### 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-

sibility Act of 1996 (8 U.S.C. 1324a note) is amended
 by adding before the period at the end of the last sentence
 the following: ", except that the basic pilot program de scribed in section 403(a) shall be a permanent program".
 (b) PROGRAM MADE MANDATORY.—Section 402 of
 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 sub11 section (g)"; and

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

13 "(g) E-Verify Program Made Mandatory.— Subject to subsection (c)(3), any person or other entity 14 15 that conducts any hiring (or recruitment or referral) in a State in which the E–Verify program described under 16 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.—

(1) IN GENERAL.—Except as provided in paragraph (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

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

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

(g) DOCUMENT FRAUD STUDY.—The Government
Accountability Office shall conduct a study to examine
methods to combat document fraud, theft and forgery in
the use and expansion of the E–Verify program. The report shall make recommendations to the appropriate agencies on ways to reduce instances of document fraud, theft,

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and forgery. The report shall be published within six
 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:

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

16 Increase as necessary the number of (2)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.

### 1SEC. 4. MANDATORY NOTIFICATION OF SSN MISMATCHES2AND MULTIPLE USES.

3 (a) NOTIFICATION OF MULTIPLE USES OF INDI-VIDUAL SOCIAL SECURITY ACCOUNT NUMBERS.—Prior to 4 5 crediting any individual with concurrent wages from more than one employer, the Commissioner of Social Security 6 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 to as "SSN"). Such notice shall include, at a minimum— 10

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

(2) a warning that any inaccuracies in this information could indicate that the individual's SSN is
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

(4) a toll-free telephone number that an individual may call to report inaccuracies in the use of
their SSN.

(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
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section 1106 of the Social Security Act (42 U.S.C.
 1306), to require that information regarding all mul tiple use notifications that lead to the identification
 of an unauthorized user of a SSN be shared with
 the Secretary of the Department of Homeland Secu 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 unau11 thorized users of another individual's SSN. The
12 names and addresses of the employers of these em13 ployees must also be provided.

(3) The Secretary shall report to the Congress 14 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.

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

by evidence of an employee being dismissed for non-con firmation through the E-Verify program. Such notifica tion shall include the name and address of the employer,
 a job description if available, and shall be made within
 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 INFOR14 MATION RETURNS.

(a) IN GENERAL.—Section 6721 of the Internal Revenue Code of 1986 (26 U.S.C. 6721) is amended by adding at the end the following:

18  $(\mathbf{g})$ MOST EGREGIOUS NONCOMPLIANT Ем-PLOYER.—Notwithstanding any other provision of this 19 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-
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fined under section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)). "(B) WAGES.—For the purposes of this paragraph, the term wages means all remuneration for employment, including the cash value of

all remuneration (including benefits) paid in any medium other than cash. "(C) SAFE HARBOR.—If a person or other entity is participating in the basic pilot program

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.".

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

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

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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.