

117TH CONGRESS  
1ST SESSION

# S. 2281

To require all Federal contractors and grantees to enroll in, and maintain compliance with, the E-Verify Program.

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IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. LANKFORD introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To require all Federal contractors and grantees to enroll in, and maintain compliance with, the E-Verify Program.

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 TITLES.**

4 This Act may be cited as the “Secure and Fair Em-  
5 ployment in federal Contracting Act” or the “SAFE Con-  
6 tracting Act”.

7 **SEC. 2. DEFINITIONS.**

8 (a) IN GENERAL.—Subchapter I of chapter 1 of sub-  
9 title I of title 41, United States Code, is amended—

10 (1) by inserting after section 105 the following:

1 **“§ 105A. E-Verify Program**

2 “The term ‘E-Verify Program’ means the program  
3 described in section 403(a) of the Illegal Immigration Re-  
4 form and Immigrant Responsibility Act of 1996 (8 U.S.C.  
5 1324a note).”; and

6 (2) in section 113—

7 (A) in paragraph (6), by striking “and” at  
8 the end;

9 (B) in paragraph (7), by striking the pe-  
10 riod at the end and inserting “; and”; and

11 (C) by adding at the end the following:

12 “(8) is enrolled in, and maintains compliance  
13 with all statutes, regulations, and policies regarding,  
14 the E-Verify Program.”.

15 (b) CLERICAL AMENDMENT.—The chapter analysis  
16 for chapter 1 of subtitle I of title 41, United States Code,  
17 is amended by inserting after the item relating to section  
18 105 the following:

“105A. E-Verify Program.”.

19 **SEC. 3. CONTRACTORS AND SUBCONTRACTORS.**

20 Section 1121(c) of title 41, United States Code, is  
21 amended by adding at the end the following:

22 “(4) E-VERIFY ENROLLMENT AND COMPLI-  
23 ANCE.—

24 “(A) CONTRACTORS.—Executive agencies  
25 shall certify a contractor’s enrollment in, and

1 compliance with all statutes, regulations, and  
2 policies regarding, the E-Verify Program.

3 “(B) SUBCONTRACTORS.—Not later than  
4 90 days after the date of the enactment of this  
5 paragraph, the Administrator shall issue a reg-  
6 ulation establishing procedures for ensuring  
7 that all subcontractors on a Federal contract  
8 enroll in, and maintain compliance with all stat-  
9 utes, regulations, and policies regarding, the E-  
10 Verify Program before receiving an award as a  
11 subcontractor on a Federal contract.”.

12 **SEC. 4. E-VERIFY COMPLIANCE REQUIREMENT.**

13 Section 1125 of title 41, United States Code, is  
14 amended by adding at the end the following:

15 “(c) E-VERIFY COMPLIANCE.—

16 “(1) IN GENERAL.—An entity may not receive  
17 a Federal grant or Federal assistance unless the en-  
18 tity certifies to the Administrator that the entity has  
19 enrolled in, and maintained compliance with all stat-  
20 utes, regulations, and policies regarding, the E-  
21 Verify Program.

22 “(2) SUBCONTRACTORS.—Any entity that con-  
23 tracts with a recipient of a Federal grant or Federal  
24 assistance, and any entity that serves as a subcon-  
25 tractor to any such entity shall be enrolled in, and

1 maintain compliance with all statutes, regulations,  
2 and policies regarding, the E-Verify Program.

3 “(3) NONCOMPLIANCE.—Any entity described  
4 in paragraph (1) or (2) that does not enroll in, or  
5 maintain compliance with, the E-Verify Program  
6 shall be barred from receiving any Federal grant or  
7 Federal assistance, or otherwise qualifying for a  
8 Federal contract or serving as a subcontractor on a  
9 Federal contract until such entity restores and  
10 maintains compliance with all statutes, regulations,  
11 and policy guidance regarding the E-Verify Pro-  
12 gram.”.

13 **SEC. 5. CONSIDERATION OF CONTRACTOR PAST PERFORM-**  
14 **ANCE.**

15 Section 1126 of title 41, United States Code, is  
16 amended—

17 (1) in subsection (a)(3)—

18 (A) in subparagraph (A), by striking  
19 “and” at the end;

20 (B) in subparagraph (B), by striking the  
21 period at the end and inserting “; and”; and

22 (C) by adding at the end the following:

23 “(C) all offerors certify enrollment in, and  
24 compliance with all statutes, regulations, and

1 policies regarding, the E-Verify Program before  
2 being considered as an offeror.”; and

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

4 “(c) E-VERIFY ENROLLMENT.—

5 “(1) IN GENERAL.—All past contract perform-  
6 ance of an offeror may not be evaluated unless, at  
7 the commencement of the evaluation, the offeror in-  
8 cludes certification of enrollment in, and compliance  
9 with all statutes, regulations, and policies regarding,  
10 the E-Verify Program.

11 “(2) NO PAST CONTRACT PERFORMANCE.—If  
12 there is no past contract performance available, the  
13 offeror shall be evaluated unfavorably unless the of-  
14 feror provides certification of enrollment in, and  
15 compliance with all statutes, regulations, and poli-  
16 cies regarding, the E-Verify Program.

17 “(3) SAFE HARBOR.—No offeror shall be penal-  
18 ized for nonenrollment or noncompliance in the E-  
19 Verify Program that occurred before the date of the  
20 enactment of this subsection.”.

21 **SEC. 6. ANNUAL REPORT.**

22 Section 1131 of title 41, United States Code, is  
23 amended by adding at the end the following: “The Admin-  
24 istrator shall include in such assessment information re-  
25 garding the compliance or noncompliance of executive

1 agencies in awarding contracts, grants, and assistance to  
2 entities that are enrolled in, and maintain compliance with  
3 all statutes, regulations, and policies regarding, the E-  
4 Verify Program.”.

5 **SEC. 7. IMPLEMENTATION.**

6 (a) IN GENERAL.—Except as provided in subsection  
7 (b), not later than 180 days after the date of the enact-  
8 ment of this Act, the Administrator of the Office of Fed-  
9 eral Procurement Policy shall develop and implement all  
10 regulations, policies, and procedures necessary to imple-  
11 ment the amendments made by this Act.

12 (b) LIMITATIONS ON REGULATIONS, POLICIES, AND  
13 PROCEDURES.—Regulations, policies, and procedures  
14 issued pursuant to subsection (a) may not reduce or limit,  
15 or authorize waivers for, any of the requirements under  
16 the amendments made by this Act.

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