

115TH CONGRESS
2D SESSION

S. 3386

To amend the Immigration and Nationality Act to provide for an electronic employment verification system, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 23, 2018

Mrs. MCCASKILL (for herself and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for an electronic employment verification system, 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 “E-Verify System Act
5 of 2018”.

6 **SEC. 2. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED**
7 **ALIENS.**

8 (a) IN GENERAL.—Section 274A of the Immigration
9 and Nationality Act (8 U.S.C. 1324a) is amended to read
10 as follows:

1 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

2 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
3 ALIENS UNLAWFUL.—

4 “(1) IN GENERAL.—It is unlawful for an em-
5 ployer—

6 “(A) to hire, recruit, or refer for a fee an
7 alien for employment in the United States
8 knowing that the alien is an unauthorized alien
9 with respect to such employment; or

10 “(B) to hire, recruit, or refer for a fee for
11 employment in the United States an individual
12 without complying with the requirements under
13 subsections (c) and (d).

14 “(2) CONTINUING EMPLOYMENT.—

15 “(A) PROHIBITION ON CONTINUED EM-
16 PLOYMENT OF UNAUTHORIZED ALIENS.—It is
17 unlawful for an employer, after hiring an alien
18 for employment, to continue to employ the alien
19 in the United States knowing that the alien is
20 (or has become) an unauthorized alien with re-
21 spect to such employment.

22 “(B) PROHIBITION ON CONSIDERATION OF
23 PREVIOUS UNAUTHORIZED STATUS.—Nothing
24 in this section may be construed to prohibit the
25 employment of an individual who is authorized

1 for employment in the United States if such in-
2 dividual was previously an unauthorized alien.

3 “(3) USE OF LABOR THROUGH CONTRACT.—

4 For purposes of this section, any employer that uses
5 a contract, subcontract, or exchange to obtain the
6 labor of an alien in the United States while knowing
7 that the alien is an unauthorized alien with respect
8 to performing such labor shall be considered to have
9 hired the alien for employment in the United States
10 in violation of paragraph (1)(A).

11 “(4) USE OF STATE EMPLOYMENT AGENCY

12 DOCUMENTATION.—For purposes of paragraphs
13 (1)(B), (5), and (6), an employer shall be deemed to
14 have complied with the requirements under sub-
15 section (c) with respect to the hiring of an individual
16 who was referred for such employment by a State
17 employment agency (as defined by the Secretary) if
18 the employer has and retains (for the period and in
19 the manner described in subsection (c)(3)) appro-
20 priate documentation of such referral by such agen-
21 cy, certifying that such agency has complied with the
22 procedures described in subsection (c) with respect
23 to the individual’s referral. An employer that relies
24 on a State agency’s certification of compliance with
25 subsection (c) under this paragraph may utilize and

1 retain the State agency’s certification of compliance
2 with the procedures described in subsection (d), if
3 any, in the manner provided under this paragraph.

4 “(5) GOOD FAITH DEFENSE.—

5 “(A) DEFENSE.—An employer, person, or
6 entity that hires, employs, recruits, or refers in-
7 dividuals for employment in the United States,
8 or is otherwise obligated to comply with the re-
9 quirements under this section and establishes
10 good faith compliance with the requirements
11 under paragraphs (1) through (4) of subsection
12 (c) and subsection (d)—

13 “(i) has established an affirmative de-
14 fense that the employer, person, or entity
15 has not violated paragraph (1)(A) with re-
16 spect to hiring and employing; and

17 “(ii) has established compliance with
18 its obligations under subparagraph (A) and
19 (B) of paragraph (1) and subsection (c)
20 unless the Secretary demonstrates that the
21 employer had knowledge that an individual
22 hired, employed, recruited, or referred by
23 the employer, person, or entity is an unau-
24 thorized alien.

1 “(B) EXCEPTION FOR CERTAIN EMPLOY-
2 ERS.—An employer who is not required to par-
3 ticipate in the System or who is participating in
4 the System on a voluntary basis pursuant to
5 subsection (d)(2)(J) has established an affirma-
6 tive defense under subparagraph (A) and need
7 not demonstrate compliance with the require-
8 ments under subsection (d).

9 “(6) GOOD FAITH COMPLIANCE.—

10 “(A) IN GENERAL.—Except as otherwise
11 provided in this subsection, an employer, per-
12 son, or entity is considered to have complied
13 with a requirement under this subsection not-
14 withstanding a technical or procedural failure
15 to meet such requirement if there was a good
16 faith attempt to comply with the requirement.

17 “(B) EXCEPTION IF FAILURE TO CORRECT
18 AFTER NOTICE.—Subparagraph (A) shall not
19 apply if—

20 “(i) the failure is not de minimis;

21 “(ii) the Secretary of Homeland Secu-
22 rity has explained to the employer, person,
23 or entity the basis for the failure and why
24 it is not de minimis;

1 “(iii) the employer, person, or entity
2 has been provided a period of not less than
3 30 days (beginning after the date of the
4 explanation) to correct the failure; and

5 “(iv) the employer, person, or entity
6 has not corrected the failure voluntarily
7 within such period.

8 “(C) EXCEPTION FOR PATTERN OR PRAC-
9 TICE VIOLATORS.—Subparagraph (A) shall not
10 apply to an employer, person, or entity that has
11 engaged or is engaging in a pattern or practice
12 of violations of paragraph (1)(A) or (2).

13 “(7) PRESUMPTION.—After the date on which
14 an employer is required to participate in the System
15 under subsection (d), the employer is presumed to
16 have acted with knowledge for purposes of para-
17 graph (1)(A) if the employer hires, employs, re-
18 cruits, or refers an employee for a fee and fails to
19 make an inquiry to verify the employment authoriza-
20 tion status of the employee through the System.

21 “(8) CONTINUED APPLICATION OF WORKFORCE
22 AND LABOR PROTECTION REMEDIES DESPITE UNAU-
23 THORIZED EMPLOYMENT.—

24 “(A) IN GENERAL.—Subject only to sub-
25 paragraph (B), all rights and remedies provided

1 under any Federal, State, or local law relating
2 to workplace rights, including but not limited to
3 back pay, are available to an employee de-
4 spite—

5 “(i) the employee’s status as an unau-
6 thORIZED alien during or after the period of
7 employment; or

8 “(ii) the employer’s or employee’s fail-
9 ure to comply with the requirements of
10 this section.

11 “(B) REINSTATEMENT.—Reinstatement
12 shall be available to individuals who—

13 “(i) are authorized to work in the
14 United States at the time such relief is or-
15 dered or effectuated; or

16 “(ii) lost employment-authorized sta-
17 tus due to the unlawful acts of the em-
18 ployer under this section.

19 “(b) DEFINITIONS.—In this section:

20 “(1) COMMISSIONER.—The term ‘Commis-
21 sioner’ means the Commissioner of Social Security.

22 “(2) DEPARTMENT.—Except as otherwise pro-
23 vided, the term ‘Department’ means the Department
24 of Homeland Security.

1 “(3) EMPLOYER.—The term ‘employer’ means
2 any person or entity, including an agency or depart-
3 ment of a Federal, State, or local government, an
4 agent, or a System service provider acting on behalf
5 of an employer, that hires, employs, recruits, or re-
6 fers for a fee an individual for employment in the
7 United States that is not casual, sporadic, irregular,
8 or intermittent (as defined by the Secretary).

9 “(4) EMPLOYMENT AUTHORIZED STATUS.—The
10 term ‘employment authorized status’ means, with re-
11 spect to an individual, that the individual is author-
12 ized to be employed in the United States under the
13 immigration laws of the United States.

14 “(5) SECRETARY.—Except as otherwise specifi-
15 cally provided, the term ‘Secretary’ means the Sec-
16 retary of Homeland Security.

17 “(6) SYSTEM.—The term ‘System’ means the
18 Employment Verification System established under
19 subsection (d).

20 “(7) UNAUTHORIZED ALIEN.—The term ‘unau-
21 thorized alien’ means an alien who, with respect to
22 employment in the United States at a particular
23 time—

24 “(A) is not lawfully admitted for perma-
25 nent residence; or

1 “(B) is not authorized to be employed
2 under this Act or by the Secretary.

3 “(8) WORKPLACE RIGHTS.—The term ‘work-
4 place rights’ means rights guaranteed under Fed-
5 eral, State, or local labor or employment laws, in-
6 cluding laws concerning wages and hours, benefits
7 and employment standards, labor relations, work-
8 place health and safety, work-related injuries, non-
9 discrimination, and retaliation for exercising rights
10 under such laws.

11 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
12 Any employer hiring an individual for employment in the
13 United States shall comply with the following require-
14 ments and the requirements under subsection (d) to verify
15 that the individual has employment authorized status.

16 “(1) ATTESTATION AFTER EXAMINATION OF
17 DOCUMENTATION.—

18 “(A) IN GENERAL.—

19 “(i) EXAMINATION BY EMPLOYER.—
20 An employer shall attest, under penalty of
21 perjury on a form prescribed by the Sec-
22 retary, that the employer has verified the
23 identity and employment authorization sta-
24 tus of the individual—

25 “(I) by examining—

1 “(aa) a document specified
2 in subparagraph (C); or

3 “(bb) a document specified
4 in subparagraph (D) and a docu-
5 ment specified in subparagraph
6 (E); and

7 “(II) by utilizing an identity au-
8 thentication mechanism described in
9 clause (iii) or (iv) of subparagraph
10 (F).

11 “(ii) PUBLICATION OF DOCUMENTS.—
12 The Secretary shall publish a picture of
13 each document specified in subparagraphs
14 (C) and (E) on the U.S. Citizenship and
15 Immigration Services website.

16 “(B) REQUIREMENTS.—

17 “(i) FORM.—The form referred to in
18 subparagraph (A)(i)—

19 “(I) shall be prescribed by the
20 Secretary not later than 6 months
21 after the date of the enactment of the
22 E-Verify System Act of 2018; and

23 “(II) shall be available as—

24 “(aa) a paper form;

1 “(bb) a form that may be
2 completed by an employer via
3 telephone or video conference;

4 “(cc) an electronic form; or

5 “(dd) a form that is inte-
6 grated electronically with the re-
7 quirements under subsection (d).

8 “(ii) ATTESTATION.—Each such form
9 shall require the employer to sign an attes-
10 tation with a handwritten, electronic, or
11 digital pin code signature, according to
12 standards prescribed by the Secretary.

13 “(iii) COMPLIANCE.—An employer has
14 complied with the requirements under this
15 paragraph with respect to examination of
16 the documents included in subclauses (I)
17 and (II) of subparagraph (A)(i) if—

18 “(I) the employer has, in good
19 faith, followed applicable regulations
20 and any written procedures or instruc-
21 tions provided by the Secretary; and

22 “(II) a reasonable person would
23 conclude that the documentation is
24 genuine and relates to the individual
25 presenting such documentation.

1 “(C) DOCUMENTS ESTABLISHING IDEN-
2 TITY AND EMPLOYMENT AUTHORIZED STA-
3 TUS.—A document is specified in this subpara-
4 graph if the document is unexpired (unless the
5 validity of the document is extended by law)
6 and is 1 of the following:

7 “(i) A United States passport or pass-
8 port card issued to an individual pursuant
9 to the Secretary of State’s authority under
10 the Act entitled ‘An Act to regulate the
11 issue and validity of passports, and for
12 other purposes’, approved July 3, 1926 (22
13 U.S.C. 211a).

14 “(ii) A document issued to an alien
15 evidencing that the alien is lawfully admit-
16 ted for permanent residence or another
17 document issued to an individual evidenc-
18 ing the individual’s employment authorized
19 status, as designated by the Secretary, if
20 the document—

21 “(I) contains a photograph of the
22 individual, or such other personal
23 identifying information relating to the
24 individual as the Secretary deter-

1 mines, by regulation, to be sufficient
2 for the purposes of this subparagraph;

3 “(II) is evidence of employment
4 authorized status; and

5 “(III) contains security features
6 to make the document resistant to
7 tampering, counterfeiting, and fraudu-
8 lent use.

9 “(iii) An enhanced driver’s license or
10 identification card issued to a national of
11 the United States by a State, an outlying
12 possession of the United States, or a feder-
13 ally recognized Indian tribe that—

14 “(I) meets the requirements
15 under section 202 of the REAL ID
16 Act of 2005 (division B of Public Law
17 109–13; 49 U.S.C. 30301 note); and

18 “(II) the Secretary has certified
19 by notice published in the Federal
20 Register and through appropriate no-
21 tice directly to employers registered in
22 the System 3 months prior to publica-
23 tion that such enhanced license or
24 card is suitable for use under this
25 subparagraph based upon the accu-

1 racy and security of the issuance proc-
2 ess, security features on the docu-
3 ment, and such other factors as the
4 Secretary may prescribe.

5 “(iv) A passport issued by the appro-
6 priate authority of a foreign country ac-
7 companied by a Form I-94 or Form I-
8 94A (or similar successor record), or other
9 documentation as designated by the Sec-
10 retary that specifies the individual’s status
11 in the United States and the duration of
12 such status if the proposed employment is
13 not in conflict with any restriction or limi-
14 tation specified on such form or docu-
15 mentation.

16 “(v) A passport issued by the Fed-
17 erated States of Micronesia or the Repub-
18 lic of the Marshall Islands with evidence of
19 nonimmigrant admission to the United
20 States under the Compact of Free Associa-
21 tion between the United States and the
22 Federated States of Micronesia or the Re-
23 public of the Marshall Islands.

24 “(D) DOCUMENTS ESTABLISHING IDEN-
25 TITY OF INDIVIDUAL.—A document is specified

1 in this subparagraph if the document is unex-
2 pired (unless the validity of the document is ex-
3 tended by law) and is 1 of the following:

4 “(i) A driver’s license or identity card
5 that is not described in subparagraph
6 (C)(iii) and is issued to an individual by a
7 State or an outlying possession of the
8 United States, a federally recognized In-
9 dian tribe, or an agency (including mili-
10 tary) of the Federal Government if the
11 driver’s license or identity card includes, at
12 a minimum—

13 “(I) the individual’s photograph,
14 name, date of birth, gender, and driv-
15 er’s license or identification card num-
16 ber; and

17 “(II) security features to make
18 the license or card resistant to tam-
19 pering, counterfeiting, and fraudulent
20 use.

21 “(ii) A voter registration card.

22 “(iii) A document that complies with
23 the requirements under section 7209(b)(1)
24 of the Intelligence Reform and Terrorism

1 Prevention Act of 2004 (Public Law 108–
2 458; 8 U.S.C. 1185 note).

3 “(iv) For individuals under 18 years
4 of age who are unable to present a docu-
5 ment listed in clause (i) or (ii), documenta-
6 tion of personal identity of such other type
7 as the Secretary determines will provide a
8 reliable means of identification, which may
9 include an attestation as to the individual’s
10 identity by a parent or legal guardian
11 under penalty of perjury.

12 “(E) DOCUMENTS EVIDENCING EMPLOY-
13 MENT AUTHORIZATION.—A document is speci-
14 fied in this subparagraph if the document is un-
15 expired (unless the validity of the document is
16 extended by law) and is one of the following:

17 “(i) A social security account number
18 card issued by the Commissioner, other
19 than a card which specifies on its face that
20 the card is not valid to evidence employ-
21 ment authorized status or has other simi-
22 lar words of limitation.

23 “(ii) Any other documentation evi-
24 dencing employment authorized status that
25 the Secretary determines and publishes in

1 the Federal Register and through appro-
2 priate notice directly to employers reg-
3 istered within the System to be acceptable
4 for purposes of this subparagraph if such
5 documentation, including any electronic se-
6 curity measures linked to such documenta-
7 tion, contains security features to make
8 such documentation resistant to tam-
9 pering, counterfeiting, and fraudulent use.

10 “(F) IDENTITY AUTHENTICATION MECHA-
11 NISM.—

12 “(i) DEFINITIONS.—In this subpara-
13 graph:

14 “(I) COVERED IDENTITY DOCU-
15 MENT.—The term ‘covered identity
16 document’ means a valid—

17 “(aa) United States pass-
18 port, passport card, or a docu-
19 ment evidencing lawful perma-
20 nent residence status or employ-
21 ment authorized status issued to
22 an alien;

23 “(bb) enhanced driver’s li-
24 cense or identity card issued by a
25 participating State or an outlying

1 possession of the United States;
2 or

3 “(cc) photograph and appro-
4 priate identifying information
5 provided by the Secretary of
6 State pursuant to the granting of
7 a visa.

8 “(II) PARTICIPATING STATE.—

9 The term ‘participating State’ means
10 a State that has an agreement with
11 the Secretary to provide the Sec-
12 retary, for purposes of identity
13 verification in the System, with photo-
14 graphs and appropriate identifying in-
15 formation maintained by the State.

16 “(ii) REQUIREMENT FOR IDENTITY
17 AUTHENTICATION.—In addition to
18 verifying the documents specified in sub-
19 paragraph (C), (D), or (E) and utilizing
20 the System under subsection (d), each em-
21 ployer shall use an identity authentication
22 mechanism described in clause (iii) or pro-
23 vided in clause (iv) after it becomes avail-
24 able to verify the identity of each indi-
25 vidual the employer seeks to hire.

1 “(iii) PHOTO TOOL.—

2 “(I) USE REQUIREMENT.—An
3 employer hiring an individual who has
4 a covered identity document shall
5 verify the identity of such individual
6 using the photo tool described in sub-
7 clause (II).

8 “(II) DEVELOPMENT REQUIRE-
9 MENT.—The Secretary shall develop
10 and maintain a photo tool that en-
11 ables employers to match the photo on
12 a covered identity document provided
13 to the employer to a photo maintained
14 by a U.S. Citizenship and Immigra-
15 tion Services database.

16 “(iv) ADDITIONAL SECURITY MEAS-
17 URES.—

18 “(I) USE REQUIREMENT.—An
19 employer seeking to hire an individual
20 whose identity may not be verified
21 using the photo tool described in
22 clause (iii) shall verify the identity of
23 such individual using the additional
24 security measures described in sub-
25 clause (II).

1 “(II) DEVELOPMENT REQUIRE-
2 MENT.—The Secretary shall develop,
3 after publication in the Federal Reg-
4 ister and an opportunity for public
5 comment, specific and effective addi-
6 tional security measures to adequately
7 verify the identity of an individual
8 whose identity may not be verified
9 using the photo tool described in
10 clause (iii). Such additional security
11 measures—

12 “(aa) shall be kept up-to-
13 date with technological advances;
14 and

15 “(bb) shall provide a means
16 of identity authentication in a
17 manner that provides a high level
18 of certainty as to the identity of
19 such individual, using immigra-
20 tion and identifying information
21 that may include review of iden-
22 tity documents or background
23 screening verification techniques
24 using publicly available informa-
25 tion.

1 “(G) AUTHORITY TO PROHIBIT USE OF
2 CERTAIN DOCUMENTS.—If the Secretary deter-
3 mines, after publication in the Federal Register
4 and an opportunity for public comment, that
5 any document or class of documents specified in
6 subparagraph (B), (C), or (D) does not reliably
7 establish identity or that employment author-
8 ized status is being used fraudulently to an un-
9 acceptable degree, the Secretary—

10 “(i) may prohibit or restrict the use of
11 such document or class of documents for
12 purposes of this subsection; and

13 “(ii) shall directly notify all employers
14 registered within the System of the prohi-
15 bition through appropriate means.

16 “(H) AUTHORITY TO ALLOW USE OF CER-
17 TAIN DOCUMENTS.—If the Secretary has deter-
18 mined that another document or class of docu-
19 ments, such as a document issued by a federally
20 recognized Indian tribe, may be used to reliably
21 establish identity or employment authorized sta-
22 tus, the Secretary—

23 “(i) may allow the use of that docu-
24 ment or class of documents for purposes of
25 this subsection after publication in the

1 Federal Register and an opportunity for
2 public comment;

3 “(ii) shall publish a description of any
4 such document or class of documents on
5 the U.S. Citizenship and Immigration
6 Services website; and

7 “(iii) shall directly notify all employ-
8 ers registered within the System of the ad-
9 dition through appropriate means.

10 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
11 MENT AUTHORIZATION.—An individual, upon com-
12 mencing employment with an employer, shall—

13 “(A) attest, under penalty of perjury, on
14 the form prescribed by the Secretary, that the
15 individual is—

16 “(i) a citizen of the United States;

17 “(ii) an alien lawfully admitted for
18 permanent residence;

19 “(iii) an alien who has employment
20 authorized status; or

21 “(iv) otherwise authorized by the Sec-
22 retary to be hired for such employment;

23 “(B) provide such attestation by a hand-
24 written, electronic, or digital pin code signature;
25 and

1 “(C) provide the individual’s social security
2 account number to the Secretary, unless the in-
3 dividual has not yet been issued such a number,
4 on such form as the Secretary may require.

5 “(3) RETENTION OF VERIFICATION RECORD.—

6 “(A) IN GENERAL.—After completing a
7 form for an individual in accordance with para-
8 graphs (1) and (2), the employer shall retain a
9 version of such completed form and make such
10 form available for inspection by the Secretary
11 or the Immigrant and Employee Rights Section
12 for the Civil Rights Division of the Department
13 of Justice during the period beginning on the
14 hiring date of the individual and ending on the
15 later of—

16 “(i) the date that is 3 years after such
17 hiring date; or

18 “(ii) the date that is 1 year after the
19 date on which the individual’s employment
20 with the employer is terminated.

21 “(B) REQUIREMENT FOR ELECTRONIC RE-
22 TENTION.—The Secretary—

23 “(i) shall permit an employer to retain
24 the form described in subparagraph (A) in
25 electronic form; and

1 “(ii) shall permit an employer to re-
2 tain such form in paper, microfiche, micro-
3 film, portable document format, or other
4 media.

5 “(4) COPYING OF DOCUMENTATION AND REC-
6 ORDKEEPING.—The Secretary may promulgate regu-
7 lations regarding—

8 “(A) copying documents and related infor-
9 mation pertaining to employment verification
10 presented by an individual under this sub-
11 section; and

12 “(B) retaining such information during a
13 period not to exceed the required retention pe-
14 riod set forth in paragraph (3).

15 “(5) PENALTIES.—An employer that fails to
16 comply with any requirement under this subsection
17 may be penalized under subsection (e)(4)(B).

18 “(6) PROTECTION OF CIVIL RIGHTS.—

19 “(A) IN GENERAL.—Nothing in this sec-
20 tion may be construed to diminish any rights
21 otherwise protected by Federal law.

22 “(B) PROHIBITION ON DISCRIMINATION.—
23 An employer shall use the procedures for docu-
24 ment verification set forth in this paragraph for
25 all employees without regard to race, color, reli-

1 gion, sex, national origin, or, unless specifically
2 permitted in this section, to citizenship status.

3 “(7) RECEIPTS.—The Secretary may authorize
4 the use of receipts for replacement documents, and
5 temporary evidence of employment authorization by
6 an individual to meet a documentation requirement
7 under this subsection on a temporary basis not to
8 exceed 1 year, after which time the individual shall
9 provide documentation sufficient to satisfy the docu-
10 mentation requirements under this subsection.

11 “(8) NO AUTHORIZATION OF NATIONAL IDENTI-
12 FICATION CARDS.—Nothing in this section may be
13 construed to directly or indirectly authorize the
14 issuance, use, or establishment of a national identi-
15 fication card.

16 “(d) EMPLOYMENT VERIFICATION SYSTEM.—

17 “(1) IN GENERAL.—

18 “(A) ESTABLISHMENT.—The Secretary, in
19 consultation with the Commissioner, shall es-
20 tablish the Employment Verification System.

21 “(B) MONITORING.—The Secretary shall
22 create the necessary processes to monitor—

23 “(i) the functioning of the System, in-
24 cluding the volume of the workflow, the

1 speed of processing of queries, the speed
2 and accuracy of responses;

3 “(ii) the misuse of the System, includ-
4 ing the prevention of fraud or identity
5 theft;

6 “(iii) whether the use of the System
7 results in wrongful adverse actions or dis-
8 crimination based upon a prohibited factor
9 against citizens or nationals of the United
10 States or individuals who have employment
11 authorized status; and

12 “(iv) the security, integrity, and pri-
13 vacy of the System.

14 “(C) PROCEDURES.—The Secretary—

15 “(i) shall create processes to provide
16 an individual with direct access to the indi-
17 vidual’s case history in the System, includ-
18 ing—

19 “(I) the identities of all persons
20 or entities that have queried the indi-
21 vidual through the System;

22 “(II) the date of each such
23 query; and

24 “(III) the System response for
25 each such query; and

1 “(ii) in consultation with the Commis-
2 sioner, shall develop—

3 “(I) protocols to notify an indi-
4 vidual, in a timely manner through
5 the use of electronic correspondence
6 or mail, that a query for the indi-
7 vidual has been processed through the
8 System; or

9 “(II) a process for the individual
10 to submit additional queries to the
11 System or notify the Secretary of po-
12 tential identity fraud.

13 “(2) PARTICIPATION REQUIREMENTS.—

14 “(A) FEDERAL GOVERNMENT.—Except as
15 provided in subparagraph (B), all agencies and
16 departments in the executive, legislative, or ju-
17 dicial branches of the Federal Government shall
18 participate in the System beginning on the ear-
19 lier of—

20 “(i) the date of the enactment of the
21 E-Verify System Act of 2018, to the ex-
22 tent required under section 402(e)(1) of
23 the Illegal Immigration Reform and Immig-
24 rant Responsibility Act of 1996 (division
25 C of Public Law 104–208; 8 U.S.C.

1 1324a) and as already implemented by
2 each agency or department; or

3 “(ii) the date that is 90 days after the
4 date of the enactment of the E-Verify Sys-
5 tem Act of 2018.

6 “(B) FEDERAL CONTRACTORS.—Federal
7 contractors shall participate in the System as
8 provided in the final rule relating to employ-
9 ment eligibility verification published in the
10 Federal Register on November 14, 2008 (73
11 Fed. Reg. 67,651), or any similar subsequent
12 regulation, for which purpose references to E-
13 Verify in the final rule shall be construed to
14 apply to the System.

15 “(C) CRITICAL INFRASTRUCTURE.—

16 “(i) IN GENERAL.—Beginning on the
17 date that is 1 year after the date on which
18 regulations are published implementing
19 this subsection, the Secretary may author-
20 ize or direct any employer, person, or enti-
21 ty responsible for granting access to, pro-
22 tecting, securing, operating, administering,
23 or regulating part of the critical infrastruc-
24 ture (as defined in section 1016(e) of the
25 Critical Infrastructure Protection Act of

1 2001 (42 U.S.C. 5195c(e))) to participate
2 in the System to the extent the Secretary
3 determines that such participation will as-
4 sist in the protection of the critical infra-
5 structure.

6 “(ii) NOTIFICATION TO EMPLOY-
7 ERS.—The Secretary shall notify an em-
8 ployer required to participate in the Sys-
9 tem under this subparagraph not later
10 than 90 days before the date on which the
11 employer is required to participate.

12 “(D) EMPLOYERS WITH MORE THAN 5,000
13 EMPLOYEES.—Not later than 2 years after reg-
14 ulations are published implementing this sub-
15 section, all employers with more than 5,000 em-
16 ployees shall participate in the System with re-
17 spect to all newly hired employees and employ-
18 ees with expiring temporary employment au-
19 thorization documents.

20 “(E) EMPLOYERS WITH MORE THAN 500
21 EMPLOYEES.—Not later than 3 years after reg-
22 ulations are published implementing this sub-
23 section, all employers with more than 500 em-
24 ployees shall participate in the System with re-
25 spect to all newly hired employees and employ-

1 ees with expiring temporary employment au-
2 thorization documents.

3 “(F) AGRICULTURAL EMPLOYMENT.—Not
4 later than 4 years after regulations are pub-
5 lished implementing this subsection, employers
6 of employees performing agricultural employ-
7 ment shall participate in the System with re-
8 spect to all newly hired employees and employ-
9 ees with expiring temporary employment au-
10 thorization documents. An agricultural em-
11 ployee shall not be counted for purposes of sub-
12 paragraph (D) or (E).

13 “(G) ALL EMPLOYERS.—Except as pro-
14 vided in subparagraph (H), not later than 4
15 years after regulations are published imple-
16 menting this subsection, all employers shall par-
17 ticipate in the System with respect to all newly
18 hired employees and employees with expiring
19 temporary employment authorization docu-
20 ments.

21 “(H) TRIBAL GOVERNMENT EMPLOY-
22 ERS.—

23 “(i) RULEMAKING.—In developing
24 regulations to implement this subsection,
25 the Secretary shall—

1 “(I) consider the effects of this
2 section on federally recognized Indian
3 tribes and tribal members; and

4 “(II) consult with the govern-
5 ments of federally recognized Indian
6 tribes.

7 “(ii) REQUIRED PARTICIPATION.—Not
8 later than 5 years after regulations are
9 published implementing this subsection, all
10 employers owned by, or entities of, the gov-
11 ernment of a federally recognized Indian
12 tribe shall participate in the System with
13 respect to all newly hired employees and
14 employees with expiring temporary employ-
15 ment authorization documents.

16 “(I) IMMIGRATION LAW VIOLATORS.—

17 “(i) ORDERS FINDING VIOLATIONS.—
18 An order finding any employer to have vio-
19 lated this section or section 274C may, in
20 the Secretary’s discretion, require the em-
21 ployer to participate in the System with re-
22 spect to newly hired employees and em-
23 ployees with expiring temporary employ-
24 ment authorization documents, if such em-
25 ployer is not otherwise required to partici-

1 pate in the System under this section. The
2 Secretary shall monitor such employer's
3 compliance with System procedures.

4 “(ii) PATTERN OR PRACTICE OF VIO-
5 LATIONS.—The Secretary may require an
6 employer that is required to participate in
7 the System with respect to newly hired em-
8 ployees to participate in the System with
9 respect to the employer's current employ-
10 ees if the employer is determined by the
11 Secretary or other appropriate authority to
12 have engaged in a pattern or practice of
13 violations of the immigration laws of the
14 United States.

15 “(J) VOLUNTARY PARTICIPATION.—The
16 Secretary may permit any employer that is not
17 required to participate in the System under this
18 section to do so on a voluntary basis.

19 “(3) CONSEQUENCE OF FAILURE TO PARTICI-
20 PATE.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), the failure, other than a de
23 minimis or inadvertent failure, of an employer
24 that is required to participate in the System to

1 comply with the requirements of the System
2 with respect to an individual—

3 “(i) shall be treated as a violation of
4 subsection (a)(1)(B) with respect to that
5 individual; and

6 “(ii) creates a rebuttable presumption
7 that the employer has violated paragraph
8 (1)(A) or (2) of subsection (a).

9 “(B) EXCEPTION.—

10 “(i) IN GENERAL.—Subparagraph (A)
11 shall not apply in a criminal prosecution.

12 “(ii) USE AS EVIDENCE.—Nothing in
13 this paragraph may be construed to limit
14 the use in the prosecution of a Federal
15 crime, in a manner otherwise consistent
16 with Federal criminal law and procedure,
17 of evidence relating to the employer’s fail-
18 ure to comply with requirements of the
19 System.

20 “(4) PROCEDURES FOR PARTICIPANTS IN THE
21 SYSTEM.—

22 “(A) IN GENERAL.—An employer partici-
23 pating in the System shall register such partici-
24 pation with the Secretary and, when hiring any

1 individual for employment in the United States,
2 shall comply with the following:

3 “(i) REGISTRATION OF EMPLOYERS.—

4 The Secretary, through notice in the Fed-
5 eral Register, shall prescribe procedures
6 that employers shall be required to follow
7 to register with the System.

8 “(ii) UPDATING INFORMATION.—The

9 employer is responsible for providing notice
10 of any change to the information required
11 under subclauses (I), (II), and (III) of
12 clause (v) before conducting any further
13 inquiries within the System, or on such
14 other schedule as the Secretary may pre-
15 scribe.

16 “(iii) TRAINING.—The Secretary shall

17 require employers to undergo such training
18 as the Secretary determines to be nec-
19 essary to ensure proper use, protection of
20 civil rights and civil liberties, privacy, in-
21 tegrity, and security of the System. To the
22 extent practicable, such training shall be
23 made available electronically on the U.S.
24 Citizenship and Immigration Services
25 website.

1 “(iv) NOTIFICATION TO EMPLOY-
2 EES.—The employer shall inform individ-
3 uals hired for employment that the Sys-
4 tem—

5 “(I) will be used by the employer;

6 “(II) may be used for immigra-
7 tion enforcement purposes; and

8 “(III) may not be used to dis-
9 criminate or to take adverse action
10 against a national of the United
11 States or an alien who has employ-
12 ment authorized status.

13 “(v) PROVISION OF ADDITIONAL IN-
14 FORMATION.—The employer shall obtain
15 from the individual (and the individual
16 shall provide) and shall record in such
17 manner as the Secretary may specify—

18 “(I) the individual’s social secu-
19 rity account number;

20 “(II) if the individual does not
21 attest to United States citizenship or
22 status as a national of the United
23 States under subsection (c)(2), such
24 identification or authorization number

1 established by the Department as the
2 Secretary shall specify; and

3 “(III) such other information as
4 the Secretary may require to deter-
5 mine the identity and employment au-
6 thorization of an individual.

7 “(vi) PRESENTATION OF DOCUMENTA-
8 TION.—The employer, and the individual
9 whose identity and employment authorized
10 status are being confirmed, shall fulfill the
11 requirements under subsection (c).

12 “(B) SEEKING CONFIRMATION.—

13 “(i) IN GENERAL.—An employer shall
14 use the System to confirm the identity and
15 employment authorized status of any indi-
16 vidual during—

17 “(I) the period beginning on the
18 date on which the individual accepts
19 an offer of employment and ending 3
20 business days after the date on which
21 employment begins; or

22 “(II) such other reasonable pe-
23 riod as the Secretary may prescribe.

24 “(ii) LIMITATION.—An employer may
25 not make the starting date of an individ-

1 ual’s employment or training or any other
2 term and condition of employment depend-
3 ent on the receipt of a confirmation of
4 identity and employment authorized status
5 by the System.

6 “(iii) REVERIFICATION.—If an indi-
7 vidual has a limited period of employment
8 authorized status, the individual’s em-
9 ployer shall reverify such status through
10 the System not later than 3 business days
11 after the last day of such period.

12 “(iv) OTHER EMPLOYMENT.—For em-
13 ployers directed by the Secretary to par-
14 ticipate in the System under paragraph
15 (2)(C)(i) to protect critical infrastructure
16 or otherwise specified circumstances in this
17 section to verify their entire workforce, the
18 System may be used for initial verification
19 of an individual who was hired before the
20 employer became subject to the System,
21 and the employer shall initiate all required
22 procedures on or before such date as the
23 Secretary shall specify.

24 “(v) NOTIFICATION.—

1 “(I) IN GENERAL.—The Sec-
2 retary shall provide, and the employer
3 shall utilize, as part of the System, a
4 method of notifying employers of a
5 confirmation or nonconfirmation of an
6 individual’s identity and employment
7 authorized status, or a notice that
8 further action is required to verify
9 such identity or employment eligibility
10 (referred to in this subsection as a
11 ‘further action notice’).

12 “(II) PROCEDURES.—The Sec-
13 retary shall—

14 “(aa) directly notify the in-
15 dividual and the employer, by
16 means of electronic correspond-
17 ence, mail, text message, tele-
18 phone, or other direct commu-
19 nication, of a nonconfirmation or
20 further action notice;

21 “(bb) provide information
22 about filing an administrative ap-
23 peal under paragraph (6) and a
24 filing for review before an admin-

1 administrative law judge under para-
2 graph (7); and

3 “(cc) establish procedures to
4 directly notify the individual and
5 the employer of a confirmation.

6 “(III) IMPLEMENTATION.—The
7 Secretary may provide for a phased-in
8 implementation of the notification re-
9 quirements under this clause, as ap-
10 appropriate. The notification system
11 shall cover all inquiries not later than
12 1 year from the date of the enactment
13 of the E-Verify System Act of 2018.

14 “(C) CONFIRMATION OR NONCONFIRMA-
15 TION.—

16 “(i) INITIAL RESPONSE.—

17 “(I) IN GENERAL.—Except as
18 provided in subclause (II), the System
19 shall provide—

20 “(aa) a confirmation of an
21 individual’s identity and employ-
22 ment authorized status or a fur-
23 ther action notice at the time of
24 the inquiry; and

1 “(bb) an appropriate code
2 indicating such confirmation or
3 such further action notice.

4 “(II) ALTERNATIVE DEAD-
5 LINE.—If the System is unable to
6 provide immediate confirmation or
7 further action notice for technological
8 reasons or due to unforeseen cir-
9 cumstances, the System shall provide
10 a confirmation or further action notice
11 not later than 3 business days after
12 the initial inquiry.

13 “(ii) CONFIRMATION UPON INITIAL
14 INQUIRY.—If the employer receives an ap-
15 propriate confirmation of an individual’s
16 identity and employment authorized status
17 under the System, the employer shall
18 record the confirmation in such manner as
19 the Secretary may specify.

20 “(iii) FURTHER ACTION NOTICE AND
21 LATER CONFIRMATION OR NONCONFIRMA-
22 TION.—

23 “(I) NOTIFICATION AND AC-
24 KNOWLEDGMENT THAT FURTHER AC-
25 TION IS REQUIRED.—Not later than 3

1 business days after an employer re-
2 ceives a further action notice of an in-
3 dividual's identity or employment eli-
4 gibility under the System, or during
5 such other reasonable time as the Sec-
6 retary may prescribe, the employer
7 shall notify the individual for whom
8 the confirmation is sought of the fur-
9 ther action notice and any procedures
10 specified by the Secretary for address-
11 ing such notice. The further action
12 notice shall be given to the individual
13 in writing and the employer shall ac-
14 knowledge in the System under pen-
15 alty of perjury that it provided the
16 employee with the further action no-
17 tice. The individual shall affirmatively
18 acknowledge in writing, or in such
19 other manner as the Secretary may
20 specify, the receipt of the further ac-
21 tion notice from the employer. If the
22 individual refuses to acknowledge the
23 receipt of the further action notice, or
24 acknowledges in writing that the indi-
25 vidual will not contest the further ac-

1 tion notice under subclause (II), the
2 employer shall notify the Secretary in
3 such manner as the Secretary may
4 specify.

5 “(II) CONTEST.—Not later than
6 10 business days after receiving noti-
7 fication of a further action notice
8 under subclause (I), the individual
9 shall contact the appropriate Federal
10 agency and, if the Secretary so re-
11 quires, appear in person for purposes
12 of verifying the individual’s identity
13 and employment eligibility. The Sec-
14 retary, in consultation with the Com-
15 missioner and other appropriate Fed-
16 eral agencies, shall specify an avail-
17 able secondary verification procedure
18 to confirm the validity of information
19 provided and to provide a confirma-
20 tion or nonconfirmation. Any proce-
21 dures for reexamination shall not limit
22 in any way an employee’s right to ap-
23 peal a nonconfirmation.

24 “(III) NO CONTEST.—If the indi-
25 vidual refuses to acknowledge receipt

1 of the further action notice, acknowl-
2 edges that the individual will not con-
3 test the further action notice as pro-
4 vided in subclause (I), or does not
5 contact the appropriate Federal agen-
6 cy within the period specified in sub-
7 clause (II), following expiration of the
8 period specified in subclause (II), a
9 nonconfirmation shall be issued. The
10 employer shall record the noncon-
11 firmation in such manner as the Sec-
12 retary may specify and terminate the
13 individual's employment. An individ-
14 ual's failure to contest a further ac-
15 tion notice shall not be considered an
16 admission of guilt with respect to any
17 violation of this section or any provi-
18 sion of law.

19 “(IV) CONFIRMATION OR NON-
20 CONFIRMATION.—Unless the period is
21 extended in accordance with this sub-
22 clause, the System shall provide a
23 confirmation or nonconfirmation not
24 later than 10 business days after the
25 date on which the individual contests

1 the further action notice under sub-
2 clause (II). If the Secretary deter-
3 mines that good cause exists, after
4 taking into account adverse impacts
5 to the employer, and including time to
6 permit the individual to obtain and
7 provide needed evidence of identity or
8 employment eligibility, the Secretary
9 shall extend the period for providing
10 confirmation or nonconfirmation for
11 stated periods beyond 10 business
12 days. When confirmation or noncon-
13 firmation is provided, the confirma-
14 tion system shall provide an appro-
15 priate code indicating such confirma-
16 tion or nonconfirmation.

17 “(V) REEXAMINATION.—Nothing
18 in this section shall prevent the Sec-
19 retary from establishing procedures to
20 reexamine a case where a confirma-
21 tion or nonconfirmation has been pro-
22 vided if subsequently received infor-
23 mation indicates that the confirmation
24 or nonconfirmation may not have been
25 correct. Any procedures for reexam-

1 ination shall not limit in any way an
2 employee's right to appeal a noncon-
3 firmation.

4 “(VI) EMPLOYEE PROTEC-
5 TIONS.—An employer may not termi-
6 nate employment or take any other
7 adverse action against an individual
8 solely because of a failure of the indi-
9 vidual to have identity and employ-
10 ment eligibility confirmed under this
11 subsection until—

12 “(aa) a nonconfirmation has
13 been issued;

14 “(bb) if the further action
15 notice was contested, the period
16 to timely file an administrative
17 appeal has expired without an
18 appeal or the contestation to the
19 further action notice is with-
20 drawn; or

21 “(cc) if an appeal before an
22 administrative law judge under
23 paragraph (7) has been filed, the
24 nonconfirmation has been upheld

1 or the appeal has been withdrawn
2 or dismissed.

3 “(iv) NOTICE OF NONCONFIRMA-
4 TION.—Not later than 3 business days
5 after an employer receives a nonconfirma-
6 tion, or during such other reasonable time
7 as the Secretary may provide, the employer
8 shall notify the individual who is the sub-
9 ject of the nonconfirmation, and provide
10 information about filing an administrative
11 appeal pursuant to paragraph (6) and a
12 request for a hearing before an administra-
13 tive law judge pursuant to paragraph (7).
14 The nonconfirmation notice shall be given
15 to the individual in writing and the em-
16 ployer shall acknowledge in the System
17 under penalty of perjury that it provided
18 the notice (or adequately attempted to pro-
19 vide notice, but was unable to do so despite
20 reasonable efforts). The individual shall af-
21 firmatively acknowledge in writing, or in
22 such other manner as the Secretary may
23 prescribe, the receipt of the nonconfirma-
24 tion notice from the employer. If the indi-
25 vidual refuses or fails to acknowledge the

1 receipt of the nonconfirmation notice, the
2 employer shall notify the Secretary in such
3 manner as the Secretary may prescribe.

4 “(D) CONSEQUENCES OF NONCONFIRMA-
5 TION.—

6 “(i) TERMINATION OF CONTINUED
7 EMPLOYMENT.—Except as provided in
8 clause (iii), an employer that has received
9 a nonconfirmation regarding an individual
10 and has made reasonable efforts to notify
11 the individual in accordance with subpara-
12 graph (C)(iv) shall terminate the employ-
13 ment of the individual upon the expiration
14 of the time period specified in paragraph
15 (7).

16 “(ii) CONTINUED EMPLOYMENT
17 AFTER NONCONFIRMATION.—If the em-
18 ployer continues to employ an individual
19 after receiving nonconfirmation and ex-
20 haustion of all appeals or expiration of all
21 rights to appeal if not appealed, in viola-
22 tion of clause (i), a rebuttable presumption
23 is created that the employer has violated
24 paragraphs (1)(A) and (2) of subsection

1 (a). Such presumption shall not apply in
2 any prosecution under subsection (k)(1).

3 “(iii) EFFECT OF ADMINISTRATIVE
4 APPEAL OR REVIEW BY ADMINISTRATIVE
5 LAW JUDGE.—If an individual files an ad-
6 ministrative appeal of the nonconfirmation
7 within the time period specified in para-
8 graph (6)(A), or files for review with an
9 administrative law judge specified in para-
10 graph (7)(A), the employer shall not termi-
11 nate the individual’s employment under
12 this subparagraph prior to the resolution
13 of the administrative appeal unless the
14 Secretary or Commissioner terminates the
15 stay under paragraph (6)(B) or (7)(B).

16 “(iv) WEEKLY REPORT.—The Direc-
17 tor of U.S. Citizenship and Immigration
18 Services shall submit a weekly report to
19 the Assistant Secretary for Immigration
20 and Customs Enforcement that includes,
21 for each individual who receives final non-
22 confirmation through the System—

23 “(I) the name of such individual;

24 “(II) his or her social security
25 number or alien file number;

1 “(III) the name and contact in-
2 formation for his or her current em-
3 ployer; and

4 “(IV) any other critical informa-
5 tion that the Assistant Secretary de-
6 termines to be appropriate.

7 “(E) OBLIGATION TO RESPOND TO QUE-
8 RIES AND ADDITIONAL INFORMATION.—

9 “(i) IN GENERAL.—Employers shall
10 comply with requests for information from
11 the Secretary and the Immigration and
12 Employee Rights Section of the Civil
13 Rights Division of the Department of Jus-
14 tice, including queries concerning current
15 and former employees, within the time
16 frame during which records are required to
17 be maintained under this section regarding
18 such former employees, if such information
19 relates to the functioning of the System,
20 the accuracy of the responses provided by
21 the System, or any suspected misuse, dis-
22 crimination, fraud, or identity theft in the
23 use of the System. Failure to comply with
24 a request under this clause constitutes a
25 violation of subsection (a)(1)(B).

1 “(ii) ACTION BY INDIVIDUALS.—

2 “(I) IN GENERAL.—Individuals
3 being verified through the System
4 may be required to take further action
5 to address questions identified by the
6 Secretary or the Commissioner re-
7 garding the documents relied upon for
8 purposes of subsection (c).

9 “(II) NOTIFICATION.—Not later
10 than 3 business days after the receipt
11 of such questions regarding an indi-
12 vidual, or during such other reason-
13 able time as the Secretary may pre-
14 scribe, the employer shall—

15 “(aa) notify the individual of
16 any such requirement for further
17 actions; and

18 “(bb) record the date and
19 manner of such notification.

20 “(III) ACKNOWLEDGMENT.—The
21 individual shall acknowledge the noti-
22 fication received from the employer
23 under subclause (II) in writing, or in
24 such other manner as the Secretary
25 may prescribe.

1 “(iii) RULEMAKING.—

2 “(I) IN GENERAL.—The Sec-
3 retary, in consultation with the Com-
4 missioner and the Attorney General,
5 is authorized to issue regulations im-
6 plementing, clarifying, and
7 supplementing the requirements under
8 this subparagraph—

9 “(aa) to facilitate the func-
10 tioning, accuracy, and fairness of
11 the System;

12 “(bb) to prevent misuse, dis-
13 crimination, fraud, or identity
14 theft in the use of the System; or

15 “(cc) to protect and main-
16 tain the confidentiality of infor-
17 mation that could be used to lo-
18 cate or otherwise place at risk of
19 harm victims of domestic vio-
20 lence, dating violence, sexual as-
21 sault, stalking, and human traf-
22 ficking, and of the applicant or
23 beneficiary of any petition de-
24 scribed in section 384(a)(2) of
25 the Illegal Immigration Reform

1 and Immigrant Responsibility
2 Act of 1996 (8 U.S.C.
3 1367(a)(2)).

4 “(II) NOTICE.—The regulations
5 issued under subclause (I) shall be—

6 “(aa) published in the Fed-
7 eral Register; and

8 “(bb) provided directly to all
9 employers registered in the Sys-
10 tem.

11 “(F) DESIGNATED AGENTS.—The Sec-
12 retary shall establish a process—

13 “(i) for certifying, on an annual basis
14 or at such times as the Secretary may pre-
15 scribe, designated agents and other System
16 service providers seeking access to the Sys-
17 tem to perform verification queries on be-
18 half of employers, based upon training,
19 usage, privacy, and security standards pre-
20 scribed by the Secretary;

21 “(ii) for ensuring that designated
22 agents and other System service providers
23 are subject to monitoring to the same ex-
24 tent as direct access users; and

1 “(iii) for establishing standards for
2 certification of electronic I–9 programs.

3 “(G) REQUIREMENT TO PROVIDE INFOR-
4 MATION.—

5 “(i) IN GENERAL.—No later than 3
6 months after the date of the enactment of
7 the E–Verify System Act of 2018, the Sec-
8 retary, in consultation with the Secretary
9 of Labor, the Secretary of Agriculture, the
10 Commissioner, the Attorney General, the
11 Equal Employment Opportunity Commis-
12 sion, and the Administrator of the Small
13 Business Administration, shall commence a
14 campaign to disseminate information re-
15 specting the procedures, rights, and rem-
16 edies prescribed under this section.

17 “(ii) CAMPAIGN REQUIREMENTS.—
18 The campaign authorized under clause
19 (i)—

20 “(I) shall be aimed at increasing
21 the knowledge of employers, employ-
22 ees, and the general public concerning
23 employer and employee rights, respon-
24 sibilities, and remedies under this sec-
25 tion; and

1 “(II) shall be coordinated with
2 the public education campaign con-
3 ducted by U.S. Citizenship and Immi-
4 gration Services.

5 “(iii) ASSESSMENT.—The Secretary
6 shall assess the success of the campaign in
7 achieving the goals of the campaign.

8 “(iv) AUTHORITY TO CONTRACT.—In
9 order to carry out and assess the campaign
10 under this subparagraph, the Secretary
11 may, to the extent deemed appropriate and
12 subject to the availability of appropria-
13 tions, contract with public and private or-
14 ganizations for outreach and assessment
15 activities under the campaign.

16 “(v) AUTHORIZATION OF APPROPRIA-
17 TIONS.—There are authorized to be appro-
18 priated to carry out this paragraph
19 \$40,000,000 for each of the fiscal years
20 2019 through 2021.

21 “(H) AUTHORITY TO MODIFY INFORMA-
22 TION REQUIREMENTS.—Based on a regular re-
23 view of the System and the document
24 verification procedures to identify misuse or
25 fraudulent use and to assess the security of the

1 documents and processes used to establish iden-
2 tity or employment authorized status, the Sec-
3 retary, in consultation with the Commissioner,
4 after publication of notice in the Federal Reg-
5 ister and an opportunity for public comment,
6 may modify, if the Secretary determines that
7 the modification is necessary to ensure that the
8 System accurately and reliably determines the
9 identity and employment authorized status of
10 employees and maintain existing protections
11 against misuse, discrimination, fraud, and iden-
12 tity theft—

13 “(i) the information that shall be pre-
14 sented to the employer by an individual;

15 “(ii) the information that shall be pro-
16 vided to the System by the employer; and

17 “(iii) the procedures that shall be fol-
18 lowed by employers with respect to the
19 process of verifying an individual through
20 the System.

21 “(I) SELF-VERIFICATION.—Subject to ap-
22 propriate safeguards to prevent misuse of the
23 system, the Secretary, in consultation with the
24 Commissioner, shall establish a secure self-
25 verification procedure to permit an individual

1 who seeks to verify the individual’s own employ-
2 ment eligibility to contact the appropriate agen-
3 cy and, in a timely manner, correct or update
4 the information contained in the System.

5 “(5) PROTECTION FROM LIABILITY FOR AC-
6 TIONS TAKEN ON THE BASIS OF INFORMATION PRO-
7 VIDED BY THE SYSTEM.—An employer shall not be
8 liable to a job applicant, an employee, the Federal
9 Government, or a State or local government, under
10 Federal, State, or local criminal or civil law for any
11 employment-related action taken with respect to a
12 job applicant or employee in good faith reliance on
13 information provided by the System.

14 “(6) ADMINISTRATIVE APPEAL.—

15 “(A) IN GENERAL.—An individual who is
16 notified of a nonconfirmation may, not later
17 than 10 business days after the date that such
18 notice is received, file an administrative appeal
19 of such nonconfirmation with the Commissioner
20 if the notice is based on records maintained by
21 the Commissioner, or in any other case, with
22 the Secretary. An individual who did not timely
23 contest a further action notice timely received
24 by that individual for which the individual ac-

1 knowledgeed receipt may not be granted a review
2 under this paragraph.

3 “(B) ADMINISTRATIVE STAY OF NONCON-
4 FIRMATION.—The nonconfirmation shall be
5 automatically stayed upon the timely filing of
6 an administrative appeal, unless the noncon-
7 firmation resulted after the individual acknowl-
8 edged receipt of the further action notice but
9 failed to contact the appropriate agency within
10 the time provided. The stay shall remain in ef-
11 fect until the resolution of the appeal, unless
12 the Secretary or the Commissioner terminates
13 the stay based on a determination that the ad-
14 ministrative appeal is frivolous or filed for pur-
15 poses of delay.

16 “(C) REVIEW FOR ERROR.—The Secretary
17 and the Commissioner shall develop procedures
18 for resolving administrative appeals regarding
19 nonconfirmations based upon the information
20 that the individual has provided, including any
21 additional evidence or argument that was not
22 previously considered. Any such additional evi-
23 dence or argument shall be filed within 10 busi-
24 ness days of the date the appeal was originally
25 filed. Appeals shall be resolved within 20 busi-

1 ness days after the individual has submitted all
2 evidence and arguments the individual wishes to
3 submit, or has stated in writing that there is no
4 additional evidence that the individual wishes to
5 submit. The Secretary and the Commissioner
6 may, on a case by case basis for good cause, ex-
7 tend the filing and submission period in order
8 to ensure accurate resolution of an appeal be-
9 fore the Secretary or the Commissioner.

10 “(D) PREPONDERANCE OF EVIDENCE.—
11 Administrative appeal under this paragraph
12 shall be limited to whether a nonconfirmation
13 notice is supported by a preponderance of the
14 evidence.

15 “(E) DAMAGES, FEES, AND COSTS.—No
16 money damages, fees or costs may be awarded
17 in the administrative appeal process under this
18 paragraph.

19 “(7) REVIEW BY ADMINISTRATIVE LAW
20 JUDGE.—

21 “(A) IN GENERAL.—Not later than 30
22 days after the date an individual receives a final
23 determination on an administrative appeal
24 under paragraph (6), the individual may obtain
25 review of such determination by filing a com-

1 plaint with a Department of Justice administra-
2 tive law judge in accordance with this para-
3 graph.

4 “(B) STAY OF NONCONFIRMATION.—The
5 nonconfirmation related to such final deter-
6 mination shall be automatically stayed upon the
7 timely filing of a complaint under this para-
8 graph, and the stay shall remain in effect until
9 the resolution of the complaint, unless the ad-
10 ministrative law judge determines that the ac-
11 tion is frivolous or filed for purposes of delay.

12 “(C) SERVICE.—The respondent to com-
13 plaint filed under this paragraph is either the
14 Secretary or the Commissioner, but not both,
15 depending upon who issued the administrative
16 order under paragraph (6). In addition to serv-
17 ing the respondent, the plaintiff shall serve the
18 Attorney General.

19 “(D) AUTHORITY OF ADMINISTRATIVE
20 LAW JUDGE.—

21 “(i) RULES OF PRACTICE.—The Sec-
22 retary shall promulgate regulations regard-
23 ing the rules of practice in appeals brought
24 pursuant to this subsection.

1 “(ii) AUTHORITY OF ADMINISTRATIVE
2 LAW JUDGE.—The administrative law
3 judge shall have power to—

4 “(I) terminate a stay of a non-
5 confirmation under subparagraph (B)
6 if the administrative law judge deter-
7 mines that the action is frivolous or
8 filed for purposes of delay;

9 “(II) adduce evidence at a hear-
10 ing;

11 “(III) compel by subpoena the
12 attendance of witnesses and the pro-
13 duction of evidence at any designated
14 place or hearing;

15 “(IV) resolve claims of identity
16 theft; and

17 “(V) enter, upon the pleadings
18 and any evidence adduced at a hear-
19 ing, a decision affirming or reversing
20 the result of the agency, with or with-
21 out remanding the cause for a rehear-
22 ing.

23 “(iii) SUBPOENA.—In case of contu-
24 macy or refusal to obey a subpoena law-
25 fully issued under this section and upon

1 application of the administrative law judge,
2 an appropriate district court of the United
3 States may issue an order requiring com-
4 pliance with such subpoena and any failure
5 to obey such order may be punished by
6 such court as a contempt of such court.

7 “(iv) TRAINING.—An administrative
8 law judge hearing cases shall have special
9 training respecting employment authorized
10 status verification.

11 “(E) ORDER BY ADMINISTRATIVE LAW
12 JUDGE.—

13 “(i) IN GENERAL.—The administra-
14 tive law judge shall issue and cause to be
15 served to the parties in the proceeding an
16 order which may be appealed as provided
17 in subparagraph (G).

18 “(ii) CONTENTS OF ORDER.—Such an
19 order shall uphold or reverse the final de-
20 termination on the request for reconsider-
21 ation and order lost wages and other ap-
22 propriate remedies as provided in subpara-
23 graph (F).

24 “(F) COMPENSATION FOR ERROR.—

1 “(i) IN GENERAL.—In cases in which
2 the administrative law judge reverses the
3 final determination of the Secretary or the
4 Commissioner made under paragraph (6),
5 and the administrative law judge finds
6 that—

7 “(I) the nonconfirmation was due
8 to gross negligence or intentional mis-
9 conduct of the employer, the adminis-
10 trative law judge may order the em-
11 ployer to pay the individual lost
12 wages, and reasonable costs and attor-
13 neys’ fees incurred during administra-
14 tive and judicial review; or

15 “(II) such final determination
16 was erroneous by reason of the neg-
17 ligence of the Secretary or the Com-
18 missioner, the administrative law
19 judge may order the Secretary or the
20 Commissioner to pay the individual
21 lost wages, and reasonable costs and
22 attorneys’ fees incurred during the ad-
23 ministrative appeal and the adminis-
24 trative law judge review.

1 “(ii) CALCULATION OF LOST
2 WAGES.—Lost wages shall be calculated
3 based on the wage rate and work schedule
4 that prevailed prior to termination. The in-
5 dividual shall be compensated for wages
6 lost beginning on the first scheduled work
7 day after employment was terminated and
8 ending 120 days after completion of the
9 administrative law judge’s review described
10 in this paragraph or the day after the indi-
11 vidual is reinstated or obtains employment
12 elsewhere, whichever occurs first. If the in-
13 dividual obtains employment elsewhere at a
14 lower wage rate, the individual shall be
15 compensated for the difference in wages
16 for the period ending 120 days after com-
17 pletion of the administrative law judge re-
18 view process. No lost wages shall be award-
19 ed for any period of time during which the
20 individual was not in employment author-
21 ized status.

22 “(iii) PAYMENT OF COMPENSATION.—
23 Notwithstanding any other law, payment of
24 compensation for lost wages, costs, and at-
25 torneys’ fees under this paragraph, or com-

1 promise settlements of the same, shall be
2 made as provided by section 1304 of title
3 31, United States Code. Appropriations
4 made available to the Secretary or the
5 Commissioner, accounts provided for under
6 section 286, and funds from the Federal
7 Old-Age and Survivors Insurance Trust
8 Fund or the Federal Disability Insurance
9 Trust Fund shall not be available to pay
10 such compensation.

11 “(G) APPEAL.—No later than 45 days
12 after the entry of such final order, any person
13 adversely affected by such final order may seek
14 review of such order in the United States Court
15 of Appeals for the circuit in which the violation
16 is alleged to have occurred or in which the em-
17 ployer resides or transacts business.

18 “(8) MANAGEMENT OF THE SYSTEM.—

19 “(A) IN GENERAL.—The Secretary is au-
20 thorized to establish, manage, and modify the
21 System, which shall—

22 “(i) respond to inquiries made by par-
23 ticipating employers at any time through
24 the internet, or such other means as the
25 Secretary may designate, concerning an in-

1 individual's identity and whether the indi-
2 vidual is in employment authorized status;

3 “(ii) maintain records of the inquiries
4 that were made, of confirmations provided
5 (or not provided), and of the codes pro-
6 vided to employers as evidence of their
7 compliance with their obligations under the
8 System; and

9 “(iii) provide information to, and re-
10 quire action by, employers and individuals
11 using the System.

12 “(B) DESIGN AND OPERATION OF SYS-
13 TEM.—The System shall be designed and oper-
14 ated—

15 “(i) to maximize its reliability and
16 ease of use by employers consistent with
17 protecting the privacy and security of the
18 underlying information, and ensuring full
19 notice of such use to employees;

20 “(ii) to maximize its ease of use by
21 employees, including direct notification of
22 its use, of results, and ability to challenge
23 results;

24 “(iii) to respond accurately to all in-
25 quiries made by employers on whether in-

1 individuals are authorized to be employed
2 and to register any times when the system
3 is unable to receive inquiries;

4 “(iv) to maintain appropriate adminis-
5 trative, technical, and physical safeguards
6 to prevent unauthorized disclosure of per-
7 sonal information, misuse by employers
8 and employees, and discrimination;

9 “(v) to require regularly scheduled re-
10 fresher training of all users of the System
11 to ensure compliance with all procedures;

12 “(vi) to allow for auditing of the use
13 of the System to detect misuse, discrimina-
14 tion, fraud, and identity theft, to protect
15 privacy and assess System accuracy, and
16 to preserve the integrity and security of
17 the information in all of the System, in-
18 cluding—

19 “(I) to develop and use tools and
20 processes to detect or prevent fraud
21 and identity theft, such as multiple
22 uses of the same identifying informa-
23 tion or documents to fraudulently gain
24 employment;

1 “(II) to develop and use tools
2 and processes to detect and prevent
3 misuse of the system by employers
4 and employees;

5 “(III) to develop tools and pro-
6 cesses to detect anomalies in the use of
7 the system that may indicate potential
8 fraud or misuse of the system; and

9 “(IV) to audit documents and in-
10 formation submitted by employees to
11 employers, including authority to con-
12 duct interviews with employers and
13 employees, and obtain information
14 concerning employment from the em-
15 ployer;

16 “(vii) to confirm identity and employ-
17 ment authorization through verification
18 and comparison of records as determined
19 necessary by the Secretary;

20 “(viii) to confirm electronically the
21 issuance of the employment authorization
22 or identity document and—

23 “(I) if such photograph is avail-
24 able, to display the digital photograph
25 that the issuer placed on the docu-

1 ment so that the employer can com-
2 pare the photograph displayed to the
3 photograph on the document pre-
4 sented by the employee; or

5 “(II) if a photograph is not avail-
6 able from the issuer, to confirm the
7 authenticity of the document using
8 such alternative procedures as the
9 Secretary may specify; and

10 “(ix) to provide appropriate notifica-
11 tion directly to employers registered with
12 the System of all changes made by the
13 Secretary or the Commissioner related to
14 allowed and prohibited documents, and use
15 of the System.

16 “(C) SAFEGUARDS TO THE SYSTEM.—

17 “(i) REQUIREMENT TO DEVELOP.—

18 The Secretary, in consultation with the
19 Commissioner and other appropriate Fed-
20 eral and State agencies, shall develop poli-
21 cies and procedures to ensure protection of
22 the privacy and security of personally iden-
23 tifiable information and identifiers con-
24 tained in the records accessed or main-
25 tained by the System. The Secretary, in

1 consultation with the Commissioner and
2 other appropriate Federal and State agen-
3 cies, shall develop and deploy appropriate
4 privacy and security training for the Fed-
5 eral and State employees accessing the
6 records under the System.

7 “(ii) PRIVACY AUDITS.—The Sec-
8 retary, acting through the Chief Privacy
9 Officer of the Department, shall conduct
10 regular privacy audits of the policies and
11 procedures established under clause (i), in-
12 cluding any collection, use, dissemination,
13 and maintenance of personally identifiable
14 information and any associated informa-
15 tion technology systems, as well as scope of
16 requests for this information. The Chief
17 Privacy Officer shall review the results of
18 the audits and recommend to the Secretary
19 any changes necessary to improve the pri-
20 vacy protections of the program.

21 “(iii) ACCURACY AUDITS.—

22 “(I) IN GENERAL.—Not later
23 than November 30 of each year, the
24 Inspector General of the Department
25 of Homeland Security shall submit a

1 report to the Secretary, with a copy to
2 the President of the Senate and the
3 Speaker of the House of Representa-
4 tives, that sets forth the error rate of
5 the System for the previous fiscal year
6 and the assessments required to be
7 submitted by the Secretary under sub-
8 paragraphs (A) and (B) of paragraph
9 (10). The report shall describe in de-
10 tail the methodology employed for
11 purposes of the report, and shall make
12 recommendations for how error rates
13 may be reduced.

14 “(II) ERROR RATE DEFINED.—In
15 this clause, the term ‘error rate’
16 means the percentage determined by
17 dividing—

18 “(aa) the number of employ-
19 ment authorized individuals who
20 received further action notices,
21 contested such notices, and were
22 subsequently found to be employ-
23 ment authorized; by

1 “(bb) the number of System
2 inquiries submitted for employ-
3 ment authorized individuals.

4 “(III) REDUCTION OF PENALTIES
5 FOR RECORDKEEPING OR
6 VERIFICATION PRACTICES FOLLOWING
7 PERSISTENT SYSTEM INACCURA-
8 CIES.—Notwithstanding subsection
9 (e)(4)(C)(i), in any calendar year fol-
10 lowing a report by the Inspector Gen-
11 eral under subclause (I) that the Sys-
12 tem had an error rate higher than 0.3
13 percent for the previous fiscal year,
14 the civil penalty assessable by the Sec-
15 retary or an administrative law judge
16 under that subsection for each first-
17 time violation by an employer who has
18 not previously been penalized under
19 this section may not exceed \$1,000.

20 “(iv) RECORDS SECURITY PRO-
21 GRAM.—Any person, including a private
22 third party vendor, who retains document
23 verification or System data pursuant to
24 this section shall implement an effective
25 records security program that—

1 “(I) ensures that only authorized
2 personnel have access to document
3 verification or System data; and

4 “(II) ensures that whenever such
5 data is created, completed, updated,
6 modified, altered, or corrected in elec-
7 tronic format, a secure and perma-
8 nent record is created that establishes
9 the date of access, the identity of the
10 individual who accessed the electronic
11 record, and the particular action
12 taken.

13 “(v) RECORDS SECURITY PROGRAM.—
14 In addition to the security measures de-
15 scribed in clause (iv), a private third party
16 vendor who retains document verification
17 or System data pursuant to this section
18 shall implement an effective records secu-
19 rity program that—

20 “(I) provides for backup and re-
21 covery of any records maintained in
22 electronic format to protect against
23 information loss, such as power inter-
24 ruptions; and

1 “(II) ensures that employees are
2 trained to minimize the risk of unau-
3 thorized or accidental alteration or
4 erasure of such data in electronic for-
5 mat.

6 “(vi) AUTHORIZED PERSONNEL DE-
7 FINED.—In this subparagraph, the term
8 ‘authorized personnel’ means anyone reg-
9 istered as a System user, or anyone with
10 partial or full responsibility for completion
11 of employment authorization verification or
12 retention of data in connection with em-
13 ployment authorization verification on be-
14 half of an employer.

15 “(D) AVAILABLE FACILITIES AND ALTER-
16 NATIVE ACCOMMODATIONS.—The Secretary
17 shall make appropriate arrangements and de-
18 velop standards to allow employers or employ-
19 ees, including remote hires, who are otherwise
20 unable to access the System to use electronic
21 and telephonic formats (including video confer-
22 encing, scanning technology, and other available
23 technologies), Federal Government facilities,
24 public facilities, or other available locations in
25 order to utilize the System.

1 “(E) RESPONSIBILITIES OF THE SEC-
2 RETARY.—

3 “(i) IN GENERAL.—As part of the
4 System, the Secretary shall maintain a re-
5 liable, secure method, which, operating
6 through the System and within the time
7 periods specified, compares the name, alien
8 identification or authorization number, or
9 other information as determined relevant
10 by the Secretary, provided in an inquiry
11 against such information maintained or
12 accessed by the Secretary in order to con-
13 firm (or not confirm) the validity of the in-
14 formation provided, the correspondence of
15 the name and number, whether the alien
16 has employment authorized status (or, to
17 the extent that the Secretary determines to
18 be feasible and appropriate, whether the
19 records available to the Secretary verify
20 the identity or status of a national of the
21 United States), and such other information
22 as the Secretary may prescribe.

23 “(ii) PHOTOGRAPH DISPLAY.—As part
24 of the System, the Secretary shall establish
25 a reliable, secure method, which, operating

1 through the System, displays the digital
2 photograph described in subparagraph
3 (B)(viii)(I).

4 “(iii) TIMING OF NOTICES.—The Sec-
5 retary shall have authority to prescribe
6 when a confirmation, nonconfirmation, or
7 further action notice shall be issued.

8 “(iv) USE OF INFORMATION.—The
9 Secretary shall perform regular audits
10 under the System, as described in subpara-
11 graph (B)(vi) and shall utilize the informa-
12 tion obtained from such audits, as well as
13 any information obtained from the Com-
14 missioner pursuant to part E of title XI of
15 the Social Security Act (42 U.S.C. 1301 et
16 seq.), for the purposes of this section and
17 to administer and enforce the immigration
18 laws.

19 “(v) IDENTITY FRAUD PROTECTION.—
20 To prevent identity fraud, not later than
21 18 months after the date of the enactment
22 of the E-Verify System Act of 2018, the
23 Secretary shall—

24 “(I) in consultation with the
25 Commissioner, establish a program to

1 provide a reliable, secure method for
2 an individual to temporarily suspend
3 or limit the use of the individual's so-
4 cial security account number or other
5 identifying information for verification
6 by the System; and

7 “(II) for each individual being
8 verified through the System—

9 “(aa) notify the individual
10 that the individual has the option
11 to limit the use of the individ-
12 ual's social security account num-
13 ber or other identifying informa-
14 tion for verification by the Sys-
15 tem; and

16 “(bb) provide instructions to
17 the individuals for exercising the
18 option referred to in item (aa).

19 “(vi) ALLOWING PARENTS TO PRE-
20 VENT THEFT OF THEIR CHILD'S IDEN-
21 TITY.—The Secretary, in consultation with
22 the Commissioner, shall establish a pro-
23 gram that provides a reliable, secure meth-
24 od by which parents or legal guardians
25 may suspend or limit the use of the social

1 security account number or other identi-
2 fying information of a minor under their
3 care for the purposes of the System. The
4 Secretary may implement the program on
5 a limited pilot program basis before mak-
6 ing it fully available to all individuals.

7 “(vii) PROTECTION FROM MULTIPLE
8 USE.—The Secretary and the Commis-
9 sioner shall establish a procedure for iden-
10 tifying and handling a situation in which a
11 social security account number has been
12 identified to be subject to unusual multiple
13 use in the System or is otherwise suspected
14 or determined to have been compromised
15 by identity fraud.

16 “(viii) MONITORING AND COMPLIANCE
17 UNIT.—The Secretary shall establish or
18 designate a monitoring and compliance
19 unit to detect and reduce identity fraud
20 and other misuse of the System.

21 “(ix) CIVIL RIGHTS AND CIVIL LIB-
22 ERTIES ASSESSMENTS.—

23 “(I) REQUIREMENT TO CON-
24 DUCT.—The Secretary shall conduct
25 regular civil rights and civil liberties

1 assessments of the System, including
2 participation by employers, other pri-
3 vate entities, and Federal, State, and
4 local government entities.

5 “(II) REQUIREMENT TO RE-
6 SPOND.—Employers, other private en-
7 tities, and Federal, State, and local
8 entities shall timely respond to any re-
9 quest in connection with such an as-
10 sessment.

11 “(III) ASSESSMENT AND REC-
12 OMMENDATIONS.—The Officer for
13 Civil Rights and Civil Liberties of the
14 Department shall review the results of
15 each such assessment and recommend
16 to the Secretary any changes nec-
17 essary to improve the civil rights and
18 civil liberties protections of the Sys-
19 tem.

20 “(F) GRANTS TO STATES.—

21 “(i) IN GENERAL.—The Secretary
22 shall create and administer a grant pro-
23 gram to help provide funding for States
24 that grant—

1 “(I) the Secretary access to driv-
2 er’s license information as needed to
3 confirm that a driver’s license pre-
4 sented under subsection (c)(1)(D)(i)
5 confirms the identity of the subject of
6 the System check, and that a driver’s
7 license matches the State’s records;
8 and

9 “(II) such assistance as the Sec-
10 retary may request in order to resolve
11 further action notices or nonconfirma-
12 tions relating to such information.

13 “(ii) CONSTRUCTION WITH THE DRIV-
14 ER’S PRIVACY PROTECTION ACT OF 1994.—
15 The provision of a photograph to the Sec-
16 retary as described in clause (i) may not be
17 construed as a violation of section 2721 of
18 title 18, United States Code, and is a per-
19 missible use under subsection (b)(1) of
20 that section.

21 “(iii) AUTHORIZATION OF APPROPRIA-
22 TIONS.—There is authorized to be appro-
23 priated to the Secretary \$250,000,000 to
24 carry out this subparagraph.

1 “(G) RESPONSIBILITIES OF THE SEC-
2 RETARY OF STATE.—As part of the System, the
3 Secretary of State shall provide to the Sec-
4 retary access to passport and visa information
5 as needed to confirm that a passport, passport
6 card, or visa presented under subsection
7 (c)(1)(C) confirms the identity of the subject of
8 the System check, and that a passport, passport
9 card, or visa photograph matches the Secretary
10 of State’s records, and shall provide such assist-
11 ance as the Secretary may request in order to
12 resolve further action notices or nonconfirma-
13 tions relating to such information.

14 “(H) UPDATING INFORMATION.—The
15 Commissioner, the Secretary, and the Secretary
16 of State shall update their information in a
17 manner that promotes maximum accuracy and
18 shall provide a process for the prompt correc-
19 tion of erroneous information.

20 “(9) LIMITATION ON USE OF THE SYSTEM.—
21 Notwithstanding any other provision of law, nothing
22 in this subsection may be construed to permit or
23 allow any department, bureau, or other agency of
24 the United States Government or any other entity to
25 utilize any information, database, or other records

1 assembled under this subsection for any purpose
2 other than for employment verification or to ensure
3 secure, appropriate and nondiscriminatory use of the
4 System.

5 “(10) ANNUAL REPORT AND CERTIFICATION.—

6 Not later than 18 months after the promulgation of
7 regulations to implement this subsection, and annu-
8 ally thereafter, the Secretary shall submit to Con-
9 gress a report that includes the following:

10 “(A) An assessment, as submitted to the
11 Secretary by the Inspector General of the De-
12 partment of Homeland Security pursuant to
13 paragraph (8)(C)(iii)(I), of the accuracy rates
14 of further action notices and other System no-
15 tices provided by employers to individuals who
16 are authorized to be employed in the United
17 States.

18 “(B) An assessment, as submitted to the
19 Secretary by the Inspector General of the De-
20 partment of Homeland Security pursuant to
21 paragraph (8)(C)(iii)(I), of the accuracy rates
22 of further action notices and other System no-
23 tices provided directly (by the System) in a
24 timely fashion to individuals who are not au-
25 thorized to be employed in the United States.

1 “(C) An assessment of any challenges
2 faced by small employers in utilizing the Sys-
3 tem.

4 “(D) An assessment of the rate of em-
5 ployer noncompliance (in addition to failure to
6 provide required notices in a timely fashion) in
7 each of the following categories:

8 “(i) Taking adverse action based on a
9 further action notice.

10 “(ii) Use of the System for non-
11 employees or other individuals before they
12 are offered employment.

13 “(iii) Use of the System to reverify
14 employment authorized status of current
15 employees except if authorized to do so.

16 “(iv) Use of the System selectively,
17 except in cases in which such use is au-
18 thorized.

19 “(v) Use of the System to deny em-
20 ployment or post-employment benefits or
21 otherwise interfere with labor rights.

22 “(vi) Requiring employees or appli-
23 cants to use any self-verification feature or
24 to provide self-verification results.

1 “(vii) Discouraging individuals who
2 receive a further action notice from chal-
3 lenging the further action notice or appeal-
4 ing a determination made by the System.

5 “(E) An assessment of the rate of em-
6 ployee noncompliance in each of the following
7 categories:

8 “(i) Obtaining employment when un-
9 authorized with an employer complying
10 with the System in good faith.

11 “(ii) Failure to provide required docu-
12 ments in a timely manner.

13 “(iii) Attempting to use fraudulent
14 documents or documents not related to the
15 individual.

16 “(iv) Misuse of the administrative ap-
17 peal and judicial review process.

18 “(F) An assessment of the amount of time
19 taken for—

20 “(i) the System to provide the con-
21 firmation or further action notice;

22 “(ii) individuals to contest further ac-
23 tion notices;

1 “(iii) the System to provide a con-
2 firmation or nonconfirmation of a con-
3 tested further action notice;

4 “(iv) individuals to file an administra-
5 tive appeal of a nonconfirmation; and

6 “(v) resolving administrative appeals
7 regarding nonconfirmations.

8 “(11) ANNUAL GAO STUDY AND REPORT.—

9 “(A) REQUIREMENT.—The Comptroller
10 General shall, for each year, undertake a study
11 to evaluate the accuracy, efficiency, integrity,
12 and impact of the System.

13 “(B) REPORT.—Not later than 18 months
14 after the promulgation of regulations to imple-
15 ment this subsection, and yearly thereafter, the
16 Comptroller General shall submit to Congress a
17 report containing the findings of the study car-
18 ried out under this paragraph. Each such re-
19 port shall include, at a minimum, the following:

20 “(i) An assessment of System per-
21 formance with respect to the rate at which
22 individuals who are eligible for employment
23 in the United States are correctly approved
24 within the required periods, including a
25 separate assessment of such rate for natu-

1 realized United States citizens, nationals of
2 the United States, and aliens.

3 “(ii) An assessment of the privacy and
4 confidentiality of the System and of the
5 overall security of the System with respect
6 to cybertheft and theft or misuse of private
7 data.

8 “(iii) An assessment of whether the
9 System is being implemented in a manner
10 that is not discriminatory or used for retal-
11 iation against employees.

12 “(iv) An assessment of the most com-
13 mon causes for the erroneous issuance of
14 nonconfirmations by the System and rec-
15 ommendations to correct such causes.

16 “(v) The recommendations of the
17 Comptroller General regarding System im-
18 provements.

19 “(vi) An assessment of the frequency
20 and magnitude of changes made to the
21 System and the impact on the ability for
22 employers to comply in good faith.

23 “(vii) An assessment of the direct and
24 indirect costs incurred by employers in
25 complying with the System, including costs

1 associated with retaining potential employ-
2 ees through the administrative appeals
3 process and receiving a nonconfirmation.

4 “(viii) An assessment of any backlogs
5 or delays in the System providing the con-
6 firmation or further action notice and im-
7 pacts to hiring by employers.

8 “(e) COMPLIANCE.—

9 “(1) COMPLAINTS AND INVESTIGATIONS.—The
10 Secretary shall establish procedures—

11 “(A) for individuals and entities to file
12 complaints respecting potential violations of
13 subsections (a) or (f)(1);

14 “(B) for the investigation of those com-
15 plaints which the Secretary deems appropriate
16 to investigate; and

17 “(C) for providing notification to the Im-
18 migration and Employee Rights Section of the
19 Civil Rights Division of the Department of Jus-
20 tice of potential violations of section 274B.

21 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
22 ducting investigations and proceedings under this
23 subsection—

1 “(A) immigration officers shall have rea-
2 sonable access to examine evidence of the em-
3 ployer being investigated;

4 “(B) immigration officers designated by
5 the Secretary, and administrative law judges
6 and other persons authorized to conduct pro-
7 ceedings under this section, may compel by sub-
8 poena the attendance of relevant witnesses and
9 the production of relevant evidence at any des-
10 ignated place in an investigation or case under
11 this subsection. In case of refusal to fully com-
12 ply with a subpoena lawfully issued under this
13 paragraph, the Secretary may request that the
14 Attorney General apply in an appropriate dis-
15 trict court of the United States for an order re-
16 quiring compliance with the subpoena, and any
17 failure to obey such order may be punished by
18 the court as contempt. Failure to cooperate
19 with the subpoena shall be subject to further
20 penalties, including further fines and the void-
21 ing of any mitigation of penalties or termi-
22 nation of proceedings under paragraph (4)(E);
23 and

24 “(C) the Secretary, in cooperation with the
25 Commissioner and Attorney General, and in

1 consultation with other relevant agencies, shall
2 establish a Joint Employment Fraud Task
3 Force consisting of, at a minimum—

4 “(i) the System’s compliance per-
5 sonnel;

6 “(ii) immigration law enforcement of-
7 ficers;

8 “(iii) personnel of the Immigrant and
9 Employee Rights Section of the Civil
10 Rights Division of the Department of Jus-
11 tice;

12 “(iv) personnel of the Office for Civil
13 Rights and Civil Liberties of the Depart-
14 ment; and

15 “(v) personnel of Office of Inspector
16 General of the Social Security Administra-
17 tion.

18 “(3) COMPLIANCE PROCEDURES.—

19 “(A) PRE-PENALTY NOTICE.—If the Sec-
20 retary has reasonable cause to believe that
21 there has been a civil violation of this section in
22 the previous 3 years, the Secretary shall issue
23 to the employer concerned a written notice of
24 the Department’s intention to issue a claim for

1 a monetary or other penalty. Such pre-penalty
2 notice shall—

3 “(i) describe the violation;

4 “(ii) specify the laws and regulations
5 allegedly violated;

6 “(iii) disclose the material facts which
7 establish the alleged violation;

8 “(iv) describe the penalty sought to be
9 imposed; and

10 “(v) inform such employer that such
11 employer shall have a reasonable oppor-
12 tunity to make representations as to why a
13 monetary or other penalty should not be
14 imposed.

15 “(B) EMPLOYER’S RESPONSE.—Whenever
16 any employer receives written pre-penalty notice
17 of a fine or other penalty in accordance with
18 subparagraph (A), the employer may, within 60
19 days from receipt of such notice, file with the
20 Secretary its written response to the notice.
21 The response may include any relevant evidence
22 or proffer of evidence that the employer wishes
23 to present with respect to whether the employer
24 violated this section and whether, if so, the pen-
25 alty should be mitigated, and shall be filed and

1 considered in accordance with procedures to be
2 established by the Secretary.

3 “(C) RIGHT TO A HEARING.—Before
4 issuance of an order imposing a penalty on any
5 employer, person, or entity, the employer, per-
6 son, or entity shall be entitled to a hearing be-
7 fore an administrative law judge, if requested
8 within 60 days of the notice of penalty. The
9 hearing shall be held at the nearest location
10 practicable to the place where the employer,
11 person, or entity resides or of the place where
12 the alleged violation occurred.

13 “(D) ISSUANCE OF ORDERS.—If no hear-
14 ing is so requested, the Secretary’s imposition
15 of the order shall constitute a final and
16 unappealable order. If a hearing is requested
17 and the administrative law judge determines,
18 upon clear and convincing evidence received,
19 that there was a violation, the administrative
20 law judge shall issue the final determination
21 with a written penalty claim. The penalty claim
22 shall specify all charges in the information pro-
23 vided under clauses (i) through (iii) of subpara-
24 graph (A) and any mitigation of the penalty

1 that the administrative law judge deems appro-
2 priate under paragraph (4)(E).

3 “(4) CIVIL PENALTIES.—

4 “(A) HIRING OR CONTINUING TO EMPLOY
5 UNAUTHORIZED ALIENS.—Any employer that
6 violates any provision of subsection (a)(1)(A) or
7 (a)(2) shall—

8 “(i) pay a civil penalty of not less
9 than \$3,500 and not more than \$7,500 for
10 each unauthorized alien with respect to
11 which each violation of either subsection
12 (a)(1)(A) or (a)(2) occurred;

13 “(ii) if the employer has previously
14 been fined as a result of a previous en-
15 forcement action or previous violation
16 under this paragraph, pay a civil penalty of
17 not less than \$5,000 and not more than
18 \$15,000 for each unauthorized alien with
19 respect to which a violation of either sub-
20 section (a)(1)(A) or (a)(2) occurred; and

21 “(iii) if the employer has previously
22 been fined more than once under this para-
23 graph, pay a civil penalty of not less than
24 \$10,000 and not more than \$25,000 for
25 each unauthorized alien with respect to

1 which a violation of either subsection
2 (a)(1)(A) or (a)(2) occurred.

3 “(B) ENHANCED PENALTIES.—After the
4 Secretary certifies to Congress that the System
5 has been established, implemented, and made
6 mandatory for use by all employers in the
7 United States, the Secretary may establish an
8 enhanced civil penalty for an employer who—

9 “(i) fails to query the System to verify
10 the identify and work authorized status of
11 an individual; and

12 “(ii) violates a Federal, State, or local
13 law related to—

14 “(I) the payment of wages;

15 “(II) hours worked by employees;

16 or

17 “(III) workplace health and safe-
18 ty.

19 “(C) RECORDKEEPING OR VERIFICATION
20 PRACTICES.—Any employer that violates or fails
21 to comply with any requirement under sub-
22 section (a)(1)(B), other than a minor or inad-
23 vertent failure, as determined by the Secretary,
24 shall pay a civil penalty of—

1 “(i) not less than \$500 and not more
2 than \$2,000 for each violation;

3 “(ii) if an employer has previously
4 been fined under this paragraph, not less
5 than \$1,000 and not more than \$4,000 for
6 each violation; and

7 “(iii) if an employer has previously
8 been fined more than once under this para-
9 graph, not less than \$2,000 and not more
10 than \$8,000 for each violation.

11 “(D) OTHER PENALTIES.—The Secretary
12 may impose additional penalties for violations,
13 including cease and desist orders, specially de-
14 signed compliance plans to prevent further vio-
15 lations, suspended fines to take effect in the
16 event of a further violation, and in appropriate
17 cases, the remedy provided by paragraph (f)(2).

18 “(E) MITIGATION.—The Secretary or, if
19 an employer requests a hearing, the administra-
20 tive law judge, is authorized, upon such terms
21 and conditions as the Secretary or administra-
22 tive law judge deems reasonable and just and in
23 accordance with such procedures as the Sec-
24 retary may establish or any procedures estab-
25 lished governing the administrative law judge’s

1 assessment of penalties, to reduce or mitigate
2 penalties imposed upon employers, based upon
3 factors including, the employer's hiring volume,
4 compliance history, good-faith implementation
5 of a compliance program, the size and level of
6 sophistication of the employer, and voluntary
7 disclosure of violations of this subsection to the
8 Secretary. The Secretary or administrative law
9 judge shall not mitigate a penalty below the
10 minimum penalty provided by this section, ex-
11 cept that the Secretary may, in the case of an
12 employer subject to penalty for recordkeeping
13 or verification violations only who has not pre-
14 viously been penalized under this section, in the
15 Secretary's or administrative law judge's discre-
16 tion, mitigate the penalty below the statutory
17 minimum or remit it entirely. In any case where
18 a civil money penalty has been imposed on an
19 employer under section 274B for an action or
20 omission that is also a violation of this section,
21 the Secretary or administrative law judge shall
22 mitigate any civil money penalty under this sec-
23 tion by the amount of the penalty imposed
24 under section 274B.

1 “(F) EFFECTIVE DATE.—The civil money
2 penalty amounts and the enhanced penalties
3 provided by subparagraphs (A), (B), and (C) of
4 this paragraph and by subsection (f)(2) shall
5 apply to violations of this section committed on
6 or after the date that is 1 year after the date
7 of the enactment of the E-Verify System Act of
8 2018. For violations committed prior to such
9 date of enactment, the civil money penalty
10 amounts provided by regulations implementing
11 this section as in effect the minute before such
12 date of enactment with respect to knowing hir-
13 ing or continuing employment, verification, or
14 indemnity bond violations, as appropriate, shall
15 apply.

16 “(5) ORDER OF INTERNAL REVIEW AND CER-
17 TIFICATION OF COMPLIANCE.—

18 “(A) EMPLOYER COMPLIANCE.—If the
19 Secretary has reasonable cause to believe that
20 an employer has failed to comply with this sec-
21 tion, the Secretary is authorized, at any time,
22 to require that the employer certify that it is in
23 compliance with this section, or has instituted a
24 program to come into compliance.

25 “(B) EMPLOYER CERTIFICATION.—

1 “(i) REQUIREMENT.—Except as pro-
2 vided in subparagraph (C), not later than
3 60 days after receiving a notice from the
4 Secretary requiring a certification under
5 subparagraph (A), an official with respon-
6 sibility for, and authority to bind the com-
7 pany on, all hiring and immigration com-
8 pliance notices shall certify under penalty
9 of perjury that the employer is in conform-
10 ance with the requirements of paragraphs
11 (1) through (4) of subsection (c), per-
12 taining to document verification require-
13 ments, and with subsection (d), pertaining
14 to the System (once the System is imple-
15 mented with respect to that employer ac-
16 cording to the requirements under sub-
17 section (d)(2)), and with any additional re-
18 quirements that the Secretary may promul-
19 gate by regulation pursuant to subsection
20 (c) or (d) or that the employer has insti-
21 tuted a program to come into compliance
22 with these requirements.

23 “(ii) APPLICATION.—Clause (i) shall
24 not apply until the date that the Secretary
25 certifies to Congress that the System has

1 been established, implemented, and made
2 mandatory for use by all employers in the
3 United States.

4 “(C) EXTENSION OF DEADLINE.—At the
5 request of the employer, the Secretary may ex-
6 tend the 60-day deadline for good cause.

7 “(D) STANDARDS OR METHODS.—The Sec-
8 retary is authorized to publish in the Federal
9 Register standards or methods for such certifi-
10 cation, require specific recordkeeping practices
11 with respect to such certifications, and audit
12 the records thereof at any time. This authority
13 shall not be construed to diminish or qualify
14 any other penalty provided by this section.

15 “(6) REQUIREMENTS FOR REVIEW OF A FINAL
16 DETERMINATION.—With respect to judicial review of
17 a final determination or penalty order issued under
18 paragraph (3)(D), the following requirements apply:

19 “(A) DEADLINE.—The petition for review
20 must be filed no later than 30 days after the
21 date of the final determination or penalty order
22 issued under paragraph (3)(D).

23 “(B) VENUE AND FORMS.—The petition
24 for review shall be filed with the court of ap-
25 peals for the judicial circuit where the employ-

1 er's principal place of business was located
2 when the final determination or penalty order
3 was made. The record and briefs do not have
4 to be printed. The court shall review the pro-
5 ceeding on a typewritten or electronically filed
6 record and briefs.

7 “(C) SERVICE.—The respondent is the
8 Secretary. In addition to serving the respond-
9 ent, the petitioner shall serve the Attorney Gen-
10 eral.

11 “(D) PETITIONER'S BRIEF.—The peti-
12 tioner shall serve and file a brief in connection
13 with a petition for judicial review not later than
14 40 days after the date on which the administra-
15 tive record is available, and may serve and file
16 a reply brief not later than 14 days after serv-
17 ice of the brief of the respondent, and the court
18 may not extend these deadlines, except for good
19 cause shown. If a petitioner fails to file a brief
20 within the time provided in this paragraph, the
21 court shall dismiss the appeal unless a manifest
22 injustice would result.

23 “(E) SCOPE AND STANDARD FOR RE-
24 VIEW.—The court of appeals shall conduct a de
25 novo review of the administrative record on

1 which the final determination was based and
2 any additional evidence that the Court finds
3 was previously unavailable at the time of the
4 administrative hearing.

5 “(F) EXHAUSTION OF ADMINISTRATIVE
6 REMEDIES.—A court may review a final deter-
7 mination under paragraph (3)(C) only if—

8 “(i) the petitioner has exhausted all
9 administrative remedies available to the pe-
10 titioner as of right, including any adminis-
11 trative remedies established by regulation,
12 and

13 “(ii) another court has not decided
14 the validity of the order, unless the review-
15 ing court finds that the petition presents
16 grounds that could not have been pre-
17 sented in the prior judicial proceeding or
18 that the remedy provided by the prior pro-
19 ceeding was inadequate or ineffective to
20 test the validity of the order.

21 “(G) ENFORCEMENT OF ORDERS.—If the
22 final determination issued against the employer
23 under this subsection is not subjected to review
24 as provided in this paragraph, the Attorney
25 General, upon request by the Secretary, may

1 bring a civil action to enforce compliance with
2 the final determination in any appropriate dis-
3 trict court of the United States. The court, on
4 a proper showing, shall issue a temporary re-
5 straining order or a preliminary or permanent
6 injunction requiring that the employer comply
7 with the final determination issued against that
8 employer under this subsection. In any such
9 civil action, the validity and appropriateness of
10 the final determination shall not be subject to
11 review.

12 “(7) CREATION OF LIEN.—If any employer lia-
13 ble for a fee or penalty under this section neglects
14 or refuses to pay such liability after demand and
15 fails to file a petition for review (if applicable) as
16 provided in paragraph (6), the amount of the fee or
17 penalty shall be a lien in favor of the United States
18 on all property and rights to property, whether real
19 or personal, belonging to such employer. If a petition
20 for review is filed as provided in paragraph (6), the
21 lien shall arise upon the entry of a final judgment
22 by the court. The lien continues for 20 years or until
23 the liability is satisfied, remitted, set aside, or termi-
24 nated.

25 “(8) FILING NOTICE OF LIEN.—

1 “(A) PLACE FOR FILING.—The notice of a
2 lien referred to in paragraph (7) shall be filed
3 as described in 1 of the following:

4 “(i) UNDER STATE LAWS.—

5 “(I) REAL PROPERTY.—In the
6 case of real property, in 1 office with-
7 in the State (or the county, or other
8 governmental subdivision), as des-
9 ignated by the laws of such State, in
10 which the property subject to the lien
11 is situated.

12 “(II) PERSONAL PROPERTY.—In
13 the case of personal property, whether
14 tangible or intangible, in 1 office with-
15 in the State (or the county, or other
16 governmental subdivision), as des-
17 ignated by the laws of such State, in
18 which the property subject to the lien
19 is situated, except that State law
20 merely conforming to or reenacting
21 Federal law establishing a national fil-
22 ing system does not constitute a sec-
23 ond office for filing as designated by
24 the laws of such State.

1 “(ii) WITH CLERK OF DISTRICT
2 COURT.—In the office of the clerk of the
3 United States district court for the judicial
4 district in which the property subject to
5 the lien is situated, whenever the State has
6 not by law designated 1 office which meets
7 the requirements of clause (i).

8 “(iii) WITH RECORDER OF DEEDS OF
9 THE DISTRICT OF COLUMBIA.—In the of-
10 fice of the Recorder of Deeds of the Dis-
11 trict of Columbia, if the property subject to
12 the lien is situated in the District of Co-
13 lumbia.

14 “(B) SITUS OF PROPERTY SUBJECT TO
15 LIEN.—For purposes of subparagraph (A),
16 property shall be deemed to be situated as fol-
17 lows:

18 “(i) REAL PROPERTY.—In the case of
19 real property, at its physical location.

20 “(ii) PERSONAL PROPERTY.—In the
21 case of personal property, whether tangible
22 or intangible, at the residence of the tax-
23 payer at the time the notice of lien is filed.

24 “(C) DETERMINATION OF RESIDENCE.—
25 For purposes of subparagraph (B)(ii), the resi-

1 dence of a corporation or partnership shall be
2 deemed to be the place at which the principal
3 executive office of the business is located, and
4 the residence of a taxpayer whose residence is
5 outside the United States shall be deemed to be
6 in the District of Columbia.

7 “(D) EFFECT OF FILING NOTICE OF
8 LIEN.—

9 “(i) IN GENERAL.—Upon filing of a
10 notice of lien in the manner described in
11 this paragraph, the lien shall be valid
12 against any purchaser, holder of a security
13 interest, mechanic’s lien, or judgment lien
14 creditor, except with respect to properties
15 or transactions specified in subsection (b),
16 (c), or (d) of section 6323 of the Internal
17 Revenue Code of 1986 for which a notice
18 of tax lien properly filed on the same date
19 would not be valid.

20 “(ii) NOTICE OF LIEN.—The notice of
21 lien shall be considered a notice of lien for
22 taxes payable to the United States for the
23 purpose of any State or local law providing
24 for the filing of a notice of a tax lien. A
25 notice of lien that is registered, recorded,

1 docketed, or indexed in accordance with
2 the rules and requirements relating to
3 judgments of the courts of the State where
4 the notice of lien is registered, recorded,
5 docketed, or indexed shall be considered
6 for all purposes as the filing prescribed by
7 this section.

8 “(iii) OTHER PROVISIONS.—The pro-
9 visions of section 3201(e) of title 28,
10 United States Code, shall apply to liens
11 filed as prescribed by this paragraph.

12 “(E) ENFORCEMENT OF A LIEN.—A lien
13 obtained through this paragraph shall be con-
14 sidered a debt as defined by section 3002 of
15 title 28, United States Code and enforceable
16 pursuant to chapter 176 of such title.

17 “(9) ATTORNEY GENERAL ADJUDICATION.—
18 The Attorney General shall have jurisdiction to adju-
19 dicate administrative proceedings under this sub-
20 section. Such proceedings shall be conducted in ac-
21 cordance with requirements of section 554 of title 5,
22 United States Code.

23 “(f) CRIMINAL AND CIVIL PENALTIES AND INJUNC-
24 TIONS.—

1 “(1) PROHIBITION OF INDEMNITY BONDS.—It
2 is unlawful for an employer, in the hiring of any in-
3 dividual, to require the individual to post a bond or
4 security, to pay or agree to pay an amount, or other-
5 wise to provide a financial guarantee or indemnity,
6 against any potential liability arising under this sec-
7 tion relating to such hiring of the individual.

8 “(2) CIVIL PENALTY.—Any employer who is de-
9 termined, after notice and opportunity for mitigation
10 of the monetary penalty under subsection (e), to
11 have violated paragraph (1) shall be subject to a
12 civil penalty of \$10,000 for each violation and to an
13 administrative order requiring the return of any
14 amounts received in violation of such paragraph to
15 the employee or, if the employee cannot be located,
16 to the general fund of the Treasury.

17 “(g) GOVERNMENT CONTRACTS.—

18 “(1) CONTRACTORS AND RECIPIENTS.—When-
19 ever an employer who is a Federal contractor (mean-
20 ing an employer who holds a Federal contract,
21 grant, or cooperative agreement, or reasonably may
22 be expected to submit an offer for or be awarded a
23 government contract) is determined by the Secretary
24 to have violated this section on more than 3 occa-
25 sions or is convicted of a crime under this section,

1 the employer shall be considered for debarment from
2 the receipt of Federal contracts, grants, or coopera-
3 tive agreements in accordance with the procedures
4 and standards and for the periods prescribed by the
5 Federal Acquisition Regulation. However, any ad-
6 ministrative determination of liability for civil pen-
7 alty by the Secretary or the Attorney General shall
8 not be reviewable in any debarment proceeding.

9 “(2) INADVERTENT VIOLATIONS.—Inadvertent
10 violations of recordkeeping or verification require-
11 ments, in the absence of any other violations of this
12 section, shall not be a basis for determining that an
13 employer is a repeat violator for purposes of this
14 subsection.

15 “(3) OTHER REMEDIES AVAILABLE.—Nothing
16 in this subsection shall be construed to modify or
17 limit any remedy available to any agency or official
18 of the Federal Government for violation of any con-
19 tractual requirement to participate in the System, as
20 provided in the final rule relating to employment eli-
21 gibility verification published in the Federal Register
22 on November 14, 2008 (73 Fed. Reg. 67,651), or
23 any similar subsequent regulation.

24 “(h) PREEMPTION.—The provisions of this section
25 preempt any State or local law, ordinance, policy, or rule,

1 including any criminal or civil fine or penalty structure,
2 relating to the hiring, continued employment, or status
3 verification for employment eligibility purposes, of unau-
4 thorized aliens. A State, locality, municipality, or political
5 subdivision may exercise its authority over business licens-
6 ing and similar laws as a penalty for failure to use the
7 System.

8 “(i) DEPOSIT OF AMOUNTS RECEIVED.—Except as
9 otherwise specified, civil penalties collected under this sec-
10 tion shall be deposited by the Secretary into the Treasury
11 as miscellaneous receipts.

12 “(j) CHALLENGES TO VALIDITY OF THE SYSTEM.—

13 “(1) IN GENERAL.—Any right, benefit, or claim
14 not otherwise waived or limited pursuant to this sec-
15 tion is available in an action instituted in the United
16 States District Court for the District of Columbia,
17 but shall be limited to determinations of—

18 “(A) whether this section, or any regula-
19 tion issued to implement this section, violates
20 the Constitution of the United States; or

21 “(B) whether such a regulation issued by
22 or under the authority of the Secretary to im-
23 plement this section, is contrary to applicable
24 provisions of this section or was issued in viola-
25 tion of chapter 5 of title 5, United States Code.

1 “(2) DEADLINES FOR BRINGING ACTIONS.—

2 Any action instituted under this subsection must be
3 filed no later than 180 days after the date the chal-
4 lenged section or regulation described in subpara-
5 graph (A) or (B) of paragraph (1) becomes effective.

6 No court shall have jurisdiction to review any chal-
7 lenge described in subparagraph (B) after the time
8 period specified in this subsection expires.

9 “(k) CRIMINAL PENALTIES AND INJUNCTIONS FOR
10 PATTERN OR PRACTICE VIOLATIONS.—

11 “(1) PATTERN AND PRACTICE.—Any employer
12 who engages in a pattern or practice of knowing vio-
13 lations of subsection (a)(1)(A) or (a)(2) shall be
14 fined under title 18, United States Code, no more
15 than \$10,000 for each unauthorized alien with re-
16 spect to whom such violation occurs, imprisoned for
17 not more than 2 years for the entire pattern or prac-
18 tice, or both.

19 “(2) TERM OF IMPRISONMENT.—The maximum
20 term of imprisonment of a person convicted of any
21 criminal offense under the United States Code shall
22 be increased by 5 years if the offense is committed
23 as part of a pattern or practice of violations of sub-
24 section (a)(1)(A) or (a)(2).

1 “(3) ENJOINING OF PATTERN OR PRACTICE
2 VIOLATIONS.—Whenever the Secretary or the Attor-
3 ney General has reasonable cause to believe that an
4 employer is engaged in a pattern or practice of em-
5 ployment in violation of subsection (a)(1)(A) or
6 (a)(2), the Attorney General may bring a civil action
7 in the appropriate district court of the United States
8 requesting such relief, including a permanent or
9 temporary injunction, restraining order, or other
10 order against the employer, as the Secretary or At-
11 torney General deems necessary.

12 “(1) CRIMINAL PENALTIES FOR UNLAWFUL AND
13 ABUSIVE EMPLOYMENT.—

14 “(1) IN GENERAL.—Any person who, during
15 any 12-month period, knowingly employs or hires,
16 employs, recruits, or refers for a fee for employment
17 10 or more individuals within the United States who
18 are under the control and supervision of such per-
19 son—

20 “(A) knowing that the individuals are un-
21 authorized aliens; and

22 “(B) under conditions that violate section
23 5(a) of the Occupational Safety and Health Act
24 of 1970 (29 U.S.C. 654(a) (relating to occupa-
25 tional safety and health), section 6 or 7 of the

1 Fair Labor Standards Act of 1938 (29 U.S.C.
2 206 and 207) (relating to minimum wages and
3 maximum hours of employment), section 3142
4 of title 40, United States Code, (relating to re-
5 quired wages on construction contracts), or sec-
6 tions 6703 or 6704 of title 41, United States
7 Code, (relating to required wages on service
8 contracts),
9 shall be fined under title 18, United States Code, or
10 imprisoned for not more than 10 years, or both.

11 “(2) ATTEMPT AND CONSPIRACY.—Any person
12 who attempts or conspires to commit any offense
13 under this section shall be punished in the same
14 manner as a person who completes the offense.”.

15 (b) REPORT ON USE OF THE SYSTEM IN THE AGRICULTURAL
16 INDUSTRY.—Not later than 18 months after
17 the date of the enactment of this Act, the Secretary of
18 Homeland Security, in consultation with the Secretary of
19 Agriculture, shall submit a report to Congress that as-
20 sesses implementation of the Employment Verification
21 System established under section 274A(d) of the Immigra-
22 tion and Nationality Act, as amended by subsection (a),
23 in the agricultural industry, including the use of such Sys-
24 tem technology in agriculture industry hiring processes,
25 user, contractor, and third-party employer employ-

1 ment practices, timing and logistics regarding employment
2 verification and reverification processes to meet agri-
3 culture industry practices, and identification of potential
4 challenges and modifications to meet the unique needs of
5 the agriculture industry. Such report shall review—

6 (1) the modality of access, training and out-
7 reach, customer support, processes for further action
8 notices and secondary verifications for short-term
9 workers, monitoring, and compliance procedures for
10 such System;

11 (2) the interaction of such System with the
12 process to admit nonimmigrant workers pursuant to
13 section 218 or 218A of the Immigration and Nation-
14 ality Act (8 U.S.C. 1188 et seq.) and with enforce-
15 ment of the immigration laws; and

16 (3) the collaborative use of processes of other
17 Federal and State agencies that intersect with the
18 agriculture industry.

19 (c) REPORT ON IMPACT OF THE SYSTEM ON EM-
20 PLOYERS.—Not later than 18 months after the date of
21 the enactment of this Act, the Secretary of Homeland Se-
22 curity shall submit to Congress a report that assesses—

23 (1) the implementation of the Employment
24 Verification System established under section

1 274A(d) of the Immigration and Nationality Act, as
2 amended by subsection (a), by employers;

3 (2) any adverse impact on the revenues, busi-
4 ness processes, or profitability of employers required
5 to use such System; and

6 (3) the economic impact of such System on
7 small businesses.

8 (d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
9 OF THE EFFECTS OF DOCUMENT REQUIREMENTS ON EM-
10 PLOYMENT AUTHORIZED PERSONS AND EMPLOYERS.—

11 (1) STUDY.—The Comptroller General of the
12 United States shall carry out a study of—

13 (A) the effects of the documentary require-
14 ments of section 274A of the Immigration and
15 Nationality Act, as amended by subsection (a),
16 on employers, naturalized United States citi-
17 zens, nationals of the United States, and indi-
18 viduals with employment authorized status; and

19 (B) the challenges such employers, citizens,
20 nationals, or individuals may face in obtaining
21 the documentation required under that section.

22 (2) REPORT.—Not later than 4 years after the
23 date of the enactment of this Act, the Comptroller
24 General shall submit to Congress a report containing
25 the findings of the study carried out under para-

1 graph (1). Such report shall include, at a minimum,
2 the following:

3 (A) An assessment of available information
4 regarding the number of working age nationals
5 of the United States and individuals who have
6 employment authorized status who lack docu-
7 ments required for employment by such section
8 274A.

9 (B) A description of the additional steps
10 required for individuals who have employment
11 authorized status and do not possess the docu-
12 ments required by such section 274A to obtain
13 such documents.

14 (C) A general assessment of the average fi-
15 nancial costs for individuals who have employ-
16 ment authorized status who do not possess the
17 documents required by such section 274A to ob-
18 tain such documents.

19 (D) A general assessment of the average
20 financial costs and challenges for employers
21 who have been required to participate in the
22 Employment Verification System established by
23 subsection (d) of such section 274A.

24 (E) A description of the barriers to indi-
25 viduals who have employment authorized status

1 in obtaining the documents required by such
2 section 274A, including barriers imposed by the
3 executive branch of the Government.

4 (F) Any particular challenges facing indi-
5 viduals who have employment authorized status
6 who are members of a federally recognized In-
7 dian tribe in complying with the provisions of
8 such section 274A.

9 (e) REPEAL OF PILOT PROGRAMS AND E-VERIFY
10 AND TRANSITION PROCEDURES.—

11 (1) REPEAL.—Sections 401, 402, 403, 404,
12 and 405 of the Illegal Immigration Reform and Im-
13 migrant Responsibility Act of 1996 (division C of
14 Public Law 104–208; 8 U.S.C. 1324a note) are re-
15 pealed.

16 (2) TRANSITION PROCEDURES.—

17 (A) CONTINUATION OF E-VERIFY PRO-
18 GRAM.—Notwithstanding the repeals made by
19 paragraph (1), the Secretary of Homeland Se-
20 curity shall continue to operate the E-Verify
21 Program as described in section 403 of the Ille-
22 gal Immigration Reform and Immigrant Re-
23 sponsibility Act of 1996 (division C of Public
24 Law 104–208; 8 U.S.C. 1324a note), as in ef-
25 fect the minute before the date of the enact-

1 ment of this Act, until the transition to the
2 System described in section 274A(d) of the Im-
3 migration and Nationality Act, as amended by
4 subsection (a), is determined by the Secretary
5 to be complete.

6 (B) TRANSITION TO THE SYSTEM.—Any
7 employer who was participating in the E-Verify
8 Program described in section 403 of the Illegal
9 Immigration Reform and Immigrant Responsi-
10 bility Act of 1996 (division C of Public Law
11 104–208; 8 U.S.C. 1324a note), as in effect the
12 minute before the date of the enactment of this
13 Act, shall participate in the System described in
14 section 274A(d) of the Immigration and Na-
15 tionality Act, as amended by subsection (a), to
16 the same extent and in the same manner that
17 the employer participated in such E-Verify Pro-
18 gram.

19 (3) CONSTRUCTION.—The repeal made by para-
20 graph (1) may not be construed to limit the author-
21 ity of the Secretary to allow or continue to allow the
22 participation in such System of employers who have
23 participated in such E-Verify Program, as in effect
24 on the minute before the date of the enactment of
25 this Act.

1 (f) CONFORMING AMENDMENT.—Section 274(a) (8
2 U.S.C. 1324(a)) is amended—

3 (1) by striking paragraph (3); and

4 (2) by redesignating paragraph (4) as para-
5 graph (3).

6 **SEC. 3. INCREASING SECURITY AND INTEGRITY OF SOCIAL**
7 **SECURITY CARDS.**

8 (a) FRAUD-RESISTANT, TAMPER-RESISTANT, WEAR-
9 RESISTANT, AND IDENTITY THEFT-RESISTANT SOCIAL
10 SECURITY CARDS.—

11 (1) ISSUANCE.—

12 (A) PRELIMINARY WORK.—Not later than
13 180 days after the date of the enactment of this
14 Act, the Commissioner of Social Security shall
15 begin work to administer and issue fraud-resist-
16 ant, tamper-resistant, wear-resistant, and iden-
17 tity theft-resistant social security cards.

18 (B) COMPLETION.—Not later than 5 years
19 after the date of the enactment of this Act, the
20 Commissioner of Social Security shall issue only
21 social security cards determined to be fraud-re-
22 sistant, tamper-resistant, wear-resistant, and
23 identity theft-resistant.

24 (2) AMENDMENT.—

1 (A) IN GENERAL.—Section 205(c)(2)(G) of
2 the Social Security Act (42 U.S.C.
3 405(c)(2)(G)) is amended by striking the sec-
4 ond sentence and inserting the following: “The
5 social security card shall be fraud-resistant,
6 tamper-resistant, wear-resistant, and identity
7 theft-resistant.”.

8 (B) EFFECTIVE DATE.—The amendment
9 made by subparagraph (A) shall take effect on
10 the date that is 5 years after the date of the
11 enactment of this Act.

12 (3) AUTHORIZATION OF APPROPRIATIONS.—
13 There is authorized to be appropriated such sums as
14 may be necessary to carry out this section and the
15 amendments made by this section.

16 (4) EMERGENCY DESIGNATION.—

17 (A) IN GENERAL.—The amounts author-
18 ized to be appropriated by this subsection are
19 designated by Congress as being for emergency
20 requirements pursuant to section
21 251(b)(2)(A)(i) of the Balanced Budget and
22 Emergency Deficit Control Act of 1985 (2
23 U.S.C. 901(b)(2)(A)(i)).

24 (B) SENATE DESIGNATION.—In the Sen-
25 ate, the amounts authorized to be appropriated

1 by this subsection are designated as for emer-
 2 gency requirements pursuant to section 4112(a)
 3 of H. Con. Res. 71 (115th Congress), the con-
 4 current resolution on the budget for fiscal year
 5 2018.

6 (b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the
 7 Social Security Act (42 U.S.C. 405(c)(2)(G)), as amended
 8 by subsection (a)(2), is amended—

9 (1) by inserting “(i)” after “(G)”; and

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

11 “(ii) The Commissioner of Social Security shall re-
 12 strict the issuance of multiple replacement social security
 13 cards to any individual to 3 per year and 10 for the life
 14 of the individual, except that the Commissioner may allow
 15 for reasonable exceptions from the limits under this clause
 16 on a case-by-case basis in compelling circumstances.”.

17 (c) CRIMINAL PENALTIES.—

18 (1) SOCIAL SECURITY FRAUD.—

19 (A) IN GENERAL.—Chapter 47 of title 18,
 20 United States Code, is amended by inserting at
 21 the end the following:

22 **“§ 1041. Social security fraud**

23 “Any person who—

24 “(1) knowingly possesses or uses a social secu-
 25 rity account number or social security card knowing

1 that the number or card was obtained from the
2 Commissioner of Social Security by means of fraud
3 or false statement;

4 “(2) knowingly and falsely represents a number
5 to be the social security account number assigned by
6 the Commissioner of Social Security to him or her
7 or to another person, when such number is known
8 not to be the social security account number as-
9 signed by the Commissioner of Social Security to
10 him or her or to such other person;

11 “(3) knowingly, and without lawful authority,
12 buys, sells, or possesses with intent to buy or sell a
13 social security account number or a social security
14 card that is or purports to be a number or card
15 issued by the Commissioner of Social Security;

16 “(4) knowingly alters, counterfeits, forges, or
17 falsely makes a social security account number or a
18 social security card;

19 “(5) knowingly uses, distributes, or transfers a
20 social security account number or a social security
21 card knowing the number or card to be intentionally
22 altered, counterfeited, forged, falsely made, or sto-
23 len; or

24 “(6) without lawful authority, knowingly pro-
25 duces or acquires for any person a social security ac-

1 count number, a social security card, or a number
2 or card that purports to be a social security account
3 number or social security card,
4 shall be fined under this title, imprisoned not more than
5 5 years, or both.”.

6 (B) TABLE OF SECTIONS AMENDMENT.—

7 The table of sections for chapter 47 of title 18,
8 United States Code, is amended by adding after
9 the item relating to section 1040 the following:

“1041. Social security fraud.”.

10 (2) INFORMATION DISCLOSURE.—

11 (A) IN GENERAL.—Notwithstanding any
12 other provision of law and subject to subpara-
13 graph (B), the Commissioner of Social Security
14 shall disclose for the purpose of investigating a
15 violation of section 1041 of title 18, United
16 States Code, or section 274A, 274B, or 274C
17 of the Immigration and Nationality Act (8
18 U.S.C. 1324a, 1324b, and 1324c), after receiv-
19 ing a written request from an officer in a super-
20 visory position or higher official of any Federal
21 law enforcement agency, the following records
22 of the Social Security Administration:

23 (i) Records concerning the identity,
24 address, location, or financial institution

1 accounts of the holder of a social security
2 account number or social security card.

3 (ii) Records concerning the applica-
4 tion for and issuance of a social security
5 account number or social security card.

6 (iii) Records concerning the existence
7 or nonexistence of a social security account
8 number or social security card.

9 (B) LIMITATION.—The Commissioner of
10 Social Security shall not disclose any tax return
11 or tax return information pursuant to subpara-
12 graph (A) except as authorized by section 6103
13 of the Internal Revenue Code of 1986.

14 **SEC. 4. INCREASING SECURITY AND INTEGRITY OF IMMI-**
15 **GRATION DOCUMENTS.**

16 Not later than 1 year after the date of the enactment
17 of this Act, the Secretary of Homeland Security shall sub-
18 mit a report to Congress on the feasibility, advantages,
19 and disadvantages of including, in addition to a photo-
20 graph, other biometric information on each employment
21 authorization document issued by the Department of
22 Homeland Security.

1 **SEC. 5. RESPONSIBILITIES OF THE SOCIAL SECURITY AD-**
2 **MINISTRATION.**

3 Title XI of the Social Security Act (42 U.S.C. 1301
4 et seq.) is amended by adding at the end the following
5 new part:

6 “PART E—EMPLOYMENT VERIFICATION
7 “RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL
8 SECURITY

9 “SEC. 1186. (a) CONFIRMATION OF EMPLOYMENT
10 VERIFICATION DATA.—As part of the employment
11 verification system established by the Secretary of Home-
12 land Security under the provisions of section 274A of the
13 Immigration and Nationality Act (8 U.S.C. 1324a) (in
14 this section referred to as the ‘System’), the Commissioner
15 of Social Security shall, subject to the provisions of section
16 274A(d) of the Immigration and Nationality Act (8 U.S.C.
17 1324a(d)), establish a reliable, secure method that, oper-
18 ating through the System and within the time periods
19 specified in section 274A(d) of such Act—

20 “(1) compares the name, date of birth, social
21 security account number, and available citizenship
22 information provided in an inquiry against such in-
23 formation maintained by the Commissioner in order
24 to confirm (or not confirm) the validity of the infor-
25 mation provided regarding an individual whose iden-
26 tity and employment eligibility must be confirmed;

1 “(2) determines the correspondence of the
2 name, date of birth, and number;

3 “(3) determines whether the name and number
4 belong to an individual who is deceased according to
5 the records maintained by the Commissioner;

6 “(4) determines whether an individual is a na-
7 tional of the United States, as defined in section
8 101(a)(22) of the Immigration and Nationality Act
9 (8 U.S.C. 1101(a)(22)); and

10 “(5) determines whether the individual has pre-
11 sented a social security account number that is not
12 valid for employment.

13 “(b) PROHIBITION.—The System shall not disclose or
14 release social security information to employers through
15 the confirmation system (other than such confirmation or
16 nonconfirmation, information provided by the employer to
17 the System, or the reason for the issuance of a further
18 action notice).”.

19 **SEC. 6. IMPROVED PROHIBITION ON DISCRIMINATION**
20 **BASED ON NATIONAL ORIGIN OR CITIZEN-**
21 **SHIP STATUS.**

22 (a) IN GENERAL.—Section 274B(a) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1324b(a)) is amended
24 to read as follows:

1 “(a) PROHIBITION ON DISCRIMINATION BASED ON
2 NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

3 “(1) PROHIBITION ON DISCRIMINATION GEN-
4 ERALLY.—It is an unfair immigration-related em-
5 ployment practice for a person, other entity, or em-
6 ployment agency, to discriminate against any indi-
7 vidual (other than an unauthorized alien defined in
8 section 274A(b)) because of such individual’s na-
9 tional origin or citizenship status, with respect to the
10 following:

11 “(A) The hiring of the individual for em-
12 ployment.

13 “(B) The verification of the individual’s
14 eligibility to work in the United States.

15 “(C) The discharging of the individual
16 from employment.

17 “(2) EXCEPTIONS.—Paragraph (1) shall not
18 apply to the following:

19 “(A) A person, other entity, or employer
20 that employs 3 or fewer employees, except for
21 an employment agency.

22 “(B) A person’s or entity’s discrimination
23 because of an individual’s national origin if the
24 discrimination with respect to that employer,
25 person, or entity and that individual is covered

1 under section 703 of the Civil Rights Act of
2 1964 (42 U.S.C. 2000e-2), unless the discrimi-
3 nation is related to an individual's verification
4 of employment authorization.

5 “(C) Discrimination because of citizenship
6 status which—

7 “(i) is otherwise required in order to
8 comply with a provision of Federal, State,
9 or local law related to law enforcement;

10 “(ii) is required by Federal Govern-
11 ment contract; or

12 “(iii) the Secretary or Attorney Gen-
13 eral determines to be essential for an em-
14 ployer to do business with an agency or de-
15 partment of the Federal Government or a
16 State, local, or tribal government.

17 “(3) ADDITIONAL EXCEPTION PROVIDING
18 RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—

19 Notwithstanding any other provision of this section,
20 it is not an unfair immigration-related employment
21 practice for an employer (as defined in section
22 274A(b)) to prefer to hire, recruit, or refer for a fee
23 an individual who is a citizen or national of the
24 United States over another individual who is an
25 alien if the 2 individuals are equally qualified.

1 “(4) UNFAIR IMMIGRATION-RELATED EMPLOY-
2 MENT PRACTICES RELATING TO THE SYSTEM.—It is
3 also an unfair immigration-related employment prac-
4 tice for a person, other entity, or employment agen-
5 cy—

6 “(A) to discharge or constructively dis-
7 charge an individual solely due to a further ac-
8 tion notice issued by the Employment
9 Verification System created by section 274A
10 until the administrative appeal described in sec-
11 tion 274A(d)(6) is completed;

12 “(B) to use the System with regard to any
13 person for any purpose except as authorized by
14 section 274A(d);

15 “(C) to use the System to reverify the em-
16 ployment authorization of a current employee,
17 including an employee continuing in employ-
18 ment, other than reverification upon expiration
19 of employment authorization, or as otherwise
20 authorized under section 274A(d) or by regula-
21 tion;

22 “(D) to use the System selectively for em-
23 ployees, except where authorized by law;

1 “(E) to fail to provide to an individual any
2 notice required in section 274A(d) within the
3 relevant time period;

4 “(F) to use the System to deny workers’
5 employment or post-employment benefits;

6 “(G) to misuse the System to discriminate
7 based on national origin or citizenship status;

8 “(H) to require an employee or prospective
9 employee to use any self-verification feature of
10 the System or provide, as a condition of appli-
11 cation or employment, any self-verification re-
12 sults;

13 “(I) to use an immigration status
14 verification system, service, or method other
15 than those described in section 274A for pur-
16 poses of verifying employment eligibility; or

17 “(J) to grant access to document
18 verification or System data, to any individual or
19 entity other than personnel authorized to have
20 such access, or to fail to take reasonable safe-
21 guards to protect against unauthorized loss,
22 use, alteration, or destruction of System data.

23 “(5) PROHIBITION OF INTIMIDATION OR RETAL-
24 IATION.—It is also an unfair immigration-related
25 employment practice for a person, other entity, or

1 employment agency to intimidate, threaten, coerce,
2 or retaliate against any individual—

3 “(A) for the purpose of interfering with
4 any right or privilege secured under this sec-
5 tion; or

6 “(B) because the individual intends to file
7 or has filed a charge or a complaint, testified,
8 assisted, or participated in any manner in an
9 investigation, proceeding, or hearing under this
10 section.

11 “(6) TREATMENT OF CERTAIN DOCUMENTARY
12 PRACTICES AS EMPLOYMENT PRACTICES.—A per-
13 son’s, other entity’s, or employment agency’s re-
14 quest, for purposes of verifying employment eligi-
15 bility, for more or different documents than are re-
16 quired under section 274A, or for specific docu-
17 ments, or refusing to honor documents tendered that
18 reasonably appear to be genuine shall be treated as
19 an unfair immigration-related employment practice.

20 “(7) PROHIBITION OF WITHHOLDING EMPLOY-
21 MENT RECORDS.—It is an unfair immigration-re-
22 lated employment practice for an employer that is
23 required under Federal, State, or local law to main-
24 tain records documenting employment, including
25 dates or hours of work and wages received, to fail

1 to provide such records to any employee upon re-
2 quest.

3 “(8) PROFESSIONAL, COMMERCIAL, AND BUSI-
4 NESS LICENSES.—An individual who is authorized to
5 be employed in the United States may not be denied
6 a professional, commercial, or business license on
7 the basis of his or her immigration status.

8 “(9) EMPLOYMENT AGENCY DEFINED.—In this
9 section, the term ‘employment agency’ means any
10 employer, person, or entity regularly undertaking
11 with or without compensation to procure employees
12 for an employer or to procure for employees oppor-
13 tunities to work for an employer and includes an
14 agent of such employer, person, or entity.”.

15 (b) REFERRAL BY EEOC.—Section 274B(b) of the
16 Immigration and Nationality Act (8 U.S.C. 1324b(b)) is
17 amended by adding at the end the following:

18 “(3) REFERRAL BY EEOC.—The Equal Employ-
19 ment Opportunity Commission shall refer all matters
20 alleging immigration-related unfair employment
21 practices filed with the Commission, including those
22 alleging violations of paragraphs (1), (4), (5), and
23 (6) of subsection (a) to the Immigration and Em-
24 ployee Rights Section of the Civil Rights Division of
25 the Department of Justice.”.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
2 274B(l)(3) of the Immigration and Nationality Act (8
3 U.S.C. 1324b(l)(3)) is amended by striking the period at
4 the end and inserting “and an additional \$40,000,000 for
5 each of fiscal years 2019 through 2021.”.

6 (d) FINES.—

7 (1) IN GENERAL.—Section 274B(g)(2)(B) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1324b(g)(2)(B)) is amended by striking clause (iv)
10 and inserting the following:

11 “(iv) to pay any applicable civil pen-
12 alties prescribed below, the amounts of
13 which may be adjusted periodically to ac-
14 count for inflation as provided by law—

15 “(I) except as provided in sub-
16 clauses (II) through (IV), to pay a
17 civil penalty of not less than \$2,000
18 and not more than \$5,000 for each in-
19 dividual subjected to an unfair immi-
20 gration-related employment practice;

21 “(II) except as provided in sub-
22 clauses (III) and (IV), in the case of
23 an employer, person, or entity pre-
24 viously subject to a single order under
25 this paragraph, to pay a civil penalty

1 of not less than \$4,000 and not more
2 than \$10,000 for each individual sub-
3 jected to an unfair immigration-re-
4 lated employment practice;

5 “(III) except as provided in sub-
6 clause (IV), in the case of an em-
7 ployer, person, or entity previously
8 subject to more than 1 order under
9 this paragraph, to pay a civil penalty
10 of not less than \$8,000 and not more
11 than \$25,000 for each individual sub-
12 jected to an unfair immigration-re-
13 lated employment practice; and

14 “(IV) in the case of an unfair im-
15 migration-related employment practice
16 described in paragraphs (4) through
17 (7) of subsection (a), to pay a civil
18 penalty of not less than \$500 and not
19 more than \$2,000 for each individual
20 subjected to an unfair immigration-re-
21 lated employment practice.”.

22 (2) EFFECTIVE DATE.—The amendment made
23 by paragraph (1) shall take effect on the date that
24 is 1 year after the date of the enactment of this Act

1 and apply to violations occurring on or after such
2 date of enactment.

3 **SEC. 7. RULEMAKING.**

4 (a) INTERIM FINAL REGULATIONS.—

5 (1) IN GENERAL.—Not later than 1 year after
6 the date of the enactment of this Act—

7 (A) the Secretary of Homeland Security
8 shall issue regulations implementing sections 2
9 and 6 and the amendments made by such sec-
10 tions (except for section 274A(d)(7) of the Im-
11 migration and Nationality Act); and

12 (B) the Attorney General shall issue regu-
13 lations implementing section 274A(d)(7) of the
14 Immigration and Nationality Act, as added by
15 section 2, section 6, and the amendments made
16 by such sections.

17 (2) EFFECTIVE DATE.—Regulations issued pur-
18 suant to paragraph (1) shall be effective immediately
19 on an interim basis, but are subject to change and
20 revision after public notice and opportunity for a pe-
21 riod for public comment.

22 (b) FINAL REGULATIONS.—Within a reasonable time
23 after publication of the interim regulations under sub-
24 section (a), the Secretary of Homeland Security, in con-
25 sultation with the Commissioner of Social Security and the

1 Attorney General, shall publish final regulations imple-
2 menting this subtitle.

3 **SEC. 8. OFFICE OF THE SMALL BUSINESS AND EMPLOYEE**
4 **ADVOCATE.**

5 (a) ESTABLISHMENT OF SMALL BUSINESS AND EM-
6 PLOYEE ADVOCATE.—The Secretary of Homeland Secu-
7 rity shall establish and maintain within U.S. Citizenship
8 and Immigration Services the Office of the Small Business
9 and Employee Advocate (in this section referred to as the
10 “Office”). The purpose of the Office shall be to assist
11 small businesses and individuals in complying with the re-
12 quirements of section 274A of the Immigration and Na-
13 tionality Act (8 U.S.C. 1324a), as amended by this Act,
14 including the resolution of conflicts arising in the course
15 of attempted compliance with such requirements.

16 (b) FUNCTIONS.—The functions of the Office shall
17 include, but not be limited to, the following:

18 (1) Informing small businesses and individuals
19 about the verification practices required by section
20 274A of the Immigration and Nationality Act, in-
21 cluding, but not limited to, the document verification
22 requirements and the employment verification sys-
23 tem requirements under subsections (c) and (d) of
24 that section.

1 (2) Assisting small businesses and individuals
2 in addressing allegedly erroneous further action no-
3 tices and nonconfirmations issued under subsection
4 (d) of section 274A of the Immigration and Nation-
5 ality Act.

6 (3) Informing small businesses and individuals
7 of the financial liabilities and criminal penalties that
8 apply to violations and failures to comply with the
9 requirements of section 274A of the Immigration
10 and Nationality Act, including, but not limited to, by
11 issuing best practices for compliance with that sec-
12 tion.

13 (4) To the extent practicable, proposing
14 changes to the Secretary of Homeland Security in
15 the administrative practices of the employment
16 verification system required under subsection (d) of
17 section 274A of the Immigration and Nationality
18 Act to mitigate the problems identified under para-
19 graph (2).

20 (5) Making recommendations through the Sec-
21 retary to Congress for legislative action to mitigate
22 such problems.

23 (c) AUTHORITY TO ISSUE ASSISTANCE ORDER.—

24 (1) IN GENERAL.—Upon application filed by a
25 small business or individual with the Office (in such

1 form, manner, and at such time as the Secretary of
2 Homeland Security shall by regulations prescribe),
3 the Office may issue an assistance order if—

4 (A) the Office determines the small busi-
5 ness or individual is suffering or about to suffer
6 a significant hardship as a result of the manner
7 in which the employment verification laws
8 under subsections (c) and (d) of section 274A
9 of the Immigration and Nationality Act are
10 being administered by the Secretary; or

11 (B) the small business or individual meets
12 such other requirements as are set forth in reg-
13 ulations prescribed by the Secretary.

14 (2) DETERMINATION OF HARDSHIP.—For pur-
15 poses of paragraph (1), a significant hardship shall
16 include—

17 (A) an immediate threat of adverse action;

18 (B) a delay of more than 60 days in resolv-
19 ing employment verification system problems;

20 (C) the incurring by the small business or
21 individual of significant costs if relief is not
22 granted; or

23 (D) irreparable injury to, or a long-term
24 adverse impact on, the small business or indi-
25 vidual if relief is not granted.

1 (3) STANDARDS WHEN ADMINISTRATIVE GUID-
2 ANCE NOT FOLLOWED.—In cases where a U.S. Citi-
3 zenship and Immigration Services employee is not
4 following applicable published administrative guid-
5 ance, the Office shall construe the factors taken into
6 account in determining whether to issue an assist-
7 ance order under this subsection in the manner most
8 favorable to the small business or individual.

9 (4) TERMS OF ASSISTANCE ORDER.—The terms
10 of an assistance order under this subsection may re-
11 quire the Secretary within a specified time period—

12 (A) to determine whether any employee is
13 or is not authorized to work in the United
14 States; or

15 (B) to abate any penalty under section
16 274A of the Immigration and Nationality Act
17 that the Office determines is arbitrary, capri-
18 cious, or disproportionate to the underlying of-
19 fense.

20 (5) AUTHORITY TO MODIFY OR RESCIND.—Any
21 assistance order issued by the Office under this sub-
22 section may be modified or rescinded—

23 (A) only by the Office, the Director or
24 Deputy Director of U.S. Citizenship and Immi-

1 gration Services, or the Secretary or the Sec-
2 retary's designee; and

3 (B) if rescinded by the Director or Deputy
4 Director of U.S. Citizenship and Immigration
5 Services, only if a written explanation of the
6 reasons of such official for the modification or
7 rescission is provided to the Office.

8 (6) SUSPENSION OF RUNNING OF PERIOD OF
9 LIMITATION.—The running of any period of limita-
10 tion with respect to an action described in paragraph
11 (4)(A) shall be suspended for—

12 (A) the period beginning on the date of the
13 small business or individual's application under
14 paragraph (1) and ending on the date of the
15 Office's decision with respect to such applica-
16 tion; and

17 (B) any period specified by the Office in
18 an assistance order issued under this subsection
19 pursuant to such application.

20 (7) INDEPENDENT ACTION OF OFFICE.—Noth-
21 ing in this subsection shall prevent the Office from
22 taking any action in the absence of an application
23 under paragraph (1).

24 (d) ACCESSIBILITY TO THE PUBLIC.—

1 (1) IN PERSON, ONLINE, AND TELEPHONE AS-
2 SISTANCE.—The Office shall provide information
3 and assistance specified in subsection (b) in person
4 at locations designated by the Secretary of Home-
5 land Security, online through an Internet website of
6 the Department available to the public, and by tele-
7 phone.

8 (2) AVAILABILITY TO ALL EMPLOYERS.—In
9 making information and assistance available, the Of-
10 fice shall prioritize the needs of small businesses and
11 individuals. However, the information and assistance
12 available through the Office shall be available to any
13 employer.

14 (e) AVOIDING DUPLICATION THROUGH COORDINA-
15 TION.—In the discharge of the functions of the Office, the
16 Secretary of Homeland Security shall consult with the
17 Secretary of Labor, the Secretary of Agriculture, the Com-
18 missioner, the Attorney General, the Equal Employment
19 Opportunity Commission, and the Administrator of the
20 Small Business Administration in order to avoid duplica-
21 tion of efforts across the Federal Government.

22 (f) DEFINITIONS.—In this section:

23 (1) The term “employer” has the meaning
24 given that term in section 274A(b) of the Immigra-
25 tion and Nationality Act.

1 (2) The term “small business” means an em-
2 ployer with 49 or fewer employees.

3 (g) AUTHORIZATION OF APPROPRIATIONS.—There is
4 authorized to be appropriated such sums as may be nec-
5 essary to carry out the functions of the Office.

○