of Social Security  
 14           shall disclose for the purpose of investigating a  
 15           violation of section 1041 of title 18, United  
 16           States Code, or section 274A, 274B, or 274C  
 17           of the Immigration and Nationality Act (8  
 18           U.S.C. 1324a, 1324b, and 1324c), after receiv-  
 19           ing a written request from an officer in a super-  
 20           visory position or higher official of any Federal  
 21           law enforcement agency, the following records  
 22           of the Social Security Administration:

23                   (i) Records concerning the identity,  
 24                   address, location, or financial institution



1 accounts of the holder of a social security  
2 account number or social security card.

3 (ii) Records concerning the applica-  
4 tion for and issuance of a social security  
5 account number or social security card.

6 (iii) Records concerning the existence  
7 or nonexistence of a social security account  
8 number or social security card.

9 (B) LIMITATION.—The Commissioner of  
10 Social Security shall not disclose any tax return  
11 or tax return information pursuant to subpara-  
12 graph (A) except as authorized by section 6103  
13 of the Internal Revenue Code of 1986.

14 **SEC. 4. INCREASING SECURITY AND INTEGRITY OF IMMI-**  
15 **GRATION DOCUMENTS.**

16 Not later than 1 year after the date of the enactment  
17 of this Act, the Secretary of Homeland Security shall sub-  
18 mit a report to Congress on the feasibility, advantages,  
19 and disadvantages of including, in addition to a photo-  
20 graph, other biometric information on each employment  
21 authorization document issued by the Department of  
22 Homeland Security.

1 **SEC. 5. RESPONSIBILITIES OF THE SOCIAL SECURITY AD-**  
 2 **MINISTRATION.**

3 Title XI of the Social Security Act (42 U.S.C. 1301  
 4 et seq.) is amended by adding at the end the following  
 5 new part:

6 “PART E—EMPLOYMENT VERIFICATION  
 7 “RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL  
 8 SECURITY

9 “SEC. 1186. (a) CONFIRMATION OF EMPLOYMENT  
 10 VERIFICATION DATA.—As part of the employment  
 11 verification system established by the Secretary of Home-  
 12 land Security under the provisions of section 274A of the  
 13 Immigration and Nationality Act (8 U.S.C. 1324a) (in  
 14 this section referred to as the ‘System’), the Commissioner  
 15 of Social Security shall, subject to the provisions of section  
 16 274A(d) of the Immigration and Nationality Act (8 U.S.C.  
 17 1324a(d)), establish a reliable, secure method that, oper-  
 18 ating through the System and within the time periods  
 19 specified in section 274A(d) of such Act—

20 “(1) compares the name, date of birth, social  
 21 security account number, and available citizenship  
 22 information provided in an inquiry against such in-  
 23 formation maintained by the Commissioner in order  
 24 to confirm (or not confirm) the validity of the infor-  
 25 mation provided regarding an individual whose iden-  
 26 tity and employment eligibility must be confirmed;

1 “(2) determines the correspondence of the  
2 name, date of birth, and number;

3 “(3) determines whether the name and number  
4 belong to an individual who is deceased according to  
5 the records maintained by the Commissioner;

6 “(4) determines whether an individual is a na-  
7 tional of the United States, as defined in section  
8 101(a)(22) of the Immigration and Nationality Act  
9 (8 U.S.C. 1101(a)(22)); and

10 “(5) determines whether the individual has pre-  
11 sented a social security account number that is not  
12 valid for employment.

13 “(b) PROHIBITION.—The System shall not disclose or  
14 release social security information to employers through  
15 the confirmation system (other than such confirmation or  
16 nonconfirmation, information provided by the employer to  
17 the System, or the reason for the issuance of a further  
18 action notice).”.

19 **SEC. 6. IMPROVED PROHIBITION ON DISCRIMINATION**  
20 **BASED ON NATIONAL ORIGIN OR CITIZEN-**  
21 **SHIP STATUS.**

22 (a) IN GENERAL.—Section 274B(a) of the Immigra-  
23 tion and Nationality Act (8 U.S.C. 1324b(a)) is amended  
24 to read as follows:

1       “(a) PROHIBITION ON DISCRIMINATION BASED ON  
2 NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

3               “(1) PROHIBITION ON DISCRIMINATION GEN-  
4 ERALLY.—It is an unfair immigration-related em-  
5 ployment practice for a person, other entity, or em-  
6 ployment agency, to discriminate against any indi-  
7 vidual (other than an unauthorized alien defined in  
8 section 274A(b)) because of such individual’s na-  
9 tional origin or citizenship status, with respect to the  
10 following:

11               “(A) The hiring of the individual for em-  
12 ployment.

13               “(B) The verification of the individual’s  
14 eligibility to work in the United States.

15               “(C) The discharging of the individual  
16 from employment.

17       “(2) EXCEPTIONS.—Paragraph (1) shall not  
18 apply to the following:

19               “(A) A person, other entity, or employer  
20 that employs 3 or fewer employees, except for  
21 an employment agency.

22               “(B) A person’s or entity’s discrimination  
23 because of an individual’s national origin if the  
24 discrimination with respect to that employer,  
25 person, or entity and that individual is covered

1 under section 703 of the Civil Rights Act of  
2 1964 (42 U.S.C. 2000e-2), unless the discrimi-  
3 nation is related to an individual's verification  
4 of employment authorization.

5 “(C) Discrimination because of citizenship  
6 status which—

7 “(i) is otherwise required in order to  
8 comply with a provision of Federal, State,  
9 or local law related to law enforcement;

10 “(ii) is required by Federal Govern-  
11 ment contract; or

12 “(iii) the Secretary or Attorney Gen-  
13 eral determines to be essential for an em-  
14 ployer to do business with an agency or de-  
15 partment of the Federal Government or a  
16 State, local, or tribal government.

17 “(3) ADDITIONAL EXCEPTION PROVIDING  
18 RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—

19 Notwithstanding any other provision of this section,  
20 it is not an unfair immigration-related employment  
21 practice for an employer (as defined in section  
22 274A(b)) to prefer to hire, recruit, or refer for a fee  
23 an individual who is a citizen or national of the  
24 United States over another individual who is an  
25 alien if the 2 individuals are equally qualified.

1           “(4) UNFAIR IMMIGRATION-RELATED EMPLOY-  
2           MENT PRACTICES RELATING TO THE SYSTEM.—It is  
3           also an unfair immigration-related employment prac-  
4           tice for a person, other entity, or employment agen-  
5           cy—

6                   “(A) to discharge or constructively dis-  
7                   charge an individual solely due to a further ac-  
8                   tion notice issued by the Employment  
9                   Verification System created by section 274A  
10                  until the administrative appeal described in sec-  
11                  tion 274A(d)(6) is completed;

12                   “(B) to use the System with regard to any  
13                   person for any purpose except as authorized by  
14                   section 274A(d);

15                   “(C) to use the System to reverify the em-  
16                   ployment authorization of a current employee,  
17                   including an employee continuing in employ-  
18                   ment, other than reverification upon expiration  
19                   of employment authorization, or as otherwise  
20                   authorized under section 274A(d) or by regula-  
21                   tion;

22                   “(D) to use the System selectively for em-  
23                   ployees, except where authorized by law;

1           “(E) to fail to provide to an individual any  
2           notice required in section 274A(d) within the  
3           relevant time period;

4           “(F) to use the System to deny workers’  
5           employment or post-employment benefits;

6           “(G) to misuse the System to discriminate  
7           based on national origin or citizenship status;

8           “(H) to require an employee or prospective  
9           employee to use any self-verification feature of  
10          the System or provide, as a condition of appli-  
11          cation or employment, any self-verification re-  
12          sults;

13          “(I) to use an immigration status  
14          verification system, service, or method other  
15          than those described in section 274A for pur-  
16          poses of verifying employment eligibility; or

17          “(J) to grant access to document  
18          verification or System data, to any individual or  
19          entity other than personnel authorized to have  
20          such access, or to fail to take reasonable safe-  
21          guards to protect against unauthorized loss,  
22          use, alteration, or destruction of System data.

23          “(5) PROHIBITION OF INTIMIDATION OR RETAL-  
24          IATION.—It is also an unfair immigration-related  
25          employment practice for a person, other entity, or

1 employment agency to intimidate, threaten, coerce,  
2 or retaliate against any individual—

3 “(A) for the purpose of interfering with  
4 any right or privilege secured under this sec-  
5 tion; or

6 “(B) because the individual intends to file  
7 or has filed a charge or a complaint, testified,  
8 assisted, or participated in any manner in an  
9 investigation, proceeding, or hearing under this  
10 section.

11 “(6) TREATMENT OF CERTAIN DOCUMENTARY  
12 PRACTICES AS EMPLOYMENT PRACTICES.—A per-  
13 son’s, other entity’s, or employment agency’s re-  
14 quest, for purposes of verifying employment eligi-  
15 bility, for more or different documents than are re-  
16 quired under section 274A, or for specific docu-  
17 ments, or refusing to honor documents tendered that  
18 reasonably appear to be genuine shall be treated as  
19 an unfair immigration-related employment practice.

20 “(7) PROHIBITION OF WITHHOLDING EMPLOY-  
21 MENT RECORDS.—It is an unfair immigration-re-  
22 lated employment practice for an employer that is  
23 required under Federal, State, or local law to main-  
24 tain records documenting employment, including  
25 dates or hours of work and wages received, to fail



1 to provide such records to any employee upon re-  
2 quest.

3 “(8) PROFESSIONAL, COMMERCIAL, AND BUSI-  
4 NESS LICENSES.—An individual who is authorized to  
5 be employed in the United States may not be denied  
6 a professional, commercial, or business license on  
7 the basis of his or her immigration status.

8 “(9) EMPLOYMENT AGENCY DEFINED.—In this  
9 section, the term ‘employment agency’ means any  
10 employer, person, or entity regularly undertaking  
11 with or without compensation to procure employees  
12 for an employer or to procure for employees oppor-  
13 tunities to work for an employer and includes an  
14 agent of such employer, person, or entity.”.

15 (b) REFERRAL BY EEOC.—Section 274B(b) of the  
16 Immigration and Nationality Act (8 U.S.C. 1324b(b)) is  
17 amended by adding at the end the following:

18 “(3) REFERRAL BY EEOC.—The Equal Employ-  
19 ment Opportunity Commission shall refer all matters  
20 alleging immigration-related unfair employment  
21 practices filed with the Commission, including those  
22 alleging violations of paragraphs (1), (4), (5), and  
23 (6) of subsection (a) to the Immigration and Em-  
24 ployee Rights Section of the Civil Rights Division of  
25 the Department of Justice.”.

1       (c) AUTHORIZATION OF APPROPRIATIONS.—Section  
 2 274B(l)(3) of the Immigration and Nationality Act (8  
 3 U.S.C. 1324b(l)(3)) is amended by striking the period at  
 4 the end and inserting “and an additional \$40,000,000 for  
 5 each of fiscal years 2019 through 2021.”.

6       (d) FINES.—

7           (1) IN GENERAL.—Section 274B(g)(2)(B) of  
 8 the Immigration and Nationality Act (8 U.S.C.  
 9 1324b(g)(2)(B)) is amended by striking clause (iv)  
 10 and inserting the following:

11                   “(iv) to pay any applicable civil pen-  
 12 alties prescribed below, the amounts of  
 13 which may be adjusted periodically to ac-  
 14 count for inflation as provided by law—

15                           “(I) except as provided in sub-  
 16 clauses (II) through (IV), to pay a  
 17 civil penalty of not less than \$2,000  
 18 and not more than \$5,000 for each in-  
 19 dividual subjected to an unfair immi-  
 20 gration-related employment practice;

21                           “(II) except as provided in sub-  
 22 clauses (III) and (IV), in the case of  
 23 an employer, person, or entity pre-  
 24 viously subject to a single order under  
 25 this paragraph, to pay a civil penalty

1 of not less than \$4,000 and not more  
2 than \$10,000 for each individual sub-  
3 jected to an unfair immigration-re-  
4 lated employment practice;

5 “(III) except as provided in sub-  
6 clause (IV), in the case of an em-  
7 ployer, person, or entity previously  
8 subject to more than 1 order under  
9 this paragraph, to pay a civil penalty  
10 of not less than \$8,000 and not more  
11 than \$25,000 for each individual sub-  
12 jected to an unfair immigration-re-  
13 lated employment practice; and

14 “(IV) in the case of an unfair im-  
15 migration-related employment practice  
16 described in paragraphs (4) through  
17 (7) of subsection (a), to pay a civil  
18 penalty of not less than \$500 and not  
19 more than \$2,000 for each individual  
20 subjected to an unfair immigration-re-  
21 lated employment practice.”.

22 (2) EFFECTIVE DATE.—The amendment made  
23 by paragraph (1) shall take effect on the date that  
24 is 1 year after the date of the enactment of this Act

1       and apply to violations occurring on or after such  
2       date of enactment.

3   **SEC. 7. RULEMAKING.**

4       (a) INTERIM FINAL REGULATIONS.—

5           (1) IN GENERAL.—Not later than 1 year after  
6       the date of the enactment of this Act—

7           (A) the Secretary of Homeland Security  
8       shall issue regulations implementing sections 2  
9       and 6 and the amendments made by such sec-  
10      tions (except for section 274A(d)(7) of the Im-  
11      migration and Nationality Act); and

12          (B) the Attorney General shall issue regu-  
13      lations implementing section 274A(d)(7) of the  
14      Immigration and Nationality Act, as added by  
15      section 2, section 6, and the amendments made  
16      by such sections.

17          (2) EFFECTIVE DATE.—Regulations issued pur-  
18      suant to paragraph (1) shall be effective immediately  
19      on an interim basis, but are subject to change and  
20      revision after public notice and opportunity for a pe-  
21      riod for public comment.

22      (b) FINAL REGULATIONS.—Within a reasonable time  
23      after publication of the interim regulations under sub-  
24      section (a), the Secretary of Homeland Security, in con-  
25      sultation with the Commissioner of Social Security and the

1 Attorney General, shall publish final regulations imple-  
2 menting this subtitle.

3 **SEC. 8. OFFICE OF THE SMALL BUSINESS AND EMPLOYEE**  
4 **ADVOCATE.**

5 (a) ESTABLISHMENT OF SMALL BUSINESS AND EM-  
6 PLOYEE ADVOCATE.—The Secretary of Homeland Secu-  
7 rity shall establish and maintain within U.S. Citizenship  
8 and Immigration Services the Office of the Small Business  
9 and Employee Advocate (in this section referred to as the  
10 “Office”). The purpose of the Office shall be to assist  
11 small businesses and individuals in complying with the re-  
12 quirements of section 274A of the Immigration and Na-  
13 tionality Act (8 U.S.C. 1324a), as amended by this Act,  
14 including the resolution of conflicts arising in the course  
15 of attempted compliance with such requirements.

16 (b) FUNCTIONS.—The functions of the Office shall  
17 include, but not be limited to, the following:

18 (1) Informing small businesses and individuals  
19 about the verification practices required by section  
20 274A of the Immigration and Nationality Act, in-  
21 cluding, but not limited to, the document verification  
22 requirements and the employment verification sys-  
23 tem requirements under subsections (c) and (d) of  
24 that section.

1           (2) Assisting small businesses and individuals  
2           in addressing allegedly erroneous further action no-  
3           tices and nonconfirmations issued under subsection  
4           (d) of section 274A of the Immigration and Nation-  
5           ality Act.

6           (3) Informing small businesses and individuals  
7           of the financial liabilities and criminal penalties that  
8           apply to violations and failures to comply with the  
9           requirements of section 274A of the Immigration  
10          and Nationality Act, including, but not limited to, by  
11          issuing best practices for compliance with that sec-  
12          tion.

13          (4) To the extent practicable, proposing  
14          changes to the Secretary of Homeland Security in  
15          the administrative practices of the employment  
16          verification system required under subsection (d) of  
17          section 274A of the Immigration and Nationality  
18          Act to mitigate the problems identified under para-  
19          graph (2).

20          (5) Making recommendations through the Sec-  
21          retary to Congress for legislative action to mitigate  
22          such problems.

23          (c) AUTHORITY TO ISSUE ASSISTANCE ORDER.—

24                (1) IN GENERAL.—Upon application filed by a  
25                small business or individual with the Office (in such

1 form, manner, and at such time as the Secretary of  
2 Homeland Security shall by regulations prescribe),  
3 the Office may issue an assistance order if—

4 (A) the Office determines the small busi-  
5 ness or individual is suffering or about to suffer  
6 a significant hardship as a result of the manner  
7 in which the employment verification laws  
8 under subsections (c) and (d) of section 274A  
9 of the Immigration and Nationality Act are  
10 being administered by the Secretary; or

11 (B) the small business or individual meets  
12 such other requirements as are set forth in reg-  
13 ulations prescribed by the Secretary.

14 (2) DETERMINATION OF HARDSHIP.—For pur-  
15 poses of paragraph (1), a significant hardship shall  
16 include—

17 (A) an immediate threat of adverse action;

18 (B) a delay of more than 60 days in resolv-  
19 ing employment verification system problems;

20 (C) the incurring by the small business or  
21 individual of significant costs if relief is not  
22 granted; or

23 (D) irreparable injury to, or a long-term  
24 adverse impact on, the small business or indi-  
25 vidual if relief is not granted.

1           (3) STANDARDS WHEN ADMINISTRATIVE GUID-  
2           ANCE NOT FOLLOWED.—In cases where a U.S. Citi-  
3           zenship and Immigration Services employee is not  
4           following applicable published administrative guid-  
5           ance, the Office shall construe the factors taken into  
6           account in determining whether to issue an assist-  
7           ance order under this subsection in the manner most  
8           favorable to the small business or individual.

9           (4) TERMS OF ASSISTANCE ORDER.—The terms  
10          of an assistance order under this subsection may re-  
11          quire the Secretary within a specified time period—

12                (A) to determine whether any employee is  
13                or is not authorized to work in the United  
14                States; or

15                (B) to abate any penalty under section  
16                274A of the Immigration and Nationality Act  
17                that the Office determines is arbitrary, capri-  
18                cious, or disproportionate to the underlying of-  
19                fense.

20          (5) AUTHORITY TO MODIFY OR RESCIND.—Any  
21          assistance order issued by the Office under this sub-  
22          section may be modified or rescinded—

23                (A) only by the Office, the Director or  
24                Deputy Director of U.S. Citizenship and Immi-



1           gration Services, or the Secretary or the Sec-  
2           retary's designee; and

3           (B) if rescinded by the Director or Deputy  
4           Director of U.S. Citizenship and Immigration  
5           Services, only if a written explanation of the  
6           reasons of such official for the modification or  
7           rescission is provided to the Office.

8           (6) SUSPENSION OF RUNNING OF PERIOD OF  
9           LIMITATION.—The running of any period of limita-  
10          tion with respect to an action described in paragraph  
11          (4)(A) shall be suspended for—

12           (A) the period beginning on the date of the  
13           small business or individual's application under  
14           paragraph (1) and ending on the date of the  
15           Office's decision with respect to such applica-  
16           tion; and

17           (B) any period specified by the Office in  
18           an assistance order issued under this subsection  
19           pursuant to such application.

20          (7) INDEPENDENT ACTION OF OFFICE.—Noth-  
21          ing in this subsection shall prevent the Office from  
22          taking any action in the absence of an application  
23          under paragraph (1).

24          (d) ACCESSIBILITY TO THE PUBLIC.—

1           (1) IN PERSON, ONLINE, AND TELEPHONE AS-  
2           SISTANCE.—The Office shall provide information  
3           and assistance specified in subsection (b) in person  
4           at locations designated by the Secretary of Home-  
5           land Security, online through an Internet website of  
6           the Department available to the public, and by tele-  
7           phone.

8           (2) AVAILABILITY TO ALL EMPLOYERS.—In  
9           making information and assistance available, the Of-  
10          fice shall prioritize the needs of small businesses and  
11          individuals. However, the information and assistance  
12          available through the Office shall be available to any  
13          employer.

14          (e) AVOIDING DUPLICATION THROUGH COORDINA-  
15          TION.—In the discharge of the functions of the Office, the  
16          Secretary of Homeland Security shall consult with the  
17          Secretary of Labor, the Secretary of Agriculture, the Com-  
18          missioner, the Attorney General, the Equal Employment  
19          Opportunity Commission, and the Administrator of the  
20          Small Business Administration in order to avoid duplica-  
21          tion of efforts across the Federal Government.

22          (f) DEFINITIONS.—In this section:

23               (1) The term “employer” has the meaning  
24               given that term in section 274A(b) of the Immigra-  
25               tion and Nationality Act.

1           (2) The term “small business” means an em-  
2       ployer with 49 or fewer employees.

3       (g) AUTHORIZATION OF APPROPRIATIONS.—There is  
4       authorized to be appropriated such sums as may be nec-  
5       essary to carry out the functions of the Office.

○