

117TH CONGRESS
1ST SESSION

S. 418

To enforce work authorization requirements for immigrants.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2021

Mr. PORTMAN introduced the following bill; which was read twice and referred
to the Committee on the Judiciary

A BILL

To enforce work authorization requirements for immigrants.

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 Act”.

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

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

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

10 **“(a) MAKING EMPLOYMENT OF UNAUTHORIZED**
11 **ALIENS UNLAWFUL.—**

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

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

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

11 “(2) CONTINUING EMPLOYMENT.—

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

19 “(B) PROHIBITION ON CONSIDERATION OF
20 PREVIOUS UNAUTHORIZED STATUS.—Nothing
21 in this section may be construed to prohibit the
22 employment of an individual who is authorized
23 for employment in the United States if such in-
24 dividual was previously an unauthorized alien.

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

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

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

1 with the procedures described in subsection (d), if
2 any, in the manner provided under this paragraph.

3 “(5) GOOD FAITH DEFENSE.—

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

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

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

“(B) EXCEPTION FOR CERTAIN EMPLOYERS.—An employer who is not required to participate in the System or who is participating in the System on a voluntary basis pursuant to subsection (d)(2)(J) has established an affirmative defense under subparagraph (A) and need not demonstrate compliance with the requirements under subsection (d).

“(6) GOOD FAITH COMPLIANCE.—

“(A) IN GENERAL.—Except as otherwise provided in this subsection, an employer, person, or entity is considered to have complied with a requirement under this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

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

“(i) the failure is not de minimis;

“(ii) the Secretary has explained to the employer, person, or entity the basis for the failure and why 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

under any Federal, State, or local law relating to workplace rights, including back pay, are available to an employee despite—

“(i) the employee’s status as an unauthorized alien during or after the period of employment; or

“(ii) the employer’s or employee’s failure to comply with the requirements of this section.

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

“(i) are authorized to work in the United States at the time such relief is ordered or effectuated; or

“(ii) lost employment-authorized status due to the unlawful acts of the employer under this section.

“(b) DEFINITIONS.—In this section:

“(1) COMMISSIONER.—The term ‘Commissioner’ means the Commissioner of Social Security.

“(2) DEPARTMENT.—Except as otherwise provided, the term ‘Department’ means the Department of Homeland Security.

“(3) EMPLOYER.—The term ‘employer’ means any person or entity, including an agency or depart-

1 ment of a Federal, State, or local government, an
2 agent, or a System service provider acting on behalf
3 of an employer, that hires, employs, recruits, or re-
4 fers for a fee an individual for employment in the
5 United States that is not casual, sporadic, irregular,
6 or intermittent (as defined by the Secretary).

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

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

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

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

22 “(A) is not lawfully admitted for perma-
23 nent residence; or

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

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

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

14 “(1) ATTESTATION AFTER EXAMINATION OF
 15 DOCUMENTATION.—

16 “(A) IN GENERAL.—

17 “(i) EXAMINATION BY EMPLOYER.—

18 An employer shall attest, under penalty of
 19 perjury on a form prescribed by the Sec-
 20 retary, that the employer has verified the
 21 identity and employment authorization sta-
 22 tus of the individual—

23 “(I) by examining—

24 “(aa) a document specified
 25 in subparagraph (C); or

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

5 “(II) by using an identity au-
6 thentication mechanism described in
7 clause (iii) or (iv) of subparagraph
8 (F).

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

14 “(B) REQUIREMENTS.—

15 “(i) FORM.—The form referred to in
16 subparagraph (A)(i)—

17 “(I) shall be prescribed by the
18 Secretary not later than 6 months
19 after the date of the enactment of the
20 E-Verify Act;

21 “(II) shall be available as—

22 “(aa) a paper form;

23 “(bb) a form that may be
24 completed by an employer via
25 telephone or video conference;

1 “(cc) an electronic form; or

2 “(dd) a form that is inte-
3 grated electronically with the re-
4 quirements under subparagraph
5 (F) and subsection (d).

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

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

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

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

24 “(C) DOCUMENTS ESTABLISHING IDEN-
25 TITY AND EMPLOYMENT AUTHORIZED STA-

1 TUS.—A document is specified in this subpara-
2 graph if the document is unexpired (unless the
3 validity of the document is extended by law)
4 and is one of the following:

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

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

19 “(I) contains a photograph of the
20 individual, or such other personal
21 identifying information relating to the
22 individual as the Secretary deter-
23 mines, by regulation, to be sufficient
24 for the purposes of this subparagraph;

1 “(II) is evidence of employment
2 authorized status; and

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

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

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

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

1 ment, and such other factors as the
2 Secretary may prescribe.

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

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

22 “(D) DOCUMENTS ESTABLISHING IDEN-
23 TITY OF INDIVIDUAL.—A document is specified
24 in this subparagraph if the document is unex-

1 pired (unless the validity of the document is ex-
2 tended by law) and is one of the following:

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

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

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

20 “(ii) A voter registration card.

21 “(iii) A document that complies with
22 the requirements under section 7209(b)(1)
23 of the Intelligence Reform and Terrorism
24 Prevention Act of 2004 (Public Law 108–
25 458; 8 U.S.C. 1185 note).

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

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

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

21 “(ii) Any other documentation evi-
22 dencing employment authorized status that
23 the Secretary determines and publishes in
24 the Federal Register and through appro-
25 priate notice directly to employers reg-

istered within the System to be acceptable
for purposes of this subparagraph if such
documentation, including any electronic security
measures linked to such documentation,
contains security features to make
such documentation resistant to tampering,
counterfeiting, and fraudulent use.

“(F) IDENTITY AUTHENTICATION MECHANISM.—

“(i) DEFINITIONS.—In this subparagraph:

“(I) COVERED IDENTITY DOCUMENT.—The term ‘covered identity document’ means a valid—

“(aa) United States passport, passport card, or a document evidencing lawful permanent residence status or employment authorized status issued to an alien;

“(bb) enhanced driver’s license or identity card issued by a participating State or an outlying possession of the United States; or

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

6 “(II) PARTICIPATING STATE.—
 7 The term ‘participating State’ means
 8 a State that has an agreement with
 9 the Secretary to provide the Sec-
 10 retary, for purposes of identity
 11 verification in the System, with photo-
 12 graphs and appropriate identifying in-
 13 formation maintained by the State.

14 “(ii) REQUIREMENT FOR IDENTITY
 15 AUTHENTICATION.—In addition to verify-
 16 ing the documents specified in subpara-
 17 graph (C), (D), or (E), the System shall
 18 require each employer to verify the identity
 19 of each newly hired employee using the
 20 identity authentication mechanism de-
 21 scribed in clause (iii), or for an individual
 22 whose identity is not able to be verified
 23 using that mechanism, to use the addi-
 24 tional security measures provided in clause
 25 (iv) after such measures become available.

1 A failure of the System to verify the iden-
2 tity of an individual due to the use of an
3 identity authentication mechanism shall re-
4 sult in a further action notice under sub-
5 section (d)(4)(C)(iii).

6 “(iii) PHOTO TOOL.—

7 “(I) USE REQUIREMENT.—An
8 employer that hires an individual who
9 has presented a covered identity docu-
10 ment to establish his or her identity
11 and employment authorization under
12 this subsection shall verify the identity
13 of such individual using the photo tool
14 described in subclause (II).

15 “(II) DEVELOPMENT REQUIRE-
16 MENT.—The Secretary shall develop
17 and maintain a photo tool that en-
18 ables employers to match the photo-
19 graph on a covered identity document
20 provided to the employer to a photo-
21 graph maintained by a U.S. Citizen-
22 ship and Immigration Services data-
23 base or other appropriate database.

24 “(III) INDIVIDUAL QUERIES.—

25 The photo tool capability shall be in-

1 incorporated into the System and made
2 available to employers not later than 1
3 year after the date on which regula-
4 tions are published implementing sub-
5 section (d).

6 “(IV) LIMITATIONS ON USE OF
7 INFORMATION.—Information and im-
8 ages acquired from State motor vehi-
9 cle databases through the photo tool
10 developed under this clause—

11 “(aa) may only be used for
12 matching photographs to a cov-
13 ered identity document for the
14 purposes of employment verifica-
15 tion;

16 “(bb) shall not be collected
17 or stored by the Federal Govern-
18 ment; and

19 “(cc) may only be dissemi-
20 nated in response to an indi-
21 vidual photo tool query.

22 “(iv) ADDITIONAL SECURITY MEAS-
23 URES.—

24 “(I) USE REQUIREMENT.—An
25 employer seeking to hire an individual

1 whose identity is not able to be
2 verified using the photo tool described
3 in clause (iii) because the employee
4 did not present a covered document
5 for employment eligibility verification
6 purposes shall verify the identity of
7 such individual using the additional
8 security measures described in sub-
9 clause (II).

10 “(II) DEVELOPMENT REQUIRE-
11 MENT.—The Secretary shall develop,
12 after publication in the Federal Reg-
13 ister and an opportunity for public
14 comment, specific and effective addi-
15 tional security measures to adequately
16 verify the identity of an individual
17 whose identity is not able to be
18 verified using the photo tool described
19 in clause (iii). Such additional security
20 measures—

21 “(aa) shall be kept up-to-
22 date with technological advances;

23 “(bb) shall provide a means
24 of identity authentication in a
25 manner that provides a high level

1 of certainty as to the identity of
2 such individual, using immigra-
3 tion and identifying information
4 that may include review of iden-
5 tity documents or background
6 screening verification techniques
7 using publicly available informa-
8 tion; and

9 “(cc) shall be incorporated
10 into the System and made avail-
11 able to employers not later than
12 1 year after the date on which
13 regulations are published imple-
14 menting subsection (d).

15 “(III) COMPREHENSIVE USE.—

16 An employer may employ the addi-
17 tional security measures set forth in
18 this clause with respect to all individ-
19 uals the employer hires if the em-
20 ployer notifies the Secretary of such
21 election at the time the employer reg-
22 isters for use of the System under
23 subsection (d)(4)(A)(i) or anytime
24 thereafter. An election under this sub-
25 clause may be withdrawn 90 days

1 after the employer notifies the Sec-
2 retary of the employer's intent to dis-
3 continue such election.

4 “(v) AUTOMATED VERIFICATION.—

5 The Secretary—

6 “(I) may establish a program, in
7 addition to the identity authentication
8 mechanism described in paragraph
9 (F)(iii), in which the System auto-
10 matically verifies information con-
11 tained in a covered identity document
12 issued by a participating State, which
13 is presented under subparagraph
14 (D)(i), including information needed
15 to verify that the covered identity doc-
16 ument matches the State's records;

17 “(II) may not maintain informa-
18 tion provided by a participating State
19 in a database maintained by U.S.
20 Citizenship and Immigration Services;
21 and

22 “(III) may not use or disclose
23 such information, except as authorized
24 under this section.

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 signature; 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 of 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, and the
2 speed 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 Act, to the extent required under
 22 section 402(e)(1) of the Illegal Immigra-
 23 tion Reform and Immigrant Responsibility
 24 Act of 1996 (division C of Public Law
 25 104–208; 8 U.S.C. 1324a) and as already

1 implemented by each agency or depart-
2 ment; or

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

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

14 “(C) CRITICAL INFRASTRUCTURE.—

15 “(i) IN GENERAL.—Beginning on the
16 date that is 1 year after the date on which
17 regulations are published implementing
18 this subsection, the Secretary may author-
19 ize or direct any employer, person, or enti-
20 ty responsible for granting access to, pro-
21 tecting, securing, operating, administering,
22 or regulating part of the critical infrastruc-
23 ture (as defined in section 1016(e) of the
24 Critical Infrastructure Protection Act of
25 2001 (42 U.S.C. 5195c(e))) to participate

1 in the System to the extent the Secretary
2 determines that such participation will as-
3 sist in the protection of the critical infra-
4 structure.

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

11 “(D) EMPLOYERS WITH MORE THAN 10,000
12 EMPLOYEES.—Not later than 1 year after regu-
13 lations are published implementing this sub-
14 section, all employers with more than 10,000
15 employees shall participate in the System with
16 respect to all newly hired employees and em-
17 ployees with expiring temporary employment
18 authorization documents.

19 “(E) EMPLOYERS WITH MORE THAN 500
20 EMPLOYEES.—Not later than 2 years after reg-
21 ulations are published implementing this sub-
22 section, all employers with more than 500 em-
23 ployees shall participate in the System with re-
24 spect to all newly hired employees and employ-

ees with expiring temporary employment authorization documents.

“(F) EMPLOYERS WITH MORE THAN 20 EMPLOYEES.—Not later than 3 years after regulations are published implementing this subsection, all employers with more than 20 employees shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents.

“(G) AGRICULTURAL EMPLOYMENT.—Not later than 4 years after regulations are published implementing this subsection, employers of employees performing agricultural employment (as defined in section 218A) shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents. An agricultural employee shall not be counted for purposes of subparagraph (D), (E), or (F).

“(H) ALL EMPLOYERS.—Not later than 4 years after regulations are published implementing this subsection, all employers shall participate in the System with respect to all newly

1 hired employees and employees with expiring
 2 temporary employment authorization docu-
 3 ments.

4 “(I) TRIBAL GOVERNMENT EMPLOYERS.—

5 “(i) RULEMAKING.—In developing
 6 regulations to implement this subsection,
 7 the Secretary shall—

8 “(I) consider the effects of this
 9 section on federally recognized Indian
 10 tribes and tribal members; and

11 “(II) consult with the govern-
 12 ments of federally recognized Indian
 13 tribes.

14 “(ii) REQUIRED PARTICIPATION.—Not
 15 later than 4 years after regulations are
 16 published implementing this subsection, all
 17 employers owned by, or entities of, the gov-
 18 ernment of a federally recognized Indian
 19 tribe shall participate in the System with
 20 respect to all newly hired employees and
 21 employees with expiring temporary employ-
 22 ment authorization documents.

23 “(J) IMMIGRATION LAW VIOLATORS.—

24 “(i) ORDERS FINDING VIOLATIONS.—
 25 An order finding any employer to have vio-

1 lated this section or section 274C may, in
2 the Secretary's discretion, require the em-
3 ployer to participate in the System with re-
4 spect to newly hired employees and em-
5 ployees with expiring temporary employ-
6 ment authorization documents, if such em-
7 ployer is not otherwise required to partici-
8 pate in the System under this section. The
9 Secretary shall monitor such employer's
10 compliance with System procedures.

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

22 “(K) VOLUNTARY PARTICIPATION.—The
23 Secretary may permit any employer that is not
24 required to participate in the System under this
25 section to do so on a voluntary basis.

1 “(3) CONSEQUENCE OF FAILURE TO PARTICI-
2 PATE.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), the failure, other than a de
5 minimis or inadvertent failure, of an employer
6 that is required to participate in the System to
7 comply with the requirements of the System
8 with respect to an individual—

9 “(i) shall be treated as a violation of
10 subsection (a)(1)(B) with respect to that
11 individual; and

12 “(ii) creates a rebuttable presumption
13 that the employer has violated paragraph
14 (1)(A) or (2) of subsection (a).

15 “(B) EXCEPTION.—

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

18 “(ii) USE AS EVIDENCE.—Nothing in
19 this paragraph may be construed to limit
20 the use in the prosecution of a Federal
21 crime, in a manner otherwise consistent
22 with Federal criminal law and procedure,
23 of evidence relating to the employer’s fail-
24 ure to comply with requirements of the
25 System.

1 “(4) PROCEDURES FOR PARTICIPANTS IN THE
2 SYSTEM.—

3 “(A) IN GENERAL.—An employer partici-
4 pating in the System shall register such partici-
5 pation with the Secretary and, when hiring any
6 individual for employment in the United States,
7 shall comply with the following:

8 “(i) REGISTRATION OF EMPLOYERS.—
9 The Secretary, through notice in the Fed-
10 eral Register, shall prescribe procedures
11 that employers shall be required to follow
12 to register with the System.

13 “(ii) UPDATING INFORMATION.—The
14 employer is responsible for providing notice
15 of any change to the information required
16 under subclauses (I), (II), and (III) of
17 clause (v) before conducting any further
18 inquiries within the System, or on such
19 other schedule as the Secretary may pre-
20 scribe.

21 “(iii) TRAINING.—The Secretary shall
22 require employers to undergo such training
23 as the Secretary determines to be nec-
24 essary to ensure proper use, protection of
25 civil rights and civil liberties, privacy, in-

1 tegrity, and security of the System. To the
 2 extent practicable, such training shall be
 3 made available electronically on the U.S.
 4 Citizenship and Immigration Services
 5 website.

6 “(iv) NOTIFICATION TO EMPLOY-
 7 EES.—The employer shall inform individ-
 8 uals hired for employment that the Sys-
 9 tem—

10 “(I) will be used by the employer;

11 “(II) may be used for immigra-
 12 tion enforcement purposes; and

13 “(III) may not be used to dis-
 14 criminate or to take adverse action
 15 against a national of the United
 16 States or an alien who has employ-
 17 ment authorized status.

18 “(v) PROVISION OF ADDITIONAL IN-
 19 FORMATION.—The employer shall obtain
 20 from the individual (and the individual
 21 shall provide) and shall record in such
 22 manner as the Secretary may specify—

23 “(I) the individual’s social secu-
 24 rity account number;

1 “(II) if the individual does not
 2 attest to United States citizenship or
 3 status as a national of the United
 4 States under subsection (c)(2), such
 5 identification or authorization number
 6 established by the Department as the
 7 Secretary shall specify; and

8 “(III) such other information as
 9 the Secretary may require to deter-
 10 mine the identity and employment au-
 11 thorization of an individual.

12 “(vi) PRESENTATION OF DOCUMENTA-
 13 TION.—The employer, and the individual
 14 whose identity and employment authorized
 15 status are being confirmed, shall fulfill the
 16 requirements under subsection (c).

17 “(B) SEEKING CONFIRMATION.—

18 “(i) IN GENERAL.—An employer shall
 19 use the System to confirm the identity and
 20 employment authorized status of any indi-
 21 vidual during—

22 “(I) the period beginning on the
 23 date on which the individual accepts
 24 an offer of employment and ending 3

1 business days after the date on which
2 employment begins; or

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

5 “(ii) LIMITATION.—An employer may
6 not make the starting date of an individ-
7 ual’s employment or training or any other
8 term and condition of employment depend-
9 ent on the receipt of a confirmation of
10 identity and employment authorized status
11 by the System.

12 “(iii) REVERIFICATION.—If an indi-
13 vidual has a limited period of employment
14 authorized status, the individual’s em-
15 ployer shall re-verify such status through
16 the System not later than 3 business days
17 after the last day of such period.

18 “(iv) OTHER EMPLOYMENT.—For em-
19 ployers directed by the Secretary to par-
20 ticipate in the System under paragraph
21 (2)(C)(i) to protect critical infrastructure
22 or otherwise specified circumstances in this
23 section to verify their entire workforce, the
24 System may be used for initial verification
25 of an individual who was hired before the

1 employer became subject to the System,
2 and the employer shall initiate all required
3 procedures on or before such date as the
4 Secretary shall specify.

5 “(v) NOTIFICATION.—

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

17 “(II) PROCEDURES.—The Sec-
18 retary shall—

19 “(aa) directly notify the in-
20 dividual and the employer, by
21 means of electronic correspond-
22 ence, mail, text message, tele-
23 phone, or other direct commu-
24 nication, of a nonconfirmation or
25 further action notice;

1 “(bb) provide information
 2 about filing an administrative ap-
 3 peal under paragraph (6) and a
 4 filing for review before an admin-
 5 istrative law judge under para-
 6 graph (7); and

7 “(cc) establish procedures to
 8 directly notify the individual and
 9 the employer of a confirmation.

10 “(III) IMPLEMENTATION.—The
 11 Secretary may provide for a phased-in
 12 implementation of the notification re-
 13 quirements under this clause, as ap-
 14 propriate. The notification system
 15 shall cover all inquiries not later than
 16 1 year from the date of the enactment
 17 of the E-Verify Act.

18 “(C) CONFIRMATION OR NONCONFIRMA-
 19 TION.—

20 “(i) INITIAL RESPONSE.—

21 “(I) IN GENERAL.—Except as
 22 provided in subclause (II), the System
 23 shall provide—

24 “(aa) a confirmation of an
 25 individual’s identity and employ-

1 ment authorized status or a fur-
2 ther action notice at the time of
3 the inquiry; and

4 “(bb) an appropriate code
5 indicating such confirmation or
6 such further action notice.

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

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

23 “(iii) FURTHER ACTION NOTICE AND
24 LATER CONFIRMATION OR NONCONFIRMA-
25 TION.—

1 “(I) NOTIFICATION AND AC-
2 KNOWLEDGMENT THAT FURTHER AC-
3 TION IS REQUIRED.—Not later than 3
4 business days after an employer re-
5 ceives a further action notice of an in-
6 dividual’s identity or employment eli-
7 gibility under the System, or during
8 such other reasonable time as the Sec-
9 retary may prescribe, the employer
10 shall notify the individual for whom
11 the confirmation is sought of the fur-
12 ther action notice and any procedures
13 specified by the Secretary for address-
14 ing such notice. The employer shall
15 give the further action notice to the
16 individual in writing and the employer
17 shall acknowledge in the System
18 under penalty of perjury that it pro-
19 vided the employee with the further
20 action notice. The individual shall af-
21 firmatively acknowledge in writing, or
22 in such other manner as the Secretary
23 may specify, the receipt of the further
24 action notice from the employer. If
25 the individual refuses to acknowledge

1 the receipt of the further action no-
2 tice, or acknowledges in writing that
3 the individual will not contest the fur-
4 ther action notice under subclause
5 (II), the employer shall notify the Sec-
6 retary in such manner as the Sec-
7 retary may specify.

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

1 in any way an employee's right to ap-
2 peal a nonconfirmation.

3 “(III) NO CONTEST.—If the indi-
4 vidual refuses to acknowledge receipt
5 of the further action notice, acknowl-
6 edges that the individual will not con-
7 test the further action notice as pro-
8 vided in subclause (I), or does not
9 contact the appropriate Federal agen-
10 cy within the period specified in sub-
11 clause (II), following expiration of the
12 period specified in subclause (II), a
13 nonconfirmation shall be issued. The
14 employer shall record the noncon-
15 firmation in such manner as the Sec-
16 retary may specify and terminate the
17 individual's employment. An individ-
18 ual's failure to contest a further ac-
19 tion notice shall not be considered an
20 admission of guilt with respect to any
21 violation of this section or any provi-
22 sion of law.

23 “(IV) CONFIRMATION OR NON-
24 CONFIRMATION.—Unless the period is
25 extended in accordance with this sub-

1 clause, the System shall provide a
2 confirmation or nonconfirmation not
3 later than 10 business days after the
4 date on which the individual contests
5 the further action notice under sub-
6 clause (II). If the Secretary deter-
7 mines that good cause exists, after
8 taking into account adverse impacts
9 to the employer, and including time to
10 permit the individual to obtain and
11 provide needed evidence of identity or
12 employment eligibility, the Secretary
13 shall extend the period for providing
14 confirmation or nonconfirmation for
15 stated periods beyond 10 business
16 days. When confirmation or noncon-
17 firmation is provided, the confirma-
18 tion system shall provide an appro-
19 priate code indicating such confirma-
20 tion or nonconfirmation.

21 “(V) REEXAMINATION.—Nothing
22 in this section may be construed to
23 prevent the Secretary from estab-
24 lishing procedures to reexamine a case
25 where a confirmation or nonconfirma-

1 tion has been provided if subsequently
2 received information indicates that the
3 confirmation or nonconfirmation may
4 not have been correct. Any procedures
5 for reexamination shall not limit in
6 any way an employee's right to appeal
7 a nonconfirmation.

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

16 “(aa) a nonconfirmation has
17 been issued;

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

1 “(cc) if an appeal before an
2 administrative law judge under
3 paragraph (7) has been filed, the
4 nonconfirmation has been upheld
5 or the appeal has been withdrawn
6 or dismissed.

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

1 or in such other manner as the Secretary
2 may prescribe, the receipt of the noncon-
3 firmation notice from the employer. If the
4 individual refuses or fails to acknowledge
5 the receipt of the nonconfirmation notice,
6 the employer shall notify the Secretary in
7 such manner as the Secretary may pre-
8 scribe.

9 “(D) CONSEQUENCES OF NONCONFIRMA-
10 TION.—

11 “(i) TERMINATION OF CONTINUED
12 EMPLOYMENT.—Except as provided in
13 clause (iii), an employer that has received
14 a nonconfirmation regarding an individual
15 and has made reasonable efforts to notify
16 the individual in accordance with subpara-
17 graph (C)(iv) shall terminate the employ-
18 ment of the individual upon the expiration
19 of the time period specified in paragraph
20 (7).

21 “(ii) CONTINUED EMPLOYMENT
22 AFTER NONCONFIRMATION.—If the em-
23 ployer continues to employ an individual
24 after receiving nonconfirmation and ex-
25 haustion of all appeals or expiration of all

rights to appeal if not appealed, in violation of clause (i), a rebuttable presumption is created that the employer has violated paragraphs (1)(A) and (2) of subsection (a). Such presumption shall not apply in any prosecution under subsection (k)(1).

“(iii) EFFECT OF ADMINISTRATIVE APPEAL OR REVIEW BY ADMINISTRATIVE LAW JUDGE.—If an individual files an administrative appeal of the nonconfirmation within the time period specified in paragraph (6)(A), or files for review with an administrative law judge specified in paragraph (7)(A), the employer shall not terminate the individual’s employment under this subparagraph prior to the resolution of the administrative appeal unless the Secretary or the Commissioner terminates the stay under paragraph (6)(B) or (7)(B).

“(iv) WEEKLY REPORT.—The Director of U.S. Citizenship and Immigration Services shall submit a weekly report to the Assistant Secretary for Immigration and Customs Enforcement that includes,

1 for each individual who receives final non-
2 confirmation through the System—

3 “(I) the name of such individual;

4 “(II) his or her social security
5 number or alien file number;

6 “(III) the name and contact in-
7 formation for his or her current em-
8 ployer; and

9 “(IV) any other critical informa-
10 tion that the Assistant Secretary de-
11 termines to be appropriate.

12 “(v) OTHER REFERRAL.—The Direc-
13 tor of U.S. Citizenship and Immigration
14 Services shall refer to the Assistant Sec-
15 retary for Immigration and Customs En-
16 forcement for appropriate action by the
17 Assistant Secretary, or for referral by the
18 Assistant Secretary to another law enforce-
19 ment agency, as appropriate—

20 “(I) any case in which the Direc-
21 tor believes that a social security
22 number has been falsely or fraudu-
23 lently used; and

24 “(II) any case in which a false or
25 fraudulent document is used by an

1 employee who has received a further
2 action notice to resolve such notice.

3 “(E) OBLIGATION TO RESPOND TO QUE-
4 RIES AND ADDITIONAL INFORMATION.—

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

22 “(ii) ACTION BY INDIVIDUALS.—

23 “(I) IN GENERAL.—Individuals
24 being verified through the System
25 may be required to take further action

1 to address questions identified by the
2 Secretary or the Commissioner re-
3 garding the documents relied upon for
4 purposes of subsection (c).

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

11 “(aa) notify the individual of
12 any such requirement for further
13 actions; and

14 “(bb) record the date and
15 manner of such notification.

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

22 “(iii) RULEMAKING.—

23 “(I) IN GENERAL.—The Sec-
24 retary, in consultation with the Com-
25 missioner and the Attorney General,

1 is authorized to issue regulations im-
2 plementing, clarifying, and supple-
3 menting the requirements under this
4 subparagraph—

5 “(aa) to facilitate the func-
6 tioning, accuracy, and fairness of
7 the System;

8 “(bb) to prevent misuse, dis-
9 crimination, fraud, or identity
10 theft in the use of the System;
11 and

12 “(cc) to protect and main-
13 tain the confidentiality of infor-
14 mation that could be used to lo-
15 cate or otherwise place at risk of
16 harm victims of domestic vio-
17 lence, dating violence, sexual as-
18 sault, stalking, and human traf-
19 ficking, and of the applicant or
20 beneficiary of any petition de-
21 scribed in section 384(a)(2) of
22 the Illegal Immigration Reform
23 and Immigrant Responsibility
24 Act of 1996 (8 U.S.C.
25 1367(a)(2)).

1 “(II) NOTICE.—The regulations
2 issued under subclause (I) shall be—

3 “(aa) published in the Fed-
4 eral Register; and

5 “(bb) provided directly to all
6 employers registered in the Sys-
7 tem.

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

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

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

22 “(iii) for establishing standards for
23 certification of electronic I–9 programs.

24 “(G) REQUIREMENT TO PROVIDE INFOR-
25 MATION.—

1 “(i) IN GENERAL.—No later than 3
2 months after the date of the enactment of
3 the E-Verify Act, the Secretary, in con-
4 sultation with the Secretary of Labor, the
5 Secretary of Agriculture, the Commis-
6 sioner, the Attorney General, the Equal
7 Employment Opportunity Commission, and
8 the Administrator of the Small Business
9 Administration, shall commence a cam-
10 paign to disseminate information respect-
11 ing the procedures, rights, and remedies
12 prescribed under this section.

13 “(ii) CAMPAIGN REQUIREMENTS.—
14 The campaign authorized under clause
15 (i)—

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

22 “(II) shall be coordinated with
23 the public education campaign con-
24 ducted by U.S. Citizenship and Immi-
25 gration Services.

1 “(iii) ASSESSMENT.—The Secretary
2 shall assess the success of the campaign in
3 achieving the goals of the campaign.

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

12 “(v) AUTHORIZATION OF APPROPRIA-
13 TIONS.—There are authorized to be appro-
14 priated, for each of the fiscal years 2020
15 through 2022, such sums as may be nec-
16 essary to carry out this subparagraph.

17 “(H) AUTHORITY TO MODIFY INFORMA-
18 TION REQUIREMENTS.—Based on a regular re-
19 view of the System and the document
20 verification procedures to identify misuse or
21 fraudulent use and to assess the security of the
22 documents and processes used to establish iden-
23 tity or employment authorized status, the Sec-
24 retary, in consultation with the Commissioner,
25 after publication of notice in the Federal Reg-

1 ister and an opportunity for public comment,
2 may modify, if the Secretary determines that
3 the modification is necessary to ensure that the
4 System accurately and reliably determines the
5 identity and employment authorized status of
6 employees and maintains existing protections
7 against misuse, discrimination, fraud, and iden-
8 tity theft—

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

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

13 “(iii) the procedures that shall be fol-
14 lowed by employers with respect to the
15 process of verifying an individual through
16 the System.

17 “(I) SELF-VERIFICATION.—Subject to ap-
18 propriate safeguards to prevent misuse of the
19 system, the Secretary, in consultation with the
20 Commissioner, shall establish a secure self-
21 verification procedure to permit an individual
22 who seeks to verify the individual’s own employ-
23 ment eligibility to contact the appropriate agen-
24 cy and, in a timely manner, correct or update
25 the information contained in the System.

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

10 “(6) ADMINISTRATIVE APPEAL.—

11 “(A) IN GENERAL.—An individual who is
12 notified of a nonconfirmation may, not later
13 than 10 business days after the date that such
14 notice is received, file an administrative appeal
15 of such nonconfirmation with the Commissioner
16 if the notice is based on records maintained by
17 the Commissioner, or in any other case, with
18 the Secretary. An individual who does not time-
19 ly contest a further action notice timely received
20 by that individual for which the individual ac-
21 knowledged receipt may not be granted a review
22 under this paragraph.

23 “(B) ADMINISTRATIVE STAY OF NONCON-
24 FIRMATION.—The nonconfirmation shall be
25 automatically stayed upon the timely filing of

1 an administrative appeal, unless the noncon-
2 firmation resulted after the individual acknowl-
3 edged receipt of the further action notice but
4 failed to contact the appropriate agency within
5 the time provided. The stay shall remain in ef-
6 fect until the resolution of the appeal, unless
7 the Secretary or the Commissioner terminates
8 the stay based on a determination that the ad-
9 ministrative appeal is frivolous or filed for pur-
10 poses of delay.

11 “(C) REVIEW FOR ERROR.—The Secretary
12 and the Commissioner shall develop procedures
13 for resolving administrative appeals regarding
14 nonconfirmations based upon the information
15 that the individual has provided, including any
16 additional evidence or argument that was not
17 previously considered. Any such additional evi-
18 dence or argument shall be filed within 10 busi-
19 ness days of the date the appeal was originally
20 filed. Appeals shall be resolved within 20 busi-
21 ness days after the individual has submitted all
22 evidence and arguments the individual wishes to
23 submit, or has stated in writing that there is no
24 additional evidence that the individual wishes to
25 submit. The Secretary and the Commissioner

1 may, on a case by case basis for good cause, ex-
 2 tend the filing and submission period in order
 3 to ensure accurate resolution of an appeal be-
 4 fore the Secretary or the Commissioner.

5 “(D) PREPONDERANCE OF EVIDENCE.—
 6 Administrative appeal under this paragraph
 7 shall be limited to whether a nonconfirmation
 8 notice is supported by a preponderance of the
 9 evidence.

10 “(E) DAMAGES, FEES, AND COSTS.—No
 11 money damages, fees, or costs may be awarded
 12 in the administrative appeal process under this
 13 paragraph.

14 “(7) REVIEW BY ADMINISTRATIVE LAW
 15 JUDGE.—

16 “(A) IN GENERAL.—Not later than 30
 17 days after the date an individual receives a final
 18 determination on an administrative appeal
 19 under paragraph (6), the individual may obtain
 20 review of such determination by filing a com-
 21 plaint with a Department of Justice administra-
 22 tive law judge in accordance with this para-
 23 graph.

24 “(B) STAY OF NONCONFIRMATION.—The
 25 nonconfirmation related to such final deter-

mination shall be automatically stayed upon the timely filing of a complaint under this paragraph, and the stay shall remain in effect until the resolution of the complaint, unless the administrative law judge determines that the action is frivolous or filed for purposes of delay.

“(C) SERVICE.—The respondent to complaint filed under this paragraph is either the Secretary or the Commissioner, but not both, depending upon who issued the administrative order under paragraph (6). In addition to serving the respondent, the plaintiff shall serve the Attorney General.

“(D) AUTHORITY OF ADMINISTRATIVE LAW JUDGE.—

“(i) RULES OF PRACTICE.—The Secretary shall promulgate regulations regarding the rules of practice in appeals brought pursuant to this subsection.

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

“(I) terminate a stay of a nonconfirmation under subparagraph (B) if the administrative law judge deter-

1 mines that the action is frivolous or
2 filed for purposes of delay;

3 “(II) adduce evidence at a hear-
4 ing;

5 “(III) compel by subpoena the
6 attendance of witnesses and the pro-
7 duction of evidence at any designated
8 place or hearing;

9 “(IV) resolve claims of identity
10 theft; and

11 “(V) enter, upon the pleadings
12 and any evidence adduced at a hear-
13 ing, a decision affirming or reversing
14 the result of the agency, with or with-
15 out remanding the cause for a rehear-
16 ing.

17 “(iii) SUBPOENA.—In case of contu-
18 macy or refusal to obey a subpoena law-
19 fully issued under this section and upon
20 application of the administrative law judge,
21 an appropriate district court of the United
22 States may issue an order requiring com-
23 pliance with such subpoena and any failure
24 to obey such order may be punished by
25 such court as a contempt of such court.

1 “(iv) TRAINING.—An administrative
2 law judge hearing cases shall have special
3 training respecting employment authorized
4 status verification.

5 “(E) ORDER BY ADMINISTRATIVE LAW
6 JUDGE.—

7 “(i) IN GENERAL.—The administra-
8 tive law judge shall issue and cause to be
9 served to the parties in the proceeding an
10 order which may be appealed as provided
11 in subparagraph (G).

12 “(ii) CONTENTS OF ORDER.—Such an
13 order shall uphold or reverse the final de-
14 termination on the request for reconsider-
15 ation and order lost wages and other ap-
16 propriate remedies as provided in subpara-
17 graph (F).

18 “(F) COMPENSATION FOR ERROR.—

19 “(i) IN GENERAL.—In cases in which
20 the administrative law judge reverses the
21 final determination of the Secretary or the
22 Commissioner made under paragraph (6),
23 and the administrative law judge finds
24 that—

1 “(I) the nonconfirmation was due
2 to gross negligence or intentional mis-
3 conduct of the employer, the adminis-
4 trative law judge may order the em-
5 ployer to pay the individual lost
6 wages, and reasonable costs and attor-
7 neys’ fees incurred during administra-
8 tive and judicial review; or

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

19 “(ii) CALCULATION OF LOST
20 WAGES.—Lost wages shall be calculated
21 based on the wage rate and work schedule
22 that prevailed prior to termination. The in-
23 dividual shall be compensated for wages
24 lost beginning on the first scheduled work
25 day after employment was terminated and

1 ending 120 days after completion of the
2 administrative law judge's review described
3 in this paragraph or the day after the indi-
4 vidual is reinstated or obtains employment
5 elsewhere, whichever occurs first. If the in-
6 dividual obtains employment elsewhere at a
7 lower wage rate, the individual shall be
8 compensated for the difference in wages
9 for the period ending 120 days after com-
10 pletion of the administrative law judge re-
11 view process. No lost wages shall be award-
12 ed for any period of time during which the
13 individual was not in employment author-
14 ized status.

15 “(iii) PAYMENT OF COMPENSATION.—
16 Notwithstanding any other law, payment of
17 compensation for lost wages, costs, and at-
18 torneys' fees under this paragraph, or com-
19 promise settlements of the same, shall be
20 made as provided by section 1304 of title
21 31, United States Code. Appropriations
22 made available to the Secretary or the
23 Commissioner, accounts provided for under
24 section 286, and funds from the Federal
25 Old-Age and Survivors Insurance Trust

1 Fund or the Federal Disability Insurance
 2 Trust Fund shall not be available to pay
 3 such compensation.

4 “(G) APPEAL.—No later than 45 days
 5 after the entry of such final order, any person
 6 adversely affected by such final order may seek
 7 review of such order in the United States Court
 8 of Appeals for the circuit in which the violation
 9 is alleged to have occurred or in which the em-
 10 ployer resides or transacts business.

11 “(8) MANAGEMENT OF THE SYSTEM.—

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

15 “(i) respond to inquiries made by par-
 16 ticipating employers at any time through
 17 the internet, or such other means as the
 18 Secretary may designate, concerning an in-
 19 dividual’s identity and whether the indi-
 20 vidual is in employment authorized status;

21 “(ii) maintain records of the inquiries
 22 that were made, of confirmations provided
 23 (or not provided), and of the codes pro-
 24 vided to employers as evidence of their

1 compliance with their obligations under the
2 System; and

3 “(iii) provide information to, and re-
4 quire action by, employers and individuals
5 using the System.

6 “(B) DESIGN AND OPERATION OF SYS-
7 TEM.—The System shall be designed and oper-
8 ated—

9 “(i) to maximize its reliability and
10 ease of use by employers consistent with
11 protecting the privacy and security of the
12 underlying information, and ensuring full
13 notice of such use to employees;

14 “(ii) to maximize its ease of use by
15 employees, including direct notification of
16 its use, of results, and ability to challenge
17 results;

18 “(iii) to respond accurately to all in-
19 quiries made by employers on whether in-
20 dividuals are authorized to be employed
21 and to register any times when the system
22 is unable to receive inquiries;

23 “(iv) to maintain appropriate adminis-
24 trative, technical, and physical safeguards
25 to prevent unauthorized disclosure of per-

sonal information, misuse by employers
and employees, and discrimination;

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

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

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

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

“(III) to develop tools and proc-
esses to detect anomalies in the use of

1 the system that may indicate potential
2 fraud or misuse of the system; and

3 “(IV) to audit documents and in-
4 formation submitted by employees to
5 employers, including authority to con-
6 duct interviews with employers and
7 employees, and obtain information
8 concerning employment from the em-
9 ployer;

10 “(vii) to confirm identity and employ-
11 ment authorization through verification
12 and comparison of records as determined
13 necessary by the Secretary;

14 “(viii) to confirm electronically the
15 issuance of the employment authorization
16 or identity document and—

17 “(I) if such photograph is avail-
18 able, to display the digital photograph
19 that the issuer placed on the docu-
20 ment so that the employer can com-
21 pare the photograph displayed to the
22 photograph on the document pre-
23 sented by the employee; or

24 “(II) if a photograph is not avail-
25 able from the issuer, to confirm the

1 authenticity of the document using
2 such additional security measures set
3 forth in subsection (c)(1)(F)(iv);

4 “(ix) to employ specific and effective
5 additional security measures set forth in
6 subsection (c)(1)(F)(iv) to adequately
7 verify the identity of an individual that are
8 designed and operated—

9 “(I) to use state-of-the-art tech-
10 nology to determine to a high degree
11 of accuracy whether an individual pre-
12 senting biographic information is the
13 individual with that true identity;

14 “(II) to retain under the control
15 of the Secretary the use of all deter-
16 minations communicated by the Sys-
17 tem, regardless of the entity operating
18 the system pursuant to a contract or
19 other agreement with a nongovern-
20 mental entity or entities to the extent
21 helpful in acquiring the best tech-
22 nology to implement the additional se-
23 curity measures;

24 “(III) to be integrated with the
25 System so that employment authoriza-

1 tions will be determined for all indi-
2 viduals identified as presenting their
3 true identities through the databases
4 maintained by the Commissioner of
5 Social Security and the Secretary;

6 “(IV) to use tools and processes
7 to detect and prevent further action
8 notices and final nonconfirmations
9 that are not correlated to fraud or
10 identity theft;

11 “(V) to make risk-based assess-
12 ments regarding the reliability of a
13 claim of identity made by an indi-
14 vidual presenting biographic informa-
15 tion and to tailor the identity deter-
16 mination in accordance with those as-
17 sessments;

18 “(VI) to permit queries to be pre-
19 sented to individuals subject to iden-
20 tity verification at the time their iden-
21 tities are being verified in a manner
22 that permits rapid communication
23 through the internet, mobile phone,
24 and landline telephone connections to
25 facilitate identity proofing;

1 “(VII) to generate queries that
2 conform to the context of the identity
3 verification process and the cir-
4 cumstances of the individual whose
5 identity is being verified;

6 “(VIII) to use publicly available
7 databases and databases under the ju-
8 risdiction of the Commissioner of So-
9 cial Security, the Secretary, and the
10 Secretary of State to formulate que-
11 ries to be presented to individuals
12 whose identities are being verified, as
13 appropriate;

14 “(IX) to not retain data collected
15 by the System within any database
16 separate from the database in which
17 the operating system is located and to
18 limit access to the existing databases
19 to a reference process that shields the
20 operator of the System from acquiring
21 possession of the data beyond the for-
22 mulation of queries and verification of
23 responses;

24 “(X) to not permit individuals or
25 entities using the System to access

any data related to the individuals whose identities are being verified beyond confirmations, further action notices, and final nonconfirmations of identity;

“(XI) to include, if feasible, a capability for permitting document or other inputs that can be offered to individuals and entities using the System and that may be used at the option of employees to facilitate identity verification, but would not be required of either employers or employees; and

“(XII) to the greatest extent possible, in accordance with the time frames specified in this section; and

“(x) to provide appropriate notification directly to employers registered with the System of all changes made by the Secretary or the Commissioner related to allowed and prohibited documents, and use of the System.

“(C) SAFEGUARDS TO THE SYSTEM.—

“(i) REQUIREMENT TO DEVELOP.—

The Secretary, in consultation with the

1 Commissioner and other appropriate Fed-
2 eral and State agencies, shall develop poli-
3 cies and procedures to ensure protection of
4 the privacy and security of personally iden-
5 tifiable information and identifiers con-
6 tained in the records accessed or main-
7 tained by the System. The Secretary, in
8 consultation with the Commissioner and
9 other appropriate Federal and State agen-
10 cies, shall develop and deploy appropriate
11 privacy and security training for the Fed-
12 eral and State employees accessing the
13 records under the System.

14 “(ii) PRIVACY AUDITS.—The Sec-
15 retary, acting through the Chief Privacy
16 Officer of the Department, shall conduct
17 regular privacy audits of the policies and
18 procedures established under clause (i) and
19 the compliance of the Department with the
20 limitations set forth in subsection
21 (c)(1)(F)(iii)(IV), including any collection,
22 use, dissemination, and maintenance of
23 personally identifiable information and any
24 associated information technology systems,
25 as well as scope of requests for this infor-

1 mation. The Chief Privacy Officer shall re-
2 view the results of the audits and rec-
3 ommend to the Secretary any changes nec-
4 essary to improve the privacy protections
5 of the program.

6 “(iii) ACCURACY AUDITS.—

7 “(I) IN GENERAL.—Not later
8 than November 30 of each year, the
9 Inspector General of the Department
10 of Homeland Security shall submit a
11 report to the Secretary, with a copy to
12 the President of the Senate and the
13 Speaker of the House of Representa-
14 tives, that sets forth the error rate of
15 the System for the previous fiscal year
16 and the assessments required to be
17 submitted by the Secretary under sub-
18 paragraphs (A) and (B) of paragraph
19 (10). The report shall describe in de-
20 tail the methodology employed for
21 purposes of the report, and shall make
22 recommendations for how error rates
23 may be reduced.

24 “(II) ERROR RATE DEFINED.—In
25 this clause, the term ‘error rate’

1 means the percentage determined by
2 dividing—

3 “(aa) the number of employ-
4 ment authorized individuals who
5 received further action notices,
6 contested such notices, and were
7 subsequently found to be employ-
8 ment authorized; by

9 “(bb) the number of System
10 inquiries submitted for employ-
11 ment authorized individuals.

12 “(III) ERROR RATE DETERMINA-
13 TION.—The audits required under this
14 clause shall—

15 “(aa) determine the error
16 rate for identity determinations
17 pursuant to subsection (c)(1)(F)
18 for individuals presenting their
19 true identities in the same man-
20 ner and applying the same stand-
21 ard as for employment authoriza-
22 tion; and

23 “(bb) include recommenda-
24 tions, as provided in subclause

1 (I), but no reduction in fines pur-
 2 suant to subclause (IV)

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

19 “(iv) RECORDS SECURITY PRO-
 20 GRAM.—Any person, including a private
 21 third party vendor, who retains document
 22 verification or System data pursuant to
 23 this section shall implement an effective
 24 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 record is cre-
8 ated that establishes the date of ac-
9 cess, the identity of the individual who
10 accessed the electronic record, and the
11 particular action taken.

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

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

24 “(II) ensures that employees are
25 trained to minimize the risk of unau-

1 thorized or accidental alteration or
2 erasure of such data in electronic for-
3 mat.

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

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

24 “(E) RESPONSIBILITIES OF THE SEC-
25 RETARY.—

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

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

1 photograph described in subparagraph
2 (B)(viii)(I).

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

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

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

22 “(I) in consultation with the
23 Commissioner, establish a program to
24 provide a reliable, secure method for
25 an individual to temporarily suspend

1 or limit the use of the individual's so-
 2 cial security account number or other
 3 identifying information for verification
 4 by the System; and

5 “(II) for each individual being
 6 verified through the System—

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

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

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

1 care for the purposes of the System. The
2 Secretary may implement the program on
3 a limited pilot program basis before mak-
4 ing it fully available to all individuals.

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

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

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

24 “(I) REQUIREMENT TO CON-
25 DUCT.—The Secretary shall conduct

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

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

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

21 “(F) GRANTS TO STATES.—

22 “(i) IN GENERAL.—The Secretary
 23 shall create and administer a grant pro-
 24 gram to help provide funding for States
 25 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 \$500,000,000 to carry out this
 24 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, no de-
22 partment, bureau, or other agency of the United
23 States Government or any other entity may use,
24 share, or transmit any information, database, or
25 other records assembled under this subsection for

1 any purpose other than for employment verification
2 or to ensure secure, appropriate, and nondiscrim-
3 inatory use of the System.

4 “(10) ANNUAL REPORT AND CERTIFICATION.—
5 Not later than 18 months after the promulgation of
6 regulations to implement this subsection, and annu-
7 ally thereafter, the Secretary shall submit a report
8 to Congress that includes the following:

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

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

1 “(C) An assessment of any challenges
2 faced by small employers in using the System.

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

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

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

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

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

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

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

24 “(vii) Discouraging individuals who
25 receive a further action notice from chal-

1 lenging the further action notice or appeal-
2 ing a determination made by the System.

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

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

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

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

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

16 “(F) An assessment of the amount of time
17 taken for—

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

20 “(ii) individuals to contest further ac-
21 tion notices;

22 “(iii) the System to provide a con-
23 firmation or nonconfirmation of a con-
24 tested further action notice;

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

3 “(v) resolving administrative appeals
4 regarding nonconfirmations.

5 “(11) ANNUAL GAO STUDY AND REPORT.—

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

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

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

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

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

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

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

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

21 “(vii) An assessment of the direct and
22 indirect costs incurred by employers in
23 complying with the System, including costs
24 associated with retaining potential employ-

ees through the administrative appeals
process and receiving a nonconfirmation.

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

“(ix) An assessment of the effect of
the identity authentication mechanism and
any other security measures set forth in
subsection (c)(1)(F)(iv) to verify identity
incorporated into the System or otherwise
used by employers on employees.

“(12) OUTREACH AND PARTNERSHIP.—

“(A) OUTREACH.—The Secretary may con-
duct outreach and establish programs to assist
employers in verifying employment authoriza-
tion and preventing identity fraud.

“(B) PARTNERSHIP INITIATIVE.—The Sec-
retary may establish partnership initiatives be-
tween the Federal Government and private sec-
tor employers to foster cooperative relationships
and to strengthen overall hiring practices.

“(e) COMPLIANCE.—

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

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

4 “(B) for the investigation of those com-
5 plaints which the Secretary deems appropriate
6 to investigate; and

7 “(C) for providing notification to the Im-
8 migrant and Employee Rights Section of the
9 Civil Rights Division of the Department of Jus-
10 tice of potential violations of section 274B.

11 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
12 ducting investigations and proceedings under this
13 subsection—

14 “(A) immigration officers shall have rea-
15 sonable access to examine evidence of the em-
16 ployer being investigated;

17 “(B) immigration officers designated by
18 the Secretary, and administrative law judges
19 and other persons authorized to conduct pro-
20 ceedings under this section, may compel by sub-
21 poena the attendance of relevant witnesses and
22 the production of relevant evidence at any des-
23 ignated place in an investigation or case under
24 this subsection. In case of refusal to fully com-
25 ply with a subpoena lawfully issued under this

1 paragraph, the Secretary may request that the
2 Attorney General apply in an appropriate dis-
3 trict court of the United States for an order re-
4 quiring compliance with the subpoena, and any
5 failure to obey such order may be punished by
6 the court as contempt. Failure to cooperate
7 with the subpoena shall be subject to further
8 penalties, including further fines and the void-
9 ing of any mitigation of penalties or termi-
10 nation of proceedings under paragraph (4)(E);
11 and

12 “(C) the Secretary, in cooperation with the
13 Commissioner and the Attorney General, and in
14 consultation with other relevant agencies, shall
15 establish a Joint Employment Fraud Task
16 Force consisting of, at a minimum—

17 “(i) the System’s compliance per-
18 sonnel;

19 “(ii) immigration law enforcement of-
20 ficers;

21 “(iii) personnel of the Immigrant and
22 Employee Rights Section of the Civil
23 Rights Division of the Department of Jus-
24 tice;

1 “(iv) personnel of the Office for Civil
 2 Rights and Civil Liberties of the Depart-
 3 ment; and

4 “(v) personnel of Office of Inspector
 5 General of the Social Security Administra-
 6 tion.

7 “(3) COMPLIANCE PROCEDURES.—

8 “(A) PRE-PENALTY NOTICE.—If the Sec-
 9 retary has reasonable cause to believe that
 10 there has been a civil violation of this section in
 11 the previous 3 years, the Secretary shall issue
 12 to the employer concerned a written notice of
 13 the Department’s intention to issue a claim for
 14 a monetary or other penalty. Such pre-penalty
 15 notice shall—

16 “(i) describe the violation;

17 “(ii) specify the laws and regulations
 18 allegedly violated;

19 “(iii) disclose the material facts which
 20 establish the alleged violation;

21 “(iv) describe the penalty sought to be
 22 imposed; and

23 “(v) inform such employer that such
 24 employer shall have a reasonable oppor-
 25 tunity to make representations as to why a

1 monetary or other penalty should not be
2 imposed.

3 “(B) EMPLOYER’S RESPONSE.—Whenever
4 any employer receives written pre-penalty notice
5 of a fine or other penalty in accordance with
6 subparagraph (A), the employer may, within 60
7 days from receipt of such notice, file with the
8 Secretary its written response to the notice.
9 The response may include any relevant evidence
10 or proffer of evidence that the employer wishes
11 to present with respect to whether the employer
12 violated this section and whether, if so, the pen-
13 alty should be mitigated, and shall be filed and
14 considered in accordance with procedures to be
15 established by the Secretary.

16 “(C) RIGHT TO A HEARING.—Before
17 issuance of an order imposing a penalty on any
18 employer, person, or entity, the employer, per-
19 son, or entity shall be entitled to a hearing be-
20 fore an administrative law judge, if requested
21 within 60 days of the notice of penalty. The
22 hearing shall be held at the nearest location
23 practicable to the place where the employer,
24 person, or entity resides or of the place where
25 the alleged violation occurred.

1 “(D) ISSUANCE OF ORDERS.—If no hear-
2 ing is so requested, the Secretary’s imposition
3 of the order shall constitute a final and
4 unappealable order. If a hearing is requested
5 and the administrative law judge determines,
6 upon clear and convincing evidence received,
7 that there was a violation, the administrative
8 law judge shall issue the final determination
9 with a written penalty claim. The penalty claim
10 shall specify all charges in the information pro-
11 vided under clauses (i) through (iii) of subpara-
12 graph (A) and any mitigation of the penalty
13 that the administrative law judge deems appro-
14 priate under paragraph (4)(E).

15 “(4) CIVIL PENALTIES.—

16 “(A) HIRING OR CONTINUING TO EMPLOY
17 UNAUTHORIZED ALIENS.—Any employer that
18 violates any provision of subsection (a)(1)(A) or
19 (a)(2) shall—

20 “(i) pay a civil penalty of not less
21 than \$3,500 and not more than \$7,500 for
22 each unauthorized alien with respect to
23 which each violation of either subsection
24 (a)(1)(A) or (a)(2) occurred;

1 “(ii) if the employer has previously
2 been fined as a result of a previous en-
3 forcement action or previous violation
4 under this paragraph, pay a civil penalty of
5 not less than \$5,000 and not more than
6 \$15,000 for each unauthorized alien with
7 respect to which a violation of either sub-
8 section (a)(1)(A) or (a)(2) occurred; and

9 “(iii) if the employer has previously
10 been fined more than once under this para-
11 graph, pay a civil penalty of not less than
12 \$10,000 and not more than \$25,000 for
13 each unauthorized alien with respect to
14 which a violation of either subsection
15 (a)(1)(A) or (a)(2) occurred.

16 “(B) ENHANCED PENALTIES.—After the
17 Secretary certifies to Congress that the System
18 has been established, implemented, and made
19 mandatory for use by all employers in the
20 United States, the Secretary may establish an
21 enhanced civil penalty for an employer who—

22 “(i) fails to query the System to verify
23 the identify and work authorized status of
24 an individual; and

1 “(ii) violates a Federal, State, or local
2 law related to—

3 “(I) the payment of wages;

4 “(II) hours worked by employees;

5 or

6 “(III) workplace health and safe-
7 ty.

8 “(C) RECORDKEEPING OR VERIFICATION
9 PRACTICES.—Any employer that violates or fails
10 to comply with any requirement under sub-
11 section (a)(1)(B), other than a minor or inad-
12 vertent failure, as determined by the Secretary,
13 shall pay a civil penalty of—

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

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

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

24 “(D) OTHER PENALTIES.—The Secretary
25 may impose additional penalties for violations,

1 including cease and desist orders, specially de-
2 signed compliance plans to prevent further vio-
3 lations, suspended fines to take effect in the
4 event of a further violation, and in appropriate
5 cases, the remedy provided by subsection (f)(2).

6 “(E) MITIGATION.—The Secretary or, if
7 an employer requests a hearing, the administra-
8 tive law judge, is authorized, upon such terms
9 and conditions as the Secretary or administra-
10 tive law judge deems reasonable and just and in
11 accordance with such procedures as the Sec-
12 retary may establish or any procedures estab-
13 lished governing the administrative law judge’s
14 assessment of penalties, to reduce or mitigate
15 penalties imposed upon employers, based upon
16 factors including, the employer’s hiring volume,
17 compliance history, good-faith implementation
18 of a compliance program, the size and level of
19 sophistication of the employer, and voluntary
20 disclosure of violations of this subsection to the
21 Secretary. The Secretary or administrative law
22 judge shall not mitigate a penalty below the
23 minimum penalty provided by this section, ex-
24 cept that the Secretary may, in the case of an
25 employer subject to penalty for recordkeeping

1 or verification violations only who has not pre-
2 viously been penalized under this section, in the
3 Secretary's or administrative law judge's discre-
4 tion, mitigate the penalty below the statutory
5 minimum or remit it entirely. In any case where
6 a civil money penalty has been imposed on an
7 employer under section 274B for an action or
8 omission that is also a violation of this section,
9 the Secretary or administrative law judge shall
10 mitigate any civil money penalty under this sec-
11 tion by the amount of the penalty imposed
12 under section 274B.

13 “(F) EFFECTIVE DATE.—The civil money
14 penalty amounts and the enhanced penalties
15 provided by subparagraphs (A), (B), and (C) of
16 this paragraph and by subsection (f)(2) shall
17 apply to violations of this section committed on
18 or after the date that is 1 year after the date
19 of the enactment of the E-Verify Act. For viola-
20 tions committed prior to such date of enact-
21 ment, the civil money penalty amounts provided
22 by regulations implementing this section as in
23 effect the minute before such date of enactment
24 with respect to knowing hiring or continuing

1 employment, verification, or indemnity bond
 2 violations, as appropriate, shall apply.

3 “(5) ORDER OF INTERNAL REVIEW AND CER-
 4 TIFICATION OF COMPLIANCE.—

5 “(A) EMPLOYER COMPLIANCE.—If the
 6 Secretary has reasonable cause to believe that
 7 an employer has failed to comply with this sec-
 8 tion, the Secretary is authorized, at any time,
 9 to require that the employer certify that it is in
 10 compliance with this section, or has instituted a
 11 program to come into compliance.

12 “(B) EMPLOYER CERTIFICATION.—

13 “(i) REQUIREMENT.—Except as pro-
 14 vided in subparagraph (C), not later than
 15 60 days after receiving a notice from the
 16 Secretary requiring a certification under
 17 subparagraph (A), an official with respon-
 18 sibility for, and authority to bind the com-
 19 pany on, all hiring and immigration com-
 20 pliance notices shall certify under penalty
 21 of perjury that the employer is in conform-
 22 ance with the requirements of paragraphs
 23 (1) through (4) of subsection (c), per-
 24 taining to document verification require-
 25 ments, and with subsection (d), pertaining

1 to the System (once the System is imple-
2 mented with respect to that employer ac-
3 cording to the requirements under sub-
4 section (d)(2)), and with any additional re-
5 quirements that the Secretary may promul-
6 gate by regulation pursuant to subsection
7 (c) or (d) or that the employer has insti-
8 tuted a program to come into compliance
9 with these requirements.

10 “(ii) APPLICATION.—Clause (i) shall
11 not apply until the date that the Secretary
12 certifies to Congress that the System has
13 been established, implemented, and made
14 mandatory for use by all employers in the
15 United States.

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

19 “(D) STANDARDS OR METHODS.—The Sec-
20 retary is authorized to publish in the Federal
21 Register standards or methods for such certifi-
22 cation, require specific recordkeeping practices
23 with respect to such certifications, and audit
24 the records thereof at any time. This authority

1 shall not be construed to diminish or qualify
2 any other penalty provided by this section.

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

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

11 “(B) VENUE AND FORMS.—The petition
12 for review shall be filed with the court of ap-
13 peals for the judicial circuit where the employ-
14 er’s principal place of business was located
15 when the final determination or penalty order
16 was made. The record and briefs do not have
17 to be printed. The court shall review the pro-
18 ceeding on a typewritten or electronically filed
19 record and briefs.

20 “(C) SERVICE.—The respondent is the
21 Secretary. In addition to serving the respond-
22 ent, the petitioner shall serve the Attorney Gen-
23 eral.

24 “(D) PETITIONER’S BRIEF.—The peti-
25 tioner shall serve and file a brief in connection

1 with a petition for judicial review not later than
2 40 days after the date on which the administra-
3 tive record is available, and may serve and file
4 a reply brief not later than 14 days after serv-
5 ice of the brief of the respondent, and the court
6 may not extend these deadlines, except for good
7 cause shown. If a petitioner fails to file a brief
8 within the time provided in this paragraph, the
9 court shall dismiss the appeal unless a manifest
10 injustice would result.

11 “(E) SCOPE AND STANDARD FOR RE-
12 VIEW.—The court of appeals shall conduct a de
13 novo review of the administrative record on
14 which the final determination was based and
15 any additional evidence that the Court finds
16 was previously unavailable at the time of the
17 administrative hearing.

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

21 “(i) the petitioner has exhausted all
22 administrative remedies available to the pe-
23 titioner as of right, including any adminis-
24 trative remedies established by regulation;
25 and

1 “(ii) another court has not decided
2 the validity of the order, unless the review-
3 ing court finds that the petition presents
4 grounds that could not have been pre-
5 sented in the prior judicial proceeding or
6 that the remedy provided by the prior pro-
7 ceeding was inadequate or ineffective to
8 test the validity of the order.

9 “(G) ENFORCEMENT OF ORDERS.—If the
10 final determination issued against the employer
11 under this subsection is not subjected to review
12 as provided in this paragraph, the Attorney
13 General, upon request by the Secretary, may
14 bring a civil action to enforce compliance with
15 the final determination in any appropriate dis-
16 trict court of the United States. The court, on
17 a proper showing, shall issue a temporary re-
18 straining order or a preliminary or permanent
19 injunction requiring that the employer comply
20 with the final determination issued against that
21 employer under this subsection. In any such
22 civil action, the validity and appropriateness of
23 the final determination shall not be subject to
24 review.

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

14 “(8) FILING NOTICE OF LIEN.—

15 “(A) PLACE FOR FILING.—The notice of a
 16 lien referred to in paragraph (7) shall be filed
 17 as described in one of the following:

18 “(i) UNDER STATE LAWS.—

19 “(I) REAL PROPERTY.—In the
 20 case of real property, in 1 office with-
 21 in the State (or the county, or other
 22 governmental subdivision), as des-
 23 ignated by the laws of such State, in
 24 which the property subject to the lien
 25 is situated.

1 “(II) PERSONAL PROPERTY.—In
 2 the case of personal property, whether
 3 tangible or intangible, in 1 office with-
 4 in the State (or the county, or other
 5 governmental subdivision), as des-
 6 ignated by the laws of such State, in
 7 which the property subject to the lien
 8 is situated, except that State law
 9 merely conforming to or reenacting
 10 Federal law establishing a national fil-
 11 ing system does not constitute a sec-
 12 ond office for filing as designated by
 13 the laws of such State.

14 “(ii) WITH CLERK OF DISTRICT
 15 COURT.—In the office of the clerk of the
 16 United States district court for the judicial
 17 district in which the property subject to
 18 the lien is situated, whenever the State has
 19 not by law designated 1 office which meets
 20 the requirements of clause (i).

21 “(iii) WITH RECORDER OF DEEDS OF
 22 THE DISTRICT OF COLUMBIA.—In the of-
 23 fice of the Recorder of Deeds of the Dis-
 24 trict of Columbia, if the property subject to

1 the lien is situated in the District of Co-
2 lumbia.

3 “(B) SITUS OF PROPERTY SUBJECT TO
4 LIEN.—For purposes of subparagraph (A),
5 property shall be deemed to be situated as fol-
6 lows:

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

9 “(ii) PERSONAL PROPERTY.—In the
10 case of personal property, whether tangible
11 or intangible, at the residence of the tax-
12 payer at the time the notice of lien is filed.

13 “(C) DETERMINATION OF RESIDENCE.—
14 For purposes of subparagraph (B)(ii), the resi-
15 dence of a corporation or partnership shall be
16 deemed to be the place at which the principal
17 executive office of the business is located, and
18 the residence of a taxpayer whose residence is
19 outside the United States shall be deemed to be
20 in the District of Columbia.

21 “(D) EFFECT OF FILING NOTICE OF
22 LIEN.—

23 “(i) IN GENERAL.—Upon filing of a
24 notice of lien in the manner described in
25 this paragraph, the lien shall be valid

1 against any purchaser, holder of a security
2 interest, mechanic's lien, or judgment lien
3 creditor, except with respect to properties
4 or transactions specified in subsection (b),
5 (c), or (d) of section 6323 of the Internal
6 Revenue Code of 1986 for which a notice
7 of tax lien properly filed on the same date
8 would not be valid.

9 “(ii) NOTICE OF LIEN.—The notice of
10 lien shall be considered a notice of lien for
11 taxes payable to the United States for the
12 purpose of any State or local law providing
13 for the filing of a notice of a tax lien. A
14 notice of lien that is registered, recorded,
15 docketed, or indexed in accordance with
16 the rules and requirements relating to
17 judgments of the courts of the State where
18 the notice of lien is registered, recorded,
19 docketed, or indexed shall be considered
20 for all purposes as the filing prescribed by
21 this section.

22 “(iii) OTHER PROVISIONS.—Section
23 3201(e) of title 28, United States Code,
24 shall apply to liens filed pursuant to this
25 paragraph.

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

6 “(9) ATTORNEY GENERAL ADJUDICATION.—
 7 The Attorney General shall have jurisdiction to adju-
 8 dicate administrative proceedings under this sub-
 9 section. Such proceedings shall be conducted in ac-
 10 cordance with section 554 of title 5, United States
 11 Code.

12 “(f) CRIMINAL AND CIVIL PENALTIES AND INJUNC-
 13 TIONS.—

14 “(1) PROHIBITION OF INDEMNITY BONDS.—It
 15 is unlawful for an employer, in the hiring of any in-
 16 dividual, to require the individual to post a bond or
 17 security, to pay or agree to pay an amount, or other-
 18 wise to provide a financial guarantee or indemnity,
 19 against any potential liability arising under this sec-
 20 tion relating to such hiring of the individual.

21 “(2) CIVIL PENALTY.—Any employer who is de-
 22 termined, after notice and opportunity for mitigation
 23 of the monetary penalty under subsection (e), to
 24 have violated paragraph (1) shall be subject to a
 25 civil penalty of \$10,000 for each violation and to an

1 administrative order requiring the return of any
2 amounts received in violation of such paragraph to
3 the employee or, if the employee cannot be located,
4 to the general fund of the Treasury.

5 “(g) GOVERNMENT CONTRACTS.—

6 “(1) CONTRACTORS AND RECIPIENTS.—When-
7 ever an employer who is a Federal contractor (mean-
8 ing an employer who holds a Federal contract,
9 grant, or cooperative agreement, or reasonably may
10 be expected to submit an offer for or be awarded a
11 government contract) is determined by the Secretary
12 to have violated this section on more than 3 occa-
13 sions or is convicted of a crime under this section,
14 the employer shall be considered for debarment from
15 the receipt of Federal contracts, grants, or coopera-
16 tive agreements in accordance with the procedures
17 and standards and for the periods prescribed by the
18 Federal Acquisition Regulation. However, any ad-
19 ministrative determination of liability for civil pen-
20 alty by the Secretary or the Attorney General shall
21 not be reviewable in any debarment proceeding.

22 “(2) INADVERTENT VIOLATIONS.—Inadvertent
23 violations of recordkeeping or verification require-
24 ments, in the absence of any other violations of this
25 section, shall not be a basis for determining that an

1 employer is a repeat violator for purposes of this
2 subsection.

3 “(3) OTHER REMEDIES AVAILABLE.—Nothing
4 in this subsection shall be construed to modify or
5 limit any remedy available to any agency or official
6 of the Federal Government for violation of any con-
7 tractual requirement to participate in the System, as
8 provided in the final rule relating to employment eli-
9 gibility verification published in the Federal Register
10 on November 14, 2008 (73 Fed. Reg. 67,651), or
11 any similar subsequent regulation.

12 “(h) PREEMPTION.—The provisions of this section
13 preempt any State or local law, ordinance, policy, or rule,
14 including any criminal or civil fine or penalty structure,
15 relating to the hiring, continued employment, or status
16 verification for employment eligibility purposes, of unau-
17 thorized aliens. A State, locality, municipality, or political
18 subdivision may exercise its authority over business licens-
19 ing and similar laws as a penalty for failure to use the
20 System.

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

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

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

6 “(A) whether this section, or any regula-
 7 tion issued to implement this section, violates
 8 the Constitution of the United States; or

9 “(B) whether such a regulation issued by
 10 or under the authority of the Secretary to im-
 11 plement this section, is contrary to applicable
 12 provisions of this section or was issued in viola-
 13 tion of chapter 5 of title 5, United States Code.

14 “(2) DEADLINES FOR BRINGING ACTIONS.—
 15 Any action instituted under this subsection must be
 16 filed no later than 180 days after the date the chal-
 17 lenged section or regulation described in subpara-
 18 graph (A) or (B) of paragraph (1) becomes effective.
 19 No court shall have jurisdiction to review any chal-
 20 lenge described in subparagraph (B) after the time
 21 period specified in this subsection expires.

22 “(k) CRIMINAL PENALTIES AND INJUNCTIONS FOR
 23 PATTERN OR PRACTICE VIOLATIONS.—

24 “(1) PATTERN AND PRACTICE.—Any employer
 25 who engages in a pattern or practice of knowing vio-

1 lations of subsection (a)(1)(A) or (a)(2) shall be
2 fined under title 18, United States Code, no more
3 than \$10,000 for each unauthorized alien with re-
4 spect to whom such violation occurs, imprisoned for
5 not more than 2 years for the entire pattern or prac-
6 tice, or both.

7 “(2) TERM OF IMPRISONMENT.—The maximum
8 term of imprisonment of a person convicted of any
9 criminal offense under the United States Code shall
10 be increased by 5 years if the offense is committed
11 as part of a pattern or practice of violations of sub-
12 section (a)(1)(A) or (a)(2).

13 “(3) ENJOINING OF PATTERN OR PRACTICE
14 VIOLATIONS.—Whenever the Secretary or the Attor-
15 ney General has reasonable cause to believe that an
16 employer is engaged in a pattern or practice of em-
17 ployment in violation of subsection (a)(1)(A) or
18 (a)(2), the Attorney General may bring a civil action
19 in the appropriate district court of the United States
20 requesting such relief, including a permanent or
21 temporary injunction, restraining order, or other
22 order against the employer, as the Secretary or the
23 Attorney General determines to be necessary.

24 “(1) CRIMINAL PENALTIES FOR UNLAWFUL AND
25 ABUSIVE EMPLOYMENT.—

1 “(1) IN GENERAL.—Any person who, during
2 any 12-month period, knowingly employs or hires,
3 employs, recruits, or refers for a fee for employment
4 10 or more individuals within the United States who
5 are under the control and supervision of such per-
6 son—

7 “(A) knowing that the individuals are un-
8 authorized aliens; and

9 “(B) under conditions that violate section
10 5(a) of the Occupational Safety and Health Act
11 of 1970 (29 U.S.C. 654(a)) (relating to occupa-
12 tional safety and health), section 6 or 7 of the
13 Fair Labor Standards Act of 1938 (29 U.S.C.
14 206 and 207) (relating to minimum wages and
15 maximum hours of employment), section 3142
16 of title 40, United States Code (relating to re-
17 quired wages on construction contracts), or sec-
18 tion 6703 or 6704 of title 41, United States
19 Code (relating to required wages on service con-
20 tracts),

21 shall be fined under title 18, United States Code, or
22 imprisoned for not more than 10 years, or both.

23 “(2) ATTEMPT AND CONSPIRACY.—Any person
24 who attempts or conspires to commit any offense

1 under this section shall be punished in the same
 2 manner as a person who completes the offense.

3 “(m) LIMITATION ON ADJUSTMENT OF STATUS.—
 4 The Secretary may not adjust the status of aliens who
 5 have been granted registered provisional immigrant sta-
 6 tus, except for aliens granted blue card status as described
 7 in section 245D(b), unless the Secretary, after consulta-
 8 tion with the Comptroller General of the United States,
 9 certifies in writing to the President and Congress that the
 10 Secretary has implemented the System, including the full
 11 incorporation of the photo tool and additional security
 12 measures, required by this section, and has required the
 13 use of the System by all employers to prevent unauthor-
 14 ized workers from obtaining employment in the United
 15 States.”.

16 **SEC. 3. REPORT ON USE OF THE SYSTEM IN THE AGRICUL-**
 17 **TURAL INDUSTRY.**

18 (a) IN GENERAL.—Not later than 18 months after
 19 the date of the enactment of this Act, the Secretary of
 20 Homeland Security, in consultation with the Secretary of
 21 Agriculture, shall submit a report to Congress that as-
 22 sesses implementation of the Employment Verification
 23 System established under section 274A(d) of the Immigra-
 24 tion and Nationality Act, as amended by section 2, in the
 25 agricultural industry, including the use of such System

1 technology in agriculture industry hiring processes, user,
2 contractor, and third-party employer agent employment
3 practices, timing and logistics regarding employment
4 verification and reverification processes to meet agri-
5 culture industry practices, and identification of potential
6 challenges and modifications to meet the unique needs of
7 the agriculture industry.

8 (b) CONTENTS.—The report required under sub-
9 section (a) shall review—

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

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

20 (3) the collaborative use of processes of other
21 Federal and State agencies that intersect with the
22 agriculture industry.

1 **SEC. 4. REPORT ON IMPACT OF THE SYSTEM ON EMPLOY-**
2 **ERS.**

3 Not later than 18 months after the date of the enact-
4 ment of this Act, the Secretary of Homeland Security shall
5 submit a report to Congress that assesses—

6 (1) the implementation by employers of the
7 Employment Verification System established under
8 section 274A(d) of the Immigration and Nationality
9 Act, as amended by section 2;

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

13 (3) the economic impact of such System on
14 small businesses.

15 **SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF**
16 **THE EFFECTS OF DOCUMENT REQUIRE-**
17 **MENTS ON EMPLOYMENT AUTHORIZED PER-**
18 **SONS AND EMPLOYERS.**

19 (a) STUDY.—The Comptroller General of the United
20 States shall carry out a study of—

21 (1) the effects of the documentary requirements
22 under section 274A of the Immigration and Nation-
23 ality Act, as amended by section 2, on employers,
24 naturalized United States citizens, nationals of the
25 United States, and individuals with employment au-
26 thorized status; and

1 (2) the challenges such employers, citizens, na-
2 tionals, or individuals may face in obtaining the doc-
3 umentation required under that section.

4 (b) REPORT.—

5 (1) IN GENERAL.—Not later than 4 years after
6 the date of the enactment of this Act, the Comp-
7 troller General shall submit a report to Congress
8 containing the findings of the study carried out
9 under subsection (a).

10 (2) CONTENTS.—The report required under
11 paragraph (1) shall include—

12 (A) an assessment of available information
13 regarding the number of working age nationals
14 of the United States and individuals who have
15 employment authorized status who lack docu-
16 ments required for employment by such section
17 274A;

18 (B) a description of the additional steps
19 required for individuals who have employment
20 authorized status and do not possess the docu-
21 ments required by such section 274A to obtain
22 such documents;

23 (C) a general assessment of the average fi-
24 nancial costs for individuals who have employ-
25 ment authorized status who do not possess the

1 documents required by such section 274A to ob-
 2 tain such documents;

3 (D) a general assessment of the average fi-
 4 nancial costs and challenges for employers who
 5 have been required to participate in the Em-
 6 ployment Verification System established by
 7 subsection (d) of such section 274A;

8 (E) a description of the barriers to individ-
 9 uals who have employment authorized status in
 10 obtaining the documents required by such sec-
 11 tion 274A, including barriers imposed by the
 12 executive branch of the Government; and

13 (F) any particular challenges facing indi-
 14 viduals who have employment authorized status
 15 who are members of a federally recognized In-
 16 dian tribe in complying with the provisions of
 17 such section 274A.

18 **SEC. 6. REPEAL OF PILOT PROGRAMS AND E-VERIFY AND**
 19 **TRANSITION PROCEDURES.**

20 (a) REPEAL.—Sections 401, 402, 403, 404, and 405
 21 of the Illegal Immigration Reform and Immigrant Respon-
 22 sibility Act of 1996 (division C of Public Law 104–208;
 23 8 U.S.C. 1324a note) are repealed.

24 (b) TRANSITION PROCEDURES.—

1 (1) CONTINUATION OF E-VERIFY PROGRAM.—

2 Notwithstanding the repeals made by subsection (a),
3 the Secretary of Homeland Security shall continue
4 to operate the E-Verify Program described in section
5 403 of the Illegal Immigration Reform and Immigrant
6 Responsibility Act of 1996 (division C of Public
7 Law 104–208; 8 U.S.C. 1324a note), as in effect
8 on the day immediately preceding the date of the enactment
9 of this Act, until the Secretary determines
10 that the transition to the System described in section
11 274A(d) of the Immigration and Nationality
12 Act, as amended by section 2, is complete.

13 (2) TRANSITION TO THE SYSTEM.—Any employer
14 that was participating in the E-Verify Program
15 described in section 403 of the Illegal Immigration
16 Reform and Immigrant Responsibility Act of
17 1996 (division C of Public Law 104–208; 8 U.S.C.
18 1324a note), as in effect on the day immediately
19 preceding the date of the enactment of this Act,
20 shall participate in the System described in section
21 274A(d) of the Immigration and Nationality Act, as
22 amended by section 2, to the same extent and in the
23 same manner that the employer participated in such
24 E-Verify Program.

1 (c) CONSTRUCTION.—The repeal made by subsection
 2 (a) may not be construed to limit the authority of the Sec-
 3 retary of Homeland Security to allow, or continue to allow,
 4 the participation in such System of employers who have
 5 participated in such E-Verify Program, as in effect on the
 6 day immediately preceding the date of the enactment of
 7 this Act.

8 (d) CONFORMING AMENDMENT.—Section 274(a) of
 9 the Immigration and Nationality Act (8 U.S.C. 1324(a))
 10 is amended—

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

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

14 **SEC. 7. TAXPAYER ADDRESS INFORMATION.**

15 Section 6103(m) of the Internal Revenue Code of
 16 1986 is amended by adding at the end the following:

17 “(8) TAXPAYER ADDRESS INFORMATION FUR-
 18 NISHED TO SECRETARY OF HOMELAND SECURITY.—

19 Upon written request from the Secretary of Home-
 20 land Security, the Secretary shall disclose the mail-
 21 ing address of any taxpayer who is entitled to re-
 22 ceive a notification from the Secretary of Homeland
 23 Security pursuant to paragraphs (1)(C) and
 24 (8)(E)(vii) of section 274A(d) of the Immigration
 25 and Nationality Act (8 U.S.C. 1324a(d)) for use

1 only by employees of the Department of Homeland
2 for the purpose of mailing such notification to such
3 taxpayer.”.

4 **SEC. 8. SOCIAL SECURITY ACCOUNT STATEMENTS.**

5 Section 1143(a)(2) of the Social Security Act (42
6 U.S.C. 1320b–13(a)(2)) is amended—

7 (a) in subparagraph (D), by striking “and” at the
8 end;

9 (b) in subparagraph (E), by striking the period at
10 the end and inserting “; and”; and

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

12 “(F) to the extent resources are available,
13 information in the Commissioner’s records indi-
14 cating that a query was submitted to the em-
15 ployment verification system established under
16 section 274A(d) of the Immigration and Na-
17 tionality Act (8 U.S.C. 1324a(d)) under that
18 individual’s name or social security number;
19 and

20 “(G) a toll-free telephone number operated
21 by the Department of Homeland Security for
22 employment verification system inquiries and a
23 link to self-verification procedure established
24 under section 274A(d)(4)(I) of such Act (8
25 U.S.C. 1324a(d)(4)(I)).”.

1 **SEC. 9. GOOD FAITH COMPLIANCE.**

2 Section 274B(a) of the Immigration and Nationality
3 Act (8 U.S.C. 1324b(a)) is amended by adding at the end
4 the following:

5 “(7) TREATMENT OF CERTAIN VIOLATIONS
6 AFTER REASONABLE STEPS IN GOOD FAITH.—Not-
7 withstanding paragraphs (4) and (6), a person,
8 other entity, or employment agency shall not be lia-
9 ble for civil penalties described in subsection
10 (g)(2)(B)(iv) that are related to a violation of any
11 such paragraph if the person, entity, or employment
12 agency has taken reasonable steps, in good faith, to
13 comply with such paragraphs at issue, unless the
14 person, other entity, or employment agency—

15 “(A) was, for similar conduct, subject to—

16 “(i) a reasonable cause determination
17 by the Office of Special Counsel for Immi-
18 gration Related Unfair Employment Prac-
19 tices; or

20 “(ii) a finding by an administrative
21 law judge that a violation of this section
22 has occurred; or

23 “(B) committed the violation in order to
24 interfere with workplace rights (as defined in
25 section 274A(b)(8)).

1 “(8) GOOD FAITH.—As used in paragraph (7),
 2 the term ‘good faith’ shall not include any action
 3 taken in order to interfere with ‘workplace rights’
 4 (as defined in section 274A(b)(8)). Neither the Of-
 5 fice of Special Counsel nor an administrative law
 6 judge hearing a claim under this section shall have
 7 any authority to assess workplace rights other than
 8 those guaranteed under this section.

9 “(9) RULES OF CONSTRUCTION.—Nothing in
 10 this section may be construed—

11 “(A) to permit the Office of Special Coun-
 12 sel for Immigration-Related Unfair Employ-
 13 ment Practices or an administrative law judge
 14 hearing a claim under this Section to enforce
 15 any workplace rights other than those guaran-
 16 teed under this section; or

17 “(B) to prohibit any person, other entity,
 18 or employment agency from using an identity
 19 verification system, service, or method (in addi-
 20 tion to the employment verification system de-
 21 scribed in section 274A(d)), until the date on
 22 which the employer is required to participate in
 23 the System under section 274A(d)(2) and the
 24 additional security measures mandated by sec-
 25 tion 274A(c)(F)(iv) have become available to

1 verify the identity of a newly hired employee, if
2 such system—

3 “(i) is used in a uniform manner for
4 all newly hired employees;

5 “(ii) is not used for the purpose or
6 with the intent of discriminating against
7 any individual;

8 “(iii) provides for timely notice to em-
9 ployees run through the system of a mis-
10 match or failure to confirm identity; and

11 “(iv) sets out procedures for employ-
12 ees run through the system to resolve a
13 mismatch or other failure to confirm iden-
14 tity.

15 “(10) LIABILITY.—A person, entity, or employ-
16 ment agency that uses an identity verification sys-
17 tem, service, or method in a way that conflicts with
18 the requirements under paragraph (7) shall be sub-
19 ject to liability under paragraph (4)(I).

20 “(j) MAINTENANCE OF REASONABLE LEVELS OF
21 SERVICE AND ENFORCEMENT.—There are authorized to
22 be appropriated such sums as may be necessary to main-
23 tain reasonable levels of service and enforcement in admin-
24 istering the Employment Verification System.”.

○