

113TH CONGRESS  
1ST SESSION

# H. R. 502

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2013

Mr. DEFAZIO 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 the Workforce, 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

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## 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 re-  
11 quirement of this paragraph with respect to ex-  
12 amination of a document if the document rea-  
13 sonably appears on its face to be genuine, rea-  
14 sonably appears to pertain to the individual  
15 whose identity and work eligibility is being  
16 verified, and, if the document bears an expira-  
17 tion date, that expiration date has not elapsed.  
18 If an individual provides a document (or com-  
19 bination of documents) that reasonably appears  
20 on its face to be genuine, reasonably appears to  
21 pertain to the individual whose identity and  
22 work eligibility is being verified, and is suffi-  
23 cient to meet the first sentence of this para-  
24 graph, nothing in this paragraph shall be con-  
25 strued as requiring the person or entity to so-

1           licit the production of any other document or as  
2           requiring the individual to produce another doc-  
3           ument.”;

4           (3) in subsection (b)(1)(D)—

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

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

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

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

24                “(3) RETENTION OF VERIFICATION FORM AND  
25                VERIFICATION.—

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

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

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

19                   “(II) in the case of the hiring of  
20 an individual, the later of—

21                           “(aa) 3 years after the date  
22 of such hiring; or

23                           “(bb) 1 year after the date  
24 the individual’s employment is  
25 terminated; and

1                   “(III) in the case of the  
2 verification of a previously hired indi-  
3 vidual, the later of—

4                   “(aa) 3 years after the date  
5 of the completion of verification;  
6 or

7                   “(bb) 1 year after the date  
8 the individual’s employment is  
9 terminated;

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

21                  “(iii) not commence recruitment or re-  
22 ferral of the individual until the person or  
23 entity receives verification under clause (i)  
24 or (ii) of subparagraph (D).

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

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

22           “(D)           VERIFICATION           OR  
23 NONVERIFICATION.—

24           “(i) VERIFICATION UPON INITIAL IN-  
25 QUIRY.—If an employer receives a

1 verification notice under subparagraph (B)  
2 for an individual, the employer shall  
3 record, as described in subparagraph  
4 (A)(i), the appropriate code provided in  
5 such notice.

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

20 “(iii) NO CONTEST.—If the individual  
21 does not contest the tentative  
22 nonverification notice within 10 days of re-  
23 ceiving notice from the individual’s em-  
24 ployer, the notice shall become final and  
25 the employer shall record, as described in

1           subparagraph (A)(i), the appropriate code  
2           provided through the system to indicate  
3           the individual did not contest the tentative  
4           nonverification. An individual’s failure to  
5           contest a tentative nonverification shall not  
6           be considered an admission of guilt with  
7           respect to any violation of this Act or any  
8           other provision of law.

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

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

22                  “(I) a final verification notice or  
23                  final nonverification notice is issued  
24                  through the system; or

1                   “(II) 10 working days after the  
2                   individual contests a tentative  
3                   nonverification under clause (iv).

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

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

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

21                         “(II) in the case of an alien au-  
22                         thorized to be employed in the United  
23                         States for a temporary period, during  
24                         such period.

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

13          “(ix) RECORDING OF CONTEST RESO-  
14          LUTION.—The employer shall record the  
15          appropriate code that is provided through  
16          the system to indicate a final verification  
17          notice or final nonverification notice as de-  
18          scribed in paragraph (1)(A).

19          “(x) CONSEQUENCES OF  
20          NONVERIFICATION.—If the employer has  
21          received a final nonverification regarding  
22          an individual, the employer shall terminate  
23          the employment, recruitment, or referral of  
24          the individual. Such employer shall provide  
25          to the Secretary any information relating

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

11 “(E) ADMINISTRATIVE REVIEW.—

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

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

22 “(iii) REVIEW FOR ERRORS.—If a  
23 final determination on an appeal filed  
24 under clause (i) results in verification of  
25 an individual’s eligibility to work in the

1 United States, the administrative review  
2 process shall require the Secretary to de-  
3 termine if the final nonverification notice  
4 issued for the individual was the result  
5 of—

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

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

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

15 “(iv) COMPENSATION FOR ERROR.—

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

24 “(II) CALCULATION OF LOST  
25 WAGES.—Lost wages shall be cal-

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

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

20           “(vi) SOURCE OF FUNDS.—Compensa-  
21          tion or reimbursement provided under this  
22          paragraph shall be provided from the Em-  
23          ployment Verification Compensation Fund  
24          established under section 8 and shall not  
25          be provided from appropriated funds.

1 “(F) JUDICIAL REVIEW.—

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

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

22 “(iii) ANSWER.—As part of the Sec-  
23 retary’s answer to a complaint for such ju-  
24 dicial review, the Secretary shall file a cer-  
25 tified copy of the administrative record

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

10 “(iv) COMPENSATION FOR ERROR.—

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

17 “(II) CALCULATION OF LOST  
18 WAGES.—Lost wages shall be cal-  
19 culated based on the wage rate and  
20 work scheduled that prevailed prior to  
21 termination. The individual shall be  
22 compensated for wages lost beginning  
23 on the first scheduled work day after  
24 employment was terminated and end-  
25 ing 180 days after completion of the

1                   judicial review described in this para-  
2                   graph or the day after the individual  
3                   is reinstated or obtains employment  
4                   elsewhere, whichever occurs first.

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

15                  “(H) LIMITATION ON COLLECTION AND  
16                  USE OF DATA.—

17                  “(i) LIMITATION ON COLLECTION OF  
18                  DATA.—

19                  “(I) IN GENERAL.—The System  
20                  shall collect and maintain only the  
21                  minimum data necessary to facilitate  
22                  the successful operation of the Sys-  
23                  tem, and in no case shall the data be  
24                  other than—

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

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

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

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

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

20           “(II) PENALTIES.—Any officer,  
21 employee, or contractor who willfully  
22 and knowingly collects and maintains  
23 data in the system other than data  
24 described in clause (i) shall be guilty

1 of a misdemeanor and fined not more  
2 than \$1,000 for each violation.

3 “(ii) LIMITATION ON USE OF DATA.—

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

7 “(I) for the purpose of commit-  
8 ting identity fraud, or assisting an-  
9 other person in committing identity  
10 fraud, as defined in section 1028 of  
11 title 18, United States Code;

12 “(II) for the purpose of unlaw-  
13 fully obtaining employment in the  
14 United States or unlawfully obtaining  
15 employment in the United States for  
16 any other person; or

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

20 shall be guilty of a felony and upon convic-  
21 tion shall be fined under title 18, United  
22 States Code, or imprisoned for not less  
23 than 5 years, or both.

24 “(iii) EXCEPTIONS.—Nothing in  
25 clauses (i) or (ii) may be construed to limit

1           the collection, maintenance, or use of data  
2           by the Commissioner of Internal Revenue  
3           or the Commissioner of Social Security as  
4           provided by law.”.

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

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

12           (1) in subsection (a)(1)(A), by striking “for a  
13 fee”;

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

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

20           (3) in subsection (a)(2), by striking “after hir-  
21 ing an alien for employment in accordance with  
22 paragraph (1),” and inserting “after complying with  
23 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 “on September 30, 2012”  
14 and inserting “2 years after the enactment of the Elec-  
15 tronic Employment Eligibility Verification and Illegal Im-  
16 migration Control Act”.

17 **SEC. 6. HIRING HALLS.**

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

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

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

21 **SEC. 7. PENALTIES.**

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

24 (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 Secretary of Homeland Secu-  
12 rity shall create and maintain a publicly available and ac-  
13 cessible online database of contracting and subcontracting  
14 individuals or entities which discloses the number of em-  
15 ployment eligibility violations and employment eligibility  
16 verification rejections each contracting or subcontracting  
17 individual or entity has received. The database shall also  
18 disclose the total number of verification attempts each  
19 contracting or subcontracting individual or entity has  
20 made.

21 (b) AUDIT.—The Secretary 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 the Congress that includes an  
10 evaluation of the following requirements and  
11 changes:

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

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

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

24 (iii) files an application for such card,  
25 whether as a replacement of an existing  
26 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, the Congress shall consider leg-  
4 islation 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 the Congress that determines whether  
8 the described employment eligibility verification system  
9 permits contracting individuals and entities to determine  
10 the eligibility of subcontracting individuals or entities  
11 without unduly burdening contractors and without freeing  
12 subcontracting individuals or entities to break employment  
13 laws.

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

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

○