

111TH CONGRESS
1ST SESSION

H. R. 1096

To create an electronic employment eligibility verification system to ensure that all workers in the United States are legally able to work, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2009

Mr. MARSHALL (for himself, Mr. DEFazio, Mr. BARTLETT, Mr. BARROW, and Mr. TAYLOR) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means and Education and Labor, 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 create an electronic employment eligibility verification system to ensure that all workers in the United States are legally able to work, 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 “Electronic Employ-
5 ment Eligibility Verification and Illegal Immigration Con-
6 trol Act”.

1 **SEC. 2. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.**

2 (a) IN GENERAL.—Section 274A(b) of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended
4 by adding at the end the following:

5 “(7) EMPLOYMENT ELIGIBILITY VERIFICATION
6 SYSTEM.—

7 “(A) IN GENERAL.—The Secretary of
8 Homeland Security shall establish and admin-
9 ister a verification system through which the
10 Secretary (or a designee of the Secretary)—

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

17 “(ii) maintains records of the inquir-
18 ies that were made, of verifications pro-
19 vided (or not provided), and of the codes
20 provided to inquirers as evidence of their
21 compliance with their obligations under
22 this section.

23 “(B) DESIGN AND OPERATION OF SYS-
24 TEM.—The verification system shall be designed
25 and operated—

1 “(i) to maximize its reliability and
2 ease of use by persons and other entities
3 consistent with insulating and protecting
4 the privacy and security of the underlying
5 information;

6 “(ii) to respond to all inquiries made
7 by such persons and entities on whether
8 individuals are authorized to be employed
9 and to register all times when such inquir-
10 ies are not received;

11 “(iii) with appropriate administrative,
12 technical, and physical safeguards to pre-
13 vent unauthorized disclosure of personal
14 information; and

15 “(iv) to have reasonable safeguards
16 against the system’s resulting in unlawful
17 discriminatory practices based on national
18 origin or citizenship status, including—

19 “(I) the selective or unauthorized
20 use of the system to verify eligibility;

21 “(II) the use of the system prior
22 to an offer of employment; or

23 “(III) the exclusion of certain in-
24 dividuals from consideration for em-
25 ployment as a result of a perceived

1 likelihood that additional verification
2 will be required, beyond what is re-
3 quired for most job applicants.

4 “(C) RESPONSIBILITIES OF THE COMMIS-
5 SIONER OF SOCIAL SECURITY.—As part of the
6 verification system, the Commissioner of Social
7 Security, in consultation with the Secretary of
8 Homeland Security (and any designee of the
9 Secretary selected to establish and administer
10 the verification system), shall establish a reli-
11 able, secure method, which, within the time pe-
12 riods specified under subparagraphs (B) and
13 (C) of paragraph (3), compares the name and
14 Social Security account number provided in an
15 inquiry against such information maintained by
16 the Commissioner in order to validate (or not
17 validate) the information provided regarding an
18 individual whose identity and employment eligi-
19 bility must be confirmed, the correspondence of
20 the name and number, and whether the indi-
21 vidual has presented a Social Security account
22 number that is not valid for employment. The
23 Commissioner shall not disclose or release So-
24 cial Security information (other than such
25 verification or nonverification) except as pro-

1 vided for in this section or section 205(c)(2)(I)
2 of the Social Security Act.

3 “(D) RESPONSIBILITIES OF THE SEC-
4 RETARY OF HOMELAND SECURITY.—

5 “(i) As part of the verification system,
6 the Secretary of Homeland Security (in
7 consultation with any designee of the Sec-
8 retary selected to establish and administer
9 the verification system), shall establish a
10 reliable, secure method, which, within the
11 time periods specified under subparagraphs
12 (B) and (C) of paragraph (3), compares
13 the name and alien identification or au-
14 thorization number which are provided in
15 an inquiry against such information main-
16 tained by the Secretary in order to validate
17 (or not validate) the information provided,
18 the correspondence of the name and num-
19 ber, and whether the alien is authorized to
20 be employed in the United States.

21 “(ii) When a single employer has sub-
22 mitted to the verification system pursuant
23 to subparagraphs (B) and (C) of para-
24 graph (3) the identical Social Security ac-
25 count number in more than one instance,

1 or when multiple employers have submitted
2 to the verification system pursuant to such
3 paragraph the identical Social Security ac-
4 count number, in a manner which indicates
5 the possible fraudulent use of that number,
6 the Secretary of Homeland Security shall
7 conduct an investigation, within the time
8 periods specified in such subparagraphs, in
9 order to ensure that no fraudulent use of
10 a Social Security account number has
11 taken place. If the Secretary has selected
12 a designee to establish and administer the
13 verification system, the designee shall no-
14 tify the Secretary when a single employer
15 has submitted to the verification system
16 pursuant to such subparagraphs the iden-
17 tical Social Security account number in
18 more than one instance, or when multiple
19 employers have submitted to the
20 verification system pursuant to such para-
21 graph the identical Social Security account
22 number, in a manner which indicates the
23 possible fraudulent use of that number.
24 The designee shall also provide the Sec-
25 retary with all pertinent information, in-

1 including the name and address of the em-
2 ployer or employers who submitted the rel-
3 evant Social Security account number, the
4 relevant Social Security account number
5 submitted by the employer or employers,
6 and the relevant name and date of birth of
7 the employee submitted by the employer or
8 employers.

9 “(iii) The Secretary in consultation
10 with the Commissioner of Social Security,
11 shall establish procedures to permit an in-
12 dividual who contests a tentative or final
13 nonverification notice, or seeks to verify
14 the individual’s own employment, to con-
15 tact the appropriate agency and, in a time-
16 ly manner, correct or update the informa-
17 tion used by the system.

18 “(iv) The Secretary shall prescribe a
19 system to register employer participation
20 prior to the date the employer is required
21 or permitted to submit information with
22 respect to an employee.

23 “(E) UPDATING INFORMATION.—The
24 Commissioner of Social Security and the Sec-
25 retary of Homeland Security shall update their

1 information in a manner that promotes the
2 maximum accuracy and shall provide a process
3 for the prompt correction of erroneous informa-
4 tion, including instances in which it is brought
5 to their attention in the secondary verification
6 process described in paragraph (3)(C).

7 “(F) FEDERAL TORT CLAIMS ACT.—If an
8 individual alleges that the individual would not
9 have been dismissed from a job but for an error
10 of the verification mechanism, the individual
11 may seek compensation only through the mech-
12 anism of the Federal Tort Claims Act, and in-
13 junctive relief to correct such error. No class
14 action may be brought under this subpara-
15 graph.

16 “(G) PROTECTION FROM LIABILITY FOR
17 ACTIONS TAKEN ON THE BASIS OF INFORMA-
18 TION.—No person or entity shall be civilly or
19 criminally liable for any action taken in good
20 faith reliance on information provided through
21 the employment eligibility verification mecha-
22 nism established under this paragraph.”.

23 (b) REPEAL OF PROVISION RELATING TO EVALUA-
24 TIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—

1 Section 274A(d) of such Act (8 U.S.C. 1324a(d)) is re-
2 pealed.

3 **SEC. 3. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
4 **ESS.**

5 Section 274A of the Immigration and Nationality Act
6 (8 U.S.C. 1324a) is amended—

7 (1) in subsection (a)(3), by inserting “(A)”
8 after “DEFENSE.—”, and by adding at the end the
9 following:

10 “(B) FAILURE TO SEEK AND OBTAIN
11 VERIFICATION.—In the case of a person or enti-
12 ty in the United States that hires, or continues
13 to employ, an individual, or recruits or refers
14 an individual for employment, the following re-
15 quirements apply:

16 “(i) FAILURE TO SEEK
17 VERIFICATION.—

18 “(I) IN GENERAL.—If the person
19 or entity has not made an inquiry,
20 under the mechanism established
21 under subsection (b)(7), seeking
22 verification of the identity and work
23 eligibility of the individual, by not
24 later than the end of 3 working days
25 (as specified by the Secretary of

1 Homeland Security) after the date of
2 the hiring, the date specified in sub-
3 section (b)(8)(B) for previously hired
4 individuals, or before the recruiting or
5 referring commences, the defense
6 under subparagraph (A) shall not be
7 considered to apply with respect to
8 any employment, except as provided in
9 subclause (II).

10 “(II) SPECIAL RULE FOR FAIL-
11 URE OF VERIFICATION MECHANISM.—
12 If such a person or entity in good
13 faith attempts to make an inquiry in
14 order to qualify for the defense under
15 subparagraph (A) and the verification
16 mechanism has registered that not all
17 inquiries were responded to during the
18 relevant time, the person or entity can
19 make an inquiry until the end of the
20 first subsequent working day in which
21 the verification mechanism registers
22 no nonresponses and qualify for such
23 defense.

24 “(ii) FAILURE TO OBTAIN
25 VERIFICATION.—If the person or entity

1 has made the inquiry described in clause
2 (i)(I) but has not received an appropriate
3 verification of such identity and work eligi-
4 bility under such mechanism within the
5 time period specified under subsection
6 (b)(7)(B) after the time the verification in-
7 quiry was received, the defense under sub-
8 paragraph (A) shall not be considered to
9 apply with respect to any employment after
10 the end of such time period.”;

11 (2) by amending subparagraph (A) of sub-
12 section (b)(1) to read as follows:

13 “(A) IN GENERAL.—The person or entity
14 must attest, under penalty of perjury and on a
15 form designated or established by the Secretary
16 by regulation, that it has verified that the indi-
17 vidual is not an unauthorized alien by—

18 “(i) obtaining from the individual the
19 individual’s Social Security account num-
20 ber and recording the number on the form
21 (if the individual claims to have been
22 issued such a number), and, if the indi-
23 vidual does not attest to United States citi-
24 zenship under paragraph (2), obtaining
25 such identification or authorization number

1 established by the Department of Home-
2 land Security for the alien as the Secretary
3 of Homeland Security may specify, and re-
4 cording such number on the form; and

5 “(ii)(I) examining a document de-
6 scribed in subparagraph (B); or

7 “(II) examining a document described
8 in subparagraph (C) and a document de-
9 scribed in subparagraph (D).

10 A person or entity has complied with the
11 requirement of this paragraph with respect
12 to examination of a document if the docu-
13 ment reasonably appears on its face to be
14 genuine, reasonably appears to pertain to
15 the individual whose identity and work eli-
16 gibility is being verified, and, if the docu-
17 ment bears an expiration date, that expira-
18 tion date has not elapsed. If an individual
19 provides a document (or combination of
20 documents) that reasonably appears on its
21 face to be genuine, reasonably appears to
22 pertain to the individual whose identity
23 and work eligibility is being verified, and is
24 sufficient to meet the first sentence of this
25 paragraph, nothing in this paragraph shall

1 be construed as requiring the person or en-
2 tity to solicit the production of any other
3 document or as requiring the individual to
4 produce another document.”;

5 (3) in subsection (b)(1)(D)—

6 (A) in clause (i), by striking “or such other
7 personal identification information relating to
8 the individual as the Attorney General finds, by
9 regulation, sufficient for purposes of this sec-
10 tion”; and

11 (B) in clause (ii), by inserting before the
12 period “and that contains a photograph of the
13 individual”;

14 (4) in subsection (b)(2), by adding at the end
15 the following: “The individual must also provide that
16 individual’s Social Security account number (if the
17 individual claims to have been issued such a num-
18 ber), and, if the individual does not attest to United
19 States citizenship under this paragraph, such identi-
20 fication or authorization number established by the
21 Department of Homeland Security for the alien as
22 the Secretary may specify.”; and

23 (5) by amending paragraph (3) of subsection
24 (b) to read as follows:

1 “(3) RETENTION OF VERIFICATION FORM AND
2 VERIFICATION.—

3 “(A) IN GENERAL.—After completion of
4 such form in accordance with paragraphs (1)
5 and (2), the person or entity must—

6 “(i) retain a paper, microfiche, micro-
7 film, or electronic version of the form and
8 make it available for inspection by officers
9 of the Department of Homeland Security,
10 the Special Counsel for Immigration-Related
11 Unfair Employment Practices, or the
12 Department of Labor during a period be-
13 ginning on the date of the hiring, recruit-
14 ing, or referral of the individual or the
15 date of the completion of verification of a
16 previously hired individual and ending—

17 “(I) in the case of the recruiting
18 or referral of an individual, 3 years
19 after the date of the recruiting or re-
20 ferral;

21 “(II) in the case of the hiring of
22 an individual, the later of—

23 “(aa) 3 years after the date
24 of such hiring; or

1 “(bb) 1 year after the date
2 the individual’s employment is
3 terminated; and

4 “(III) in the case of the
5 verification of a previously hired indi-
6 vidual, the later of—

7 “(aa) 3 years after the date
8 of the completion of verification;
9 or

10 “(bb) 1 year after the date
11 the individual’s employment is
12 terminated;

13 “(ii) make an inquiry, as provided in
14 paragraph (7), using the verification sys-
15 tem to seek verification of the identity and
16 employment eligibility of an individual, by
17 not later than the end of 3 working days
18 (as specified by the Secretary of Homeland
19 Security) after the date of the hiring or in
20 the case of previously hired individuals, the
21 date specified in paragraph (8)(B), or be-
22 fore the recruiting or referring commences;
23 and

24 “(iii) not commence recruitment or re-
25 ferral of the individual until the person or

1 entity receives verification under clause (i)
2 or (ii) of subparagraph (D).

3 “(B) INITIAL RESPONSE.—The verification
4 system shall provide verification or a tentative
5 nonverification of an individual’s identity and
6 employment eligibility within 3 working days of
7 the initial inquiry. If providing verification or
8 tentative nonverification, the verification system
9 shall provide an appropriate code indicating
10 such verification or such nonverification.

11 “(C) SECONDARY VERIFICATION PROCESS
12 IN CASE OF TENTATIVE NONVERIFICATION.—In
13 cases of tentative nonverification, the Secretary
14 shall specify, in consultation with the Commis-
15 sioner of Social Security, an available secondary
16 verification process to confirm the validity of in-
17 formation provided and to provide a final
18 verification or nonverification within 10 working
19 days after the date of the tentative
20 nonverification. When final verification or
21 nonverification is provided, the verification sys-
22 tem shall provide an appropriate code indicating
23 such verification or nonverification.

24 “(D) VERIFICATION OR
25 NONVERIFICATION.—

1 “(i) VERIFICATION UPON INITIAL IN-
2 QUIRY.—If an employer receives a
3 verification notice under subparagraph (B)
4 for an individual, the employer shall
5 record, as described in subparagraph
6 (A)(i), the appropriate code provided in
7 such notice.

8 “(ii) TENTATIVE
9 NONVERIFICATION.—If an employer re-
10 ceives a tentative nonverification notice
11 under subparagraph (B) for an individual,
12 the employer shall inform such individual
13 of the issuance of such notice in writing,
14 on a form prescribed by the Secretary not
15 later than 3 days after receiving such no-
16 tice. Such individual shall acknowledge re-
17 ceipt of such notice in writing as described
18 in paragraph (1)(A). If the individual re-
19 fuses to acknowledge receipt of notice, the
20 individual’s employment must be termi-
21 nated immediately.

22 “(iii) NO CONTEST.—If the individual
23 does not contest the tentative
24 nonverification notice within 10 days of re-
25 ceiving notice from the individual’s em-

1 ployer, the notice shall become final and
2 the employer shall record, as described in
3 subparagraph (A)(i), the appropriate code
4 provided through the system to indicate
5 the individual did not contest the tentative
6 nonverification. An individual's failure to
7 contest a tentative nonverification shall not
8 be considered an admission of guilt with
9 respect to any violation of this Act or any
10 other provision of law.

11 “(iv) CONTEST.—If the individual
12 contests the tentative nonverification no-
13 tice, the individual shall submit appro-
14 priate information to contest such notice
15 under the procedures established in sub-
16 paragraph (E) not later than 10 days after
17 receiving the notice from the individual's
18 employer.

19 “(v) EFFECTIVE PERIOD OF TEN-
20 TATIVE NONVERIFICATION NOTICE.—A
21 tentative nonverification notice shall re-
22 main in effect until such notice becomes
23 final under clause (iii), or the earlier of—

1 “(I) a final verification notice or
2 final nonverification notice is issued
3 through the system; or

4 “(II) 10 working days after the
5 individual contests a tentative
6 nonverification under clause (iv).

7 “(vi) ADDITIONAL AUTHORITY.—The
8 Secretary shall have the authority to issue
9 a final verification notice for an individual.
10 In such a case, the Secretary shall deter-
11 mine the individual’s eligibility for employ-
12 ment in the United States and record the
13 results of such determination in the system
14 within 12 months.

15 “(vii) EFFECTIVE PERIOD OF FINAL
16 NOTICE.—A final verification notice issued
17 under this paragraph for an individual
18 shall remain in effect—

19 “(I) during any continuous pe-
20 riod of employment of such individual
21 by such employer, unless the Sec-
22 retary determines the final verification
23 was the result of identity fraud; or

24 “(II) in the case of an alien au-
25 thorized to be employed in the United

1 States for a temporary period, during
2 such period.

3 “(viii) PROHIBITION ON TERMINATION.—An employer may not terminate
4 the employment of an individual based on
5 a tentative nonverification notice until such
6 notice becomes final under clause (iii), an
7 individual refuses to acknowledge receipt of
8 tentative nonverification under clause (ii),
9 or a final nonverification notice is issued
10 for the individual by the System. Nothing
11 in this clause shall prohibit the termination
12 of employment for any other reason other
13 than such tentative nonverification.
14

15 “(ix) RECORDING OF CONTEST RESOLUTION.—The employer shall record the
16 appropriate code that is provided through
17 the system to indicate a final verification
18 notice or final nonverification notice as described in paragraph (1)(A).
19
20

21 “(x) CONSEQUENCES OF NONVERIFICATION.—If the employer has
22 received a final nonverification regarding
23 an individual, the employer shall terminate
24 the employment, recruitment, or referral of
25

1 the individual. Such employer shall provide
2 to the Secretary any information relating
3 to the individual that the Secretary deter-
4 mines would assist the Secretary in enforce-
5 ing or administering the immigration laws.
6 If the employer continues to employ, re-
7 cruit or refer the individual after receiving
8 final nonverification, a rebuttable presump-
9 tion is created that the employer has vio-
10 lated subsections (a)(1)(A) and (a)(2).
11 Such presumption may not apply to a
12 prosecution under subsection (f)(1).

13 “(E) ADMINISTRATIVE REVIEW.—

14 “(i) IN GENERAL.—An individual who
15 is terminated from employment as a result
16 of a final nonverification notice may, not
17 later than 60 days after the date of such
18 termination, file an appeal of such notice.

19 “(ii) PROCEDURES.—The Secretary
20 and Commissioner of Social Security shall
21 develop procedures to review appeals filed
22 under clause (i) and to make final deter-
23 minations on such appeals.

24 “(iii) REVIEW FOR ERRORS.—If a
25 final determination on an appeal filed

1 under clause (i) results in verification of
2 an individual's eligibility to work in the
3 United States, the administrative review
4 process shall require the Secretary to de-
5 termine if the final nonverification notice
6 issued for the individual was the result
7 of—

8 “(I) an error or negligence on the
9 part of an employee or official oper-
10 ating or responsible for the System;

11 “(II) the decision rules, proc-
12 esses, or procedures utilized by the
13 system; or

14 “(III) erroneous system informa-
15 tion that was not the result of acts or
16 omissions of the individual.

17 “(iv) COMPENSATION FOR ERROR.—

18 “(I) IN GENERAL.—If the Sec-
19 retary makes a determination under
20 clause (iii) that the final
21 nonverification notice issued for an in-
22 dividual was not caused by an act or
23 omission of the individual, the Sec-
24 retary shall compensate the individual
25 for lost wages.

1 “(II) CALCULATION OF LOST
2 WAGES.—Lost wages shall be cal-
3 culated based on the wage rate and
4 work schedule that prevailed prior to
5 termination. The individual shall be
6 compensated for wages lost beginning
7 on the first scheduled work day after
8 employment was terminated and end-
9 ing 180 days after completion of the
10 administrative review process de-
11 scribed in this paragraph or the day
12 after the individual is reinstated or
13 obtains employment elsewhere, which-
14 ever occurs first.

15 “(v) LIMITATION ON COMPENSA-
16 TION.—For purposes of determining an in-
17 dividual’s compensation for the loss of em-
18 ployment, such compensation shall not in-
19 clude any period in which the individual
20 was ineligible for employment in the
21 United States.

22 “(vi) SOURCE OF FUNDS.—Compensa-
23 tion or reimbursement provided under this
24 paragraph shall be provided from the Em-
25 ployment Verification Compensation Fund

1 established under section 8 and shall not
2 be provided from appropriated funds.

3 “(F) JUDICIAL REVIEW.—

4 “(i) IN GENERAL.—After the Sec-
5 retary makes a final determination on an
6 appeal filed by an individual under the ad-
7 ministrative review process described in
8 subparagraph (E), the individual may ob-
9 tain judicial review of such determination
10 by a civil action commenced not later than
11 60 days after the date of such decision, or
12 such further time as the Secretary may
13 allow.

14 “(ii) JURISDICTION.—A civil action
15 for such judicial review shall be brought in
16 the district court of the United States for
17 the judicial district in which the plaintiff
18 resides, or has a principal place of busi-
19 ness, or, if the plaintiff does not reside or
20 have a principal place of business within
21 any such judicial district, in the District
22 Court of the United States for the District
23 of Columbia.

24 “(iii) ANSWER.—As part of the Sec-
25 retary’s answer to a complaint for such ju-

1 dicial review, the Secretary shall file a cer-
2 tified copy of the administrative record
3 compiled during the administrative review
4 under subparagraph (E), including the evi-
5 dence upon which the findings and decision
6 complained of are based. The court shall
7 have power to enter, upon the pleadings
8 and transcript of the record, a judgment
9 affirming or reversing the result of that
10 administrative review, with or without re-
11 manding the cause for a rehearing.

12 “(iv) COMPENSATION FOR ERROR.—

13 “(I) IN GENERAL.—In cases in
14 which such judicial review reverses the
15 final determination of the Secretary
16 made under subparagraph (E), the
17 court shall compensate the individual
18 for lost wages.

19 “(II) CALCULATION OF LOST
20 WAGES.—Lost wages shall be cal-
21 culated based on the wage rate and
22 work scheduled that prevailed prior to
23 termination. The individual shall be
24 compensated for wages lost beginning
25 on the first scheduled work day after

1 employment was terminated and end-
2 ing 180 days after completion of the
3 judicial review described in this para-
4 graph or the day after the individual
5 is reinstated or obtains employment
6 elsewhere, whichever occurs first.

7 “(G) LIMITATION ON USE OF THE
8 VERIFICATION SYSTEM AND ANY RELATED SYS-
9 TEMS.—Notwithstanding any other provision of
10 law, nothing in this paragraph shall be con-
11 strued to permit or allow any department, bu-
12 reau, or other agency of the United States Gov-
13 ernment to utilize any information, database, or
14 other records assembled under this paragraph
15 for any other purpose other than as provided
16 for.

17 “(H) LIMITATION ON COLLECTION AND
18 USE OF DATA.—

19 “(i) LIMITATION ON COLLECTION OF
20 DATA.—

21 “(I) IN GENERAL.—The System
22 shall collect and maintain only the
23 minimum data necessary to facilitate
24 the successful operation of the Sys-

1 tem, and in no case shall the data be
2 other than—

3 “(aa) information necessary
4 to register employers under para-
5 graph (7)(D)(iv);

6 “(bb) information necessary
7 to initiate and respond to inquir-
8 ies or contests under subpara-
9 graph (E);

10 “(cc) information necessary
11 to establish and enforce compli-
12 ance with paragraph (7)(D)(iv)
13 and subparagraph (E);

14 “(dd) information necessary
15 to detect and prevent employ-
16 ment related identity fraud; and

17 “(ee) such other information
18 the Secretary determines is nec-
19 essary, subject to a 180 day no-
20 tice and comment period in the
21 Federal Register.

22 “(II) PENALTIES.—Any officer,
23 employee, or contractor who willfully
24 and knowingly collects and maintains
25 data in the system other than data

described in clause (i) shall be guilty of a misdemeanor and fined not more than \$1,000 for each violation.

“(ii) LIMITATION ON USE OF DATA.—

Whoever willfully and knowingly accesses, discloses, or uses any information obtained or maintained by the system—

“(I) for the purpose of committing identity fraud, or assisting another person in committing identity fraud, as defined in section 1028 of title 18, United States Code;

“(II) for the purpose of unlawfully obtaining employment in the United States or unlawfully obtaining employment in the United States for any other person; or

“(III) for any purpose other than as provided for under any provision of law;

shall be guilty of a felony and upon conviction shall be fined under title 18, United States Code, or imprisoned for not less than 5 years, or both.

1 “(iii) EXCEPTIONS.—Nothing in
 2 clauses (i) or (ii) may be construed to limit
 3 the collection, maintenance, or use of data
 4 by the Commissioner of Internal Revenue
 5 or the Commissioner of Social Security as
 6 provided by law.”.

7 **SEC. 4. EXPANSION OF EMPLOYMENT ELIGIBILITY**
 8 **VERIFICATION SYSTEM TO PREVIOUSLY**
 9 **HIRED INDIVIDUALS AND RECRUITING AND**
 10 **REFERRING.**

11 (a) APPLICATION TO RECRUITING AND REFER-
 12 RING.—Section 274A of the Immigration and Nationality
 13 Act (8 U.S.C. 1324a) is amended—

14 (1) in subsection (a)(1)(A), by striking “for a
 15 fee”;

16 (2) in subsection (a)(1), by amending subpara-
 17 graph (B) to read as follows:

18 “(B) to hire, continue to employ, or to re-
 19 cruit or refer for employment in the United
 20 States an individual without complying with the
 21 requirements of subsection (b).”;

22 (3) in subsection (a)(2), by striking “after hir-
 23 ing an alien for employment in accordance with
 24 paragraph (1),” and inserting “after complying with
 25 paragraph (1),”; and

1 (4) in subsection (a)(3), as amended by section
2 3, is further amended by striking “hiring,” and in-
3 serting “hiring, employing,” each place it appears.

4 (b) EMPLOYMENT ELIGIBILITY VERIFICATION FOR
5 PREVIOUSLY HIRED INDIVIDUALS.—Section 274A(b) of
6 such Act (8 U.S.C. 1324a(b)), as amended by section 2(a),
7 is further amended by adding at the end the following:

8 “(8) USE OF EMPLOYMENT ELIGIBILITY
9 VERIFICATION SYSTEM FOR PREVIOUSLY HIRED IN-
10 DIVIDUALS.—

11 “(A) ON A VOLUNTARY BASIS.—Beginning
12 on the date that is 2 years after the date of the
13 enactment of the Electronic Employment Eligi-
14 bility Verification and Illegal Immigration Con-
15 trol Act and until the date specified in subpara-
16 graph (B)(iii), a person or entity may make an
17 inquiry, as provided in paragraph (7), using the
18 verification system to seek verification of the
19 identity and employment eligibility of any indi-
20 vidual employed by the person or entity, as long
21 as it is done on a nondiscriminatory basis.

22 “(B) ON A MANDATORY BASIS.—

23 “(i) A person or entity described in
24 clause (ii) must make an inquiry as pro-
25 vided in paragraph (7), using the

1 verification system to seek verification of
2 the identity and employment eligibility of
3 all individuals employed by the person or
4 entity who have not been previously subject
5 to an inquiry by the person or entity by
6 the date 3 years after the date of enact-
7 ment of the Electronic Employment Eligi-
8 bility Verification and Illegal Immigration
9 Control Act.

10 “(ii) A person or entity is described in
11 this clause if it is a Federal, State, or local
12 governmental body (including the Armed
13 Forces of the United States), or if it em-
14 ploys individuals working in a location that
15 is a Federal, State, or local government
16 building, a military base, a nuclear energy
17 site, a weapon site, an airport, or that con-
18 tains critical infrastructure (as defined in
19 section 1016(e) of the Critical Infrastruc-
20 ture Protection Act of 2001 (42 U.S.C.
21 5195c(e))), but only to the extent of such
22 individuals.

23 “(iii) All persons and entities other
24 than those described in clause (ii) must
25 make an inquiry, as provided in paragraph

1 (7), using the verification system to seek
2 verification of the identity and employment
3 eligibility of all individuals employed by the
4 person or entity who have not been pre-
5 viously subject to an inquiry by the person
6 or entity by the date 6 years after the date
7 of enactment of the Electronic Employ-
8 ment Eligibility Verification and Illegal
9 Immigration Control Act.”.

10 **SEC. 5. BASIC PILOT PROGRAM.**

11 Section 401(b) of the Illegal Immigration Reform and
12 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
13 note) is amended by striking “at the end of the 11-year
14 period beginning on the first day the pilot program is in
15 effect” and inserting “2 years after the enactment of the
16 Electronic Employment Eligibility Verification and Illegal
17 Immigration Control Act”.

18 **SEC. 6. HIRING HALLS.**

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

22 “(4) RECRUITMENT AND REFERRAL.—As used
23 in this section, the term ‘refer’ means the act of
24 sending or directing a person or transmitting docu-
25 mentation or information to another, directly or in-

1 directly, with the intent of obtaining employment in
2 the United States for such person. Generally, only
3 persons or entities referring for remuneration
4 (whether on a retainer or contingency basis) are in-
5 cluded in the definition. However, labor service agen-
6 cies, whether public, private, for-profit, or nonprofit,
7 that refer, dispatch, or otherwise facilitate the hiring
8 of workers for any period of time by a third party
9 are included in the definition whether or not they re-
10 ceive remuneration. As used in this section the term
11 ‘recruit’ means the act of soliciting a person, directly
12 or indirectly, and referring the person to another
13 with the intent of obtaining employment for that
14 person. Generally, only persons or entities recruiting
15 for remunerations (whether on a retainer or contin-
16 gency basis) are included in the definition. However,
17 labor service agencies, whether public, private, for-
18 profit, or nonprofit that refer, dispatch, or otherwise
19 facilitate the hiring of workers for any period of
20 time by a third party are included in the definition
21 whether or not they receive remuneration.”.

22 **SEC. 7. PENALTIES.**

23 Section 274A of the Immigration and Nationality Act
24 (8 U.S.C. 1324a) is amended—

25 (1) in subsection (e)(4)—

1 (A) in subparagraph (A), in the matter be-
2 fore clause (i), by inserting “, subject to para-
3 graphs (10) through (12),” after “in an
4 amount”;

5 (B) in subparagraph (A)(i), by striking
6 “not less than \$250 and not more than
7 \$2,000” and inserting “not less than \$5,000
8 and not more than \$15,000”;

9 (C) in subparagraph (A)(ii), by striking
10 “not less than \$2,000 and not more than
11 \$5,000” and inserting “not less than \$10,000
12 and not more than \$15,000”;

13 (D) in subparagraph (A)(iii), by striking
14 “not less than \$3,000 and not more than
15 \$10,000” and inserting “not less than \$25,000
16 and not more than \$40,000”; and

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

19 “(B) may require the person or entity to
20 take such other remedial action as is appro-
21 priate.”;

22 (2) in subsection (e)(5)—

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

1 (B) by striking “\$100” and inserting
2 “\$1,000”;

3 (C) by striking “\$1,000” and inserting
4 “\$25,000”;

5 (D) by striking “the size of the business of
6 the employer being charged, the good faith of
7 the employer” and inserting “the good faith of
8 the employer being charged”; and

9 (E) by adding at the end the following sen-
10 tence: “Failure by a person or entity to utilize
11 the employment eligibility verification system as
12 required by law, or providing information to the
13 system that the person or entity knows or rea-
14 sonably believes to be false, shall be treated as
15 a violation of subsection (a)(1)(A).”;

16 (3) by adding at the end of subsection (e) the
17 following new paragraphs:

18 “(10) MITIGATION OF CIVIL MONEY PENALTIES
19 FOR SMALLER EMPLOYERS.—In the case of imposi-
20 tion of a civil penalty under paragraph (4)(A) with
21 respect to a violation of subsection (a)(1)(A) or
22 (a)(2) for hiring or continuation of employment by
23 an employer and in the case of imposition of a civil
24 penalty under paragraph (5) for a violation of sub-
25 section (a)(1)(B) for hiring by an employer, the dol-

1 lar amounts otherwise specified in the respective
2 paragraph shall be reduced as follows:

3 “(A) In the case of an employer with an
4 average of fewer than 26 full-time equivalent
5 employees (as defined by the Secretary of
6 Homeland Security), the amounts shall be re-
7 duced by 60 percent.

8 “(B) In the case of an employer with an
9 average of at least 26, but fewer than 101, full-
10 time equivalent employees (as so defined), the
11 amounts shall be reduced by 40 percent.

12 “(C) In the case of an employer with an
13 average of at least 101, but fewer than 251,
14 full-time equivalent employees (as so defined),
15 the amounts shall be reduced by 20 percent.

16 The last sentence of paragraph (4) shall apply under
17 this paragraph in the same manner as it applies
18 under such paragraph.

19 “(11) EXEMPTION FROM PENALTY FOR INITIAL
20 GOOD FAITH VIOLATION.—In the case of imposition
21 of a civil penalty under paragraph (4)(A) with re-
22 spect to a violation of subsection (a)(1)(A) or (a)(2)
23 for hiring or continuation of employment or recruit-
24 ment or referral by person or entity and in the case
25 of imposition of a civil penalty under paragraph (5)

1 for a violation of subsection (a)(1)(B) for hiring or
2 recruitment or referral by a person or entity, the
3 penalty otherwise imposed shall be waived if the vio-
4 lator establishes that it was the first such violation
5 of such provision by the violator and the violator
6 acted in good faith.

7 “(12) SAFE HARBOR FOR CONTRACTORS.—A
8 person or other entity shall be liable for a penalty
9 under paragraph (4)(A) with respect to the violation
10 of subsection (a)(1)(A), (a)(1)(B), or (a)(2) with re-
11 spect to the hiring or continuation of employment of
12 an unauthorized alien by a subcontractor of that
13 person or entity unless the person or entity verifies
14 through the employment eligibility verification sys-
15 tem that all subcontractor employees and entities
16 participating in the subcontracted employment are
17 eligible for employment prior to beginning employ-
18 ment for the contracting person or entity. A con-
19 tracting person or entity shall not be required to
20 verify a subcontractor if the contracting person or
21 entity has previously verified the employment eligi-
22 bility of that subcontractor. A contracting person or
23 entity shall not be required to verify the employment
24 eligibility of a subcontractor employee if the person
25 or entity has previously verified the subcontractor

1 employee as a result of the subcontractor employee's
2 previous employment on behalf of the person or enti-
3 ty as an employee of the subcontractor.”;

4 (4) by amending paragraph (1) of subsection (f)
5 to read as follows:

6 “(1) CRIMINAL PENALTY.—Any person or enti-
7 ty which engages in a pattern or practice of viola-
8 tions of subsection (a)(1) or (2) shall be fined not
9 more than \$50,000 for each unauthorized alien with
10 respect to which such a violation occurs, imprisoned
11 for not less than 1 year, or both, notwithstanding
12 the provisions of any other Federal law relating to
13 fine levels.”;

14 (5) in subsection (f)(2), by striking “Attorney
15 General” each place it appears and inserting “Sec-
16 retary of Homeland Security”;

17 (6) by redesignating subsection (h) as sub-
18 section (j);

19 (7) by inserting after subsection (g) the fol-
20 lowing:

21 “(h) PROHIBITION ON AWARD OF GOVERNMENT
22 CONTRACTS, GRANTS AND AGREEMENTS.—

23 “(1) EMPLOYERS WITH NO CONTRACTS,
24 GRANTS, OR AGREEMENTS.—

1 “(A) IN GENERAL.—If an employer who
2 does not hold a Federal contract, grant, or co-
3 operative agreement is determined by the Sec-
4 retary to be a repeat violator of this section or
5 is convicted of a crime under this section, the
6 employer shall be debarred from the receipt of
7 a Federal contract, grant, or cooperative agree-
8 ment for a period of 5 years. The Secretary or
9 the Attorney General shall advise the Adminis-
10 trator of General Services of such a debarment,
11 and the Administrator of General Services shall
12 list the employer on the List of Parties Ex-
13 cluded from Federal Procurement and Non-
14 procurement Programs for a period of 5 years.

15 “(B) WAIVER.—The Administrator of Gen-
16 eral Services, in consultation with the Secretary
17 and the Attorney General, may waive operation
18 of this subsection or may limit the duration or
19 scope of the debarment.

20 “(2) EMPLOYERS WITH CONTRACTS, GRANTS,
21 OR AGREEMENTS.—An employer who holds a Fed-
22 eral contract, grant, or cooperative agreement and is
23 determined by the Secretary to be a repeat violator
24 of this section or is convicted of a crime under this
25 section, shall be debarred from the receipt of new

1 Federal contracts, grants, or cooperative agreements
 2 for a period of 5 years.

3 “(i) PENALTY FOR FALSE ATTESTATION BY EM-
 4 PLOYEE.—An individual who falsely represents that the
 5 individual is eligible for employment in the United States
 6 in an attestation required by this shall, for each such viola-
 7 tion, be subject to a fine of not less than \$5,000, a term
 8 of imprisonment not to exceed 3 years, or both.”; and

9 (8) by inserting after subsection (j) (as so re-
 10 designated) the following:

11 “(k) SPECIAL CRIMINAL PENALTIES FOR SUB-
 12 CONTRACTORS AND LABOR BROKERS.—Any person or
 13 subcontracting entity which engages in a pattern or prac-
 14 tice of violations of subsection (a)(1)(A) or (a)(2) shall
 15 be fined not less than \$100,000 for each unauthorized
 16 alien with respect to whom such a violation occurs, impris-
 17 oned for not less than 5 years for the entire pattern or
 18 practice, or both, notwithstanding the provisions of any
 19 other law relating to fine levels.”.

20 **SEC. 8. COMPENSATION FUND.**

21 (a) ESTABLISHMENT.—There is established in the
 22 Treasury a separate account to be known as the “Employ-
 23 ment Verification Compensation Fund” (in this section re-
 24 ferred to as the “Fund”).

1 (b) TRANSFERS TO THE FUND.—There shall be de-
2 posited in the Fund all fines and penalties collected under
3 section 274A of the Immigration and Nationality Act (8
4 U.S.C. 1324a).

5 (c) EXPENDITURES.—Subject to appropriations Acts,
6 amounts in the Fund shall be available for compensation
7 pursuant to subparagraphs (E) and (F) of section
8 274A(b)(3) of the Immigration and Nationality Act (8
9 U.S.C. 1324a(b)(3)), as amended by section 3 of this Act.

10 **SEC. 9. CONTRACTOR DATABASE AND AUDITS.**

11 (a) DATABASE.—The Department of Homeland Se-
12 curity shall create and maintain a publicly available and
13 accessible online database of contracting and subcon-
14 tracting individuals or entities which discloses the number
15 of employment eligibility violations and employment eligi-
16 bility verification rejections each contracting or subcon-
17 tracting individual or entity has received. The database
18 shall also disclose the total number of verification at-
19 tempts each contracting or subcontracting individual or
20 entity has made.

21 (b) AUDIT.—The Department of Homeland Security
22 shall audit and investigate any contracting or subcon-
23 tracting individual or entity which has a 10% or greater
24 employment verification rejection rate.

1 **SEC. 10. REPORT ON SOCIAL SECURITY CARD-BASED EM-**
2 **PLOYMENT ELIGIBILITY VERIFICATION.**

3 (a) REPORT.—

4 (1) IN GENERAL.—Not later than 9 months
5 after the date of the enactment of this Act, the
6 Commissioner of Social Security, in consultation
7 with the Secretary of Treasury, the Secretary of
8 Homeland Security, and the Attorney General, shall
9 submit a report to Congress that includes an evalua-
10 tion of the following requirements and changes:

11 (A) A requirement that Social Security
12 cards that are made of a durable plastic or
13 similar material and that include an encrypted,
14 machine-readable electronic identification strip
15 and a digital photograph of the individual to
16 whom the card is issued, be issued to each indi-
17 vidual (whether or not a United States citizen)
18 who—

19 (i) is authorized to be employed in the
20 United States;

21 (ii) is seeking employment in the
22 United States; and

23 (iii) files an application for such card,
24 whether as a replacement of an existing
25 Social Security card or as a card issued in

1 connection with the issuance of a new So-
2 cial Security account number.

3 (B) The creation of a unified database to
4 be maintained by the Department of Homeland
5 Security and comprised of data from the Social
6 Security Administration and the Department of
7 Homeland Security specifying the work author-
8 ization of individuals (including both United
9 States citizens and noncitizens) for the purpose
10 of conducting employment eligibility
11 verification.

12 (C) A requirement that all employers verify
13 the employment eligibility of all new hires using
14 the Social Security cards described in subpara-
15 graph (A) and a phone, electronic card-reading,
16 or other mechanism to seek verification of em-
17 ployment eligibility through the use of the uni-
18 fied database described in subparagraph (B).

19 (2) ITEMS INCLUDED IN REPORT.—The report
20 under paragraph (1) shall include an evaluation of
21 each of the following:

22 (A) Projected cost, including the cost to
23 the Federal Government, State and local gov-
24 ernments, and the private sector.

25 (B) Administrability.

1 (C) Potential effects on—

2 (i) employers;

3 (ii) employees, including employees
4 who are United States citizens as well as
5 those that are not citizens;

6 (iii) tax revenue; and

7 (iv) privacy.

8 (D) The extent to which employer and em-
9 ployee compliance with immigration laws would
10 be expected to improve.

11 (E) Any other relevant information.

12 (3) ALTERNATIVES.—The report under para-
13 graph (1) also shall examine any alternatives to
14 achieve the same goals as the requirements and
15 changes described in paragraph (1) but that involve
16 lesser cost, lesser burden on those affected, or great-
17 er ease of administration.

18 (b) INSPECTOR GENERAL REVIEW.—Not later than
19 3 months after the report is submitted under subsection
20 (a), the Inspector General of the Social Security Adminis-
21 tration, in consultation with the Inspectors General of the
22 Department of Treasury, the Department of Homeland
23 Security, and the Department of Justice, shall send to the
24 Congress an evaluation of such report.

1 (c) CONGRESSIONAL CONSIDERATION.—Upon receipt
2 of the Inspector General’s evaluation of the Commissioner
3 of Social Security’s report, Congress shall consider legisla-
4 tion enacting a plan that best meets both the objectives
5 outlined in this section as well as ease and feasibility of
6 implementation based on the reports presented by the
7 Commissioner of Social Security and the Inspector Gen-
8 eral.

9 **SEC. 11. EFFECTIVE DATE.**

10 This Act and the amendments made by this Act shall
11 take effect on the date of enactment of this Act, except
12 that the requirements of persons and entities to comply
13 with the employment eligibility verification process shall
14 take effect on the date that is 2 years after such date.

15 **SEC. 12. LIMITATION ON VERIFICATION RESPONSIBILITIES**
16 **OF COMMISSIONER OF SOCIAL SECURITY.**

17 The Commissioner of Social Security is authorized to
18 perform activities with respect to carrying out the Com-
19 missioner’s responsibilities in this Act or the amendments
20 made by this Act, but only to the extent (except for the
21 purpose of carrying out section 8) the Secretary of Home-
22 land Security has provided, in advance, funds to cover the
23 Commissioner’s full costs in carrying out such responsibil-
24 ities. In no case shall funds from the Federal Old-Age and
25 Survivors Insurance Trust Fund or the Federal Disability

1 Insurance Trust Fund be used to carry out such respon-
2 sibilities.

3 **SEC. 13. REPORT ON IMPACT ON CONTRACTING AND SUB-**
4 **CONTRACTING INDIVIDUALS AND ENTITIES.**

5 Not later than 12 months after the date of the enact-
6 ment of this Act, the Secretary of Homeland Security shall
7 submit a report to Congress that determines whether the
8 described employment eligibility verification system per-
9 mits contracting individuals and entities to determine the
10 eligibility of subcontracting individuals or entities without
11 unduly burdening contractors and without freeing subcon-
12 tracting individuals or entities to break employment laws.

13 **SEC. 14. REPORT ON EMPLOYMENT ELIGIBILITY**
14 **VERIFICATION SYSTEM.**

15 Not later than 1 year after the implementation of the
16 employment eligibility verification system established
17 under this Act, and 1 year thereafter, the Secretary of
18 Homeland Security shall submit to Congress a report on
19 the progress and problems associated with implementation
20 of the system, including information relating to the most
21 efficient use of the system by small businesses.

○