

112TH CONGRESS
1ST SESSION

H. R. 800

To make the E-Verify program permanent, and to provide for penalties to enforce compliance with the program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 18, 2011

Mr. CARTER (for himself, Mr. SHULER, Mr. MCINTYRE, and Mr. GOHMERT) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and the Workforce and the Judiciary, 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 make the E-Verify program permanent, and to provide for penalties to enforce compliance with the program, 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 “Jobs Recovery by En-
5 suring a Legal American Workforce Act of 2011”.

6 **SEC. 2. E-VERIFY MADE PERMANENT AND MANDATORY.**

7 (a) PROGRAM MADE PERMANENT.—Section 401(b)
8 of the Illegal Immigration Reform and Immigrant Respon-

1 sibility Act of 1996 (8 U.S.C. 1324a note) is amended
2 by adding before the period at the end of the last sentence
3 the following: “, except that the basic pilot program de-
4 scribed in section 403(a) shall be a permanent program”.

5 (b) PROGRAM MADE MANDATORY.—Section 402 of
6 such Act is amended—

7 (1) in subsection (a) by inserting “or subsection
8 (g)” after “in subsection (e)”;

9 (2) in subsection (e) by inserting after “require
10 under this subsection” the following: “or under sub-
11 section (g)”;

12 (3) by adding at the end the following:

13 “(g) E-VERIFY PROGRAM MADE MANDATORY.—
14 Subject to subsection (c)(3), any person or other entity
15 that conducts any hiring (or recruitment or referral) in
16 a State in which the E-Verify program described under
17 section 403(a) is operating shall elect to participate in
18 such program. The Secretary of Homeland Security shall
19 ensure that verification by means of a toll-free telephone
20 line is an available option in complying with the preceding
21 sentence.”.

22 (c) TRANSITION PERIOD; EFFECTIVE DATE.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (2), the amendments made by subsection (b)

1 shall take effect beginning on the date that is 2
2 years after the date of enactment of this Act.

3 (2) CERTAIN ENTITIES.—The amendments
4 made by subsection (b) shall take effect beginning
5 on the date that is—

6 (A) 540 days after the date of enactment
7 of this Act, in the case of a person or entity
8 that employs 100 or more individuals in the
9 United States; and

10 (B) 1 year after the date of enactment of
11 this Act, in the case of—

12 (i) a contractor that—

13 (I) has entered into a contract
14 with the Federal Government to which
15 section 2(b)(1) of the Service Contract
16 Act of 1965 (41 U.S.C. 351(b)(1))
17 applies, and any subcontractor under
18 such contract; or

19 (II) has entered into a contract
20 exempted from the application of such
21 Act by section 6 of such Act (41
22 U.S.C. 356), and any subcontractor
23 under such contract; or

1 (ii) any person or entity that employs
2 more than 250 individuals in the United
3 States.

4 (d) APPLICATION TO CURRENT EMPLOYEES.—Every
5 person or entity that employs one or more persons in the
6 United States shall verify through the E-Verify program
7 by not later than the applicable effective date in (c) that
8 each employee is authorized to work in the United States.

9 (e) RULE OF CONSTRUCTION.—Nothing in the
10 amendments made by this section shall be construed to
11 prevent a person or other entity that is not required to
12 participate in the E-Verify program described in section
13 403(a) from voluntarily participating in such program.

14 (f) NO LIMITATION ON PARTICIPATION BY STATE OR
15 LOCAL LAW.—No State or local government may prohibit
16 a person or other entity from using the E-verify program
17 to verify the employment authorization of new hires or
18 current employees.

19 (g) DOCUMENT FRAUD STUDY.—The Government
20 Accountability Office shall conduct a study to examine
21 methods to combat document fraud, theft and forgery in
22 the use and expansion of the E-Verify program. The re-
23 port shall make recommendations to the appropriate agen-
24 cies on ways to reduce instances of document fraud, theft,

1 and forgery. The report shall be published within six
2 months after enactment of this Act.

3 **SEC. 3. ENHANCING MONITORING OF AND COMPLIANCE**
4 **WITH E-VERIFY PROGRAM.**

5 The Secretary of the Department of Homeland Secu-
6 rity is authorized to take the following actions to increase
7 the capability and effectiveness of the E-Verify employer
8 Monitoring and Compliance team within the Citizenship
9 and Immigration Services:

10 (1) Increase by no more than 6 the number of
11 fulltime employees dedicated to the development of
12 thresholds and algorithms and quality assurance
13 procedures for the monitoring of employer adherence
14 to the conditions that are currently outlined in the
15 E-Verify Memorandum of Understanding.

16 (2) Increase as necessary the number of
17 fulltime employees dedicated to outreach to employ-
18 ers using the E-Verify program and the creation of
19 informational tools and corrective action procedures
20 that will provide compliance assistance to these em-
21 ployers. These employees may also be utilized in the
22 operation of the toll-free compliance assistance call
23 center.

1 (3) Establish procedures for the identification
2 of cases of potential fraud or misuse of the E-Verify
3 program.

4 (4) Establish procedures for the sharing of in-
5 formation on these selected cases with Immigration
6 and Customs Enforcement for further investigation
7 as necessary.

8 (5) Report to the Congress within one year of
9 the date of enactment of this Act on the activities
10 of the Office of Monitoring and Compliance which
11 shall include—

12 (A) a description of the types of fraud and
13 misuse being detected by the thresholds and al-
14 gorithms used for employee monitoring within
15 the Office;

16 (B) the number and type of cases flagged
17 by the Office and referred to Immigration and
18 Customs Enforcement, as well as the outcome
19 of these cases; and

20 (C) an assessment of the number and the
21 nature of calls received by the compliance as-
22 sistance call center.

1 **SEC. 4. MANDATORY NOTIFICATION OF SSN MISMATCHES**
2 **AND MULTIPLE USES.**

3 (a) NOTIFICATION OF MULTIPLE USES OF INDI-
4 VIDUAL SOCIAL SECURITY ACCOUNT NUMBERS.—Prior to
5 crediting any individual with concurrent wages from more
6 than one employer, the Commissioner of Social Security
7 shall notify the individual that wages from two or more
8 employers are being reported under the individual’s social
9 security account number (hereinafter in this Act referred
10 to as “SSN”). Such notice shall include, at a minimum—

11 (1) the name and location of each employer re-
12 porting benefits for an individual;

13 (2) a warning that any inaccuracies in this in-
14 formation could indicate that the individual’s SSN is
15 being fraudulently used by another individual;

16 (3) an explanation of any potential risk that an
17 individual is subject to if his or her SSN has been
18 used or is being used by someone else; and

19 (4) a toll-free telephone number that an indi-
20 vidual may call to report inaccuracies in the use of
21 their SSN.

22 (b) INFORMATION SHARING WITH THE DEPART-
23 MENT OF HOMELAND SECURITY.—

24 (1) Not later than 180 days following the date
25 of enactment of this Act, the Commissioner of Social
26 Security shall promulgate regulations in accord with

1 section 1106 of the Social Security Act (42 U.S.C.
2 1306), to require that information regarding all mul-
3 tiple use notifications that lead to the identification
4 of an unauthorized user of a SSN be shared with
5 the Secretary of the Department of Homeland Secu-
6 rity on a timely basis.

7 (2) Information to be shared with the Secretary
8 shall include, at a minimum, the name and mailing
9 address of all employees who are the subject of an
10 unresolved mismatch notification or who are unau-
11 thorized users of another individual's SSN. The
12 names and addresses of the employers of these em-
13 ployees must also be provided.

14 (3) The Secretary shall report to the Congress
15 annually the number of cases that the Commissioner
16 of Social Security has shared with the Department
17 of Homeland Security regarding unauthorized users
18 of an SSN and the actions that have been taken to
19 resolve these cases. The Secretary shall submit the
20 first report to the Congress not later than 1 year
21 after the date of enactment of this Act.

22 (c) INFORMATION SHARING WITH THE STATES.—
23 The Department of Homeland Security shall report to the
24 agency within each State that administers unemployment
25 benefits of jobs that have potentially been made available

1 by evidence of an employee being dismissed for non-con-
2 firmation through the E-Verify program. Such notifica-
3 tion shall include the name and address of the employer,
4 a job description if available, and shall be made within
5 3 business days of final non-confirmation.

6 (d) INFORMATION SHARING WITH THE PUBLIC.—
7 The Department of Homeland Security shall prominently
8 display on the Internet home page of the E-Verify pro-
9 gram as “Recovered Jobs” the total number of jobs by
10 month and year reported to the states under (c); and a
11 link to the total number of jobs reported to each state
12 by month and year.

13 **SEC. 5. PENALTY FOR FAILURE TO FILE CORRECT INFOR-**
14 **MATION RETURNS.**

15 (a) IN GENERAL.—Section 6721 of the Internal Rev-
16 enue Code of 1986 (26 U.S.C. 6721) is amended by add-
17 ing at the end the following:

18 “(g) MOST EGREGIOUS NONCOMPLIANT EM-
19 PLOYER.—Notwithstanding any other provision of this
20 section, in the case of a most egregious noncompliant em-
21 ployer, as designated for any taxable year by the Social
22 Security Administration, the penalty for any failure de-
23 scribed in this subsection with respect to an information
24 return with respect to such taxable year shall be the max-
25 imum allowable penalty under this section for such failure.

1 “(h) PENALTY STRUCTURE WITH RESPECT TO EM-
 2 PLOYING AN ALIEN NOT AUTHORIZED TO BE EM-
 3 PLOYED.—In the case of a failure described in subsection
 4 (a)(2) with respect to any person employing an alien not
 5 authorized to be so employed, the penalty under this sec-
 6 tion shall be determined in accordance with the following
 7 table:

“In the case of—	Not less than—	Not more than—
The first offense	\$2,500	\$5,000
The second offense	\$7,500	\$15,000
The third and subsequent offenses	\$25,000	\$50,000.”.

8 (b) EFFECTIVE DATE.—The amendment made by
 9 this section shall apply to failures occurring after the date
 10 of the enactment of this Act.

11 **SEC. 6. CLARIFICATION THAT WAGES PAID TO UNAUTHOR-**
 12 **IZED ALIENS MAY NOT BE DEDUCTED FROM**
 13 **GROSS INCOME.**

14 (a) DENIAL OF DEDUCTION.—Subsection (c) of sec-
 15 tion 162 of the Internal Revenue Code of 1986 (relating
 16 to illegal bribes, kickbacks, and other payments) is amend-
 17 ed by adding at the end the following new paragraph:

18 “(4) WAGES PAID TO OR ON BEHALF OF UNAU-
 19 THORIZED ALIENS.—

20 “(A) IN GENERAL.—No deduction shall be
 21 allowed under subsection (a) for any wage paid
 22 to or on behalf of an unauthorized alien, as de-

1 fined under section 274A(h)(3) of the Immigra-
2 tion and Nationality Act (8 U.S.C.
3 1324a(h)(3)).

4 “(B) WAGES.—For the purposes of this
5 paragraph, the term wages means all remunera-
6 tion for employment, including the cash value of
7 all remuneration (including benefits) paid in
8 any medium other than cash.

9 “(C) SAFE HARBOR.—If a person or other
10 entity is participating in the basic pilot program
11 described in section 403 of the Illegal Immigra-
12 tion Reform and Immigrant Responsibility Act
13 of 1996 (8 U.S.C. 1324a note) and obtains con-
14 firmation of identity and employment eligibility
15 in compliance with the terms and conditions of
16 the program with respect to the hiring (or re-
17 cruitment or referral) of an employee, subpara-
18 graph (A) shall not apply with respect to wages
19 paid to such employee.”.

20 (b) SIX-YEAR LIMITATION ON ASSESSMENT AND
21 COLLECTION.—Subsection (c) of section 6501 of such
22 Code (relating to exceptions) is amended by adding at the
23 end the following new paragraph:

24 “(12) DEDUCTION CLAIMED FOR WAGES PAID
25 TO UNAUTHORIZED ALIENS.—In the case of a return

1 of tax on which a deduction is shown in violation of
2 section 162(c)(4), any tax under chapter 1 may be
3 assessed, or a proceeding in court for the collection
4 of such tax may be begun without assessment, at
5 any time within 6 years after the return was filed.”.

6 (c) USE OF DOCUMENTATION FOR ENFORCEMENT
7 PURPOSES.—Section 274A of the Immigration and Na-
8 tionality Act (8 U.S.C. 1324a) is amended—

9 (1) in subparagraph (b)(5), by inserting “, sec-
10 tion 162(c)(4) of the Internal Revenue Code of
11 1986,” after “enforcement of this Act”;

12 (2) in subparagraph (d)(2)(F), by inserting “,
13 section 162(c)(4) of the Internal Revenue Code of
14 1986,” after “enforcement of this Act”; and

15 (3) in subparagraph (d)(2)(G), by inserting
16 “section 162(c)(4) of the Internal Revenue Code of
17 1986 or” after “or enforcement of”.

18 (d) AVAILABILITY OF INFORMATION.—

19 (1) IN GENERAL.—The Commissioner of Social
20 Security, the Secretary of the Department of Home-
21 land Security, and the Secretary of the Treasury,
22 shall jointly establish a program to share informa-
23 tion among such agencies that may or could lead to
24 the identification of unauthorized aliens (as defined
25 under section 274A(h)(3) of the Immigration and

1 Nationality Act), including any no-match letter, any
2 information in the earnings suspense file, and any
3 information in the investigation and enforcement of
4 section 162(c)(4) of the Internal Revenue Code of
5 1986.

6 (2) DISCLOSURE BY SECRETARY OF THE
7 TREASURY.—

8 (A) IN GENERAL.—Subsection (i) of sec-
9 tion 6103 of the Internal Revenue Code of 1986
10 is amended by adding at the end the following
11 new paragraph:

12 “(9) PAYMENT OF WAGES TO UNAUTHORIZED
13 ALIENS.—Upon request from the Commissioner of
14 the Social Security Administration or the Secretary
15 of the Department of Homeland Security, the Sec-
16 retary shall disclose to officers and employees of
17 such Administration or Department—

18 “(A) taxpayer identity information of em-
19 ployers who paid wages with respect to which a
20 deduction was not allowed by reason of section
21 162(c)(4), and

22 “(B) taxpayer identity information of indi-
23 viduals to whom such wages were paid, for pur-
24 poses of carrying out any enforcement activities

1 of such Administration or Department with re-
2 spect to such employers or individuals.”.

3 (B) RECORDKEEPING.—Paragraph (4) of
4 section 6103(p) of such Code is amended—

5 (i) by striking “(5), or (7)” in the
6 matter preceding subparagraph (A) and in-
7 serting “(5), (7), or (9)”, and

8 (ii) by striking “(5) or (7)” in sub-
9 paragraph (F)(ii) and inserting “(5), (7),
10 or (9)”.

11 (e) EFFECTIVE DATE.—

12 (1) DENIAL OF DEDUCTION.—The amendment
13 made by subsection (a) shall apply to amounts paid
14 or incurred in taxable years beginning after Decem-
15 ber 31, 2010.

16 (2) SIX-YEAR LIMITATION ON ASSESSMENT AND
17 COLLECTION.—The amendment made by subsection
18 (b) shall apply with respect to returns for taxable
19 years beginning after December 31, 2010.

20 (3) USE OF DOCUMENTATION FOR ENFORCE-
21 MENT PURPOSES.—The amendments made by sub-
22 section (c) shall take effect on the date of the enact-
23 ment of this Act.

24 (4) AVAILABILITY OF INFORMATION.—The
25 amendments made by subsection (d) shall apply with

- 1 respect to requests made for taxable years beginning
- 2 after December 31, 2010.

○