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

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2011

Mr. Smith of Texas (for himself, Mr. Calvert, Mr. Gallegly, Mr. Chaffetz, Mr. Bilbray, Mr. Royce, Mr. Gary G. Miller of California, Mrs. Myrick, Mr. Sensenbrenner, Mr. Franks of Arizona, Mr. Carter, Mr. Kingston, Mr. Daniel E. Lungren of California, and Mr. Goodlatte) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Legal Workforce Act”.
SEC. 2. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

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

“(b) EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.—

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

“(A) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

“(i) ATTESTATION.—During the verification period (as defined in subparagraph (F)), the person or entity shall attest, under penalty of perjury and on a form, including electronic and telephonic formats, designated or established by the Secretary by regulation not later than 6 months after the date of the enactment of the Legal Workforce Act, that it has verified that the individual is not an unauthorized alien by—
“(I) obtaining from the individual the individual’s social security account number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under subparagraph (B), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

“(II) examining—

“(aa) a document described in clause (ii); or

“(bb) a document described in clause (iii) and a document described in clause (iv).

“(ii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION AND ESTABLISHING IDENTITY.—A document described in this subparagraph is an individual’s—
“(I) unexpired United States passport or passport card;

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

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

“(IV) in the case of a non-immigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I–94 or Form I–94A bearing the same name as the passport and containing as endorsement of the alien’s non-immigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form;

“(V) passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I–94 or Form I–94A indicating nonimmigrant admission under the Compact of Free Asso-
cation Between the United States and
the FSM or RMI; or

“(VI) other document designated
by the Secretary of Homeland Secu-

rity, if the document—

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

“(bb) is evidence of author-
ization of employment in the
United States; and

“(cc) contains security fea-
tures to make it resistant to tam-
pering, counterfeiting, and fraud-
ulent use.

“(iii) DOCUMENTS EVIDENCING EM-

PLOYMENT AUTHORIZATION.—A document
described in this subparagraph is an indi-
vidual’s social security account number
card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States).

“(iv) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is—

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

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

“(III) an individual’s unexpired Native American tribal identification document; or

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

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

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

“(B) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—

“(i) IN GENERAL.—During the verification period (as defined in subparagraph (F)), the individual shall attest, under penalty of perjury on the form designated or established for purposes of subparagraph (A), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary of Homeland Security to be hired, recruited, or referred
for such employment. Such attestation may be manifested by either a hand-written or electronic signature. The individual shall also provide that individual’s social security account number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States citizenship under this subparagraph, such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.

“(ii) Criminal penalty.—

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

“(II) Consecutive sentence.—Notwithstanding any other provision of law—

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

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

“(cc) in determining any term of imprisonment to be imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this clause occurred, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this clause; and
“(dd) a term of imprisonment imposed on an individual for a violation of this clause may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that individual for an additional violation of this clause, except that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the United States Sentencing Commission pursuant to section 994 of title 28, United States Code.

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

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

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

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

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

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

“(ii) Verification.—

“(I) Verification received.—

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

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

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

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

“(V) CONSEQUENCES OF NONVERIFICATION.—

“(aa) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonverification regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate
employment of the individual or
proceeds to recruit or refer the
individual, the person or entity
shall notify the Secretary of
Homeland Security of such fact
through the verification system
or in such other manner as the
Secretary may specify.

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

“(VI) CONTINUED EMPLOYMENT
AFTER FINAL NONVERIFICATION.—If
the person or other entity continues to
employ (or to recruit or refer) an indi-
vidual after receiving final nonverifica-
tion, a rebuttable presumption is cre-
ated that the person or entity has vio-
lated subsection (a)(1)(A).
“(D) Continuation of seasonal agricultural employment.—An individual shall not be considered a new hire subject to verification under this paragraph if the individual is engaged in seasonal agricultural employment and is returning to work for an employer that previously employed the individual.

“(E) Effective dates of new procedures.—

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

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

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

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

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

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

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

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

“(I) This subsection, as in effect before the enactment of the Legal Workforce Act.
“(II) Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), as in effect before the effective date in section 7(c) of the Legal Workforce Act.

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

“(F) Verification period defined.—

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

“(I) In the case of recruitment or referral, the term ‘verification period’ means the period ending on the date recruiting or referring commences.
“(II) In the case of hiring, the term ‘verification period’ means the period beginning on the date on which an offer of employment is extended and ending on the date that is 3 business days after the date of hiring. The offer of employment may be conditioned in accordance with clause (ii).

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

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

“(A) IN GENERAL.—Except as provided in subparagraph (B), a person or entity shall make an inquiry, as provided in subsection (d), using the verification system to seek reverification of the identity and employment eligibility of all individuals with a limited period of work authorization employed by the person or entity during the 30-day period ending on the date the
employee’s work authorization expires as follows:

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

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

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

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

“(B) Agricultural labor or services.—With respect to an employee performing agricultural labor or services (as defined for purposes of section 101(a)(15)(H)(ii)(a)), subparagraph (A) shall not apply with respect to the reverification of the employee until the date that is 36 months after the date of the enactment of the Legal Workforce Act. An employee described in this subparagraph shall not be counted for purposes of subparagraph (A).

“(C) Reverification.—Paragraph (1)(C)(ii) shall apply to reverifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

“(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph in lieu of the verification form under paragraph (1); and
“(ii) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during the period beginning on the date the reverification commences and ending on the date that is the later of 3 years after the date of such reverification or 1 year after the date the individual’s employment is terminated.

“(D) NOTICE.—The Secretary of Homeland Security shall notify a person or entity employing a person with limited work authorization of the date on which the limited work authorization expires.

“(3) PREVIOUSLY HIRED INDIVIDUALS.—

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

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

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

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

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

“(III) An employee assigned to
perform work in the United States
under a Federal or State contract, except that this subclause—

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

“(bb) only applies to contracts over the simple acquisition threshold.

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

“(i) The Commissioner of Social Security shall notify annually employees (at the employee address listed on the Wage and Tax Statement) who submit a social security account number to which more than one employer reports income and for which there is a pattern of unusual multiple use. The notification letter shall identify the number of employers to which, and the States in which, income is being reported as well as sufficient information notifying the employee of the process to contact the Social Security Administration Fraud Hotline if the employee believes the employee’s identity may have been stolen. The notice shall not share information protected as private, in order to avoid any recipient of the notice being in the position to further identity theft.

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

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

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

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

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

“(I) A description of the mis-
matched information.

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

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

“(E) Verification.—Paragraph (1)(C)(ii) shall apply to verifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

“(i) use a form designated or established by the Secretary by regulation for
purposes of this paragraph in lieu of the
verification form under paragraph (1); and

“(ii) retain a paper, microfiche, micro-
film, or electronic version of the form and
make it available for inspection by officers
of the Department of Homeland Security,
the Special Counsel for Immigration-Re-
lated Unfair Employment Practices, or the
Department of Labor during the period be-
inning on the date the verification com-
mences and ending on the date that is the
later of 3 years after the date of such
verification or 1 year after the date the in-
dividual’s employment is terminated.

“(4) EARLY COMPLIANCE.—

“(A) FORMER E-VERIFY REQUIRED USERS,
INCLUDING FEDERAL CONTRACTORS.—Notwith-
standing the deadlines in paragraphs (1) and
(2), beginning on the earlier of the date that is
6 months after the date of the enactment of the
Legal Workforce Act and the date on which the
Secretary implements the system under sub-
section (d), the Secretary is authorized to com-
mence requiring employers required to partici-
pate in the E-Verify Program described in sec-
tion 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), including employers required to participate in such program by reason of Federal acquisition laws (and regulations promulgated under those laws, including the Federal Acquisition Regulation), to commence compliance with the requirements of this subsection (and any additional requirements of such Federal acquisition laws and regulation) in lieu of any requirement to participate in the E-Verify Program.

“(B) Former E-Verify voluntary users and others desiring early compliance.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning 30 days after the date of the enactment of the Legal Workforce Act, the Secretary shall provide for the voluntary compliance with the requirements of this subsection by employers voluntarily electing to participate in the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) before such date, as well
as by other employers seeking voluntary early compliance.

“(5) Copying of documentation permitted.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

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

“(7) Good faith compliance.—

“(A) In general.—Except as otherwise provided in this subsection, a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.
“(B) Exception if failure to correct after notice.—Subparagraph (A) shall not apply if—

“(i) the failure is not de minimus;

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

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

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

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

SEC. 3. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

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

“(1) In general.—Patterned on the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), the Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary, which may be a nongovernmental entity)—

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

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

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

“(3) Secondary verification process in
case of tentative nonverification.—In cases
of tentative nonverification, the Secretary shall
specify, in consultation with the Commissioner of
Social Security, an available secondary verification
process to confirm the validity of information pro-
vided and to provide a final verification or
nonverification within 10 working days after the
date of the tentative nonverification. When final
verification or nonverification is provided, the
verification system shall provide an appropriate code
indicating such verification or nonverification.

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

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

“(B) to respond to all inquiries made by
such persons and entities on whether individ-
uals are authorized to be employed and to reg-
ister all times when such inquiries are not re-
ceived;

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

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

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

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

and

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

“(i) Individuals hired, referred, or re-
cruited, in accordance with paragraph (1)
or (4) of subsection (b).
“(ii) Employees and prospective employees, in accordance with paragraph (2), (3), or (4) of subsection (b).

“(iii) Individuals seeking to confirm their own employment eligibility on a voluntary basis.

“(5) Responsibilities of Commissioner of Social Security.—As part of the verification system, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security (and any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such verification or nonverification) ex-
cept as provided for in this section or section 205(e)(2)(I) of the Social Security Act.

“(6) Responsibilities of Secretary of Homeland Security.—As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and alien identification or authorization number which are provided in an inquiry against such information maintained by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

“(7) Offenses.—

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

“(B) CONSECUTIVE SENTENCE.—Notwithstanding any other provision of law—
“(i) a court shall not place on probation any person or entity convicted of a violation of this paragraph;

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

“(iii) in determining any term of imprisonment to be imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this section occurred, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this paragraph; and
“(iv) A term of imprisonment imposed on a person or entity for a violation of this paragraph may, in the discretion of the court, run concurrently, in whole or in part, only with another term of imprisonment that is imposed by the court at the same time on that person or entity for an additional violation of this paragraph, except that such discretion shall be exercised in accordance with any applicable guidelines and policy statements issued by the United States Sentencing Commission pursuant to section 994 of title 28, United States Code.

“(8) Updating Information.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in paragraph (3).

“(9) Limitation on Use of the Verification System and Any Related Systems.—
“(A) IN GENERAL.—Notwithstanding any other provision of law, nothing in this section shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subsection for any other purpose other than as provided for under this section.

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

“(10) REMEDIES.—If an individual alleges that the individual would not have been dismissed from a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class action may be brought under this paragraph.”.

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

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

(1) in paragraph (1)(A), by striking “for a fee”;
(2) in paragraph (1), by amending subparagraph (B) to read as follows:

“(B) to hire, continue to employ, or to recruit or refer for employment in the United States an individual without complying with the requirements of subsection (b).”;
(3) in paragraph (2), by striking “after hiring an alien for employment in accordance with paragraph (1),” and inserting “after complying with paragraph (1),”;
and
(4) in paragraph (3), by striking “hiring,” and inserting “hiring, employing,” each place it appears.

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

“(4) DEFINITION OF RECRUIT OR REFER.—As used in this section, the term ‘refer’ means the act of sending or directing a person or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person. Only persons or entities referring for remuneration (whether on a re-
tainer or contingency basis) are included in the defi-
nition, except that union hiring halls that refer
union members or nonunion individuals who pay
union membership dues are included in the defini-
tion whether or not they receive remuneration, as
are labor service entities or labor service agencies,
whether public, private, for-profit, or nonprofit, that
refer, dispatch, or otherwise facilitate the hiring of
laborers for any period of time by a third party. As
used in this section the term ‘recruit’ means the act
of soliciting a person, directly or indirectly, and re-
ferring the person to another with the intent of ob-
taining employment for that person. Only persons or
entities referring for remuneration (whether on a re-
tainer or contingency basis) are included in the defi-
nition, except that union hiring halls that refer
union members or nonunion individuals who pay
union membership dues are included in this defini-
tion whether or not they receive remuneration, as
are labor service entities or labor service agencies,
whether public, private, for-profit, or nonprofit that
recruit, dispatch, or otherwise facilitate the hiring of
laborers for any period of time by a third party.”.
(c) EFFECTIVE DATE.—The amendments made by
this section shall take effect on the date that is 1 year
after the date of the enactment of this Act, except that
the amendments made by subsection (a) shall take effect
6 months after the date of the enactment of this Act inso-
far as such amendments relate to continuation of employ-
ment.

SEC. 5. GOOD FAITH DEFENSE.

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

“(3) GOOD FAITH DEFENSE.—

“(A) DEFENSE.—An employer (or person
or entity that hires, employs, recruits or refers
for fee, or is otherwise obligated to comply with
this section) who establishes that it has com-
plied in good faith with the requirements of
subsection (b)—

“(i) shall not be liable to a job appli-
cant, an employee, the Federal Govern-
ment, or a State or local government,
der Federal, State, or local criminal or
civil law for any employment-related action
taken with respect to a job applicant or
employee in good-faith reliance on informa-
tion provided through the system estab-
lished under subsection (d); and
“(ii) has established compliance with its obligations under subparagraphs (A) and (B) of paragraph (1) and subsection (b) absent a showing by the Secretary of Homeland Security, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien.

“(B) Failure to seek and obtain verification.—Subject to the effective dates and other deadlines applicable under subsection (b), in the case of a person or entity in the United States that hires, or continues to employ, an individual, or recruits or refers an individual for employment, the following requirements apply:

“(i) Failure to seek verification.—

“(I) In general.—If the person or entity has not made an inquiry, under the mechanism established under subsection (d) and in accordance with the timeframes established under subsection (b), seeking verification of the identity and work
eligibility of the individual, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

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

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

SEC. 6. PREEMPTION.

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

“(2) PREEMPTION.—The provisions of this section preempt any State or local law, ordinance, policy, or rule, including any criminal or civil fine or penalty structure, insofar as they may now or hereafter relate to the hiring, continued employment, or status verification for employment eligibility purposes, of unauthorized aliens. A State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the verification system described in subsection (d) to verify employment eligibility when and as required under subsection (b).”.
SEC. 7. REPEAL.

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

(b) REFERENCES.—Any reference in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of, or pertaining to, the Department of Homeland Security or the Social Security Administration, to the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is deemed to refer to the employment eligibility confirmation system established under section 274A(d) of the Immigration and Nationality Act, as amended by section 3 of this Act.

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

SEC. 8. PENALTIES.

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

(1) in subsection (e)(4)—

(A) in subparagraph (A), in the matter before clause (i), by inserting “, subject to paragraph (10),” after “in an amount”;
(B) in subparagraph (A)(i), by striking “not less than $250 and not more than $2,000” and inserting “not less than $2,500 and not more than $5,000”;

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

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

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

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

(2) in subsection (e)(5)—

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

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

(C) by striking “$100” and inserting “$1,000”;
(D) by striking “$1,000” and inserting “$25,000”;

(E) by adding at the end the following:

“Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).”;

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

“(10) Exemption from penalty for good faith violation.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment or recruitment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed may be waived or reduced if the violator establishes that the violator acted in good faith.

“(11) Authority to debar employers for certain violations.—
“(A) IN GENERAL.—If a person or entity is determined by the Secretary of Homeland Security to be a repeat violator of paragraph (1)(A) or (2) of subsection (a), or is convicted of a crime under this section, such person or entity may be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition Regulation.

“(B) DOES NOT HAVE CONTRACT, GRANT, AGREEMENT.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such an person or entity does not hold a Federal contract, grant or cooperative agreement, the Secretary or Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.
“(C) Has contract, grant, agreement.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government’s interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to any appropriate lead agency to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

“(D) Review.—Any decision to debar a person or entity under in accordance with this paragraph shall be reviewable pursuant to part 9.4 of the Federal Acquisition Regulation.”;

(4) by amending paragraph (1) of subsection (f) to read as follows:
“(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1) or (2) shall be fined not more than $15,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not less than one year and not more than 10 years, or both, notwithstanding the provisions of any other Federal law relating to fine levels.”; and

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

SEC. 9. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

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

(1) provide funds to the Commissioner for the full costs of the responsibilities of the Commissioner under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 3 of this Act, including (but not limited to)—
(A) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the Commissioner under such section 274A(d), but only that portion of such costs that are attributable exclusively to such responsibilities; and

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

(2) provide such funds quarterly in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and

(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Office of Inspector General of the Social Security Administration and the Department of Homeland Security.

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

SEC. 10. FRAUD PREVENTION.

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

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

(c) Blocking Use of Certain Social Security
Account Numbers.—

(1) In general.—The Secretary of Homeland
Security shall establish a program in which the so-
cial security account numbers of an alien described
in paragraph (2) shall be blocked from use for pur-
poses of the employment eligibility verification sys-
tem established under section 274A(d) of the Immi-
grant and Nationality Act (8 U.S.C. 1324a(d)), as
amended by section 3 of this Act, unless the alien
is subsequently admitted lawfully to the United
States in, or the Secretary has subsequently changed
the alien’s status lawfully to, a status that permits
employment as a condition of the alien’s admission
or subsequent change of status, or the Secretary has
subsequently granted work authorization lawfully to
the alien.

(2) ALIENS DESCRIBED.—An alien is described
in this paragraph if the alien—

(A) has a final order of removal from the
United States;

(B) voluntarily departs the United States;

(C) is voluntarily returned; or

(D) is a nonimmigrant described in section
101(a)(15) of the Immigration and Nationality
Act (8 U.S.C. 1101(a)(15)) whose work author-
ization has expired and who is not the subject
of an application or petition that would author-
ize the alien’s employment.

SEC. 11. BIOMETRIC EMPLOYMENT ELIGIBILITY
VERIFICATION PILOT PROGRAM.

(a) IN GENERAL.—Not later than 18 months after
the date of the enactment of the Legal Workforce Act,
the Secretary of Homeland Security, after consultation
with the Commissioner of Social Security and the Director
of the National Institute of Standards and Technology,
shall establish by regulation a Biometric Employment Eli-
gibility Verification pilot program (the “Biometric Pilot”).
The purpose of the Biometric Pilot shall be to provide for
identity authentication and employment eligibility
verification with respect to enrolled new employees which shall be available to subject employers who elect to participate in the Biometric Pilot. Any subject employer may cancel the employer’s participation in the Biometric Pilot after one year after electing to participate without prejudice to future participation.

(b) **Minimum Requirements.**—In accordance with the regulations prescribed by the Secretary pursuant to subsection (a), the following shall apply:

1. **Identity Authentication and Employment Eligibility Verification by Enrollment Providers.**—The Biometric Pilot shall utilize the services of private sector entities (“enrollment providers”), with appropriate expertise, which shall be subject to initial and periodic certification by the Secretary, to provide—

   (A) enrollment under the Biometric Pilot of new employees by means of identity authentication in a manner that provides a high level of certainty as to their true identities, using immigration and identifying information maintained by the Social Security Administration and the Department of Homeland Security, review of identity documents, and background
screening verification techniques using publicly available information;

(B) protection of the authenticated information through biometric technology; and

(C) verification of employment eligibility of such new employees.

(2) DATABASE MANAGEMENT.—The Biometric Pilot shall provide for databases of identifying information which may be retained by the enrollment providers. Databases controlled by the Commissioner and Secretary of Homeland Security shall be maintained in a manner to capture new entries and new status information in a timely manner and to interact with the private enrollment databases to keep employment authorization status and identifying information current on a daily basis. The information maintained in such databases shall be subject to the requirements established pursuant to subsection (e), except that—

(A) use of the data shall be limited to obtaining employment eligibility verification only, unless the new employee consents to use the data for other purposes, as provided in regulations prescribed by the Secretary; and
(B) other identifying traits of the new employees shall be stored through an encoding process that keeps their accurate names, dates of birth, social security numbers, and immigration identification numbers (if any) separate, except during electronic verification.

(3) ACCESSIBILITY TO EMPLOYERS.—Availability of data maintained in the Biometric Pilot shall be managed so that any subject employer who participates in the Biometric Pilot can obtain verification with respect to any new employee enrolled with any enrollment provider serving in the Biometric Pilot.

(4) LIMITATIONS RELATING TO BIOMETRIC DATA.—Any biometric data maintained in the Biometric Pilot relating to any new employee shall be—

(A) encrypted and segregated from identifying information relating to the new employee, and

(B) maintained and linked to identifying information relating to the new employee only by consent of the new employee for the purpose of verifying employment eligibility or approved correction processes or for other purposes spe-
cifically authorized by the employee as provided in regulations prescribed by the Secretary.

(5) **Accuracy of Association of Data with Enrolled New Employees.**—The enrollment process under the Biometric Pilot shall be managed, in the case of each new employee enrolled in the Biometric Pilot, so as to result in the accurate association of data consisting of name, date of birth, social security number, and immigration identification number (if any) with the established identity of the new employee.

(6) **Limitations on Accessibility of Information.**—Data stored in Biometric Pilot relating to any enrolled new employee shall not be accessible to any person other than those operating the Biometric Pilot and for the sole purpose of identity authentication and employment eligibility verification in connection with the new employee, except—

(A) by the written consent of the new employee given specifically for each instance or category of disclosure for any other purpose as provided in regulations prescribed by the Secretary; or
(B) in response to a warrant issued by a judicial authority of competent jurisdiction in a criminal proceeding.

(7) PUBLIC EDUCATION.—The Secretary shall conduct a program of ongoing, comprehensive public education campaign relating to the Biometric Pilot.

(c) EMPLOYER RESPONSIBILITIES.—In accordance with the regulations prescribed by the Secretary pursuant to subsection (a), the following shall apply:

(1) USE LIMITED TO ENROLLED NEW EMPLOYEES.—Use of the Biometric Pilot by subject employers participating in the Biometric Pilot shall be limited to use in connection with the hiring of new employees occurring after their enrollment in the Biometric Pilot.

(2) USE FOR LIMITED PERIOD.—Use of the Biometric Pilot by any subject employer participating in the Biometric Pilot in connection with any new employee may occur only during the period beginning on the date of hire and ending at the end of the third business day after the employee has reported for duty. Use of the Biometric Pilot with respect to recruitment or referral for a fee may occur only until the first day of such recruitment or referral.
(3) Responsibility of employers to enroll new employees.—In connection with the hiring by any subject employer of a new employee who has not been previously enrolled in the Biometric Pilot, enrollment of the new employee shall occur only upon application by the subject employer submitted to an enrollment provider, together with payment of any costs associated with the enrollment.

(4) Limitations on selective use.—No subject employer may use the Biometric Pilot selectively to verify any class, level, or category of new employees. Nothing in this subparagraph shall be construed to preclude subject employers from utilizing the Biometric Pilot in connection with hiring at selected employment locations without implementing such usage at all locations of the employer.

(d) Employee protections.—In accordance with the regulations prescribed by the Secretary pursuant to subsection (a), the following shall apply:

(1) Access for employees to correct and update information.—Employees enrolled in the Biometric Pilot shall be provided access to the Biometric Pilot to verify information relating to their employment authorization and readily available processes to correct and update their enrollment infor-
mation and information relating to employment au-

thorization.

(2) **Right to Cancel Enrollment.**—Each employee enrolled in the Biometric Pilot shall have the right to cancel such employee’s enrollment at any time after the identity authentication and em-

ployment eligibility verification processes are com-

pleted by the subject employer described in sub-

section (c)(3). Such cancellation shall remove from the Biometric Pilot all identifying information and biometrics in connection with such employee without prejudice to future enrollments.

(e) **Maintenance of Security and Confidentiality of Information.**—

(1) **In General.**—Every person who is a sub-

ject employer participating in the Biometric Pilot or an officer or contractor of such a subject employer and who has access to any information obtained at any time from the Department of Homeland Secu-

rity shall maintain the security and confidentiality of such information. No such person may disclose any file, record, report, paper, or other item containing information so obtained at any time by any such person from the Secretary or from any officer or em-

ployee of the Department of Homeland Security ex-
cept as the Secretary may by regulations prescribe or as otherwise provided by Federal law.

(2) Penalty for disclosure in violation of subparagraph (A).—Any person described in paragraph (1) who knowingly violates paragraph (1) shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(3) Penalty for knowing disclosure of fraudulent information.—Any person who willfully and knowingly accesses, discloses, or uses any information which such person purports to be information obtained as described in paragraph (1) knowing such information to be false shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(4) Restitution.—

(A) In general.—Any Federal court, when sentencing a defendant convicted of an offense under this paragraph, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution
to the victims of such offense specified in sub-
paragraph (B). Sections 3612, 3663, and 3664
of title 18, United States Code, shall apply with
respect to the issuance and enforcement of or-
ders of restitution to victims of such offense
under this subparagraph. If the court does not
order restitution, or orders only partial restitu-
tion, under this subsection, the court shall state
on the record the reasons therefor.

(B) VICTIMS SPECIFIED.—The victims
specified in this clause are the following:

(i) Any individual who suffers a finan-
cial loss as a result of the disclosure de-
scribed in paragraph (2) or (3).

(ii) The Secretary of Homeland Secu-
rity, to the extent that the disclosure de-
scribed in paragraph (2) or (3) results in
the inappropriate payment of a benefit by
the Commissioner of Social Security.

(C) DEPOSIT IN THE TRUST FUNDS OF
AMOUNTS PAID AS RESTITUTION TO THE COM-
MISSIONER.— Funds paid to the Commissioner
as restitution pursuant to a court order under
this subparagraph shall be deposited in the
Federal Old-Age and Survivors Insurance Trust
1 Fund or the Federal Disability Insurance Trust
2 Fund, as appropriate.