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SUBTITLE X EMPLOYMENT VERIFICATION SYSTEM

WORKSITE ENFORCEMENT

SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.

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

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

3 “(1) IN GENERAL.—It is unlawful for an employer—

4 “(A) to hire an alien for employment in the United States
5 knowing that the alien is an unauthorized alien (as defined in
6 subsection (b)(1)) with respect to such employment; or

7 “(B) to hire for employment in the United States an
8 individual without complying with the requirements of subsections
9 (c) and (d).

10 “(2) CONTINUING EMPLOYMENT.—It is unlawful for an
11 employer, after hiring an alien for employment, to continue to employ the
12 alien in the United States knowing that the alien is (or has become) an
13 unauthorized alien with respect to such employment. Nothing in this
14 section shall prohibit employment of an authorized employee who was
15 previously unauthorized or permit an employer to refuse to employ an
16 authorized employee based solely on the employee’s previous
17 unauthorized status.

18 “(3) USE OF LABOR THROUGH CONTRACT.—For purposes
19 of this section, any employer who uses a contract, subcontract, or
20 exchange to obtain the labor of an alien in the United States knowing that
21 the alien is an unauthorized alien (as defined in subsection (b)(1)) with
22 respect to performing such labor, shall be considered to have hired the
23 alien for employment in the United States in violation of subparagraph
24 (a)(1)(A).

25 “(A) For purposes of ensuring compliance with the
26 immigration laws, the Secretary may require by regulation that a
27 person or entity include in a written contract or subcontract an
28 effective and enforceable requirement that the contractor or

1 subcontractor adhere to the immigration laws, including the use of
2 the System’

3 “(B) The Secretary may establish procedures by which a
4 person or entity may obtain confirmation from the Secretary that
5 the contractor or subcontractor has registered with the System and
6 is utilizing the System to verify its employees.

7 “(C) The Secretary may establish such other requirements
8 for persons or entities using contractors or subcontractors,
9 including procedures adapted to different employment sectors, as
10 the Secretary deems necessary to prevent violations of this
11 paragraph.

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

27 “(5) DEFENSE.—An employer that establishes that it has
28 complied in good faith with the requirements of subsections (c)(1) through
29 (c)(4), pertaining to document verification requirements, and subsection

1 (d), pertaining to the use of the System, has established an affirmative
2 defense that the employer has not violated subsection (a)(1)(A) with
3 respect to such hiring; provided that:

4 “(A) until such time as the Secretary has required an
5 employer to participate in the System, or that employer is
6 participating on a voluntary basis pursuant to subsection (d), a
7 defense is established without a showing of compliance with
8 subsection (d); and

9 “(B) to establish a defense, the employer must also be in
10 compliance with any additional requirements that the Secretary
11 may promulgate by regulation pursuant to subsections (c) and (d).

12 “(6) PRESUMPTION.—An employer is presumed to have acted
13 with knowledge if the employer fails to comply with written standards,
14 procedures, or instructions issued by the Secretary.

15 “(b) DEFINITIONS.—

16 “(1) UNAUTHORIZED ALIEN.—As used in this section, the
17 term ‘unauthorized alien’ means, with respect to the employment of an
18 alien at a particular time, that the alien is not at that time either—

19 “(A) an alien lawfully admitted for permanent residence; or

20 “(B) authorized to be so employed by this Act or by the
21 Secretary.

22 “(2) EMPLOYER.—As used in this section, the term ‘employer’
23 means any person or entity hiring an individual for employment in the
24 United States, including an entity in any branch of the Federal
25 Government and any person or entity who is an agent, a System service
26 provider, or other person or entity performing any responsibility under this
27 section on behalf of an employer; provided that, for purposes of any

1 requirement to participate in the System under subsection (d), except as it
2 relates to subsection (d)(2)(H), the term ‘employer’ shall not include a
3 person or entity with fewer than 5 full or part-time employees.

4 “(3) SYSTEM. -- As used in this section, the term ‘System’ means
5 an electronic identity and work authorization verification system.

6 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—Any employer
7 hiring an individual for employment in the United States shall take the following
8 steps, and those provided in subsection (d), to verify that the individual is
9 authorized to work in the United States:

10 “(1) ATTESTATION AFTER EXAMINATION OF
11 DOCUMENTATION.—

12 “(A) IN GENERAL.—The employer must attest, under
13 penalty of perjury and on a form prescribed by the Secretary, that it
14 has verified the identity and employment authorization status of
15 the individual by examining—

16 “(i) a document described in subparagraph (B); or

17 “(ii) a document described in subparagraph (C) and
18 a document described in subparagraph (D).

19 “The form prescribed by the Secretary may be electronic or on
20 paper, and may be integrated electronically with the requirements
21 under subsection (d), if the Secretary determines that combining
22 the requirements in (c) and (d) would improve efficiency of the
23 verification requirements. Such attestation may be manifested by
24 either a handwritten, electronic, or digital signature, according to
25 such standards as the Secretary may prescribe. An employer has
26 complied with the requirements of this paragraph with respect to
27 examination of documentation if the employer has followed

1 applicable regulations and any written procedures or instructions
2 provided by the Secretary, and if a reasonable person would
3 conclude that the documentation is genuine and relates to the
4 individual presenting it, taking into account any information
5 known to the employer or provided to the employer by the
6 Secretary.

7 “(B) DOCUMENTS ESTABLISHING BOTH
8 EMPLOYMENT AUTHORIZATION AND IDENTITY.—All
9 documents must be unexpired, unless the validity of the document
10 is extended by law. A document described in this subparagraph is
11 an individual’s—

12 “(i) United States passport or passport card issued
13 pursuant to the Secretary of State's authority under 22
14 U.S.C. 211a;

15 “(ii) permanent resident card, or other document
16 issued to aliens authorized to work in the United States, as
17 designated by the Secretary, if the document—

18 “(I) contains a photograph of the individual,
19 or such other personal identifying information
20 relating to the individual as the Secretary finds, by
21 regulation, sufficient for the purposes of this
22 subsection;

23 “(II) is evidence of authorization for
24 employment in the United States; and

25 “(III) contains security features to make it
26 resistant to tampering, counterfeiting, and
27 fraudulent use;

1 “(iii) enhanced state-issued driver’s license, enhanced state-
2 issued identification card, or enhanced tribal card issued to
3 a citizen of the United States, provided that the Secretary
4 has certified by notice published in the Federal Register
5 that such enhanced document is suitable for use under this
6 subparagraph based upon the accuracy and security of the
7 issuance process, security features on the document, and
8 such other factors as the Secretary may determine;

9 “(iv) a foreign passport with Form I-94 or Form I-
10 94A, or other documentation as designated by the Secretary
11 specifying the alien’s status as long as the period of status
12 has not yet expired and the proposed employment is not in
13 conflict with any restrictions or limitations identified in the
14 documentation; or

15 “(v) a passport issued by the Federated States of
16 Micronesia (FSM) or the Republic of the Marshall Islands
17 (RMI) with evidence of nonimmigrant admission to the
18 United States under the Compact of Free Association
19 between the United States and the FSM or the RMI.

20 “(C) DOCUMENTS ESTABLISHING IDENTITY OF
21 INDIVIDUAL.—All documents must be unexpired. A document
22 described in this subparagraph includes—

23 “(i) an individual’s driver’s license or identity card
24 issued by a State or an outlying possession of the United
25 States, a Federally recognized Indian tribe, or an agency
26 (including military) of the Federal government if the
27 driver’s license or identity card includes, at a minimum,—

1 “(I) the individual’s photograph, name, date
2 of birth, gender, and driver’s license or
3 identification card number, and

4 “(II) security features to make it resistant to
5 tampering, counterfeiting, and fraudulent use;

6 “(ii) a voter’s registration card; or

7 “(iii) for individuals under 18 years of age who are
8 unable to present a document listed in clause (i) or
9 (ii), documentation of personal identity of such
10 other type as the Secretary finds provides a reliable
11 means of identification, which may include an
12 attestation as to the individual’s identity by a person
13 21 years of age or older under penalty of perjury.

14 “(D) DOCUMENTS EVIDENCING EMPLOYMENT
15 AUTHORIZATION.—All documents must be unexpired. The
16 following documents may be accepted as evidence of employment
17 authorization—

18 “(i) a social security account number card issued by
19 the Commissioner of Social Security (in this section
20 referred to as the ‘Commissioner’) other than a card which
21 specifies on its face that the card is not valid for
22 employment in the United States or has other similar words
23 of limitation. The Secretary, in consultation with the
24 Commissioner, may require by publication of a notice in
25 the Federal Register that only a social security account
26 number card described in Section 303 of the
27 Comprehensive Immigration Reform Act of 2013 be
28 accepted for this purpose; or

1 “(ii) any other documentation evidencing
2 authorization of employment in the United States which the
3 Secretary determines, by notice published in the Federal
4 Register, to be acceptable for purposes of this section,
5 provided that the document, including any electronic
6 security measures linked to the document, contains security
7 features to make it resistant to tampering, counterfeiting,
8 and fraudulent use.

9 “(E) AUTHORITY TO PROHIBIT USE OF CERTAIN
10 DOCUMENTS.—If the Secretary determines that any document or
11 class of documents described in subparagraph (B), (C), or (D) does
12 not reliably establish employment authorization or identity or is
13 being used fraudulently to an unacceptable degree, the Secretary
14 may prohibit or restrict the use of that document or class of
15 documents for purposes of this subsection.

16 (F) AUTHORITY TO ALLOW USE OF CERTAIN
17 DOCUMENTS.— If the Secretary has determined that another
18 document or class of documents can be used to reliably establish
19 employment authorization or identity, the Secretary may allow the
20 use of that document or class of documents for purposes of this
21 subsection.

22 (G) GOVERNMENT ACCOUNTABILITY OFFICE
23 STUDY OF THE EFFECTS OF DOCUMENT REQUIREMENTS
24 ON WORK AUTHORIZED PERSONS.--

25 “(i) STUDY REQUIRED.--The Comptroller
26 General of the United States shall carry out a study of the
27 effects of the documentary requirements of this section on
28 U.S. citizens and other work authorized persons, and

1 challenges they may face in obtaining the necessary
2 documentation.

3 “(ii) REPORT.—Not later than four years after the
4 enactment of this Act, the Comptroller General shall submit
5 to Congress a report containing the findings of the study
6 carried out under this paragraph. Such report shall include,
7 at a minimum, the following:

8 “(I) An assessment of available information
9 regarding the number of working age U.S. citizens
10 and other work authorized persons who lack
11 documents required for employment by this section;

12 “(II) A description of the steps required for
13 work authorized persons who currently do not
14 possess the documents required in this section to
15 obtain such documents;

16 “(III) A general assessment of the average
17 financial costs for work authorized persons who do
18 not possess the documents required in this section to
19 obtain such documents;

20 “(IV) A description of the kind of
21 challenges that face work authorized persons who
22 do not possess the documents required in this
23 section in obtaining such documents, including
24 bureaucratic hurdles; and

25 “(V) Any particular challenges facing work
26 authorized persons who are members of a federally-
27 recognized Indian tribe in complying with the
28 provisions of this section.

1 “(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT

2 AUTHORIZATION.—The individual must attest, under penalty of
3 perjury in the form prescribed by the Secretary, that the individual is a
4 citizen or noncitizen national of the United States, an alien lawfully
5 admitted for permanent residence, or an alien who is authorized under this
6 Act or by the Secretary to be hired for such employment. Such attestation
7 may be manifested by either a hand-written or digital signature. The
8 individual must also provide any Social Security Account Number, if one
9 has been issued to the individual, on such form

10 “(3) RETENTION OF VERIFICATION RECORD.— After
11 completion of such form in accordance with paragraphs (1) and (2), the
12 employer must retain a paper, microfiche, microfilm, or electronic version
13 of the form, according to such standards as the Secretary may provide, and
14 make it available for inspection by officers or employees of the
15 Department of Homeland Security (or persons designated by the
16 Secretary), the Office to Combat Immigration-Related Employment
17 Discrimination, or the Department of Labor during a period beginning on
18 the date of the hiring of the individual and ending 3 years after such date
19 of hiring, or 1 year after the date the individual’s employment is
20 terminated, whichever is later.

21 “(4) COPYING OF DOCUMENTATION AND
22 RECORDKEEPING—

23 “The Secretary may promulgate regulations regarding the
24 copying of documents presented by an individual pursuant to this
25 subsection and related information pertaining to employment
26 verification under this subsection, and retention of such
27 information during a period not to exceed the required retention
28 period of the verification record.

1 “(5) PENALTIES.—An employer that fails to comply with any
2 requirement of this subsection shall be penalized under subsection
3 (e)(4)(B).

4 “(6) PROTECTION OF CIVIL RIGHTS.—

5 “(A) Nothing in this section shall be construed to prohibit
6 any reasonable accommodation necessary to protect the religious
7 freedom of any individual, or to ensure access to employment
8 opportunities of any disabled individual.

9 “(B) The employer shall use the procedures for document
10 verification set forth in this paragraph for all employees without
11 regard to race, color, religion, sex, national origin or, unless
12 specifically permitted in this section, to citizenship status.

13 “(7) RECEIPTS.—The Secretary may provide for the use of
14 receipts for replacement documents, and temporary evidence of
15 employment authorization by an individual to meet a documentation
16 requirement of this subsection on a temporary basis not to exceed 1 year,
17 after which time the individual must provide documentation sufficient to
18 satisfy paragraph (c) of this section.

19 “(8) NO AUTHORIZATION OF NATIONAL IDENTIFICATION
20 CARDS. —Nothing in this section may be construed to authorize, directly
21 or indirectly, the issuance, use, or establishment of a national
22 identification card.

23 “(d) THE EMPLOYMENT VERIFICATION SYSTEM.—

24 “(1) IN GENERAL.—

25 “(A) The Secretary, in consultation with the Commissioner,
26 shall implement and specify the procedures for the System. The

1 participating employers shall timely register with the System and
2 shall use the System as described in subsection (d)(5).

3 “(B) The Secretary shall create the necessary processes to
4 monitor the functioning of the System, including the volume of the
5 workflow, the speed of processing of queries, the speed and
6 accuracy of responses, misuse of the System, fraud or identity
7 theft, whether use of the System results in wrongful adverse
8 actions or discrimination based upon a prohibited factor against
9 U.S. citizens or employment authorized aliens, and the security,
10 integrity, and privacy of the program.

11 “(C) The Secretary shall create the necessary processes to provide
12 individuals with direct access to their case history in the System, including
13 the identities of all entities that have run the individual through the system,
14 the date of each query run, and the system response for each query run.

15 “(2) IMPLEMENTATION SCHEDULE.—

16 “(A) FEDERAL GOVERNMENT.—All employers within
17 the Executive, Legislative, or Judicial Branches of the Federal
18 Government shall participate in the System on or after the date of
19 enactment of this subsection as follows—

20 “(i) as of the date of enactment, to the extent
21 required by section 402(e)(1) of the Illegal Immigration
22 Reform and Immigrant Responsibility Act of 1996 as
23 already implemented by each Branch; or

24 “(ii) on or after the date that is 60 days after the date
25 of enactment of this subsection;

26 “whichever is earlier, with respect to all newly hired employees
27 and employees with expiring temporary employment authorization
28 documents.

1 “(B) FEDERAL CONTRACTORS.—Federal contractors
2 shall participate in the System as provided in the final rule
3 published at 73 Federal Register 67,651 (Nov. 14, 2008), or any
4 subsequent amendments thereto, for which purpose references to
5 E-Verify in the final rule shall be construed to apply to the System.

6 “(C) CRITICAL INFRASTRUCTURE.— As of the date
7 that is 1 year after regulations are published implementing this
8 subsection, the Secretary, in the Secretary’s discretion, with notice
9 to the public provided in the Federal Register, may require any
10 employer or industry which the Secretary determines to be part of
11 the following sectors of the critical infrastructure (as defined in
12 section 1016(e) of the Critical Infrastructure Protection Act of
13 2001 (42 U.S.C. § 5195c(e)) to participate in the System with
14 respect to all newly hired employees and employees with expiring
15 temporary employment authorization documents: chemical,
16 special use government facilities, energy, defense industrial base,
17 and nuclear reactors, materials and waste sectors. The Secretary
18 shall notify employers subject to this subparagraph no less than 60
19 days prior to such required participation.

20 For purposes of this subsection, the term “special use government facility”
21 includes those sectors within the government facilities sector that contain highly
22 sensitive information, materials, processes, and equipment, such as military
23 installations, embassies, courthouses, national laboratories, and structures that
24 may house critical equipment, systems, networks, and functions.

25 “(D) EMPLOYERS WITH MORE THAN 1,000
26 EMPLOYEES.—Not later than 2 years after regulations are
27 published implementing this subsection, all employers with more
28 than 1,000 employees shall participate in the System with respect

1 to all newly hired employees and employees with expiring
2 temporary employment authorization documents.

3 “(E) EMPLOYERS WITH MORE THAN 250
4 EMPLOYEES.—Not later than 3 years after the regulations are
5 published implementing this subsection, all employers with more
6 than 250 employees shall participate in the System with respect to
7 all newly hired employees and employees with expiring temporary
8 employment authorization documents.

9 “(G) ALL EMPLOYERS. Except as provided in paragraph
10 (H), not later than 4 years after the regulations are published
11 implementing this subsection, all employers shall participate in the
12 System with respect to all newly hired employees and employees
13 with expiring temporary employment authorization documents.

14 “(H) TRIBAL GOVERNMENT EMPLOYERS. – Not later
15 than 5 years after the regulations are published implementing this
16 subsection, all employers that are owned by or that are entities of
17 the government of a federally-recognized Indian tribe shall
18 participate in the System with respect to all newly hired employees
19 with expiring temporary employment authorization documents. In
20 developing regulations to implement this subsection, the Secretary
21 shall consider the effects of this section on federally recognized
22 Indian tribes and their members, and shall engage in consultation
23 regarding this section with the governments of federally
24 recognized Indian tribes.

25 “(I) IMMIGRATION LAW VIOLATORS.—An order
26 finding any employer to have violated section 274A or 274C of
27 this Act shall require the employer to participate in the System
28 with respect to newly hired employees and employees with
29 expiring temporary employment authorization documents, if such

1 employer is not otherwise required to participate in the System by
2 this section. The Secretary shall monitor such employer's
3 compliance with System procedures.

4 “(3) PARTICIPATION IN THE SYSTEM.—The Secretary has the
5 following discretionary authority—

6 “(A) To permit any employer that is not required under this
7 section to participate in the System to do so on a voluntary basis;
8 and

9 “(B) To require any employer that is required to participate
10 in the System with respect to its newly hired employees also to do
11 so with respect to its current workforce if the employer is
12 determined by the Secretary or other appropriate authority to have
13 engaged in any violation of the immigration laws.

14 “(4) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an
15 employer is required under this subsection to participate in the System and
16 fails to comply with the requirements of such program with respect to an
17 individual—

18 “(A) such failure shall be treated as a violation of
19 subsection (a)(1)(B) of this section with respect to that individual,
20 and

21 “(B) a rebuttable presumption is created that the employer
22 has violated subsection (a)(1)(A) or (a)(2) of this section.

23 “Subparagraph (B) shall not apply in the criminal prosecution: Provided
24 that, nothing in this paragraph shall be construed to limit the use in the
25 prosecution of a federal crime, in a manner otherwise consistent with Federal
26 criminal law and procedure, of evidence relating to the employer's failure to
27 comply with requirements of the System.

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

2 “(A) IN GENERAL.—An employer participating in the
3 System must register such participation with the Secretary and
4 conform to the following procedures in the event of hiring any
5 individual for employment in the United States—

6 “(i) REGISTRATION OF EMPLOYERS.—The
7 Secretary, through notice in the Federal Register, shall
8 prescribe procedures that employers must follow to register
9 with the System.

10 “(ii) UPDATING INFORMATION.—The
11 employer is responsible for providing notice of any change
12 to the information required under subclauses (I) through
13 (V) of clause (i) before conducting any further inquiries
14 within the System, or on such other schedule as the
15 Secretary may provide.

16 “(iii) TRAINING.—The Secretary shall require
17 employers to undergo such training as the Secretary deems
18 necessary to ensure proper use, protection of civil rights
19 and civil liberties, privacy, integrity, and security of the
20 System. To the extent practicable, such training shall be
21 made available electronically.

22 “(iv) NOTIFICATION TO EMPLOYEES.—The
23 employer shall post notice or otherwise inform individuals
24 hired for employment, of the use of the System, that the
25 System may be used for immigration enforcement
26 purposes, and that the System cannot be used to
27 discriminate or to take adverse action against U.S. citizens
28 or employment authorized aliens.

1 “(v) PROVISION OF ADDITIONAL
2 INFORMATION.—The employer shall obtain from the
3 individual (and the individual shall provide) and shall
4 record in such manner as the Secretary may specify—

5 “(I) the individual’s social security account
6 number,

7 “(II) if the individual does not attest to
8 United States citizenship or noncitizen nationality
9 under subsection (c)(2) of this section, such
10 identification or authorization number established
11 by the Department of Homeland Security as the
12 Secretary of Homeland Security shall specify, and

13 “(III) such other information as the
14 Secretary may require to determine the identity and
15 employment authorization of an employee.

16 “(vi) PRESENTATION OF
17 DOCUMENTATION.—The employer, and the individual
18 whose identity and employment eligibility are being
19 confirmed, shall fulfill the requirements of subsection (c) of
20 this section.

21 “(B) SEEKING CONFIRMATION.—

22 “(i) The employer shall use the System in order to
23 initiate confirmation of the identity and employment
24 eligibility of any individual no earlier than the date upon
25 which the individual has accepted an offer of employment,
26 and no later than 3 business days, or such other reasonable
27 period as the Secretary may provide, after the date when
28 employment begins. An employer may not, however, make

1 the starting date of an individual’s employment or training
2 or any other term and condition of employment dependent
3 on the receipt of a confirmation of identity and employment
4 eligibility.

5 “(ii) For reverification of an individual with a
6 limited period of employment authorization, all required
7 System procedures must be initiated no later than 3
8 business days after the date the individual’s employment
9 authorization expires.

10 “(iii) For those employers required by the Secretary
11 to verify their entire workforce, the System can be used for
12 initial verification of an individual who was hired before
13 the employer became subject to the System, and the
14 employer must initiate all required procedures on or before
15 such date as the Secretary shall specify.

16 “(iv) The Secretary shall provide, and the employer
17 shall utilize, as part of the System, a method of notifying
18 employers of a confirmation or nonconfirmation of an
19 individual’s identity and employment eligibility, or a notice
20 that further action is required to verify such identity or
21 employment eligibility (‘further action notice’). The
22 Secretary shall establish procedures to directly notify the
23 individual, as well as the employer, of a confirmation,
24 nonconfirmation, or further action notice, and provide
25 information about filing an administrative appeal pursuant
26 to paragraph (7) a hearing before an Administrative Law
27 Judge pursuant to paragraph (8). The Secretary may
28 provide for a phased-in implementation of the notification
29 requirements of this clause as appropriate, but the

1 notification system shall cover all inquiries no later than 1
2 year from the date of enactment of the Comprehensive
3 Immigration Reform Act of 2013.

4 “(C) CONFIRMATION OR NONCONFIRMATION.—

5 “(i) INITIAL RESPONSE.—The System shall
6 provide a confirmation of an individual’s identity and
7 employment eligibility or a further action notice at the time
8 of the inquiry, unless for technological reasons or due to
9 unforeseen circumstances, the System is unable to provide
10 such confirmation or further action notice. In such
11 situations, the System shall provide a confirmation or
12 further action notice within 3 business days of the initial
13 inquiry. If providing a confirmation or further action
14 notice, the System shall provide an appropriate code
15 indicating such confirmation or such further action notice.

16 “(ii) CONFIRMATION UPON INITIAL
17 INQUIRY.—When the employer receives an appropriate
18 confirmation of an individual’s identity and employment
19 eligibility under the System, the employer shall record the
20 confirmation in such manner as the Secretary may specify.

21 “(iii) FURTHER ACTION NOTICE AND LATER
22 CONFIRMATION OR NONCONFIRMATION.—

23 “(I) NOTIFICATION AND
24 ACKNOWLEDGMENT THAT FURTHER
25 ACTION IS REQUIRED.—Within 3 business days,
26 or such other reasonable time as the Secretary may
27 provide, of an employer’s receipt of a further action
28 notice of an individual’s identity or employment

1 eligibility under the System, the employer shall
2 notify the individual for whom the confirmation is
3 sought of the further action notice and any
4 procedures specified by the Secretary for addressing
5 such notice. The further action notice must be
6 given to the individual in writing and the employer
7 must acknowledge in the System under penalty of
8 perjury that it provided the employee with the
9 further action notice. The individual must
10 affirmatively acknowledge in writing, or in such
11 other manner as the Secretary may specify, the
12 receipt of the further action notice from the
13 employer. If the individual refuses to acknowledge
14 the receipt of the further action notice, or
15 acknowledges in writing that he or she will not
16 contest the further action notice under subclause
17 (II), the employer shall notify the Secretary in such
18 manner as the Secretary may specify.

19 “(II) CONTEST.—Within 15 business days
20 of receiving notification of a further action notice
21 under subclause (I), the individual must contact the
22 appropriate Federal agency and, if the Secretary so
23 requires, appear in person for purposes of verifying
24 the individual’s identity and employment eligibility.
25 The Secretary, in consultation with the
26 Commissioner and other appropriate Federal
27 agencies, shall specify an available secondary
28 verification procedure to confirm the validity of
29 information provided and to provide a confirmation
30 or nonconfirmation. Any procedures for
31 reexamination shall not limit in any way an

1 employee's right to appeal a nonconfirmation.

2 “(III) NO CONTEST.—If the individual
3 refuses to acknowledge receipt of the further action
4 notice, acknowledges that he or she will not contest
5 the further action notice as provided in subclause
6 (I), or does not contact the appropriate Federal
7 agency within the period specified in subclause (II),
8 following expiration of the period specified in
9 subclause (II), a nonconfirmation shall issue. The
10 employer shall record the nonconfirmation in such
11 manner as the Secretary may specify and terminate
12 the individual's employment. An individual's
13 failure to contest a further action notice shall not be
14 considered an admission of guilt with respect to any
15 violation of this section or any provision of law.

16 “(IV) CONFIRMATION OR
17 NONCONFIRMATION.—Unless the period is
18 extended in accordance with this subclause, the
19 System shall provide a confirmation or
20 nonconfirmation within 10 business days from the
21 date that the individual contests the further action
22 notice under subclause (II). If the Secretary
23 determines that good cause exists, including to
24 permit the individual to obtain and provide needed
25 evidence of identity or employment eligibility, the
26 Secretary shall extend the period for providing
27 confirmation or nonconfirmation for stated periods
28 beyond 10 business days. When confirmation or
29 nonconfirmation is provided, the confirmation
30 system shall provide an appropriate code indicating
31 such confirmation or nonconfirmation.

1 “(V) RE-EXAMINATION.—Nothing in
2 this section shall prevent the Secretary from
3 establishing procedures to reexamine a case where a
4 confirmation or nonconfirmation has been provided
5 if subsequently received information indicates that
6 the confirmation or nonconfirmation may not have
7 been correct. Any procedures for reexamination
8 shall not limit in any way an employee’s right to
9 appeal a nonconfirmation.

10 “(VI) EMPLOYEE PROTECTIONS.— In
11 no case shall an employer terminate employment or
12 take any other adverse action against an individual
13 solely because of a failure of the individual to have
14 identity and employment eligibility confirmed
15 under this subsection until a nonconfirmation has
16 been issued, and if the further action notice was
17 contested, the period to timely file an administrative
18 appeal has expired without an appeal, or in the case
19 where an administrative appeal has been filed, the
20 nonconfirmation has been upheld and the period for
21 seeking review by an administrative law judge has
22 expired, or a stay of the nonconfirmation has been
23 terminated, or in the case where an action has been
24 filed with an administrative law judge, the
25 nonconfirmation has been upheld or a stay of the
26 nonconfirmation has been terminated.

27 “(iv) NOTICE OF NONCONFIRMATION.—
28 Within 3 business days of an employer’s receipt of a
29 nonconfirmation, or such other reasonable time as the
30 Secretary may provide, the employer shall notify the

1 individual who is the subject of the nonconfirmation, and
2 provide information about filing an administrative appeal
3 pursuant to paragraph (7) and request for a hearing before
4 an Administrative Law Judge pursuant to paragraph (8).
5 The nonconfirmation notice must be given to the individual
6 in writing and the employer must acknowledge in the
7 System under penalty of perjury that it provided the notice
8 (or attempted to provide the notice). The individual must
9 affirmatively acknowledge in writing, or in such other
10 manner as the Secretary may specify, the receipt of the
11 nonconfirmation notice from the employer. If the
12 individual refuses or fails to acknowledge the receipt of the
13 nonconfirmation notice, the employer shall notify the
14 Secretary in such manner as the Secretary may specify.

15 “(D) CONSEQUENCES OF NONCONFIRMATION.—

16 “(i) TERMINATION OF CONTINUED
17 EMPLOYMENT.—Except as provided in clause (iii), if the
18 employer has received a nonconfirmation regarding an
19 individual and has made reasonable efforts to notify the
20 individual as required by subparagraph (C)(iv), the
21 employer shall terminate employment of the individual
22 upon the expiration of the time period as specified in
23 paragraph(7)(A) for filing an administrative appeal and
24 paragraph (8)(A) for requesting a hearing before an
25 Administrative Law Judge.

26 “(ii) CONTINUED EMPLOYMENT AFTER
27 NONCONFIRMATION.—If the employer, in violation of
28 subclause (i), continues to employ an individual after
29 receiving nonconfirmation and exhaustion of all appeals or

1 expiration of all rights to appeal if not appealed, a
2 rebuttable presumption is created that the employer has
3 violated subsections (a)(1)(A) and (a)(2) of this section.
4 The previous sentence shall not apply in any prosecution
5 under subsection (k)(1) of this section.

6 “(iii) EFFECT OF ADMINISTRATIVE APPEAL
7 OR REVIEW BY ADMINISTRATIVE LAW JUDGE.—If
8 an individual files an administrative appeal of the
9 nonconfirmation within the time period specified in
10 paragraph (7)(A), or review by an Administrative Law
11 Judge specified in paragraph (8)(A), the employer shall not
12 terminate the individual’s employment under this
13 subparagraph prior to the resolution of the administrative
14 appeal unless the Secretary or Commissioner terminates the
15 stay under paragraph (7)(B) or 8(B).

16 “(E) OBLIGATION TO RESPOND TO QUERIES AND
17 ADDITIONAL INFORMATION.—

18 “(i) Employers are required to comply with requests
19 for information from the Secretary and Office to Combat
20 Immigration-Related Employment Discrimination,
21 including queries concerning current and former employees
22 (within the time frame during which records are required to
23 be maintained under this section regarding such former
24 employees) that relate to the functioning of the System, the
25 accuracy of the responses provided by the System, and any
26 suspected misuse, discrimination, fraud, or identity theft in
27 the use of the System. Failure to comply with such a
28 request is a violation of section (a)(1)(B).

1 “(ii) Individuals being verified through the System
2 may be required to take further action to address questions
3 identified by the Secretary or the Commissioner regarding
4 the documents relied upon for purposes of subsection (c).
5 The employer shall communicate to the individual within 3
6 business days, or such other reasonable time as the
7 Secretary may provide, any such requirement for further
8 actions and shall record the date and manner of such
9 communication. The individual must acknowledge in
10 writing, or in such other manner as the Secretary may
11 specify, the receipt of this communication from the
12 employer.

13 “(iii) The Secretary, in consultation with the
14 Commissioner, is authorized, with notice to the public
15 provided in the Federal Register, to implement, clarify, and
16 supplement the requirements of this paragraph in order to
17 facilitate the functioning, accuracy, and fairness of the
18 System or to prevent misuse, discrimination, fraud, or
19 identity theft in the use of the System.

20 “(F) The Secretary shall establish a process to certify, on an
21 annual basis or such other time frame as the Secretary may
22 provide, designated agents and other System service providers
23 seeking access to the System to perform verification queries on
24 behalf of employers, based upon training, usage, privacy, and
25 security standards designated by the Secretary. The Secretary shall
26 establish a process to ensure that designated agents and other
27 System service providers are subject to monitoring to the same
28 extent as direct access users.

1 “(G) No later than 3 months after the date of enactment of
2 this section, the Secretary of Homeland Security, in consultation
3 with the Secretary of Labor, the Secretary of Agriculture, the
4 Commissioner of Social Security, the Attorney General, the Equal
5 Employment Opportunity Commission, and the Administrator of
6 the Small Business Administration, shall commence a campaign to
7 disseminate information respecting the procedures, rights, and
8 remedies prescribed under this section. Such campaign shall be
9 aimed at increasing the knowledge of employers, employees, and
10 the general public concerning employer and employee rights,
11 responsibilities, and remedies under this section. The campaign
12 shall be coordinated with the public education campaign conducted
13 by the Office to Combat Immigration-Related Employment
14 Discrimination. The Secretary shall assess the success of the
15 campaign in achieving its goals.

16 “(i) In order to carry out and assess the campaign
17 under this paragraph, the Secretary of Homeland Security
18 may, to the extent deemed appropriate and subject to the
19 availability of appropriations, contract with public and
20 private organizations for outreach and assessment activities
21 under the campaign.

22 “(ii) There are authorized to be appropriated to
23 carry out this paragraph \$40,000,000 for each fiscal year
24 2011 through 2013.

25 “(H) Based on a regular review of the System and the
26 document verification procedures to identify misuse or fraudulent
27 use and to assess the security of the documents and processes
28 being used to establish identity or employment authorization, the
29 Secretary, in consultation with the Commissioner, may modify the

1 information that must be presented to the employer, the
2 information that must be provided to the System by the employer,
3 and the procedures that must be followed by employers with
4 respect to any aspect of the System if the Secretary, in the
5 Secretary’s discretion, concludes that the modification is necessary
6 to ensure that the System accurately and reliably determines the
7 identity and employment authorization of employees while
8 providing protection against misuse, discrimination, fraud, and
9 identity theft.

10 “(I) Subject to appropriate safeguards to prevent misuse of
11 the system, the Secretary, in consultation with the Commissioner,
12 shall establish a secure self-verification procedure to permit an
13 individual who seeks to verify the individual’s own employment
14 eligibility to contact the appropriate agency and, in a timely
15 manner, correct or update the information used by the System.

16 “(J) The Secretary may, upon notice provided in the
17 Federal Register, adjust the time periods described in this
18 paragraph.

19 “(6) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN
20 ON THE BASIS OF INFORMATION PROVIDED BY THE
21 SYSTEM.—No employer participating in the System who complies with
22 all System procedures as required in this Act shall be liable under any law
23 for any employment-related action taken with respect to the employee in
24 good faith reliance on information provided through the confirmation
25 system.

26 “(7) ADMINISTRATIVE REVIEW.—

27 “(A) IN GENERAL.—An individual who is notified of a
28 nonconfirmation may, not later than 10 business days after the date

1 that such notice is received, file an administrative appeal of such
2 nonconfirmation with the Commissioner if the notice is based on
3 records maintained by the Commissioner, or in any other case,
4 with the Secretary. An individual who did not timely contest a
5 further action notice timely received by that individual for which
6 the individual acknowledged receipt may not avail himself of this
7 paragraph.

8 “(B) ADMINISTRATIVE STAY OF
9 NONCONFIRMATION.—The nonconfirmation shall be
10 automatically stayed upon the timely filing of an administrative
11 appeal, unless the nonconfirmation resulted after the individual
12 acknowledged receipt of the further action notice but failed to
13 contact the appropriate agency within the time provided and the
14 stay shall remain in effect until the resolution of the appeal, unless
15 the Secretary or the Commissioner terminates the stay based on a
16 determination that the administrative appeal is frivolous or filed for
17 purposes of delay.

18 “(C) REVIEW FOR ERROR.—The Secretary and the
19 Commissioner shall develop procedures for resolving
20 administrative appeals regarding nonconfirmations based upon the
21 information that the individual has provided, including any
22 additional evidence or argument that was not previously
23 considered. Any such additional evidence or argument shall be
24 filed within 15 days of the date the appeal was originally filed.
25 Appeals shall be resolved within 30 days after the individual has
26 submitted all evidence and arguments he or she wishes to submit,
27 or has stated in writing that there is no additional evidence that he
28 or she wishes to submit. The Secretary and the Commissioner
29 may, on a case by case basis for good cause, extend the filing and
30 submission period in order to ensure accurate resolution of an

1 appeal before him or her. Administrative review under this
2 paragraph shall be limited to whether the nonconfirmation notice is
3 supported by a preponderance of the evidence.

4 (D) DAMAGES, FEES, AND COSTS.—No money
5 damages, fees or costs may be awarded in the administrative
6 review process.

7 “(8) REVIEW BY ADMINISTRATIVE LAW JUDGE.—

8 “(A) IN GENERAL.—After the Secretary or the
9 Commissioner makes a final determination on an appeal filed by
10 an individual under paragraph (7), the individual may obtain
11 review by filing a complaint with an Administrative Law Judge of
12 such determination in an action in accordance with this paragraph
13 commenced not later than 45 days after the administrative order is
14 issued.

15 “(B) STAY OF NONCONFIRMATION.— The
16 nonconfirmation shall be automatically stayed upon the timely
17 filing of an action under this paragraph, and the stay shall remain
18 in effect until the resolution of the action, unless the
19 Administrative Law Judge determines that the action is frivolous
20 or filed for purposes of delay, in which case the Administrative
21 Law Judge may terminate the stay.

22 “(C) SERVICE.—The respondent is either the Secretary or
23 the Commissioner, but not both, depending upon who issued the
24 administrative order under paragraph (7). In addition to serving
25 the defendant, the plaintiff must also serve the Attorney General.

26 “(D) AUTHORITY OF ADMINISTRATIVE LAW
27 JUDGE.—

- 1 (i) The Secretary shall promulgate regulations
2 regarding the rules of practice in appeals brought
3 pursuant to this subsection.
- 4 (ii) The Administrative Law Judge shall have power to—
- 5 (I) terminate the stay of nonconfirmation if the
6 Administrative Law Judge determines that
7 the action is frivolous or filed for purposes
8 of delay;
- 9 (II) adduce evidence at a hearing;
- 10 (III) compel by subpoena the attendance of
11 witnesses and the production of evidence at
12 any designated place or hearing; and
- 13 (IV) enter, upon the pleadings and any evidence
14 adduced at a hearing, a decision affirming or
15 reversing the result of the agency, with or
16 without remanding the cause for a rehearing.
- 17 “(iii) in case of contumacy or refusal to obey a subpoena
18 lawfully issued under this section and upon application of
19 the Administrative Law Judge, an appropriate district court
20 of the United States may issue an order requiring
21 compliance with such subpoena and any failure to obey
22 such order may be punished by such court as a contempt
23 thereof.”
- 24 “(iv) Judges hearing cases shall have special training respecting
25 employment eligibility verification.
- 26 “(E) ORDER BY ADMINISTRATIVE LAW JUDGE.—

1 “(i) In General. The Administrative Law Judge
2 shall issue and cause to be served to the parties in the
3 proceeding an order which shall be appealed as provided in
4 subsection G.

5 “(ii) Contents of Order. Such an order shall uphold
6 or reverse the final determination on the request for
7 reconsideration and order lost wages and other appropriate
8 remedies as provided in subparagraph (F).

9 “(F) COMPENSATION FOR ERROR.—

10 “(i) IN GENERAL.—In cases in which the
11 Administrative Law Judge reverses the final determination
12 of the Secretary or the Commissioner made under
13 paragraph (7), and the Administrative Law Judge finds that
14 the final determination was erroneous by reason of the
15 negligence of the Secretary or the Commissioner, the
16 Administrative Law Judge may award to the individual lost
17 wages, and reasonable costs and attorneys’ fees incurred
18 during administrative and judicial review. Amounts under
19 this clause may be adjusted to account for inflation
20 pursuant to the US Consumer Price Index - All Urban
21 Consumers (CPI-U) compiled by the Bureau of Labor
22 Statistics.

23 “(ii) CALCULATION OF LOST WAGES.—Lost
24 wages shall be calculated based on the wage rate and work
25 schedule that prevailed prior to termination. The individual
26 shall be compensated for wages lost beginning on the first
27 scheduled work day after employment was terminated and
28 ending 180 days after completion of the Administrative
29 Law Judge’s review described in this paragraph or the day

1 after the individual is reinstated or obtains employment
2 elsewhere, whichever occurs first. If the individual obtains
3 employment elsewhere at a lower wage rate, the individual
4 shall be compensated for the difference in wages for the
5 period ending 180 days after completion of the
6 Administrative Law Judge review process. No lost wages
7 shall be awarded for any period of time during which the
8 individual was not authorized to be employed in the United
9 States.

10 “(iii) PAYMENT OF COMPENSATION.—

11 Notwithstanding any other law, payment of compensation
12 for lost wages, costs, and attorneys’ fees under this
13 paragraph, or compromise settlements of the same, shall be
14 made as provided by section 1304 of title 31, United States
15 Code. Appropriations made available to the Secretary or
16 the Commissioner, accounts provided for under section 286
17 of the Immigration and Nationality Act (8 U.S.C. 1356),
18 and funds from the Federal Old-Age and Survivors
19 Insurance Trust Fund or the Federal Disability Insurance
20 Trust Fund shall not be available to pay such compensation.

21 “(G) No later than 45 days after the entry of such final order, any
22 person adversely affected by such final order may seek review of such
23 order in the United States Court of Appeals for the circuit in which the
24 violation is alleged to have occurred or in which the employer resides or
25 transacts business.

26 “(9) PRIVATE RIGHT OF ACTION.— If the nonconfirmation
27 issued for an individual was caused by negligence or other misconduct on
28 the part of the employer (other than an entity in any branch of the Federal
29 Government), the individual may seek recovery of damages,

1 reinstatement, back pay, and other appropriate remedies in a civil action
2 against the employer. Such action must be commenced not later than 90
3 days after notice of the Secretary’s or the Commissioner’s decision on an
4 administrative appeal as described in paragraph (7), or 90 days after
5 termination of the individual as a result of the final nonconfirmation if no
6 such administrative appeal is taken. The action shall only be brought in
7 the district court of the United States for the judicial district in which the
8 plaintiff resides or, if the plaintiff does not reside within any such judicial
9 district, in the District Court of the United States for the District of
10 Columbia. In such action, no prior administrative or judicial finding
11 relating to the employer in any proceeding to which the employer was not
12 a party may be given any res judicata or collateral estoppel effect against
13 the employer.

14 “(11) MANAGEMENT OF THE SYSTEM.—

15 “(A) IN GENERAL.—The Secretary is authorized to
16 establish, manage, and modify the System, which shall—

17 “(i) respond to inquiries made by participating
18 employers at any time through the internet, or such other
19 means as the Secretary may designate, concerning an
20 individual’s identity and whether the individual is
21 authorized to be employed;

22 “(ii) maintain records of the inquiries that were
23 made, of confirmations provided (or not provided), and of
24 the codes provided to employers as evidence of their
25 compliance with their obligations under the System; and

26 “(iii) provide information to, and require action by,
27 employers and individuals using the System.

1 “(B) DESIGN AND OPERATION OF SYSTEM.— The
2 System shall be designed and operated—

3 “(i) to maximize its reliability and ease of use by
4 employers consistent with protecting the privacy and
5 security of the underlying information, and ensuring full
6 notice of such use to employees;

7 “(ii) to maximize its ease of use by employees,
8 including direct notification of its use, of results, and ability
9 to challenge results;

10 “(iii) to respond accurately to all inquiries made by
11 employers on whether individuals are authorized to be
12 employed and to register any times when the system is
13 unable to receive inquiries;

14 “(iv) to maintain appropriate administrative,
15 technical, and physical safeguards to prevent unauthorized
16 disclosure of personal information, misuse by employers
17 and employees, and discrimination;

18 (v) to require regularly scheduled refresher training
19 of all users of the System to ensure compliance with all
20 procedures;

21 “(vi) to allow for auditing of the use of the System
22 to detect misuse, discrimination, fraud, and identity theft,
23 and to preserve the integrity and security of the information
24 in all of the System, including but not limited to the
25 following:

26 “(I) to develop and use tools and processes
27 to detect or prevent fraud and identity theft, such as

1 multiple uses of the same identifying information or
2 documents to fraudulently gain employment;

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

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

9 “(IV) to audit documents and information
10 submitted by employees to employers, including
11 authority to conduct interviews with employers and
12 employees, and obtain information concerning
13 employment from the employer;

14 “(vi) to confirm identity and employment
15 authorization through verification and comparison of
16 records as determined necessary by the Secretary.

17 “(vii) to confirm electronically the issuance of the
18 employment authorization or identity document and to
19 display the digital photograph that the issuer placed on the
20 document so that the employer can compare the photograph
21 displayed to the photograph on the document presented by
22 the employee. If a photograph is not available from the
23 issuer, the Secretary may specify alternative procedures for
24 confirming the authenticity of the document.

25 “(C) SAFEGUARDS TO THE SYSTEM

26 “(i) The Secretary, in consultation with the
27 Commissioner and other appropriate Federal and State

1 agencies, shall develop policies and procedures to ensure
2 protection of the privacy and security of personally
3 identifiable information and identifiers contained in the
4 records accessed or maintained by the System. The
5 Secretary, in consultation with the Commissioner and other
6 appropriate Federal and State agencies, shall develop and
7 deploy appropriate privacy and security training for the
8 Federal and State employees accessing the records under
9 the System.

10 “(ii) The Secretary, acting through the Chief
11 Privacy Officer of the Department of Homeland Security,
12 shall conduct regular privacy audits of the policies and
13 procedures established under clause (ii), including any
14 collection, use, dissemination, and maintenance of
15 personally identifiable information and any associated
16 information technology systems, as well as scope of
17 requests for this information. The Chief Privacy Officer
18 shall review the results of the audits and recommend to the
19 Secretary any changes necessary to improve the privacy
20 protections of the program.

21 “(iii) Any person or entity who retains document
22 verification or System data pursuant to this Section must
23 implement an effective records security program that:

- 24 (I) ensures that only authorized personnel have
25 access to document verification or System
26 data;
- 27 (II) provides for backup and recovery of any
28 records maintained in electronic format to

1 protect against information loss, such as
2 power interruptions;

3 (III) ensures that employees are trained to
4 minimize the risk of unauthorized or
5 accidental alteration or erasure of such data
6 in electronic format; and

7 (IV) ensures that whenever such data is created,
8 completed, updated, modified, altered, or
9 corrected in electronic format, a secure and
10 permanent record is created that establishes
11 the date of access, the identity of the
12 individual who accessed the electronic
13 record, and the particular action taken.

14 For the purposes of this subsection, “authorized
15 personnel” means anyone registered as a System
16 user, or anyone with partial or full responsibility for
17 completion of employment authorization
18 verification or retention of data in connection with
19 employment authorization verification on behalf of
20 an employer.

21 (D) RESPONSIBILITIES OF THE SECRETARY OF
22 HOMELAND SECURITY.—

23 “(i) As part of the System, the Secretary shall
24 maintain a reliable, secure method, which, operating
25 through the System and within the time periods specified,
26 compares the name, alien identification or authorization
27 number, or other information as determined relevant by the
28 Secretary, provided in an inquiry against such information
29 maintained or accessed by the Secretary in order to confirm

1 (or not confirm) the validity of the information provided,
2 the correspondence of the name and number, whether the
3 alien is authorized to be employed in the United States (or,
4 to the extent that the Secretary determines to be feasible
5 and appropriate, whether the records available to the
6 Secretary verify the identity or status of a citizen or
7 noncitizen national of the United States), and such other
8 information as the Secretary may prescribe.

9 “(ii) As part of the System, the Secretary shall
10 establish a reliable, secure method, which, operating
11 through the System, displays the digital photograph
12 described in subparagraph (B)(vii).

13 “(iii) The Secretary shall have authority to prescribe
14 when a confirmation, nonconfirmation, or further action
15 notice shall be issued.

16 “(iv) The Secretary shall perform regular audits
17 under the System, as described in subparagraph (B)(v) and
18 shall utilize the information obtained from such audits, as
19 well as any information obtained from the Commissioner
20 pursuant to section 304 of the Comprehensive Immigration
21 Reform Act of 2013, for the purposes of this section and to
22 administer and enforce the immigration laws.

23 “(v) The Secretary shall make appropriate
24 arrangements to allow employers or employees who are
25 otherwise unable to access the System to use Federal
26 Government facilities or public facilities or other available
27 locations in order to utilize the program.

1 “(vi) The Secretary may, in consultation with the
2 Commissioner, establish a program which shall provide a
3 reliable, secure method by which victims of identity fraud
4 and other individuals may suspend or limit the use of their
5 Social Security account number or other identifying
6 information for System purposes. The Secretary may
7 implement the program on a limited pilot program basis
8 before making it fully available to all individuals.

9 “(vii) The Secretary and the Commissioner shall
10 establish a program in which Social Security account
11 numbers that have been identified to be subject to unusual
12 multiple use in the System, or that are otherwise suspected
13 or determined to have been compromised by identity fraud,
14 shall be blocked from use for System purposes after
15 notification to the holder of the Social Security account
16 number, unless the individual using such number is able to
17 establish, through secure and fair additional security
18 procedures, that he or she is the legitimate holder of the
19 number.

20 “(viii) The Secretary shall establish a monitoring
21 and compliance unit to detect and reduce identity fraud and
22 other misuse of the program.

23 “(ix) The Secretary shall conduct regular civil rights
24 and civil liberties assessments of the System, including
25 participation by employers, other private entities, other
26 Federal agencies, and state and local government.
27 Employers, other private entities and Federal, state and
28 local agencies shall timely respond to all requests in
29 connection with such assessments. The Officer shall review

1 the results of the assessment and recommend to the
2 Secretary any changes necessary to improve the civil rights
3 and civil liberties protections of the program.

4 “(x) REPORT ON USE OF THE SYSTEM IN THE
5 AGRICULTURAL INDUSTRY.— Not later than 18
6 months after the date of enactment, the Secretary shall
7 submit to Congress a report that assesses implementation of
8 the System in the agricultural industry, including the use of
9 the System technology in agriculture industry hiring
10 processes, user, contractor and third-party employer agent
11 employment practices, timing and logistics regarding
12 employment verification and reverification processes to
13 meet agriculture industry practices, and identification of
14 potential challenges and modifications to meet the unique
15 needs of the agriculture industry. The report will review the
16 modality of access, training and outreach, customer
17 support, processes for further action notices and secondary
18 verifications for short-term workers, monitoring and
19 compliance procedures for the System, the interaction of
20 the System with the process to admit non-immigrant
21 workers pursuant to section 218 of the Immigration and
22 Nationality Act and with enforcement of the immigration
23 laws, and the collaborative use of processes of other federal
24 and state agencies that intersect with the agriculture
25 industry.

26 “(xi) ANNUAL REPORT AND
27 CERTIFICATION.—Not later than 18 months after the
28 promulgation of regulations to implement this subsection,
29 and annually thereafter, the Secretary shall submit to
30 Congress a report that includes.—

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- (I) An assessment of the accuracy rates of further action notices and other System notices provided by employers to individuals who are authorized to be employed in the United States.
- (II) An assessment of the accuracy rates of further action notices and other System notices provided directly (by the System) in a timely fashion to individuals who are not authorized to be employed in the United States.
- (III) An assessment of any challenges faced by small employers in utilizing the System; and
- (IV) An assessment of the rate of other employer noncompliance (in addition to failure to provide required notices in a timely fashion) in each of the following categories: taking adverse action based on a further action notice; use of the System for non-employees; use of the System to reverify employment authorization of current employees except when authorized to do so; use of the System selectively except when authorized to do so; use of the System to deny employment or post-employment benefits or otherwise interfere with labor rights; requiring employees or applicants to use any self-verification feature or to provide self-verification results; encouraging individuals who receive a further action notice from challenging the

1 further action notice or appealing any
2 System determination.

3 “(E) RESPONSIBILITIES OF THE SECRETARY OF
4 STATE.—As part of the System, the Secretary of State shall
5 provide to the Secretary access to passport and visa information as
6 needed to confirm that a passport or passport card presented under
7 subsection (c)(1)(B) confirms the identity of the subject of the
8 System check, and that a passport, passport card, or visa
9 photograph matches the Secretary of State’s records, and shall
10 provide such assistance as the Secretary may request in order to
11 resolve further action notices or nonconfirmations relating to such
12 information.

13 “(F) UPDATING INFORMATION.—The Commissioner
14 and the Secretaries of Homeland Security and State shall update
15 their information in a manner that promotes maximum accuracy
16 and shall provide a process for the prompt correction of erroneous
17 information.

18 “(12) LIMITATION ON USE OF THE SYSTEM.—
19 Notwithstanding any other provision of law, nothing in this subsection
20 shall be construed to permit or allow any department, bureau, or other
21 agency of the United States Government to utilize any information,
22 database, or other records assembled under this subsection for any purpose
23 other than for verification or to ensure secure, appropriate and non-
24 discriminatory use of the System.

25 “(13) CONFORMING AMENDMENT.—Sections 401 to 405 of
26 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996
27 (division C of Public Law 104-208, as amended; 8 U.S.C. 1234a note) are
28 repealed, provided that nothing in this subsection shall be construed to
29 limit the authority of the Secretary to allow or continue to allow the

1 participation in the System of employers who have participated in the E-
2 Verify program established by such sections.

3 “(15) ANNUAL GAO STUDY AND REPORT.—

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

7 “(B) REPORT.—Not later than 18 months after the
8 promulgation of regulations to implement this subsection, and
9 yearly thereafter, the Comptroller General shall submit to Congress
10 a report containing the findings of the study carried out under this
11 paragraph. Each such report shall include, at a minimum, the
12 following:

13 “(i) An assessment of System performance with
14 respect to the rate at which individuals who are eligible for
15 employment in the United States are correctly approved within the
16 required periods, including a separate assessment of such rate for
17 nationals and aliens.

18 “(ii) An assessment of the privacy and confidentiality of
19 the System and of the overall security of the System with respect to
20 cybertheft and theft or misuse of private data.

21 “(iii) An assessment of whether the System is being
22 implemented in a nondiscriminatory and nonretaliatory manner.

23 “(iv) An assessment of the most common causes for the
24 erroneous issuance of nonconfirmations by the System and
25 recommendations to correct such causes.

26 “(v) The recommendations of the Comptroller General
27 regarding System improvements.

1 “(e) COMPLIANCE.—

2 “(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary
3 of Homeland Security shall establish procedures—

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

6 “(B) for the investigation of those complaints which the
7 Secretary deems appropriate to investigate;

8 “(C) for providing notification to the Department of Labor
9 of investigations under subsection (a) of this section involving the
10 employment of five or more individuals, so that the Department of
11 Labor may investigate where there is good reason to believe, based
12 on the information provided, that there may be violations of
13 worker protection standards enforced by the Department of Labor,
14 including the Fair Labor Standards Act, the Occupational Safety
15 and Health Act, and Executive Order 11246;

16 “(D) for providing notification to the Office to Combat
17 Immigration-Related Employment Discrimination of potential
18 violations of section 274B of this Act; and

19 “(E) for such other investigations of violations of
20 subsections (a) or (f)(1) as the Secretary determines to be
21 appropriate.

22 “(2) AUTHORITY IN INVESTIGATIONS.—In conducting
23 investigations and proceedings under this subsection—

24 “(A) immigration officers shall have reasonable access to
25 examine evidence of any employer being investigated;

1 “(B) immigration officers designated by the Secretary, and
2 administrative law judges and other persons authorized to conduct
3 proceedings under this section, may compel by subpoena the
4 attendance of witnesses and the production of evidence at any
5 designated place in an investigation or case under this subsection.
6 In case of refusal to fully comply with a subpoena lawfully issued
7 under this paragraph, the Secretary may request that the Attorney
8 General apply in an appropriate district court of the United States
9 for an order requiring compliance with the subpoena, and any
10 failure to obey such order may be punished by the court as
11 contempt. Failure to cooperate with the subpoena shall be subject
12 to further penalties, including but not limited to further fines and
13 the voiding of any mitigation of penalties or termination of
14 proceedings under paragraph (4)(D); and

15 “(C) the Secretary, in cooperation with the Commissioner
16 and Attorney General, and in consultation with other relevant
17 agencies, shall establish a Joint Employment Fraud Task Force
18 consisting of, at a minimum, the System’s compliance personnel,
19 immigration law enforcement officers, Office to Combat
20 Immigration-Related Employment Discrimination personnel,
21 Department of Homeland Security Office for Civil Rights and
22 Civil Liberties personnel, and Social Security Administration
23 Office of Inspector General personnel.

24 “(3) COMPLIANCE PROCEDURES.—

25 “(A) PRE-PENALTY NOTICE.—If the Secretary has
26 reasonable cause to believe that there has been a civil violation of
27 this section, the Secretary shall issue to the employer concerned a
28 written notice of the Department’s intention to issue a claim for a
29 monetary or other penalty. Such pre-penalty notice shall:

1 “(i) describe the violation;

2 “(ii) specify the laws and regulations allegedly
3 violated;

4 “(iii) disclose the material facts which establish the
5 alleged violation;

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

7 “(v) inform such employer that he or she shall have
8 a reasonable opportunity to make representations as to why
9 a monetary or other penalty should not be imposed.

10 “(B) EMPLOYER’S RESPONSE.—Whenever any
11 employer receives written pre-penalty notice of a fine or other
12 penalty in accordance with subparagraph (A), the employer may,
13 within 30 days from receipt of such notice, file with the Secretary
14 its written response to the notice. The response may include any
15 relevant evidence or proffer of evidence that the employer wishes
16 to present with respect to whether the employer violated this
17 section and whether, if so, the penalty should be mitigated, and
18 shall be filed and considered in accordance with procedures to be
19 established by the Secretary.

20 “(C) RIGHT TO A HEARING – Before issuance of an
21 order imposing a penalty on any person or entity, the person or
22 entity shall be entitled to a hearing before an Administrative Law
23 Judge, if requested within 30 days of the notice of penalty. The
24 hearing shall be held at the nearest location practicable to the place
25 where the person or entity resides or of the place where the alleged
26 violation occurred.

1 (D) ISSUANCE OF ORDERS - If no hearing is so
2 requested, the Secretary's imposition of the order shall constitute a
3 final and unappealable order. If the Administrative Law Judge
4 determines, upon the preponderance of the evidence received, that
5 there was a violation, the Administrative Law Judge shall issue the
6 final determination with a written penalty claim. The penalty claim
7 shall specify all charges in the information provided under clauses
8 (i) through (iii) of subparagraph (A) and any mitigation of the
9 penalty that the Administrative Law Judge deems appropriate
10 under paragraph (4)(D).

11 "(4) CIVIL PENALTIES

12 "(A) HIRING OR CONTINUING TO EMPLOY
13 UNAUTHORIZED ALIENS.—Any employer that violates any
14 provision of subsection (a)(1)(A) or (a)(2) shall:

15 "(i) pay a civil penalty of not less
16 than \$2,000 and not more than \$5,000 for each
17 unauthorized alien with respect to which each
18 violation of either subsection (a)(1)(A) or (a)(2)
19 occurred;

20 "(ii) if the employer has previously
21 been fined under this paragraph, pay a civil penalty
22 of not less than \$4,000 and not more than \$10,000
23 for each unauthorized alien with respect to which a
24 violation of either subsection (a)(1)(A) or (a)(2)
25 occurred; and

26 "(iii) if the employer has previously
27 been fined more than once under this paragraph,
28 pay a civil penalty of not less than \$8,000 and not

1 more than \$25,000 for each unauthorized alien with
2 respect to which a violation of either subsection
3 (a)(1)(A) or (a)(2) occurred.

4 “(B) ENHANCED CIVIL PENALTY.—If an employer is
5 determined to have committed within the 5 years immediately
6 preceding the date of any violation of subsection (a)(1)(A) or (a)(2)
7 a civil or criminal violation of Federal or State labor or
8 employment laws, including wage and hour, benefits or other
9 employment standards, workplace health and safety or work-
10 related injuries, labor relations, non-discrimination, or
11 immigration, by a court or an administrative agency with
12 jurisdiction over such violation, for which a monetary penalty or
13 monetary relief of at least \$500, a judicial injunction, or other
14 equitable relief, or any term of imprisonment has been imposed,
15 any civil money penalty or criminal fine otherwise applicable
16 under this section shall be trebled. In any proceeding under this
17 section, the Secretary of Homeland Security, Administrative Law
18 Judge, or court, as appropriate, shall determine whether a court or
19 administrative agency has imposed such penalty for such previous
20 violation of other law, but the validity and appropriateness of such
21 prior action shall not be subject to review.

22 “(C) RECORDKEEPING OR VERIFICATION
23 PRACTICES.—Any employer that violates or fails to comply with
24 any requirement of subsection (a)(1)(B), shall pay a civil penalty
25 as follows:

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

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

4 “(iii) if an employer has previously been fined more
5 than once under this paragraph, not less than \$2,000 and
6 not more than \$8,000 for each violation.

7 “(D) OTHER PENALTIES.—The Secretary may impose
8 additional penalties for violations, including cease and desist
9 orders, specially designed compliance plans to prevent further
10 violations, suspended fines to take effect in the event of a further
11 violation, and in appropriate cases, the remedy provided by
12 paragraph (f)(2).

13 “(E) MITIGATION.—The Secretary or, where an
14 employer requests a hearing, the Administrative Law Judge, is
15 authorized, upon such terms and conditions as the Secretary or
16 Administrative Law Judge deems reasonable and just and in
17 accordance with such procedures as the Secretary may establish or
18 any procedures established governing the Administrative Law
19 Judge’s assessment of penalties, to reduce or mitigate penalties
20 imposed upon employers, based upon factors including, but not
21 limited to, the employer’s hiring volume, compliance history,
22 good-faith implementation of a compliance program, and voluntary
23 disclosure of violations of this subsection to the Secretary. The
24 Secretary or Administrative Law Judge shall not mitigate a penalty
25 below the minimum penalty provided by this section, except that
26 the Secretary may, in the case of an employer subject to penalty for
27 record-keeping or verification violations only who has not
28 previously been penalized under this section, in the Secretary’s or
29 Administrative Law Judge’s discretion, mitigate the penalty below

1 the statutory minimum or remit it entirely. In any case where a
2 civil money penalty has been imposed on an employer under
3 section 274B of this Act for an action or omission that is also a
4 violation of this section, the Secretary or Administrative Law
5 Judge shall mitigate any civil money penalty under this section by
6 the amount of the penalty imposed under section 274B.

7 “(F) EFFECTIVE DATE. —The civil money penalty
8 amounts and the enhanced penalties provided by subparagraphs
9 (A), (B), and (C) of this paragraph and by paragraph (f)(2) of this
10 section shall apply to violations of this section committed on or
11 after the date that is one year after the date of enactment of the
12 Comprehensive Immigration Reform Act of 2013. For violations
13 committed prior to such date, the civil money penalty amounts
14 provided by regulations implementing section 274A of this Act as
15 in effect the day before the enactment of the Comprehensive
16 Immigration Reform Act of 2013 with respect to knowing hiring or
17 continuing employment, verification, or indemnity bond violations,
18 as appropriate, shall apply.

19 “(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION
20 OF COMPLIANCE.—If the Secretary has reasonable cause to believe that
21 an employer has failed to comply with this section, the Secretary is
22 authorized, at any time, to require that the employer certify that it is in
23 compliance with this section, or has instituted a program to come into
24 compliance. Within 60 days of receiving a notice from the Secretary
25 requiring such a certification, the employer’s chief executive officer or
26 similar official with responsibility for, and authority to bind the company
27 on, all hiring and immigration compliance notices shall certify under
28 penalty of perjury that the employer is in conformance with the
29 requirements of subsections (c)(1) through (c)(4), pertaining to document
30 verification requirements, and with subsection (d), pertaining to the

1 System (once that system is implemented with respect to that employer
2 according to the requirements of subsection (d)(1)), and with any
3 additional requirements that the Secretary may promulgate by regulation
4 pursuant to subsections (c) or (d) or that the employer has instituted a
5 program to come into compliance with these requirements. At the request
6 of the employer, the Secretary may extend the 60-day deadline for good
7 cause. The Secretary is authorized to publish in the Federal Register
8 standards or methods for such certification, require specific recordkeeping
9 practices with respect to such certifications, and audit the records thereof
10 at any time. This authority shall not be construed to diminish or qualify
11 any other penalty provided by this section.

12 “(A) REQUIREMENTS FOR REVIEW OF A FINAL
13 DETERMINATION.—With respect to judicial review of a final
14 determination or penalty claim issued under paragraph (3)(C), the
15 following requirements apply:

16 “(i) DEADLINE.—The petition for review must be
17 filed no later than 30 days after the date of the final
18 determination or penalty claim issued under paragraph
19 (3)(C).

20 “(ii) VENUE AND FORMS.—The petition for
21 review shall be filed with the court of appeals for the
22 judicial circuit where the employer’s principal place of
23 business was located when the final determination or
24 penalty claim was made. The record and briefs do not have
25 to be printed. The court shall review the proceeding on a
26 typewritten or electronically filed record and briefs.

27 “(iii) SERVICE.—The respondent is the Secretary
28 of Homeland Security. In addition to serving the

1 respondent, the petitioner must also serve the Attorney
2 General.

3 “(iv) PETITIONER’S BRIEF.—The petitioner shall
4 serve and file a brief in connection with a petition for
5 judicial review not later than 40 days after the date on
6 which the administrative record is available, and may serve
7 and file a reply brief not later than 14 days after service of
8 the brief of the respondent, and the court may not extend
9 these deadlines, except for good cause shown. If a
10 petitioner fails to file a brief within the time provided in
11 this paragraph, the court shall dismiss the appeal unless a
12 manifest injustice would result.

13 “(v) SCOPE AND STANDARD FOR REVIEW.—
14 The court of appeals shall decide the petition only on the
15 administrative record on which the final determination is
16 based. The burden shall be on the petitioner to show that
17 the determination was not supported by substantial
18 evidence.

19 “(B) EXHAUSTION OF ADMINISTRATIVE
20 REMEDIES.—A court may review a final determination under
21 paragraph (3)(C) only if—

22 “(i) the petitioner has exhausted all administrative
23 remedies available to the petitioner as of right, including
24 any administrative remedies established by regulation, and

25 “(ii) another court has not decided the validity of the order, unless
26 the reviewing court finds that the petition presents grounds that could not
27 have been presented in the prior judicial proceeding or that the remedy

1 provided by the prior proceeding was inadequate or ineffective to test the
2 validity of the order.

3 “(6) ENFORCEMENT OF ORDERS.—If the final determination issued
4 against the employer under this subsection is not subjected to review as
5 provided in paragraph (6), the Attorney General, upon request by the
6 Secretary, may bring a civil action to enforce compliance with the final
7 determination in any appropriate district court of the United States. The
8 court, on a proper showing, shall issue a temporary restraining order or a
9 preliminary or permanent injunction requiring that the employer comply
10 with the final determination issued against that employer under this
11 subsection. In any such civil action, the validity and appropriateness of
12 the final determination shall not be subject to review.

13 “(7) LIENS.—

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

24 “(B) FILING NOTICE OF LIEN.— (1) Place for filing.--
25 The notice referred to in subsection (A) shall be filed—

26 (A) Under State laws.—

27 (i) Real property.--In the case of real property, in
28 one office within the State (or the county, or other

1 governmental subdivision), as designated by the
2 laws of such State, in which the property subject to
3 the lien is situated; and

4 (ii) Personal property.--In the case of personal
5 property, whether tangible or intangible, in one
6 office within the State (or the county, or other
7 governmental subdivision), as designated by the
8 laws of such State, in which the property subject to
9 the lien is situated, except that State law merely
10 conforming to or reenacting Federal law
11 establishing a national filing system does not
12 constitute a second office for filing as designated by
13 the laws of such State; or

14 (B) With clerk of district court.--In the office of the clerk of
15 the United States district court for the judicial district in
16 which the property subject to the lien is situated, whenever
17 the State has not by law designated one office which meets
18 the requirements of subparagraph (A); or

19 (C) With Recorder of Deeds of the District of Columbia.--
20 In the office of the Recorder of Deeds of the District of
21 Columbia, if the property subject to the lien is situated in
22 the District of Columbia.

23 (2) Situs of property subject to lien.--For purposes
24 of paragraph (1), property shall be deemed to be situated—

25 (A) Real property.--In the case of real property, at
26 its physical location; or

27 (B) Personal property.--In the case of personal
28 property, whether tangible or intangible, at the
29 residence of the taxpayer at the time the notice of

1 lien is filed.

2 For purposes of paragraph (2)(B), the residence of a
3 corporation or partnership shall be deemed to be the
4 place at which the principal executive office of the
5 business is located, and the residence of a taxpayer
6 whose residence is without the United States shall
7 be deemed to be in the District of Columbia.

8 “(C) EFFECT OF FILING NOTICE OF LIEN.—Upon
9 filing of a notice of lien in the manner described in (B)
10 above, the lien shall be valid against any purchaser, holder
11 of a security interest, mechanic’s lien, or judgment lien
12 creditor, except with respect to properties or transactions
13 specified in subsection (b), (c), or (d) of section 6323 of the
14 Internal Revenue Code of 1986 for which a notice of tax
15 lien properly filed on the same date would not be valid.
16 The notice of lien shall be considered a notice of lien for
17 taxes payable to the United States for the purpose of any
18 State or local law providing for the filing of a notice of a
19 tax lien. A notice of lien that is registered, recorded,
20 docketed, or indexed in accordance with the rules and
21 requirements relating to judgments of the courts of the
22 State where the notice of lien is registered, recorded,
23 docketed, or indexed shall be considered for all purposes as
24 the filing prescribed by this section. The provisions of
25 section 3201(e) of chapter 176 of title 28 shall apply to
26 liens filed as prescribed by this section.

Comment [A1]: (B) reproduces verbatim the language of section 6323(f)(1) and (2).

EOP 1/24/13: Flag for IRS to review.

Comment [A2]: Or alternatively, track the language instead of the cross reference.

27 “(D) ENFORCEMENT OF A LIEN.—A lien obtained through this
28 process shall be considered a debt as defined by 28 U.S.C. Sec. 3002 and
29 enforceable pursuant to the Federal Debt Collection Procedures Act.

30 “(8) ATTORNEY GENERAL ADJUDICATION.—The Attorney

1 General shall have jurisdiction to adjudicate administrative proceedings
2 under this subsection.

3 “(f) PROHIBITION OF INDEMNITY BONDS.—

4 “(1) PROHIBITION.—It is unlawful for an employer, in the hiring
5 of any individual, to require the individual to post a bond or security, to
6 pay or agree to pay an amount, or otherwise to provide a financial
7 guarantee or indemnity, against any potential liability arising under this
8 section relating to such hiring of the individual.

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

16 “(g) GOVERNMENT CONTRACTS.—

17 “(1) CONTRACTORS AND RECIPIENTS.—Whenever an
18 employer who is a Federal contractor (meaning an employer who holds a
19 Federal contract, grant, or cooperative agreement, or reasonably may be
20 expected to submit an offer for or be awarded a government contract) is
21 determined by the Secretary to be a repeat violator of this section or is
22 convicted of a crime under this section, the employer shall be subject to
23 debarment from the receipt of Federal contracts, grants, or cooperative
24 agreements for a period of up to 5 years in accordance with the procedures
25 and standards prescribed by the Federal Acquisition Regulation.
26 However, any administrative determination of liability for civil penalty by
27 the Secretary or the Attorney General shall not be reviewable in any
28 debarment proceeding.

1 “(2) EFFECT OF INDICTMENTS OR OTHER ACTIONS.—

2 Indictments for violations of this section or adequate evidence of actions
3 that could form the basis for debarment under this subsection shall be
4 considered a cause for suspension under the procedures and standards for
5 suspension prescribed by the Federal Acquisition Regulation.

6 “(3) INADVERTENT VIOLATIONS.—Inadvertent violations of

7 recordkeeping or verification requirements, in the absence of any other
8 violations of this section, shall not be a basis for determining that an
9 employer is a repeat violator for purposes of this subsection.

10 “(4) OTHER REMEDIES AVAILABLE.—Nothing in this

11 subsection shall be construed to modify or limit any remedy available to
12 any agency or official of the Federal Government for violation of any
13 contractual requirement to participate in the System, as provided in the
14 final rule published at 73 Federal Register 67,651 (Nov. 14, 2008), or any
15 subsequent amendments thereto.

16 “(h) PREEMPTION.—The provisions of this section preempt any State or
17 local law imposing civil or criminal sanctions upon those who employ, or
18 recruit or refer for a fee for employment, unauthorized aliens. The
19 provisions of this section shall also preempt any State or local law,
20 regulation or order that requires or prohibits the use of E-Verify or any
21 other employment eligibility verification process or system, or that
22 modifies or alters the requirements set forth in this section.

23 “(i) DEPOSIT OF AMOUNTS RECEIVED.—Except as otherwise
24 specified, civil penalties collected under this section shall be deposited by the
25 Secretary into the Immigration Reform Penalty Account created by Section 101(c)
26 of the Comprehensive Immigration Reform Act of 2011.

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

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

5 “(A) whether this section, or any regulation issued to
6 implement this section, violates the Constitution of the United
7 States; or

8 “(B) whether such a regulation issued by or under the
9 authority of the Secretary to implement this section, is contrary to
10 applicable provisions of this section or was issued in violation of
11 title 5, chapter 5, United States Code.

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

18 “(k) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN
19 OR PRACTICE VIOLATIONS.—

20 “(1) PATTERN AND PRACTICE.—Any employer who engages
21 in a pattern or practice of knowing violations of subsection (a)(1)(A) or
22 (a)(2) shall be fined under title 18, United States Code, no more than
23 \$5,000 for each unauthorized alien with respect to whom such violation
24 occurs, imprisoned for not more than 2 years for the entire pattern or
25 practice, or both.

26 “(2) The maximum term of imprisonment of a person convicted of
27 any criminal offense under the Unites States Code shall be increased by

1 ten years if the offense is committed as part of a pattern or practice of
2 violations of subsection (a)(1)(A) or (a)(2) of this section.

3 “(3) ENJOINING OF PATTERN OR PRACTICE

4 VIOLATIONS.—Whenever the Secretary or the Attorney General has
5 reasonable cause to believe that an employer is engaged in a pattern or
6 practice of employment in violation of subsection (a)(1)(A) or (a)(2), the
7 Attorney General may bring a civil action in the appropriate district court
8 of the United States requesting such relief, including a permanent or
9 temporary injunction, restraining order, or other order against the
10 employer, as the Secretary or Attorney General deems necessary.

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

13 (1) Any person who, during any 12-month period, knowingly
14 employs or hires for employment 10 or more individuals within the United
15 States—

16 “(A) knowing that the individuals are unauthorized aliens, and

17 “(B) under conditions that violate sections 29 U.S.C. 654(a)
18 (relating to occupational safety and health), 206 or 207 of Title 29
19 (relating to minimum wages and maximum hours of employment),
20 section 3142 of Title 40 (relating to required wages on construction
21 contracts), sections 6703 or 6704 of Title 41 (relating to required
22 wages on service contracts), shall be fined under title 18, United
23 States Code, or imprisoned for not more than 15 years, or both.

24 “(2) ATTEMPT AND CONSPIRACY.—Any person who attempts
25 or conspires to commit any offense under this subsection shall be punished
26 in the same manner as a person who completes the offense.”

1 (b) CONFORMING AMENDMENT.—Section 274(a)(3) of the Immigration and
2 Nationality Act (8 U.S.C. 1324(a)(3)) is repealed.

3 **SEC. 302. EFFECTIVE DATE.**

4 Except as otherwise provided herein, this title shall become effective on the date
5 of enactment.

6 **SEC. 303. INCREASING SECURITY AND INTEGRITY OF SOCIAL SECURITY**
7 **CARDS.**

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

10 (1) ISSUANCE.—

11 (A) PRELIMINARY WORK.—Not later than 180 days after the
12 date of enactment of this title, the Commissioner of Social Security shall
13 begin work to administer and issue fraud-resistant, tamper-resistant, and
14 wear-resistant Social Security cards.

15 (B) COMPLETION.—Not later than two years after the date of
16 enactment of this title, the Commissioner of Social Security shall issue
17 only fraud-resistant, tamper-resistant, and wear-resistant Social Security
18 cards.

19 (2) AMENDMENT.—Section 205(c)(2)(G) of the Social Security Act (42
20 U.S.C. 405(c)(2)(G)) is amended to read—

21 “(i) The Commissioner of Social Security shall issue a social
22 security card to each individual at the time of the issuance of a social
23 security account number to such individual. The social security card shall
24 be fraud-resistant, tamper-resistant, and wear-resistant.”

1 (3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized
2 to be appropriated such sums as may be necessary to carry out this subsection and
3 the amendments made by this subsection.

4 (b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the Social Security Act (42
5 U.S.C. 405(c)(2)(G)) is further amended by adding at the end the following:

6 “MULTIPLE CARDS.—Section 205(c)(2)(G) of the Social Security Act (42
7 U.S.C. 405(c)(2)(G)) is further amended by adding at the end the following:

8 The Commissioner of Social Security shall restrict the issuance of multiple
9 replacement Social Security cards to any individual to 3 per year and 10 for the
10 life of the individual, except that the Commissioner may allow for reasonable
11 exceptions from the limits under this clause on a case-by-case basis in compelling
12 circumstances.”

13 (c) CRIMINAL PENALTIES.—(1) Social Security fraud. -- Chapter 47 of
14 title 18, United States Code, is amended by adding a new section 1029 reading—

15 § 1029 Social security fraud

16 “7) Whoever—

17 “(a) knowingly possesses or uses a social security account number
18 or social security card knowing that the number or card was obtained from
19 the Commissioner of Social Security by means of fraud or false statement;

20 “(b) knowingly and falsely represents a number to be the social
21 security account number assigned by the Commissioner of Social Security
22 to him or to another person, when in fact such number is not the social
23 security account number assigned by the Commissioner of Social Security
24 to him or to such other person;

25 “(c) knowingly buys, sells, or possesses with intent to buy or sell a
26 social security account number or a social security card that is or purports

1 to be a number or card issued by the Commissioner of Social Security;

2 “(d) knowingly alters, counterfeits, forges, or falsely makes a
3 social security account number or a social security card;

4 “(e) knowingly possesses, uses, distributes, or transfers a social
5 security account number or a social security card knowing the number or
6 card to be altered, counterfeited, forged, falsely made, or stolen; or”;

7 “(f) without lawful authority, knowingly produces or acquires for
8 any person a social security account number, a social security card, or a
9 number or card that purports to be a social security account number or
10 social security card;

11 shall be fined under this title, or imprisoned for not more than ten years, or
12 both.

13 “(2) Table of Sections Amendment- The table of sections for chapter 47
14 of title 18, United States Code, is amended by adding at the end the
15 following:

16 `Sec. 1029. Social security fraud.

17 “(2) Information disclosure. Notwithstanding any other provision of law
18 and subject to paragraph (subparagraph (B), the Commissioner of Social Security
19 shall disclose the following records of the Social Security Administration to any
20 federal law enforcement agency that requests such records for the purpose of
21 investigating a violation of this section or Section 274A, Section 274B, or Section
22 274C of the Immigration and Nationality Act, provided that such request is in
23 writing and from an officer in a supervisory position or higher official:

24 “(i) records concerning the identity, address, location, or financial
25 institution accounts of the holder of a social security account number or
26 social security card,

1 “(ii) records concerning the application for and issuance of a social
2 security account number or social security card, and

3 “(iii) records concerning the existence or non-existence of a social
4 security account number or social security card.

5 “(B) The Commissioner of Social Security shall not disclose any tax
6 return or tax return information pursuant to this subsection except as authorized
7 by title 26, United States Code, section 6103.”.

8 **SEC. 304. INCREASING SECURITY AND INTEGRITY OF IMMIGRATION**
9 **DOCUMENTS.**

10 (a) Not later than one year after the date of enactment of this section, the
11 Secretary of Homeland Security shall report to Congress on the feasibility, advantages,
12 and disadvantages of including other biometric information in addition to a photograph
13 on each U.S. Citizenship and Immigration Services Employment Authorization
14 Document.

15 **SEC. 305. RESPONSIBILITIES OF THE SOCIAL SECURITY**
16 **ADMINISTRATION.**

17 The Social Security Act, 42 U.S.C. 401),et. seq., is amended in Title XI by
18 adding at the end thereof the following new part:

19 **PART E.—EMPLOYMENT VERIFICATION**

20 “Sec. 1186 (42 U.S.C. 1320f) **RESPONSIBILITIES OF THE**
21 **COMMISSIONER OF SOCIAL SECURITY.—**

22 “(a) As part of the employment verification system established by
23 the Secretary of Homeland Security under the provisions of section 274A
24 of the Immigration and Nationality Act (the INA) (8 U.S.C. 1324a), the
25 Commissioner of Social Security shall, subject to the provisions of section
26 274A(d) of the INA, establish a reliable, secure method that, operating

1 through the System and within the time periods specified in section
2 274A(d) of the INA:

3 “(1) compares the name, date of birth, social security
4 account number and available citizenship information provided in
5 an inquiry against such information maintained by the
6 Commissioner in order to confirm (or not confirm) the validity of
7 the information provided regarding an individual whose identity
8 and employment eligibility must be confirmed;

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

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

14 “(4) determines whether an individual is a national of the
15 United States, as defined in Section 101(a)(22) of the INA (8
16 U.S.C. 1101(a)(22)) (when available); and

17 “(5) determines whether the individual has presented a
18 social security account number that is not valid for employment.

19 “The System shall not disclose or release social security information to
20 employers through the confirmation system (other than such confirmation
21 or nonconfirmation, information provided by the employer to the System,
22 or the reason for the issuance of a further action notice).

23 **SEC. 306. ANTIDISCRIMINATION PROTECTIONS.**

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

26 (1) by amending subsection (a) to read as follows—

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

3 “(1) IN GENERAL.—It is an unfair immigration-related
4 employment practice for a person, other entity or employment agency (as
5 defined in paragraph 9), to discriminate against any individual (other than
6 an unauthorized alien defined in section 274A(b)(1)), because of such
7 individual’s national origin or citizenship status (including an authorized
8 individual’s status prior to legalization), with respect to the hiring of the
9 individual for employment, the verification of the individual’s eligibility
10 to work in the United States, the compensation, terms, conditions, or
11 privileges of the employment of the individual, or the discharging of the
12 individual from employment.

13 “(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

14 “(A) a person, other entity, or employer that employs 3 or
15 fewer employees, except for an employment agency, as defined in
16 paragraph (9),

17 “(B) a person’s or entity’s discrimination because of an
18 individual’s national origin if the discrimination with respect to
19 that person or entity and that individual is covered under section
20 703 of the Civil Rights Act of 1964 [42 U.S.C. 2000e–2], unless
21 the discrimination is related to an individual’s verification of
22 employment authorization,

23 “(C) discrimination because of citizenship status which is
24 otherwise required in order to comply with Federal law, regulation,
25 or executive order, state or local law related to law enforcement, or
26 required by Federal government contract, or which the Attorney
27 General determines to be essential for an employer to do business

1 with an agency or department of the Federal, tribal, State or local
2 government.

3 “(3) ADDITIONAL EXCEPTION PROVIDING RIGHT TO
4 PREFER EQUALLY QUALIFIED CITIZENS.—Notwithstanding any
5 other provision of this section, it is not an unfair immigration-related
6 employment practice for an employer as defined in 8 U.S.C. 1324a to
7 prefer to hire, recruit, or refer an individual who is a citizen or national of
8 the United States over another individual who is an alien if the two
9 individuals are equally qualified.

10 “(4) UNFAIR IMMIGRATION-RELATED EMPLOYMENT
11 PRACTICES AND THE SYSTEM.— It is also an unfair immigration-
12 related employment practice for a person, other entity or employment
13 agency —

14 “(A) to terminate the employment of an individual or take
15 any adverse employment action with respect to that individual
16 (including, but not limited to, any change in the terms and
17 conditions of employment of the individual) due to a further action
18 notice issued by the System, or the individual’s decision to
19 challenge or appeal any System determination, including
20 requesting reconsideration of, or seeking review by an
21 Administrative Law Judge of a reconsideration finding under
22 Section 301(d)(7) or (d)(8), unless the stay of nonconfirmation has
23 been terminated;

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

26 “(C) to use the System to reverify the employment
27 authorization of a current employee, including an employee
28 continuing in employment, other than reverification in a situation

1 described in section 274a.2(b)(1)(viii)(A)(7) of title 8, Code of
2 Federal Regulations or any successor provision, reverification
3 upon expiration of employment authorization, or as otherwise
4 authorized under section 274A(d) or by regulation;

5 “(D) to use the System selectively for employees, except
6 where authorized by law;

7 “(E) to fail to provide to an individual any notice required
8 in Section 301(d) within the relevant time period;

9 “(F) to use the System to deny workers’ employment or
10 post-employment benefits, or otherwise interfere with their labor
11 rights;

12 “(G) to use the System to discriminate based on national
13 origin or citizenship status (including an authorized individual’s
14 status prior to legalization);

15 “(H) to require an employee or prospective employee to use
16 any self-verification feature of the System or provide, as a
17 condition of application or employment, any self-verification
18 results;

19 “(I) to use an immigration status verification system,
20 service or method other than those described in section 274A for
21 purposes of verifying employment eligibility; or

22 “(K) to grant access to document verification or System
23 data, to any individual or entity other than personnel authorized to
24 have such access, or to fail to take reasonable safeguards to
25 protect against unauthorized loss, use, alteration, or destruction of
26 System data.”

1 “(5) PROHIBITION OF INTIMIDATION OR RETALIATION.—

2 It is also an unfair immigration-related employment practice for a person,
3 other entity, or employment agency to intimidate, threaten, coerce, or
4 retaliate against any individual for the purpose of interfering with any
5 right or privilege secured under this section or because the individual
6 intends to file or has filed a charge or a complaint, testified, assisted, or
7 participated in any manner in an investigation, proceeding, or hearing
8 under this section.

9 “(6) TREATMENT OF CERTAIN DOCUMENTARY

10 PRACTICES AS EMPLOYMENT PRACTICES.— A person’s other
11 entity’s, or employment agency’s request, for purposes of verifying
12 employment eligibility, for more or different documents than are required
13 under section 274A(b), or for specific documents, or refusing to honor
14 documents tendered that reasonably appear to be genuine shall be treated
15 as an unfair immigration-related employment practice.

16 “(7) BURDEN OF PROOF IN DISPARATE IMPACT CASES.—

17 “(A) An unlawful immigration-related employment
18 practice case based on disparate impact is established only if:

19 “(i) A complaining party demonstrates that a
20 respondent uses a particular employment practice that
21 causes a disparate impact on the basis of national origin or
22 citizenship status and the respondent fails to demonstrate
23 that the challenged practice is job related for the position in
24 question and consistent with business necessity; or

25 “(ii) The complaining party demonstrates that an
26 alternative employment practice is available and the
27 respondent refuses to adopt such an alternative employment
28 practice. An alternative employment practice is a practice

1 that would serve the person’s or entity’s or employment
2 agency’s legitimate needs and have less disparate impact
3 than the employment practice challenged by the
4 complaining party.

5 “(B) With respect to demonstrating that a particular
6 employment practice causes a disparate impact as described in
7 subparagraph (A), the complaining party shall demonstrate that
8 each particular challenged employment practice causes a disparate
9 impact, except that if the complaining party can demonstrate to the
10 court that the elements of a respondent’s decision-making process
11 are not capable of separation for analysis, the decision-making
12 process may be analyzed as one employment practice.

13 “(C) If the respondent demonstrates that a specific
14 employment practice does not cause the disparate impact, the
15 respondent shall not be required to demonstrate that such practice
16 is required by business necessity.

17 “(D) A demonstration that an employment practice is
18 required by business necessity may not be used as a defense
19 against a claim of intentional discrimination under this statute.

20 “(8) MOTIVATING FACTOR.—Except as otherwise provided in
21 this Act: (a) where discrimination is an element of an unlawful
22 immigration-related unfair employment practice, discrimination is
23 established when the charging party demonstrates that citizenship status or
24 national origin was a motivating factor for the employment practice at
25 issue, even though other factors also motivated the practice; and (b) where
26 a violation of section 1324b(a)(5) is alleged, the violation is established
27 when the charging party demonstrates that an individual’s filing of or
28 intent to file a charge or complaint, or an individual’s testifying, assisting
29 or participating in an investigation, proceeding or hearing under this

1 section, or interference with any right or privilege secured under this
2 section is a motivating factor for the employment practice at issue even
3 though other factors also motivated the practice.”

4 “(9) EMPLOYMENT AGENCY DEFINED.—As used in this
5 section, the term ‘employment agency’ means any person or entity
6 regularly undertaking with or without compensation to procure employees
7 for an employer or to procure for employees opportunities to work for an
8 employer and includes an agent of such person or entity.”;

9 (2) in subsection (b) by inserting at the end of the paragraph, “The EEOC
10 shall refer all matters alleging immigration-related unfair employment practices
11 filed with the EEOC, including those alleging violations of (a)(1), (a)(4), (a)(5),
12 and (a)(6) to the Office to Combat Immigration-Related Employment
13 Discrimination.”

14 (3) by substituting for subsection (c) as follows—

15 “The Attorney General, through the Office to Combat Immigration-
16 Related Employment Discrimination, shall enforce this Section. A career, Senior
17 Executive Service attorney shall serve as chief of this Office.”

18 (2) in subsection (d)—

19 (A) by amending paragraphs (1), (2) and (3) to read as follows—

20 “(1) The Office shall investigate each charge received and
21 determine whether or not there is reasonable cause to believe that
22 the charge is true and whether or not to bring a complaint with
23 respect to the charge before an administrative law judge. The
24 Office may, on his or her own initiative, conduct investigations
25 respecting unfair immigration-related employment practices
26 prohibited by this section, including a pattern or practice of

1 discrimination, and, based on such an investigation, file a
2 complaint before such judge.

3 “(2) If the Office, after receiving such a charge respecting
4 an unfair immigration-related employment practice prohibited by
5 this section or which alleges discriminatory activity or a pattern or
6 practice of discriminatory activity, has not filed a complaint
7 before an administrative law judge with respect to such charge
8 within 120 days, the Office shall notify the person making the
9 charge of the determination not to file such a complaint during
10 such period and the person making the charge may file a
11 complaint directly before such judge within 90 days after the date
12 of receipt of the notice. The Office’s failure to file such a
13 complaint within such 120-day period shall not affect the right of
14 the Office to investigate the charge or to bring a complaint before
15 an administrative law judge thereafter”;

16 “(3) No complaint may be filed respecting any unfair
17 immigration-related employment practice occurring more than
18 180 days prior to the date of the filing of a charge with the Office.
19 Where a complaint is filed pursuant to the Office’s authority to
20 open an investigation on its own initiative under subparagraph (1),
21 no complaint may be filed respecting any unfair immigration-
22 related employment practice unless at least one alleged unfair
23 immigration-related employment practice occurred no more than
24 180 days prior to the date that the Office initiated its investigation.

25 (B) by adding new paragraph (4) to read as follows—

26 “(4) For purposes of this section, an unfair immigration-related
27 employment practice occurs when a discriminatory decision or other
28 practice is adopted, when an individual becomes subject to a
29 discriminatory decision or other practice, or when an individual is affected

1 by application of a discriminatory decision or other practice, including
2 each time wages, benefits, or other compensation is paid, resulting in
3 whole or in part from such a decision or other practice.

4 (C) by adding new paragraph (5) to read as follows—

5 “(5) If a civil action brought under Title VII of the Civil Rights Act
6 of 1964 [42 U.S.C.A. § 2000e et seq.] alleges facts sufficient to state a
7 claim of discrimination based on citizenship status or based on national
8 origin covered under subsection (a)(1) of this section, or a claim under
9 (a)(4), or a claim under (a)(5), or a claim under (a)(6), the Attorney
10 General shall have the right to intervene in such civil action. In such cases
11 the federal district court shall have the authority to issue orders and
12 provide remedies in accordance with subsection (g).

13 (5) in subsection (g)(2)—

14 (A) in subparagraph (A), by inserting before the period “and which
15 requires such affirmative action as may be appropriate, or any other
16 individual equitable relief as the administrative law judge determines
17 appropriate.”;

18 (B) In subparagraph (B)—

19 (i) in clause (iii), by inserting before the semicolon “, and
20 to provide such other relief as the administrative law judge
21 determines appropriate to make the individual whole”; and

22 (ii) by amending clause (iv) to read as follows—

23 “(iv) to pay any applicable civil penalties prescribed
24 below, the amounts of which may be adjusted periodically
25 to account for inflation as provided by law—

1 “(I) except as provided in subclauses (II)
2 through (IV), to pay a civil penalty of not less than
3 \$2,000 and not more than \$5,000 for each
4 individual subjected to an unfair immigration
5 related employment practice,

6 “(II) except as provided in subclauses (III)
7 and (IV), in the case of a person or entity previously
8 subject to a single order under this paragraph, to pay
9 a civil penalty of not less than \$4,000 and not more
10 than \$10,000 for each individual subjected to an
11 unfair immigration related employment practice,

12 “(III) except as provided in subclause (IV),
13 in the case of a person or entity previously subject
14 to more than one order under this paragraph, to pay
15 a civil penalty of not less than \$8,000 and not more
16 than \$25,000 for each individual subjected to an
17 unfair immigration related employment practice,
18 and

19 “(IV) in the case of an unfair immigration-
20 related employment practice described in
21 subsections (a)(4) or (a)(6) of this section, to pay a
22 civil penalty of not less than \$500 and not more
23 than \$2,000 for each individual subjected to an
24 unfair immigration related employment practice.”;

25 (C) In clause (vii) by striking “and”;

26 (D) In clause (viii) by striking the period and inserting “; and”; and

27 (E) by adding a new clause (ix) to read as follows—

1 “(ix)(I) No order of the administrative law judge shall
2 require the admission or reinstatement of an individual as a
3 member of a union, or the hiring, reinstatement, or promotion of an
4 individual as an employee, or the payment to him of any back pay,
5 if such individual was refused admission, suspended, or expelled,
6 or was refused employment or advancement or was suspended or
7 discharged for any reason other than discrimination on account of
8 citizenship status or national origin or in violation of this section.

9 “(II) On a claim in which an individual proves a violation
10 under paragraph (a)(8) and a respondent demonstrates that the
11 respondent would have taken the same action in the absence of the
12 impermissible motivating factor, the administrative law judge may
13 grant declaratory relief, injunctive relief and attorney’s fees and
14 costs demonstrated to be directly attributable only to the pursuit of
15 a claim under paragraph (a)(8); and shall not award back pay or
16 issue an order requiring any admission, reinstatement, hiring,
17 promotion, or payment, described in subparagraph (I).”;

18 (6) In subsection (l)(3) by inserting “and an additional \$40,000,000 for
19 each of fiscal years 2011 through 2013” before the period at the end; and

20 (7) By adding new subsections (m), (n) (o), (p) and (q) to read as
21 follows—

22 “(m) REPORTS.—The Secretary of Homeland Security shall make
23 transactional data and citizenship status data related to the System
24 available upon request by the Office to Combat Immigration-Related
25 Employment Discrimination and shall refer all claims of potential unfair
26 immigration-related unfair employment practices to the Office.

27 “(n) RECORDS.—Every employer, person or entity, and labor
28 organization subject to this section shall—

1 “(1) make and keep such records relevant to the
2 determinations of whether unfair immigration-related employment
3 practices have been or are being committed;

4 “(2) preserve such records for such periods; and

5 “(3) make such reports therefrom as the Office to Combat
6 Immigration-Related Employment Discrimination shall prescribe
7 by regulation or order, as reasonable, necessary, or appropriate for
8 the enforcement of this section or the regulations or orders
9 thereunder.

10 “The Office to Combat Immigration-Related Employment Discrimination
11 may cooperate with State and local agencies charged with the
12 administration of State fair employment practices laws and, with the
13 consent of such agencies, may, for the purpose of carrying out its
14 functions and duties under this section and within the limitation of funds
15 appropriated specifically for such purpose, engage in and contribute to the
16 cost of research and other projects of mutual interest undertaken by such
17 agencies, and utilize the services of such agencies and their employees,
18 and, notwithstanding any other provision of law, pay by advance or
19 reimbursement such agencies and their employees for services rendered to
20 assist the Office to Combat Immigration-Related Employment
21 Discrimination in carrying out this section. In furtherance of such
22 cooperative efforts, the Office may enter into written agreements with
23 such State or local agencies and such agreements may include provisions
24 under which the Office shall refrain from processing a charge in any cases
25 or class of cases specified in such agreements or under which the Office
26 shall relieve any person or class of persons in such State or locality from
27 requirements imposed under this section. The Office shall rescind any
28 such agreement whenever it determines that the agreement no longer
29 serves the interest of effective enforcement of this section. Pursuant to

1 such agreements, the Office to Combat Immigration-Related Employment
2 Discrimination shall designate Federal, State and local agencies to act as
3 agents for the purpose of receiving charges that fall, in whole or in part,
4 within the jurisdiction of the Office to Combat Immigration-Related
5 Employment Discrimination, including those that are not within the
6 jurisdiction of the Federal, State or local agency. The date of the Federal,
7 State or local agency's receipt of such charges shall be considered the date
8 such charge is filed with the Office to Combat Immigration-Related
9 Employment Discrimination. The Office to Combat Immigration-Related
10 Employment

11 “(o) The Office to Combat Immigration-Related Employment
12 Discrimination may cooperate with State and local agencies charged with
13 the administration of State fair employment practices laws and, with the
14 consent of such agencies, may, for the purpose of carrying out its
15 functions and duties under this section and within the limitation of funds
16 appropriated specifically for such purpose, engage in and contribute to the
17 cost of research and other projects of mutual interest undertaken by such
18 agencies, and utilize the services of such agencies and their employees,
19 and, notwithstanding any other provision of law, pay by advance or
20 reimbursement such agencies and their employees for services rendered to
21 assist the Office to Combat Immigration-Related Employment
22 Discrimination in carrying out this section. In furtherance of such
23 cooperative efforts, the Office may enter into written agreements with
24 such State or local agencies and such agreements may include provisions
25 under which the Office shall refrain from processing a charge in any cases
26 or class of cases specified in such agreements or under which the Office
27 shall relieve any person or class of persons in such State or locality from
28 requirements imposed under this section. The Office shall rescind any
29 such agreement whenever it determines that the agreement no longer
30 serves the interest of effective enforcement of this section. Pursuant to
31 such agreements, the Office to Combat Immigration-Related Employment

1 Discrimination shall designate Federal, State and local agencies to act as
2 agents for the purpose of receiving charges that fall, in whole or in part,
3 within the jurisdiction of the Office to Combat Immigration-Related
4 Employment Discrimination, including those that are not within the
5 jurisdiction of the Federal, State or local agency. The date of the Federal,
6 State or local agency's receipt of such charges shall be considered the date
7 such charge is filed with the Office to Combat Immigration-Related
8 Employment Discrimination. The Office to Combat Immigration-Related
9 Employment

10 "(p) MITIGATION OF CIVIL MONEY PENALTY. In any case where a
11 civil money penalty has been imposed on a person or entity under section
12 274A of this Act for an action or omission that is also a violation of this
13 section, the Attorney General shall mitigate any civil money penalty under
14 this section by the amount of the penalty imposed under section 274A. "

15 "(q) TECHNICAL ASSISTANCE FOR CERTAIN ENTITIES. The
16 Office to Combat Immigration-Related Employment Discrimination shall
17 provide technical assistance, including remote and on-site training, and
18 guidance in response to requests for technical assistance as appropriate, to
19 ensure that the following entities comply with the intent of Section 307 in
20 order to prevent discrimination on the basis of citizenship status or
21 national origin in the verification of employment eligibility: military
22 departments as defined in Section 102 of Title 5 [*United States Code*],
23 executive agencies as defined in Section 105 of Title 5 [*United States*
24 *Code*](including employees and applicants for employment who are paid
25 from nonappropriated funds), the United States Postal Service and the
26 Postal Regulatory Commission, those units of the Government of the
27 District of Columbia having positions in the competitive service, those
28 units in the judicial branch of the federal government having positions in
29 the competitive service, the Smithsonian Institution, the Government

1 Printing Office, the Government Accountability Office, and the Library of
2 Congress.”

3 (b) The amendments made by this section shall take effect on the date of the
4 enactment of this Act and shall apply to violations occurring on or after such date, except
5 that the amendment made by clause (a)(3)(B)(ii) of this section (amending section
6 274B(g)(2)(B)(iv) of the Immigration and Nationality Act) shall take effect on the date
7 that is one year after the date of enactment of this Act and apply to violations occurring
8 on or after such date.

9 **SEC. 307. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) There are authorized to be appropriated to the Secretary of Homeland Security
11 such sums as may be necessary to carry out the provisions of this title, and the
12 amendments made by this title, including the following appropriations:

13 (1) In each of the five years beginning on the date of the enactment of this
14 Act, the appropriations necessary to increase to a level not less than 4500, by the
15 end of such five-year period, the total number of personnel of the Department of
16 Homeland Security assigned exclusively or principally to an office or offices in
17 U.S. Citizenship and Immigration Services and U.S. Immigration and Customs
18 Enforcement (and consistent with the missions of such agencies), dedicated to
19 administering the System, and monitoring and enforcing compliance with sections
20 274A, 274B and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a
21 and 1324c), including compliance with the requirements of the System. These
22 personnel shall perform compliance and monitoring functions, including the
23 following:

24 (A) Verify compliance of employers participating in the System
25 with the requirements for participation that are prescribed by the
26 Secretary.

1 (B) Monitor the System for multiple uses of Social Security
2 Numbers and immigration identification numbers that could indicate
3 identity theft or fraud.

4 (C) Monitor the System to identify discriminatory or unfair
5 practices.

6 (D) Monitor the System to identify employers who are not using
7 the system properly, including employers who fail to make available
8 appropriate records with respect to their queries and any notices of
9 confirmation, nonconfirmation, or further action.

10 (E) Identify instances where employees allege that an employer
11 violated their privacy or civil rights, or misused the System, and create
12 procedures for employees to report such allegations.

13 (F) Analyze and audit the use of the System and the data obtained
14 through the System to identify fraud trends, including fraud trends across
15 industries, geographical areas, or employer size.

16 (G) Analyze and audit the use of the System and the data obtained
17 through the System to develop compliance tools as necessary to respond to
18 changing patterns of fraud.

19 (H) Provide employers with additional training and other
20 information on the proper use of the System, including but not limited to
21 privacy training and employee rights.

22 (I) Perform threshold evaluation of cases for referral to the Office
23 to Combat Immigration-Related Employment Discrimination or the Equal
24 Employment Opportunity Commission, and other officials or agencies
25 with responsibility for enforcing anti-discrimination, civil rights, privacy,
26 or worker protection laws, as may be appropriate.

1 (J) Any other compliance and monitoring activities that, in the
2 Secretary's judgment, are necessary to ensure the functioning of the
3 System.

4 (K) Investigate identity theft and fraud detected through the
5 System and undertake the necessary enforcement or referral actions.

6 (L) Investigate use of or access to fraudulent documents and
7 undertake the necessary enforcement actions.

8 (M) Perform any other investigations that, in the Secretary's
9 judgment, are necessary to ensure the lawful functioning of the System,
10 and undertake any enforcement actions necessary as a result of these
11 investigations.

12 (2) The appropriations necessary to acquire, install and maintain
13 technological equipment necessary to support the functioning of the System and
14 the connectivity between U.S. Citizenship and Immigration Services and U.S.
15 Immigration and Customs Enforcement, Department of Justice, and other
16 agencies or officials with respect to the sharing of information to support the
17 System and related immigration enforcement actions.

18 (3) The appropriations necessary to establish a robust redress process for
19 employees who wish to appeal contested nonconfirmations to ensure the accuracy
20 and fairness of the System.

21 (4) The appropriations necessary to provide a means by which individuals
22 may access their own employment authorization data to ensure its accuracy
23 independent of their employer.

24 (5) The appropriations necessary to conduct the pilot program described in
25 section 310 of this Act.

1 (6) The appropriations necessary to establish a Joint Employment Fraud
2 Task Force to promote employer compliance with the system and ensure a
3 coordinated response to noncompliance.

4 (7) The appropriations necessary for the Office for Civil Rights and Civil
5 Liberties and the Office of Privacy to perform their responsibilities as they relate
6 to the System.

7 (8) The appropriations necessary to make grants to states to support them
8 in assisting the federal government in carrying out the provisions of this title.

9 (b) There are authorized to be appropriated to the Commissioner of Social
10 Security such sums as may be necessary to carry out the provisions of this title. In no
11 case shall the Commissioner expend funds from the Old Age and Survivors Trust Fund or
12 the Disability Trust Fund for expenses related to administration of this title.

13 (c) There are authorized to be appropriated to the Attorney General such sums as
14 may be necessary to carry out the provisions of this title, including enforcing compliance
15 with section 274B of the Act, as amended by section 307 of this Act.

16 (d) There are authorized to be appropriated to the Secretary of State such sums as
17 may be necessary to carry out the provisions of this title.

18 **SEC. 308 VOLUNTARY PILOT PROGRAM ON IDENTITY**
19 **AUTHENTICATION.**

20 (a) In General. -- The Secretary shall conduct an identity assurance pilot program to
21 evaluate one or more methods of authenticating an individual's identity and
22 using the authenticated identity for employment eligibility verification
23 purposes.

24 (b) Authority for Pilot Program.-- The Secretary may, on a geographic or
25 employment sector basis, or as otherwise determined in her discretion to be
26 necessary to achieve the goals of the pilot program described in subsection

27 (a), make the pilot program available to employers and may modify the

1 requirements of section 274A(d) for employers participating in the pilot
2 program.

3 (c) Information Collection. -- Notwithstanding any other law, the Secretary may,
4 either directly or using another suitable private or public sector entity, collect
5 and maintain personal information of individuals hired by employers
6 participating in the pilot program described in subsection (a), provided that
7 such information is used only for purposes of the pilot program and is
8 destroyed no later than the date that is 30 days after the report described in
9 subsection (d) of this section is submitted to Congress.

10 (d) Report. -- Not later than the date that is two years after the date of enactment of
11 this Act, the Secretary shall report to Congress on the results of the pilot
12 program described in subsection (a).

13 **SEC. 309. REGULATIONS. -**

14 (a) INTERIM FINAL REGULATIONS- Not later than 1 year after the date of
15 enactment of the [name of act], the Secretary, in consultation with the
16 Commissioner, shall publish regulations implementing this subtitle. Such
17 regulations shall be effective immediately on an interim basis, but are subject to
18 change and revision after public notice and opportunity for a period for public
19 comment.

20 (b) FINAL REGULATIONS- Within a reasonable time after publication of the
21 interim regulations in accordance with subsection (a), the Secretary, in
22 consultation with the Commissioner, shall publish final regulations implementing
23 this subtitle.

24 **SUBTITLE XI PROTECTING AMERICAN WORKERS**

25 **SEC. 310. CONTINUED APPLICATION OF REMEDIES.**

26 (a) Remedies- Neither backpay nor any other remedies arising under a federal,
27 state, or local law concerning workplace rights as defined in section

1 274A(e)(10)(B)(iv)(III) of the INA or other causes of action giving rise to
2 liability, except any reinstatement remedy prohibited by federal law, shall be
3 denied to an individual on account of--

4 `(1) the employer's or the employee's failure to comply with the
5 requirements of this section in establishing or maintaining the employment
6 relationship; the employee's or employer's failure to comply with the
7 provisions of federal law related to the employment verification system set
8 forth in this section or'

9 `(2) the employee's status as an unauthorized alien during employment or
10 after termination of employment.

11 Reinstatement and all appropriate relief shall be available to individuals who are lawfully
12 present at the time of the effectuation of relief or who lost work authorization due to the
13 unlawful acts of the employer and for whom reinstatement would restore work
14 authorization.

15 **SEC. 311. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT VIOLATIONS**
16 **OR CRIME.**

17 (a) Protection for Victims of Labor and Employment Violations- Section
18 101(a)(15)(U) (8 U.S.C. 1101(a)(15)(U)) is amended--

19 (1) in clause (i)--

20 (A) by amending subclause (I) to read as follows:

21 `(I) the alien--

22 `(aa) has suffered substantial abuse or harm as a
23 result of having been a victim of criminal activity
24 described in clause (iii) or of a covered violation
25 described in clause (iv); or;

1 (bb) is a victim of criminal activity described in
2 clause (iii) or of a covered violation described in
3 clause (iv) and would suffer extreme hardship
4 upon removal;

5 (B) in subclause (II), by inserting `, or a covered violation
6 resulting in a claim described in clause (iv)' before the semicolon
7 at the end;

8 (C) in subclause (III)--

9 (i) by striking `or State judge, to the Service' and
10 inserting `, State, or local judge, to the Department of
11 Homeland Security, to the Equal Employment
12 Opportunity Commission, to the Department of Labor, to
13 the National Labor Relations Board'; and

14 (ii) by inserting `, or to any federal, state or local
15 governmental agency investigating, prosecuting, or
16 seeking civil remedies for any cause of action, whether
17 criminal, civil, or administrative, arising from a covered
18 violation described in clause (iv) and presents a sworn
19 affidavit from such federal, state or local governmental
20 agency attesting that the alien has been helpful, is being
21 helpful, or is likely to be helpful to such agency in the
22 investigation, prosecution, or adjudication arising from a
23 covered violation described in clause (iv) before the
24 semicolon at the end; and

25 (D) by striking subclause (IV) and inserting--

26 ` the criminal activity described in clause (iii) or the covered
27 violation described in clause (iv) violated the laws of the United
28 States and occurred in the United States (including in Indian

1 country and military installations) or the territories and possessions
2 of the United States;

3 (2) in clause (ii)(II), by striking `and' at the end;

4 (3) by moving clause (iii) 2 ems to the left;

5 (4) in clause (iii), by adding `fraud in foreign labor contracting;' after
6 `prostitution;' and striking `or' at the end and inserting `and'; and

7 (5) by adding at the end the following:

8 `(iv) a covered violation referred to in this clause is:

9 (AA) any violation involving one or more of the following or any
10 similar activity in violation of any Federal, State, or local law:
11 applicable Federal, State, or Local labor or employment laws, including
12 laws concerning wages and hours, benefits and employment standards,
13 labor relations, workplace health and safety or work-related injuries,
14 workplace non-discrimination, workplace equal opportunity, and
15 retaliation for exercising rights under any of these laws;

16 (BB) any violation giving rise to a civil cause of action pursuant to 18
17 U.S.C. section 1595; or

18 (CC) any violation of a Federal, State, or local law prohibiting
19 discrimination based on race, sex, color, national origin, age, religion,
20 familial status, or disability, or retaliation for exercising rights under
21 any of these laws. Nothing in this definition shall be construed as
22 altering the definition of retaliation or discrimination under any other
23 law.

24 ; or'.

25 (b) Temporary Protection for Victims of Crime, Labor, and Employment
26 Violations- Notwithstanding any other provision of law, the Secretary may
27 permit an alien to temporarily remain in the United States and grant the alien
28 employment authorization if the Secretary determines that the alien--

1 (1) has filed for relief under section 101(a)(15)(U) of the Immigration
2 and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or

3 (2)(A) has filed, or is a material witness to, a bona fide claim or
4 proceedings resulting from a covered violation (as defined in section
5 274A(e)(10)(B)(iii)(II) or (III) of such Act, as added by section 3(b));
6 and

7 (B) has been helpful, is being helpful, or is likely to be helpful to--

8 (i) a Federal, State, or local law enforcement official;

9 (ii) a Federal, State, or local prosecutor;

10 (iii) a Federal, State, or local judge;

11 (iv) the Department of Homeland Security;

12 (v) the Equal Employment Opportunity Commission;

13 (vi) the Department of Labor;

14 (vii) the National Labor Relations Board; or

15 (viii) other Federal, State, or local authorities

16 in the investigation, prosecution of or pursuit of civil remedies
17 related to the claim arising from a covered violation.

18 (c) Conforming Amendments- Section 214(p) (8 U.S.C. 1184(p)) is amended--

19 (1) in paragraph (1), by inserting `or investigating, prosecuting, or
20 seeking civil remedies for claims resulting from a covered violation
21 described in section 101(a)(15)(U)(iv)' after `section 101(a)(15)(U)(iii)'
22 each place such term appears; and

23 (3) in paragraph (6)--

1 (A) by inserting `or claims resulting from a covered violation
2 described in section 101(a)(15)(U)(iv)' after `described in
3 section 101(a)(15)(U)(iii)'; and

4 (B) by inserting `or claim arising from a covered violation' after
5 `prosecution of such criminal activity'.

6 (d) Adjustment of Status for Victims of Crimes- Section 245(m)(1) (8 U.S.C.
7 1255(m)(1)) is amended by inserting `or an investigation or prosecution
8 regarding a workplace or civil rights claim' after `prosecution'.

9 e) Change of Nonimmigrant Classification- Section 384(a)(1) of the Illegal
10 Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C.
11 1367(a)(1)) is amended--

12 (1) in subparagraph (E), by striking `physical or mental abuse and the
13 criminal activity,' and inserting `abuse and the criminal activity or
14 workplace claim;';

15 (2) in subparagraph (F), by striking the comma the end and inserting `;
16 or'; and

17 (3) by inserting after subparagraph (F) the following:

18 `(G) the alien's employer,'.

19 **SEC. 312. LABOR ENFORCEMENT ACTIONS.**

20 (a) Removal Proceedings- Section 239(e) (8 U.S.C. 1229(e)) is amended--

21 (1) in paragraph (1)--

22 (A) by striking `In cases where' and inserting `If'; and

23 (B) by inserting `or as a result of information provided to the
24 Department of Homeland Security in retaliation against

1 individuals for exercising or attempting to exercise their
2 workplace rights or other legal rights' after `paragraph (2)'; and

3 (2) in paragraph (2), by adding at the end the following:

4 `(C) At a facility about which a workplace claim has been filed
5 or is contemporaneously filed.'.

6 (b) Unlawful Employment of Aliens- Section 274A(e) (8 U.S.C. 1324a(e)) is
7 amended by adding at the end the following:

8 `(10) CONDUCT IN ENFORCEMENT ACTIONS-

9 `(A) ENFORCEMENT ACTION- If the Department of
10 Homeland Security undertakes an enforcement action at a
11 facility about which a workplace claim has been filed or is
12 contemporaneously filed, or as a result of information provided
13 to the Department in retaliation against employees for exercising
14 their rights related to a workplace claim, the Department shall
15 ensure that--

16 `(i) any aliens arrested or detained who are necessary for
17 the investigation or prosecution of workplace claim
18 violations or criminal activity (as described in
19 subparagraph (T) or (U) of section 101(a)(15)) are not
20 removed from the United States until after the
21 Department--

22 `(I) notifies the appropriate law enforcement
23 agency with jurisdiction over such violations or
24 criminal activity; and

25 `(II) provides such agency with the opportunity to
26 interview such aliens; and

1 (ii) no aliens entitled to a stay of removal or abeyance of
2 removal proceedings under this section are removed.

3 (B) PROTECTIONS FOR VICTIMS OF CRIME, LABOR,
4 AND EMPLOYMENT VIOLATIONS-The Secretary of
5 Homeland Security, in consultation with the Department of
6 Labor shall jointly promulgate regulations that establish a
7 process by which an alien against whom removal proceedings
8 have been initiated under chapter 4 of title II, who

9 (i) has filed or contemporaneously files a nonfrivolous
10 workplace claim;

11 (ii) who is a material witness in any pending or
12 anticipated proceeding involving a bona fide
13 workplace claim or right (as certified by the
14 relevant agency of jurisdiction or presiding judge):
15 or

16 (iii) who has filed for relief under section 101(a)(15)(U)

17 may, at the Secretary's discretion, be entitled to a stay of
18 removal or an abeyance of removal proceedings and to
19 employment authorization for a period of up to three years or
20 until the resolution of the workplace claim or the denial of
21 relief under section 101(a)(15)(U) after exhaustion of
22 administrative appeals, whichever is sooner.

23 Such period may be extended by the Secretary for an additional
24 period of up to three years if, in the Secretary's judgment extension
25 would be necessary for (I) the alien asserting a workplace claim to
26 pursue the claim to resolution; (II) the deterrent goals of any
27 statute underlying a workplace claim would be served; or (III) to
28 otherwise further interests of justice.

1 (iv) DEFINITIONS- In this section:

2 (I) MATERIAL WITNESS- Notwithstanding any other provision
3 of law, the term 'material witness' means an individual who presents a
4 declaration from an attorney investigating, prosecuting, or defending the
5 workplace claim or from the presiding officer overseeing the workplace
6 claim attesting that, to the best of the declarant's knowledge and belief,
7 reasonable cause exists to believe that the testimony of the individual will
8 be relevant to the outcome of the workplace claim.

9 (II) WORKPLACE CLAIM- The term 'workplace claim' means
10 any claim, petition, charge, complaint, or grievance filed with,
11 communicated to, or submitted to, a Federal, State, or local agency or
12 court, related to the violation of applicable Federal, State, or local labor or
13 employment laws, including laws concerning wages and hours, benefits
14 and employment standards, labor relations, workplace health and safety or
15 work-related injuries, nondiscrimination and retaliation for exercising
16 rights under these laws. This definition does not alter what constitutes
17 retaliation or discrimination under any other laws.

18 (III) WORKPLACE RIGHTS – The term 'workplace rights'
19 means rights arising under Federal, state, or local labor or employment
20 laws, including laws concerning wages and hours, benefits and
21 employment standards, labor relations, Workplace health and safety or,
22 work-related injuries, nondiscrimination, and retaliation for exercising
23 rights under these laws.

24 **SEC. 313 . ENFORCEMENT OF LABOR LAW**

25 (a) In those cases where a civil violation of a Federal law relating to
26 workplace rights as defined in section 274A(e)(10)(B)(iv)(III) of the INA has
27 been found, including a finding by the agency enforcing such law in the
28 course of a final settlement of such violation, and such violation took place

1 with respect to an unauthorized worker, there may be imposed an additional
2 civil penalty of up to \$5,000 per worker. Such funds shall be deposited into
3 the Labor Law Enforcement Fund.

4 (b) Labor Law Enforcement Fund.--Section 286 of the Immigration and
5 Nationality Act (8 U.S.C. 1356), as amended by sections 302 and 403(b), is
6 further amended by adding at the end the following new subsection:

7 ``(1) Labor Law Enforcement Fund.—

8 ``(i) IN GENERAL.--There is established in the general fund of the Treasury,
9 a separate account, which shall be known as the `Labor Law Enforcement
10 Fund' (referred to in this subsection as the `Fund').

11 ``(ii) DEPOSITS.--There shall be deposited as offsetting receipts into the
12 Fund penalties imposed in subsection (a).

13 ``(iii) PURPOSE.--Amounts deposited in the Fund shall be made available to
14 the Secretary of Labor to ensure compliance with workplace laws, including
15 by random audits of such employers, in industries that have a history of
16 significant employment unauthorized workers or non-immigrant workers
17 pursuant to sections 101(a)(15)(H)(ii)(a) or (b).

18 **SEC. 314 . PROTECTIONS FOR MIGRANT AND SEASONAL LABORERS**

19 Section 1851 of Title 29 is amended as follows:

20 Subsection (a) is amended to read:

21
22 " (i) Except as otherwise provided in this section, any person who willfully and
23 knowingly violates this chapter or any regulation under this chapter shall be fined
24 not more than \$1,000 or sentenced to prison for a term not to exceed one year, or
25 both. Upon conviction for any subsequent violation of this chapter or any
26 regulation under this chapter, the defendant shall be fined not more than \$10,000
27 or sentenced to prison for a term not to exceed three years, or both;

1 (ii) any person who knowingly destroys, conceals, removes, confiscates,
2 or possesses any actual or purported passport or other immigration document, or
3 any other actual or purported government identification document of another
4 person or threatens to do so in furtherance of a violation of the Chapter shall be
5 fined under Title 18, imprisoned not more than three years, or both;

6 (iii) any person who knowingly restricts or attempts to prevent or restrict,
7 without lawful authority, a person's liberty to move or travel, so in furtherance
8 of a violation of the Chapter, shall be fined under Title 18, imprisoned not more
9 than five years, or both;

10 (iv) and if bodily injury results from the acts committed in violation of this
11 Chapter or if such acts include sexual abuse or an attempt to commit sexual abuse
12 or if such acts include the use, attempted use, or threatened use of a dangerous
13 weapon, explosives, or fire, the defendant shall be fined under Title 18,
14 imprisoned not more than ten years, or both;

15 (v) and if death results from the acts committed in violation of this section
16 or if such acts include kidnapping or an attempt to kidnap, aggravated sexual
17 abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, the
18 defendant shall be fined under Title 18, imprisoned for any term of years or for
19 life, or both;

20 (vi) Except to the extent that a greater maximum penalty is otherwise
21 provided in this section, upon conviction for any subsequent violation of this
22 chapter or any regulation under this chapter, the defendant shall be fined under
23 Title 18, imprisoned not more three years, or both."
24

25 And by adding at the end:

26
27 "(c) Any person who knowingly and with intent to defraud violates sections
28 1821(a), 1821(f), 1831(a), or 1831(f) of this Title, or who knowingly and willfully
29 violates section 1822 or section 1832 of this Title, shall be fined under Title 18,
30 imprisoned not more than five years, or both."

1 “(d) Any person who obstructs, attempts to obstruct, interferes with or prevents
2 the enforcement of this section, shall be subject to the same fines and penalties as those
3 prescribed for the underlying offense.

4 **"SEC. 315 . DIRECTIVE TO THE UNITED STATES SENTENCING**
5 **COMMISSION.**

6 (a) **IN GENERAL.**— Pursuant to the authority under section 994 of
7 title 28, United States Code, the United States Sentencing
8 Commission shall promulgate sentencing guidelines or amend
9 existing sentencing guidelines to provide for increased penalties for
10 persons convicted of offenses under sections 274A of the
11 Immigration and Nationality Act (as amended by this Act), section
12 1851 of the Migrant and Seasonal Agricultural Worker Protection
13 Act, 216 of the Fair Labor Standards Act and any other provisions
14 of law covering similar conduct in order to reflect the intent of
15 Congress that such penalties be increased in comparison to those
16 currently provided by such guidelines and policy statements.

17 (b) **REQUIREMENTS.**— In carrying out this section, the Sentencing
18 Commission shall provide sentencing enhancements for any person
19 convicted of an offense described in subsection (a) when such
20 offense(s) involves—

- 21 a. Confiscation of identification documents
- 22 b. Corruption, bribery, extortion, or robbery;
- 23 c. Sexual abuse;
- 24 d. Serious bodily injury;
- 25 e. An intent to defraud;
- 26 f. A pattern of conduct involving multiple violations of law that
27 creates a risk to the health or safety to any victim; or
- 28 g. A pattern of conduct involving multiple violations of law that
29 denies payments due to victims for work completed.

1 **SEC. 317 . CONFIDENTIALITY FOR VICTIMS OF CRIME.**

2 (a) Subsection (a) of section 1367 of Title 8 of the United States Code is amended to
3 add “or, with respect to subsections (1)(E) and (F) and subsection (2),any other
4 official or employee of a certifying agency” after “(including any bureau or
5 agency of either of such Departments)”.

6 (b) Subsection (a)(2) of section 1367 of Title 8 of the United States Code is amended
7 to delete “who is a beneficiary of an application” and add “applying for” after
8 “any information which relates to an alien.”

9 (c) Subsection (b) of section 1367 of Title 8 of the United States Code is amended to
10 delete the word “battered” before “individuals.”

11 (d) A new subsection is added to the end of section 1367(b) of Title 8 of the United
12 States Code as follows:

13 “(8) Subsection(a)(2) of this section shall not be construed to prevent the
14 disclosure of information that prosecutors must disclose in order to comply with
15 constitutional obligations to provide statements by witnesses and certain other
16 documents to defendants in pending federal criminal proceedings, nor shall it be
17 construed to prevent the disclosure of information in civil proceedings where a
18 judge orders that such information be disclosed in connection with a witness
19 testifying in that proceeding. However, all information disclosed during litigation
20 pursuant to this exception for any purpose other than the purpose ordered in the
21 proceeding and may not be disclosed to any non-required party. Such information
22 must be filed under seal, with all personally identifying information redacted
23 except the witness’s first name, and must be required to return all copies to
24 disclosing party at the conclusion of the proceeding.”

25