

117TH CONGRESS
1ST SESSION

S. _____

To gradually raise the Federal minimum wage, to permanently establish the E-Verify employment eligibility verification system, to mandate the use of E-Verify by all employers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. COTTON (for himself, Mr. ROMNEY, Ms. COLLINS, Mrs. CAPITO, and Mr. PORTMAN) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To gradually raise the Federal minimum wage, to permanently establish the E-Verify employment eligibility verification system, to mandate the use of E-Verify by all employers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Higher Wages for American Workers Act of 2021”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Findings.
- Sec. 3. Purpose.
- Sec. 4. Minimum wage increases.
- Sec. 5. Establishment of permanent E-Verify program.
- Sec. 6. Mandatory E-Verify for all employers.
- Sec. 7. Penalty for failure to use E-Verify.
- Sec. 8. Enhanced penalties for unauthorized employment.
- Sec. 9. E-Verify self-check.
- Sec. 10. E-Verify process.
- Sec. 11. Good faith defense.
- Sec. 12. Preemption.
- Sec. 13. Access to information.
- Sec. 14. Fraud and misuse of documents.
- Sec. 15. Fraud prevention.
- Sec. 16. Protection of Social Security Administration programs.
- Sec. 17. Inspector General audits.
- Sec. 18. Recruitment, referral, and continuation of employment.
- Sec. 19. Definitions.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) In the Illegal Immigration Reform and Im-
4 migrant Responsibility Act of 1996 (division C of
5 Public Law 104–208), Congress directed the estab-
6 lishment of 3 pilot programs for employment eligi-
7 bility confirmation, including what became the E-
8 Verify Pilot Program.

9 (2) The E-Verify Pilot Program has grown into
10 a successful, necessary tool for employers across the
11 country that want to verify their workers’ employ-
12 ment eligibility.

13 (3) E-Verify is a fast, reliable, electronic sys-
14 tem, administered by the Department of Homeland
15 Security, that offers United States employers a tool
16 to verify that prospective employees are legally au-
17 thorized to work in the United States.

1 (4) All Federal executive departments and legis-
2 lative branch offices, employers subject to certain
3 court orders under section 274A(e)(4) or 274B(g) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1324a(e)(4) and 1324b(g)), employers with Federal
6 contracts or subcontracts that contain the Federal
7 Acquisition Regulation E-Verify clause, and employ-
8 ers in several States are required to use E-Verify to
9 confirm the identity and employment eligibility of
10 their employees.

11 (5) Many other employers voluntarily use E-
12 Verify to confirm that their workforce complies with
13 Federal immigration laws. In December 2020,
14 1,102,643 employers were using E-Verify.

15 (6) It is necessary to make E-Verify permanent
16 and mandatory to prevent unauthorized employment,
17 which—

18 (A) drives illegal immigration to the
19 United States; and

20 (B) undermines economic opportunity for
21 authorized workers.

22 **SEC. 3. PURPOSES.**

23 The purposes of this Act are—

24 (1) to gradually increase the Federal minimum
25 wage;

1 (2) to provide a permanent authorization for E-
2 Verify; and
3 (3) to require all employers to use E-Verify.

4 **SEC. 4. MINIMUM WAGE INCREASES.**

5 (a) SCHEDULED INCREASES.—Section 6(a) of the
6 Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)) is
7 amended—

8 (1) by striking paragraph (1) and inserting the
9 following:

10 “(1) except as otherwise provided in this sec-
11 tion, not less than—

12 “(A) \$8.00 per hour, beginning on the ef-
13 fective date under section 4(e) of the Higher
14 Wages for American Workers Act of 2021;

15 “(B) \$8.75 per hour, beginning on the
16 date that is 1 year after such effective date;

17 “(C) \$9.50 per hour, beginning on the date
18 that is 2 years after such effective date;

19 “(D) \$10.00 per hour, beginning on the
20 date that is 3 years after such effective date;
21 and

22 “(E) beginning on the date that is 5 years
23 after such effective date, and every 2 years
24 thereafter, the amount determined by the Sec-

1 retary for purposes of this subsection under
2 subsection (h);”;

3 (2) in paragraph (3), by striking “or” after the
4 semicolon;

5 (3) by redesignating paragraph (4) as para-
6 graph (5); and

7 (4) by inserting after paragraph (3) the fol-
8 lowing:

9 “(4) if such employee is employed by a business
10 with fewer than 20 employees (including a franchise
11 with fewer than 20 employees) and except as other-
12 wise provided under paragraphs (2), (3), or (5), not
13 less than—

14 “(A) \$7.75 per hour, beginning on the ef-
15 fective date under section 4(e) of the Higher
16 Wages for American Workers Act of 2021;

17 “(B) \$8.25 per hour, beginning on the
18 date that is 1 year after such effective date;

19 “(C) \$8.75 per hour, beginning on the date
20 that is 2 years after such effective date;

21 “(D) \$9.25 per hour, beginning on the
22 date that is 3 years after such effective date;

23 “(E) \$9.75 per hour, beginning on the
24 date that is 4 years after such effective date;

25 and

1 “(F) beginning on the date that is 5 years
2 after such effective date, the wage rate in effect
3 under paragraph (1)(E); or”.

4 (b) INCREASES IN YOUTH MINIMUM WAGE.—Section
5 6(g)(1) of the Fair Labor Standards Act of 1938 (29
6 U.S.C. 206(g)(1)) is amended—

7 (1) by striking “90” and inserting “180”; and
8 (2) by striking “less than \$4.25 an hour.” and
9 inserting the following: “less than—

10 “(A) \$4.75 per hour, beginning on the effective
11 date under section 4(e) of the Higher Wages for
12 American Workers Act of 2021;

13 “(B) \$5.25 per hour, beginning on the date
14 that is 1 year after such effective date;

15 “(C) \$5.75 per hour, beginning on the date that
16 is 2 years after such effective date; and

17 “(D) \$6.00 per hour, beginning on the date
18 that is 3 years after such effective date; and

19 “(E) beginning on the date that is 5 years after
20 such effective date, and every 2 years thereafter, the
21 youth minimum wage rate amount determined by
22 the Secretary for purposes of this subsection under
23 subsection (h).”.

24 (c) DETERMINATION BASED ON INCREASE IN THE
25 CONSUMER PRICE INDEX.—Section 6 of the Fair Labor

1 Standards Act of 1938, as amended by subsections (a) and
2 (b), is further amended by adding at the end the following:

3 “(h)(1) Not later than the date that is 1 year before
4 a new minimum wage rate under subsection (a)(1)(E) and
5 new youth minimum wage rate under subsection (g)(1)(E)
6 are to take effect for a 2-year period, the Secretary shall
7 determine the minimum wage rate and youth minimum
8 wage rate to be in effect pursuant to this subsection. The
9 minimum wage rate or youth minimum wage rate deter-
10 mined pursuant to this subsection shall be—

11 “(A) not less than the amount in effect under
12 subsection (a)(1) or subsection (g)(1), respectively,
13 on the date of such determination;

14 “(B) increased from such amount by the per-
15 centage increase in the Chained Consumer Price
16 Index for All Urban Consumers (as published by the
17 Bureau of Labor Statistics of the Department of
18 Labor) for the preceding 2 years, as calculated in
19 accordance with paragraph (2); and

20 “(C) rounded to the nearest multiple of \$0.05.

21 “(2) In making each determination under paragraph
22 (1) and calculating the percentage increase in the Chained
23 Consumer Price Index for All Urban Consumers under
24 paragraph (1)(B), the Secretary shall compare the Con-
25 sumer Price Index for the most recent month, quarter, or

1 year available (as selected by the Secretary before the first
2 year for which a minimum wage or youth minimum wage
3 is in effect pursuant to this subsection) with the Consumer
4 Price Index for the same month in the second preceding
5 year, the same quarter in the second preceding year, or
6 the second preceding year, respectively.”.

7 (d) **RULE OF CONSTRUCTION.**—Nothing in the
8 amendments made by this Act shall be construed to im-
9 pact or affect the Secretary’s authority to issue special
10 certificates under section 14(c) of the Fair Labor Stand-
11 ards Act of 1938 (29 U.S.C. 214(c)).

12 (e) **EFFECTIVE DATE.**—The amendments made by
13 this section shall take effect on the later of—

14 (1) January 1, 2022; or

15 (2) the date that is 90 days after the national
16 emergency declaration issued by the President under
17 the National Emergencies Act (50 U.S.C. 1601 et
18 seq.) with respect to COVID–19 is rescinded.

19 **SEC. 5. ESTABLISHMENT OF PERMANENT E-VERIFY.**

20 (a) **ESTABLISHMENT OF PERMANENT E-VERIFY.**—
21 Section 274A(d) of the Immigration and Nationality Act
22 (8 U.S.C. 1324a(d)) is amended to read as follows:

23 “(d) **ESTABLISHMENT OF PERMANENT E-VERIFY.**—

24 “(1) **IN GENERAL.**—On the date of the enact-
25 ment of the Higher Wages for American Workers

1 Act of 2021, the Secretary of Homeland Security
2 shall permanently establish E-Verify, based on the
3 E-Verify pilot program implemented under section
4 401(c)(1) of the Illegal Immigration Reform and Im-
5 migrant Responsibility Act of 1996 (8 U.S.C. 1324a
6 note), that—

7 “(A) responds to inquiries made by per-
8 sons through a website, mobile application, or
9 other toll-free electronic media, as determined
10 by the Secretary, concerning—

11 “(i) an individual’s identity; and

12 “(ii) whether such individual is au-
13 thorized to be employed in the United
14 States; and

15 “(B) maintains records of—

16 “(i) the inquiries that were made;

17 “(ii) the verifications that were pro-
18 vided (or not provided); and

19 “(iii) the codes provided to inquirers
20 as evidence of their compliance with their
21 obligations under E-Verify.

22 “(2) RESPONSES.—

23 “(A) INITIAL RESPONSES.—E-Verify shall
24 provide confirmation or a tentative noncon-
25 firmation of an individual’s identity and em-

1 ployment eligibility not later than 3 business
2 days after the initial inquiry. If providing con-
3 firmation or tentative nonconfirmation, E-
4 Verify shall provide an appropriate code indi-
5 cating such confirmation or such nonconfirma-
6 tion.

7 “(B) SECONDARY CONFIRMATION PROCESS
8 IN CASE OF TENTATIVE NONCONFIRMATION.—

9 “(i) IN GENERAL.—In cases of ten-
10 tative nonconfirmation, the Secretary shall
11 specify, in consultation with the Commis-
12 sioner of Social Security, an available sec-
13 ondary verification process to confirm the
14 validity of information provided and to
15 provide a final confirmation or noncon-
16 firmation not later than 10 business days
17 after the date on which the notice of the
18 tentative nonconfirmation is provided by
19 the Secretary.

20 “(ii) EXTENSIONS.—The Secretary, in
21 consultation with the Commissioner—

22 “(I) may extend the deadline
23 under clause (i) once, on a case-by-
24 case basis, for a period of 10 business
25 days; and

1 “(II) if such deadline is extended,
2 shall document such extension within
3 the verification system.

4 “(iii) NOTIFICATIONS.—The Sec-
5 retary, in consultation with the Commis-
6 sioner, shall immediately notify the em-
7 ployee and employer of any tentative non-
8 confirmation under clause (i), which shall
9 include—

10 “(I) guidance to the prospective
11 employee regarding the secondary
12 verification process; and

13 “(II) any extension granted
14 under clause (ii).

15 “(iv) PROCESS.—The Secretary, in
16 consultation with the Commissioner,
17 shall—

18 “(I) create a standard process for
19 extensions and notifications under this
20 paragraph; and

21 “(II) make a description of such
22 process available to the public.

23 “(v) CODE.—When final confirmation
24 or nonconfirmation is provided, the
25 verification system shall provide an appro-

1 priate code indicating such confirmation or
2 nonconfirmation.

3 “(3) DESIGN AND OPERATION OF E-VERIFY.—
4 E-Verify shall be designed and operated—

5 “(A) to maximize its reliability and ease of
6 use by persons and other entities consistent
7 with insulating and protecting the privacy and
8 security of the underlying information;

9 “(B) to respond to all inquiries made by
10 such persons and entities on whether individ-
11 uals are authorized to be employed and to reg-
12 ister all times when such inquiries are not re-
13 ceived;

14 “(C) to prevent unauthorized disclosure of
15 personal information through appropriate ad-
16 ministrative, technical, and physical safeguards;

17 “(D) to include reasonable safeguards
18 against unlawful discriminatory practices based
19 on national origin or citizenship status, includ-
20 ing—

21 “(i) the selective or unauthorized use
22 of E-Verify to verify eligibility; or

23 “(ii) the exclusion of certain individ-
24 uals from consideration for employment as
25 a result of a perceived likelihood that addi-

1 tional verification will be required, beyond
2 what is required for most job applicants;

3 “(E) to maximize the prevention of iden-
4 tity theft use in the system;

5 “(F) to limit the subjects of verification
6 to—

7 “(i) individuals hired, referred, or re-
8 cruited, in accordance with paragraph (1)
9 or (4) of subsection (b);

10 “(ii) employees and prospective em-
11 ployees, in accordance with paragraph (1),
12 (2), (3), or (4) of subsection (b); and

13 “(iii) individuals seeking to confirm
14 their own employment eligibility on a vol-
15 untary basis; and

16 “(G) to confirm identity and employment
17 authorization through verification and compari-
18 son of records maintained by the Department of
19 Homeland Security, other Federal departments,
20 States, or outlying possessions of the United
21 States, as determined necessary by the Sec-
22 retary of Homeland Security, including—

23 “(i) records maintained by the Social
24 Security Administration;

1 “(ii) passports, passport cards, and
2 visa records (including photographs) main-
3 tained by the Department of State;

4 “(iii) notwithstanding section 6103 of
5 Internal Revenue Code of 1986 or any
6 other provision of law, Employer Identi-
7 fication Number records maintained by the
8 Internal Revenue Service;

9 “(iv) State driver’s license or identity
10 card information (including photographs)
11 maintained by the Department of Motor
12 Vehicles of a State or outlying possession;
13 and

14 “(v) any other Federal records that
15 the Secretary of Homeland Security deter-
16 mines to be relevant and necessary for
17 such purpose.

18 “(4) RESPONSIBILITIES OF COMMISSIONER OF
19 SOCIAL SECURITY.—

20 “(A) IN GENERAL.—The Commissioner of
21 Social Security, in consultation with the Sec-
22 retary of Homeland Security (and any designee
23 of the Secretary selected to establish and ad-
24 minister the verification system), shall establish
25 a reliable, secure, electronic method within E-

1 Verify, which, within the periods specified in
2 subparagraphs (A) and (B) of paragraph (2),
3 compares the name and Social Security account
4 number provided in an inquiry against such in-
5 formation maintained by the Commissioner in
6 order to validate (or not validate)—

7 “(i) the information provided regard-
8 ing each individual whose identity and em-
9 ployment eligibility is being confirmed;

10 “(ii) the correspondence of the name
11 and number; and

12 “(iii) whether the individual has pre-
13 sented a Social Security account number
14 that is not valid for employment.

15 “(B) LIMITATION ON DISCLOSURES.—The
16 Commissioner may not disclose or release Social
17 Security information (other than such confirma-
18 tion or nonconfirmation) under E-Verify except
19 as provided for in this section or section
20 205(c)(2)(I) of the Social Security Act (42
21 U.S.C. 405(c)(2)(I)).

22 “(5) RESPONSIBILITIES OF SECRETARY OF
23 HOMELAND SECURITY.—The Secretary of Homeland
24 Security, in consultation with any designee of the
25 Secretary selected to establish and administer the

1 verification system, shall establish a reliable, secure,
2 electronic method within E-Verify, which, within the
3 periods specified in subparagraphs (A) and (B) of
4 paragraph (2), compares the name and alien identi-
5 fication or authorization number (or any other infor-
6 mation as determined relevant by the Secretary)
7 which are provided in an inquiry against such infor-
8 mation maintained or accessed by the Secretary—

9 “(A) to validate (or not validate)—

10 “(i) the information provided regard-
11 ing each individual whose identity and em-
12 ployment eligibility is being confirmed;

13 “(ii) the correspondence of the name
14 and number; and

15 “(iii) whether the alien is authorized
16 to be employed in the United States; or

17 “(B) to the extent that the Secretary de-
18 termines to be feasible and appropriate, to de-
19 termine whether the records available to the
20 Secretary verify the identity or status of a na-
21 tional of the United States.

22 “(6) RESPONSIBILITIES OF THE SECRETARY OF
23 STATE.—The Secretary of State, in consultation
24 with the Secretary of Homeland Security and any
25 designee of the Secretary of Homeland Security se-

1 lected to establish and administer the verification
2 system, shall establish a reliable, secure method,
3 that compares and provides, within the time periods
4 required under paragraphs (2) and (3), a confirma-
5 tion or nonconfirmation of the name and passport,
6 passport card, or visa number provided in an inquiry
7 against such information maintained by the Sec-
8 retary of State in order to confirm (or to not con-
9 firm) the information provided regarding an indi-
10 vidual whose identity and employment eligibility
11 must be confirmed.

12 “(7) UPDATING INFORMATION.—The Commis-
13 sioner of Social Security and the Secretary of Home-
14 land Security shall immediately, and not later than
15 3 business days after receiving updated information,
16 update their information in a manner that promotes
17 the maximum accuracy and shall provide a process
18 for the prompt correction of erroneous information,
19 including instances in which it is brought to their at-
20 tention in the secondary verification process de-
21 scribed in paragraph (2)(B).

22 “(8) NO NATIONAL IDENTIFICATION CARD.—
23 Nothing in this subsection, or in the Higher Wages
24 for American Workers Act of 2021, may be con-
25 strued to directly or indirectly authorize—

1 “(A) the issuance or use of national identi-
2 fication cards; or

3 “(B) the establishment of a national iden-
4 tification card.

5 “(9) REMEDIES.—

6 “(A) IN GENERAL.—If an individual al-
7 leges that the individual would not have been
8 dismissed from a job absent an error of the
9 verification mechanism, the individual may
10 seek—

11 “(i) compensation only through the
12 mechanism of chapter 171 of title 28,
13 United States Code (commonly known as
14 the ‘Federal Tort Claims Act’); and

15 “(ii) injunctive relief to correct such
16 error.

17 “(B) CLASS ACTIONS.—No class action
18 may be brought under this subsection.”.

19 (b) CONFORMING AMENDMENTS.—Section 401 of the
20 Illegal Immigration Reform and Immigrant Responsibility
21 Act of 1996 (8 U.S.C. 1324a note) is amended—

22 (1) by amending the section heading to read as
23 follows: “**E-VERIFY**”;

1 (2) in subsection (a), by striking “3 pilot pro-
2 grams of employment eligibility confirmation” and
3 inserting “E-Verify”; and

4 (3) in subsection (b)—

5 (A) in the subsection heading, by striking
6 “; TERMINATION”; and

7 (B) by striking “Unless the Congress oth-
8 erwise provides, the Secretary of Homeland Se-
9 curity shall terminate a pilot program on Sep-
10 tember 30, 2015.”.

11 (c) TRANSITION FROM PILOT TO PERMANENT E-
12 VERIFY PROGRAM.—

13 (1) IN GENERAL.—Subtitle A of title IV of the
14 Illegal Immigration Reform and Immigrant Respon-
15 sibility Act of 1996 (8 U.S.C. 1324a note) is re-
16 pealed.

17 (2) REFERENCES.—Any reference in any Fed-
18 eral law, Executive order, rule, regulation, or delega-
19 tion of authority, or any document of, or pertaining
20 to, the Department of Homeland Security, the De-
21 partment of Justice, or the Social Security Adminis-
22 tration, to the employment eligibility confirmation
23 system established under section 404 of the Illegal
24 Immigration Reform and Immigrant Responsibility
25 Act of 1996 (8 U.S.C. 1324a note) is deemed to

1 refer to E-Verify, which has been permanently estab-
2 lished pursuant to subsection (a).

3 (3) CLERICAL AMENDMENT.—The table of con-
4 tents in section 1(d) of the Illegal Immigration Re-
5 form and Immigrant Responsibility Act of 1996 (di-
6 vision C of Public Law 104–208) is amended by
7 striking the items relating to subtitle A of title IV.

8 (4) EFFECTIVE DATE.—This subsection shall
9 take effect on the date that is 90 days after the date
10 of the enactment of this Act.

11 (d) FUNDING.—

12 (1) TRANSFERS.—On the first day of each fis-
13 cal year beginning after the date of the enactment
14 of this Act, the Secretary of the Treasury shall
15 transfer \$100,000,000 in unobligated funds from the
16 general fund of the Treasury to the Department of
17 Homeland Security, which shall be used to carry out
18 E-Verify.

19 (2) AUTHORIZATION OF APPROPRIATIONS.—In
20 addition to the amounts transferred pursuant to
21 paragraph (1), there are authorized to be appro-
22 priated \$100,000,000, in fiscal year 2022, and in
23 each successive fiscal year, to carry out E-Verify.

24 (e) REPORTING REQUIREMENTS.—

1 (1) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES DEFINED.—In this subsection, the term “ap-
3 propriate congressional committees” means—

4 (A) the Committee on the Judiciary of the
5 Senate;

6 (B) the Committee on Homeland Security
7 and Governmental Affairs of the Senate;

8 (C) the Committee on the Judiciary of the
9 House of Representatives; and

10 (D) the Committee on Homeland Security
11 of the House of Representatives.

12 (2) PERMANENT E-VERIFY INITIAL REPORT.—
13 Not later than 180 days after the date of the enact-
14 ment of this Act, the President shall submit a report
15 to the appropriate congressional committees describ-
16 ing the implementation of the permanent E-Verify
17 Program, including—

18 (A) any significant changes made from the
19 E-Verify Pilot Program in existence on the day
20 before the date of the enactment of this Act;

21 (B) any additional planned changes to
22 streamline or improve the permanent E-Verify
23 Program; and

24 (C) a classified appendix, if necessary, to
25 discuss sensitive topics, such as measures to

1 prevent unauthorized disclosure of personal in-
2 formation.

3 (3) PERMANENT E-VERIFY ANNUAL REPORT.—

4 Not later than 1 year after the submission of the re-
5 port under paragraph (2), and annually thereafter,
6 the President shall submit a report to the appro-
7 priate congressional committees, the Committee on
8 Appropriations of the Senate, and the Committee on
9 Appropriations of the House of Representatives de-
10 scribing the status of the permanent E-Verify Pro-
11 gram, including—

12 (A) statistics on use, confirmations, ten-
13 tative and final nonconfirmations, and response
14 times; and

15 (B) information regarding the costs of the
16 program, including an accounting of any in-
17 creases in costs that occurred during the pre-
18 vious year.

19 **SEC. 6. MANDATORY E-VERIFY FOR ALL EMPLOYERS.**

20 (a) IN GENERAL.—Any person or other entity hiring,
21 recruiting, or referring an individual for employment in
22 the United States shall utilize E-Verify in accordance with
23 this section.

24 (b) IMPLEMENTATION TIMELINE.—

1 (1) HIRING.—Except as provided in paragraphs
2 (3) and (4), an employer shall use E-Verify when-
3 ever hiring an individual for employment in the
4 United States beginning—

5 (A) on the date that is 6 months after the
6 date of the enactment of this Act if the em-
7 ployer has 10,000 or more employees in the
8 United States on such date of enactment;

9 (B) on the date that is 9 months after the
10 date of the enactment of this Act if the em-
11 ployer has at least 500 employees in the United
12 States and fewer than 10,000 employees in the
13 United States on such date of enactment;

14 (C) on the date that is 1 year after the
15 date of the enactment of this Act if the em-
16 ployer has at least 20 employees in the United
17 States fewer than 500 employees in the United
18 States on such date of enactment;

19 (D) on the date that is 18 months after
20 the date of the enactment of this Act if the em-
21 ployer has at least 1 employee in the United
22 States and fewer than 20 employees in the
23 United States on such date of enactment; and

1 (E) on the date that is 1 year after the
2 date of the enactment of this Act for any new
3 employer.

4 (2) RECRUITING AND REFERRING.—Except as
5 provided in paragraph (3), the requirement under
6 subsection (b) shall apply to a person or other entity
7 recruiting or referring an individual for employment
8 in the United States beginning on the date that is
9 1 year after the date of the enactment of this Act.

10 (3) AGRICULTURAL LABOR OR SERVICES.—Not-
11 withstanding paragraph (1), the requirement under
12 subsection (b) shall not apply to the verification of
13 employment eligibility for employees performing ag-
14 ricultural labor or services until on or after the date
15 that is 18 months after the date of the enactment
16 of this Act.

17 (4) CRITICAL INFRASTRUCTURE .—The Sec-
18 retary of Homeland Security shall authorize and di-
19 rect any person or entity responsible for granting ac-
20 cess to, protecting, securing, operating, admin-
21 istering, or regulating part of the critical infrastruc-
22 ture (as defined in section 1016(e) of the Critical In-
23 frastructure Protection Act of 2001 (42 U.S.C.
24 5195c(e))) to use E-Verify whenever hiring an indi-
25 vidual for employment in the United States on or

1 after the date that is 6 months after the date of the
2 enactment of this Act.

3 (5) USE OF CONTRACT LABOR.—Any employer
4 who uses a contract, subcontract, or exchange to ob-
5 tain the labor of an individual in the United States
6 after the applicable effective date under paragraphs
7 (1) through (4) shall certify, in such contract, sub-
8 contract, or exchange, that the employer, and all
9 parties to such contract, subcontract, or exchange,
10 use E-Verify.

11 (6) TRANSITION RULE.—Any person or other
12 entity hiring, recruiting, or referring an individual
13 for employment in the United States before the ap-
14 plicable effective date under paragraphs (1) through
15 (4) shall be subject to any other provision of Federal
16 law requiring the person or entity to participate in
17 the E-Verify Pilot Program described in section
18 403(a) of the Illegal Immigration Reform and Immig-
19 rant Responsibility Act of 1996 (8 U.S.C. 1324a
20 note), as in effect before the date of the enactment
21 of this Act, including Executive Order 13465 (8
22 U.S.C. 1324a note), and all references to the E-
23 Verify Pilot Program or a requirement to participate
24 in an employment verification program, shall be

1 deemed to refer to the E-Verify program established
2 under section 4 of such Act.

3 (c) EARLY COMPLIANCE.—

4 (1) FORMER E-VERIFY REQUIRED USERS, IN-
5 CLUDING FEDERAL CONTRACTORS.—Notwith-
6 standing the deadlines set forth in subsection (b)(1),
7 beginning on the date of the enactment of this Act,
8 the Secretary of Homeland Security shall require
9 employers required to participate in E-Verify de-
10 scribed in section 403(a) of the Illegal Immigration
11 Reform and Immigrant Responsibility Act of 1996
12 (8 U.S.C. 1324a note), including employers required
13 to participate in such program by reason of Federal
14 acquisition laws (and regulations promulgated under
15 those laws, including the Federal Acquisition Regu-
16 lation), to use E-Verify (and comply with any addi-
17 tional requirements of such Federal acquisition laws
18 and regulation).

19 (2) FORMER E-VERIFY VOLUNTARY USERS AND
20 OTHERS DESIRING EARLY COMPLIANCE.—Notwith-
21 standing the deadlines set forth in subsection (b)(1),
22 beginning on the date of the enactment of this Act,
23 the Secretary of Homeland Security shall provide for
24 the voluntary use of E-Verify by employers volun-
25 tarily electing to participate in the E-Verify program

1 described in section 403(a) of the Illegal Immigra-
2 tion Reform and Immigrant Responsibility Act of
3 1996 (8 U.S.C. 1324a note) before such date, and
4 by other employers seeking voluntary early compli-
5 ance.

6 **SEC. 7. PENALTY FOR FAILURE TO USE E-VERIFY.**

7 If a person or entity fails to utilize E-Verify as re-
8 quired by law, including failing to comply with section
9 6(b)(5) or providing information to the system that the
10 person or entity knows or reasonably believes to be false,
11 such failure shall be treated as a violation of paragraph
12 (1)(A), (1)(B), or (2) of section 274A(a) of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1324a(a)), as applica-
14 ble.

15 **SEC. 8. ENHANCED PENALTIES FOR UNAUTHORIZED EM-**
16 **PLOYMENT.**

17 (a) IN GENERAL.—Section 274A of the Immigration
18 and Nationality Act (8 U.S.C. 1324a) is amended—

19 (1) in subsection (e)—

20 (A) in paragraph (1)—

21 (i) by striking “Attorney General”
22 each place such term appears and inserting
23 “Secretary of Homeland Security”; and

1 (ii) in subparagraph (D), by striking
2 “Service” and inserting “Department of
3 Homeland Security”;

4 (B) in paragraph (4)—

5 (i) in subparagraph (A)—

6 (I) in the matter preceding clause
7 (i), by inserting “, subject to para-
8 graph (10),” after “in an amount”;

9 (II) in subparagraph (A)(i), by
10 striking “not less than \$250 and not
11 more than \$2,000” and inserting “not
12 less than \$2,500 and not more than
13 \$5,000”;

14 (III) in subparagraph (A)(ii), by
15 striking “not less than \$2,000 and
16 not more than \$5,000” and inserting
17 “not less than \$5,000 and not more
18 than \$10,000”;

19 (IV) in subparagraph (A)(iii), by
20 striking “not less than \$3,000 and
21 not more than \$10,000” and inserting
22 “not less than \$10,000 and not more
23 than \$25,000”; and

24 (ii) by amending subparagraph (B) to
25 read as follows:

1 “(B) may require the person or entity to
2 take appropriate remedial action.”;

3 (C) in paragraph (5)—

4 (i) in the paragraph heading, by strik-
5 ing “PAPERWORK”;

6 (ii) by inserting “, subject to para-
7 graphs (10) through (12),” after “in an
8 amount”; and

9 (iii) by striking “\$100 and not more
10 than \$1,000” and inserting “\$1,000 and
11 not more than \$25,000”; and

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

13 “(10) ADJUSTMENT OF PENALTY FOR GOOD
14 FAITH VIOLATION.—The Secretary of Homeland Se-
15 curity or the Attorney General may waive or reduce
16 a civil penalty under paragraph (4)(A) (with respect
17 to a violation of paragraph (1)(A) or (2) of sub-
18 section (a) for hiring or continuation of employment
19 or recruitment or referral by person or entity) or a
20 civil penalty under paragraph (5) (with respect to a
21 violation of subsection (a)(1)(B) for hiring or re-
22 cruitment or referral by a person or entity) if the vi-
23 olator establishes that the violator acted in good
24 faith.

1 “(11) MITIGATION.—The size of the business
2 shall be taken into account when assessing the level
3 of civil money penalty under paragraph (4).

4 “(12) AUTHORITY TO DEBAR EMPLOYERS FOR
5 CERTAIN VIOLATIONS.—

6 “(A) IN GENERAL.—If the Secretary of
7 Homeland Security determines that a person or
8 entity is a repeat violator of paragraph (1)(A)
9 or (2) of subsection (a), or is convicted of a
10 crime under this section, such person or entity
11 may be proposed for debarment from the re-
12 ceipt of Federal contracts, grants, or coopera-
13 tive agreements in accordance with the debar-
14 ment standards and pursuant to the debarment
15 procedures set forth in the Federal Acquisition
16 Regulation.

17 “(B) DOES NOT HAVE CONTRACT, GRANT,
18 AGREEMENT.—If the Secretary of Homeland
19 Security or the Attorney General determines
20 that a person or entity should be proposed for
21 debarment in accordance with subparagraph
22 (A), and such an person or entity does not hold
23 a Federal contract, grant or cooperative agree-
24 ment, the Secretary or the Attorney General

1 shall refer the matter to the Administrator of
2 General Services to determine—

3 “(i) whether to list the person or enti-
4 ty on the List of Parties Excluded from
5 Federal Procurement; and

6 “(ii) if the person or entity is included
7 on such list, the duration and scope of
8 such inclusion.

9 “(C) HAS CONTRACT, GRANT, AGREE-
10 MENT.—If the Secretary of Homeland Security
11 or the Attorney General determines that a per-
12 son or entity should be proposed for debarment
13 in accordance with this subparagraph (A), and
14 such person or entity holds a Federal contract,
15 grant or cooperative agreement, the Secretary
16 or the Attorney General—

17 “(i) shall advise all agencies or de-
18 partments holding a contract, grant, or co-
19 operative agreement with the person or en-
20 tity of the Government’s interest in having
21 the person or entity proposed for debar-
22 ment; and

23 “(ii) after soliciting and considering
24 the views of all such agencies and depart-

1 ments, may refer the matter to any appro-
2 priate lead agency to determine—

3 “(I) whether to list the person or
4 entity on the List of Parties Excluded
5 from Federal Procurement; and

6 “(II) if the person or entity is in-
7 cluded on such list, the duration and
8 scope of such inclusion.

9 “(D) REVIEW.—Any decision to debar a
10 person or entity under this paragraph shall be
11 reviewable pursuant to part 9.4 of the Federal
12 Acquisition Regulation.

13 “(13) CONTINUED EMPLOYMENT AFTER FINAL
14 NONCONFIRMATION.—If a person or other entity
15 continues to employ (or to recruit or refer) an indi-
16 vidual after receiving final nonconfirmation, a rebut-
17 table presumption is created that the person or enti-
18 ty has violated subsection (a)(1)(A).”; and

19 (2) in subsection (f), by amending paragraph
20 (1) to read as follows:

21 “(1) CRIMINAL PENALTY.—Any person or enti-
22 ty that engages in a pattern or practice of violations
23 of paragraph (1) or (2) of subsection (a) shall be
24 fined not more than \$30,000 for each unauthorized

1 alien with respect to which such a violation occurs,
2 imprisoned for not more than 18 months, or both.”.

3 (b) EFFECTIVE DATE.—

4 (1) IN GENERAL.—Except as provided in para-
5 graph (2), the amendments made by subsection (a)
6 shall take effect on the date of the enactment of this
7 Act.

8 (2) CONTINUED EMPLOYMENT AFTER FINAL
9 NONCONFIRMATION.—

10 (A) IN GENERAL.—Paragraph (13) of sec-
11 tion 274A(e) of the Immigration and Nation-
12 ality Act, as added by subsection (a)(1)(D),
13 shall take effect on the date that is 6 months
14 after the date of the enactment of this Act.

15 (B) PENALTY CALCULATIONS.—The cal-
16 culation of any penalties under section
17 274A(e)(13)(B) of the Immigration and Na-
18 tionality Act, as added by subsection (a)(1)(D),
19 shall not include any period of continuing em-
20 ployment before the effective date referred to in
21 subparagraph (A).

22 **SEC. 9. E-VERIFY SELF-CHECK.**

23 (a) IN GENERAL.—The Secretary of Homeland Secu-
24 rity, in consultation with the Commissioner of Social Secu-
25 rity, shall establish a secure self-verification procedure to

1 permit an individual to verify his or her employment eligi-
2 bility.

3 (b) ELEMENTS.—The self-verification procedure es-
4 tablished under subsection (a)—

5 (1) shall be subject to appropriate safeguards to
6 prevent misuse of the confirmation system, including
7 requiring employees or applicants—

8 (A) to use any self-verification feature; or

9 (B) to provide the employer with self-
10 verification results; and

11 (2) shall allow individuals to contact the appro-
12 priate agency to correct or update the information
13 contained in the confirmation system.

14 **SEC. 10. E-VERIFY PROCESS.**

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

17 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
18 PROCESS.—

19 “(1) NEW HIRES, RECRUITMENT, AND REFER-
20 RAL.—A person or other entity hiring, recruiting, or
21 referring an individual for employment in the United
22 States shall be subject to the following requirements:

23 “(A) ATTESTATION AFTER EXAMINATION
24 OF DOCUMENTATION.—

1 “(i) ATTESTATION.—During the
2 verification period, the person or entity
3 shall attest, by either a handwritten or
4 electronic signature, under penalty of per-
5 jury, on a form, including electronic for-
6 mats, designated or established by the Sec-
7 retary by regulation not later than 6
8 months after the date of the enactment of
9 the Higher Wages for American Workers
10 Act of 2021, that the person or entity has
11 verified that the individual is not an unau-
12 thorized alien by—

13 “(I)(aa) obtaining from the indi-
14 vidual the individual’s Social Security
15 account number or United States
16 passport number and recording the
17 number on the form;

18 “(bb) if the individual does
19 not attest to United States na-
20 tionality under subparagraph
21 (B), obtaining such identification
22 or authorization number estab-
23 lished by the Department of
24 Homeland Security for the alien
25 as the Secretary of Homeland

1 Security may specify, and record-
2 ing such number on the form;

3 “(II) examining, in a manner
4 prescribed by the Secretary—

5 “(aa) a document described
6 in clause (ii) that relates to the
7 individual presenting the docu-
8 ment; or

9 “(bb) a document described
10 in clause (iii) that relates to the
11 individual presenting the docu-
12 ment and a document described
13 in clause (iv) that relates to the
14 individual presenting the docu-
15 ment; and

16 “(III) matching the photograph
17 on a document described in subclause
18 (II) that relates to the individual pre-
19 senting the document with a photo-
20 graph of such individual, if such pho-
21 tograph is available through the E-
22 Verify Program.

23 “(ii) DOCUMENTS EVIDENCING EM-
24 PLOYMENT AUTHORIZATION AND ESTAB-

1 LISHING IDENTITY.—A document de-
2 scribed in this clause is an individual’s—

3 “(I) unexpired United States
4 passport or passport card;

5 “(II) unexpired permanent resi-
6 dent card that contains a photograph;

7 “(III) unexpired employment au-
8 thorization card that contains a pho-
9 tograph;

10 “(IV) in the case of a non-
11 immigrant alien authorized to work
12 for a specific employer incident to sta-
13 tus, a foreign passport with Form I-
14 94 or Form I-94A, or other docu-
15 mentation as designated by the Sec-
16 retary specifying the alien’s non-
17 immigrant status as long as the pe-
18 riod of status has not yet expired and
19 the proposed employment is not in
20 conflict with any restrictions or limita-
21 tions identified in the documentation;

22 “(V) passport from the Fed-
23 erated States of Micronesia (FSM) or
24 the Republic of the Marshall Islands
25 (RMI) with Form I-94 or Form I-

1 94A, or other documentation as des-
2 igned by the Secretary, indicating
3 nonimmigrant admission under the
4 Compact of Free Association Between
5 the United States and the FSM or
6 RMI; or

7 “(VI) other document designated
8 by the Secretary of Homeland Secu-
9 rity, if the document—

10 “(aa) contains a photograph
11 of the individual and biometric
12 identification data from the indi-
13 vidual and such other personal
14 identifying information relating
15 to the individual as the Secretary
16 of Homeland Security finds, by
17 regulation, sufficient for purposes
18 of this clause;

19 “(bb) is evidence of author-
20 ization of employment in the
21 United States; and

22 “(cc) contains security fea-
23 tures to make it resistant to tam-
24 pering, counterfeiting, and fraud-
25 ulent use.

1 “(iii) DOCUMENTS EVIDENCING EM-
2 PLOYMENT AUTHORIZATION.—A document
3 described in this clause is an individual’s
4 Social Security account number card
5 (other than such a card which specifies on
6 the face that the issuance of the card does
7 not authorize employment in the United
8 States).

9 “(iv) DOCUMENTS ESTABLISHING
10 IDENTITY OF INDIVIDUAL.—A document
11 described in this clause is—

12 “(I) an individual’s unexpired
13 State issued driver’s license or identi-
14 fication card if the license or card
15 contains a photograph and personally
16 identifying information, such as name,
17 date of birth, gender, height, eye
18 color, and home address;

19 “(II) an individual’s unexpired
20 U.S. military identification card that
21 contains a photograph;

22 “(III) an individual’s unexpired
23 Native American tribal identification
24 document that contains a photograph
25 and was issued by a tribal entity rec-

1 ognized by the Bureau of Indian Af-
2 fairs; or

3 “(IV) in the case of an individual
4 who is younger than 18 years of age,
5 a parent or legal guardian’s attesta-
6 tion under penalty of law as to the
7 identity and age of the individual.

8 “(v) AUTHORITY TO PROHIBIT USE OF
9 CERTAIN DOCUMENTS.—If the Secretary of
10 Homeland Security finds, by regulation,
11 that any document described in clause (ii),
12 (iii), or (iv) as establishing employment au-
13 thorization or identity does not reliably es-
14 tablish such authorization or identity or is
15 being used fraudulently to an unacceptable
16 degree, the Secretary may prohibit or place
17 conditions on its use for purposes of this
18 paragraph.

19 “(B) INDIVIDUAL ATTESTATION OF EM-
20 PLOYMENT AUTHORIZATION.—

21 “(i) IN GENERAL.—During the
22 verification period, the individual shall—

23 “(I) attest, by either a hand-
24 written or electronic signature, under
25 penalty of perjury, and on the form

1 designated or established for purposes
2 of subparagraph (A), that the indi-
3 vidual is a citizen or national of the
4 United States, an alien lawfully ad-
5 mitted for permanent residence, or an
6 alien who is authorized under this Act
7 or by the Secretary of Homeland Se-
8 curity to be hired, recruited, or re-
9 ferred for such employment; and

10 “(II) provide his or her Social
11 Security account number or valid
12 United States passport number.

13 “(ii) OTHER IDENTIFICATION.—If the
14 individual does not attest to United States
15 nationality under clause (i), the individual
16 shall provide the identification or author-
17 ization number established for the alien by
18 the Department of Homeland Security, as
19 specified by the Secretary.

20 “(C) E-VERIFY REDESIGN .—The Sec-
21 retary is authorized to issue regulations allow-
22 ing any person or other entity hiring, recruit-
23 ing, or referring an individual for employment
24 and the individual to comply with this section

1 through an updated digital verification system
2 that requires the submission of—

3 “(i) the information required under
4 subparagraph (A)(i)(I);

5 “(ii) the documentation required
6 under subparagraph (A)(i)(II); and

7 “(iii) the matching of any available
8 photos with any photo contained in any
9 document presented for identity or employ-
10 ment verification purposes.

11 “(D) SYSTEM RESPONSES.—

12 “(i) CONFIRMATION RECEIVED.—If a
13 person or other entity receives an appro-
14 priate confirmation of an individual’s iden-
15 tity and work eligibility under the
16 verification system within the specified pe-
17 riod, the person or entity shall record, on
18 the form designated or established for pur-
19 poses of subparagraph (A), an appropriate
20 code provided by the system that indicates
21 a final confirmation of such identity and
22 work eligibility of the individual.

23 “(ii) TENTATIVE NONCONFIRMA-
24 TION.—

1 “(I) IN GENERAL.—If the person
2 or other entity receives a tentative
3 nonconfirmation of an individual’s
4 identity or work eligibility under the
5 verification system within the speci-
6 fied period, the person or entity
7 shall—

8 “(aa) inform the individual
9 for whom the verification is
10 sought of such nonconfirmation;

11 “(bb) if the individual does
12 not contest the nonconfirmation
13 within 10 business days after re-
14 ceiving such tentative noncon-
15 firmation, record on the form an
16 appropriate code which has been
17 provided under the system to in-
18 dicate a final nonconfirmation;
19 and

20 “(cc) if the individual does
21 contest the nonconfirmation dur-
22 ing such period, refer the indi-
23 vidual secondary verification
24 process described in subsection
25 (d)(2)(B).

1 “(II) DURATION.—A noncon-
2 firmation described in subclause (I)
3 shall remain tentative until a final
4 confirmation or nonconfirmation is
5 provided by the verification system
6 not later than 10 business days after
7 the issuance of a tentative noncon-
8 firmation.

9 “(III) NOT GROUNDS FOR TER-
10 MINATION.—An employer may not
11 terminate the employment of an indi-
12 vidual because of a failure of the indi-
13 vidual to have his or her identity and
14 work eligibility confirmed under this
15 section until the nonconfirmation be-
16 comes final. Nothing in this subclause
17 may be construed to apply to a termi-
18 nation of employment for any reason
19 other than because of such failure.

20 “(IV) NOT GROUNDS FOR RE-
21 SCISSION OF OFFER.—An employer
22 may not rescind an offer of employ-
23 ment to an individual because of a
24 failure of the individual to have his or
25 her identity and work eligibility con-

1 firmed under this section until the
2 nonconfirmation becomes final. Noth-
3 ing in this subclause may be con-
4 strued to apply to a rescission of an
5 offer of employment for any reason
6 other than because of such failure.

7 “(iii) FINAL CONFIRMATION OR NON-
8 CONFIRMATION RECEIVED.—If a final con-
9 firmation or nonconfirmation is provided
10 by the verification system regarding an in-
11 dividual, the person or entity shall record
12 on the form an appropriate code that is
13 provided under the system and that indi-
14 cates a confirmation or nonconfirmation of
15 identity and work eligibility of the indi-
16 vidual.

17 “(iv) EXTENSION.—If a person or
18 other entity in good faith attempts to make
19 an inquiry during the time period specified
20 and the verification system has registered
21 that not all inquiries were received during
22 such time, the person or entity may make
23 an inquiry in the first 5 subsequent busi-
24 ness days in which the verification system
25 registers that it has received all inquiries.

1 If the verification system cannot receive in-
2 quiries at all times during a day, the per-
3 son or entity merely has to assert that the
4 entity attempted to make the inquiry on
5 that day for the previous sentence to apply
6 to such an inquiry, and does not have to
7 provide any additional proof concerning
8 such inquiry.

9 “(v) TERMINATION UPON FINAL NON-
10 CONFIRMATION.—Not later than 3 busi-
11 ness days after receiving a final noncon-
12 firmation regarding an individual, the per-
13 son or entity shall terminate the employ-
14 ment of the individual (or decline to recruit
15 or refer the individual).

16 “(E) VERIFICATION PERIOD DEFINED.—

17 “(i) IN GENERAL.—In this paragraph:

18 “(I) In the case of recruitment or
19 referral, the term ‘verification period’
20 means the period ending on the date
21 recruiting or referring commences.

22 “(II) In the case of hiring, the
23 term ‘verification period’ means the
24 period beginning on the date on which
25 an offer of employment is extended

1 and ending on the date that is 3 busi-
2 ness days after the date of hire, ex-
3 cept as provided in clause (iii). The
4 offer of employment may be condi-
5 tioned in accordance with clause (ii).

6 “(ii) JOB OFFER MAY BE CONDI-
7 TIONAL.—A person or other entity may
8 offer a prospective employee an employ-
9 ment position that is conditioned on final
10 verification of the identity and employment
11 eligibility of the employee using the proce-
12 dures established under this paragraph.

13 “(iii) CONTACT INFORMATION.—A
14 person or other entity, upon making an
15 offer of employment to a prospective em-
16 ployee under clause (ii), shall submit to E-
17 Verify the contact information of the pro-
18 spective employee, including an email ad-
19 dress or a telephone number, so that E-
20 Verify can notify the prospective employee
21 in the case of a tentative nonconfirmation.

22 “(iv) SPECIAL RULE.—Notwith-
23 standing clause (i)(II), if a United States
24 citizen, a lawful permanent resident, or an
25 alien who is authorized for employment

1 provides evidence from the Social Security
2 Administration that such individual has
3 applied for a Social Security account num-
4 ber, the verification period shall end on the
5 date that is 3 business days after the date
6 on which the individual receives the Social
7 Security account number.

8 “(2) REVERIFICATION FOR INDIVIDUALS WITH
9 LIMITED WORK AUTHORIZATION.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraphs (B) and (C), a person or entity
12 shall use E-Verify to seek reverification of the
13 employment eligibility of all individuals with a
14 limited period of work authorization employed
15 by the person or entity not later than 3 busi-
16 ness days after the date on which the employ-
17 ee’s prior work authorization expires.

18 “(B) EFFECTIVE DATE.—Employers shall
19 be subject to the requirement under subpara-
20 graph (A) beginning on the date on which the
21 employer is required to use E-Verify under sec-
22 tion 6 of the Higher Wages for American Work-
23 ers Act of 2021.

24 “(C) REVERIFICATION.—Paragraph (1)(C)
25 shall apply to reverifications under this para-

1 graph on the same basis as it applies to
2 verifications under paragraph (1), except that
3 employers shall use a form designated or estab-
4 lished by the Secretary by regulation for pur-
5 poses of this paragraph.

6 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

7 “(A) ON A MANDATORY BASIS FOR CER-
8 TAIN EMPLOYEES.—

9 “(i) IN GENERAL.—Not later than the
10 date that is 6 months after the date of the
11 enactment of the Higher Wages for Amer-
12 ican Workers Act of 2021, an employer
13 shall use E-Verify to seek verification of
14 the identity and employment eligibility of
15 any individual described in clause (ii) who
16 is employed by the employer and whose
17 employment eligibility has not been verified
18 under the E-Verify program described in
19 section 403(a) of the Illegal Immigration
20 Reform and Immigrant Responsibility Act
21 of 1996 (8 U.S.C. 1324a note).

22 “(ii) INDIVIDUALS DESCRIBED.—An
23 individual described in this clause is—

24 “(I) an employee of any unit of a
25 Federal, State, or local government;

1 “(II) an employee who requires a
2 Federal security clearance working in
3 a Federal, State or local government
4 building, a military base, a nuclear
5 energy site, a weapons site, or an air-
6 port or other facility that requires
7 workers—

8 “(aa) to carry a Transpor-
9 tation Worker Identification Cre-
10 dential; or

11 “(bb) to have access to a Se-
12 cure Identification Display Area;
13 or

14 “(III) an employee assigned to
15 perform work in the United States
16 under a Federal contract, except that
17 this subclause—

18 “(aa) is not applicable to in-
19 dividuals who normally perform
20 support work, such as indirect or
21 overhead functions, and do not
22 perform any substantial duties
23 applicable to the contract, or are
24 working solely on contracts that
25 provide Commercial Off The

1 Shelf goods or services as set
2 forth by the Federal Acquisition
3 Regulatory Council, unless they
4 are subject to verification under
5 subclause (II); and

6 “(bb) only applies to con-
7 tracts in excess of the micro-pur-
8 chase threshold (as defined in
9 section 2.101 of title 48, Code of
10 Federal Regulations).

11 “(B) ON A MANDATORY BASIS FOR MUL-
12 TIPLE USERS OF SAME SOCIAL SECURITY AC-
13 COUNT NUMBER.—An employer who is required
14 to use E-Verify, or has elected voluntarily to
15 use E-Verify, shall make inquiries to the system
16 in accordance with the following:

17 “(i) The Commissioner of Social Secu-
18 rity shall notify annually employees (at the
19 employee address listed on the Wage and
20 Tax Statement) who submit a Social Secu-
21 rity account number to which more than 1
22 employer reports income and for which
23 there is a pattern of unusual multiple use.
24 The notification letter shall identify the
25 number of employers to which income is

1 being reported as well as sufficient infor-
2 mation notifying the employee of the proc-
3 ess to contact the Social Security Adminis-
4 tration Fraud Hotline if the employee be-
5 lieves the employee's identity may have
6 been stolen. The notice may not include in-
7 formation protected as private, in order to
8 avoid any recipient of the notice from
9 being in the position to further commit or
10 begin committing identity theft.

11 “(ii) If the person to whom the Social
12 Security account number was issued by the
13 Social Security Administration has been
14 identified and confirmed by the Commis-
15 sioner, and indicates that the Social Secu-
16 rity account number was used without his
17 or her knowledge, the Secretary and the
18 Commissioner shall—

19 “(I) lock the Social Security ac-
20 count number or employment eligi-
21 bility verification purposes; and

22 “(II) notify the employers of the
23 individuals who wrongfully submitted
24 the Social Security account number

1 that the employee may not be work el-
2 igible.

3 “(iii) Each employer receiving notifi-
4 cation of an incorrect Social Security ac-
5 count number under clause (ii) shall use
6 E-Verify to check the work eligibility sta-
7 tus of the applicable employee not later
8 than 10 business days after receiving the
9 notification.

10 “(C) ON A VOLUNTARY BASIS.—

11 “(i) IN GENERAL.—Subject to para-
12 graph (2) and subparagraphs (A) and (B),
13 an employer may make an inquiry through
14 E-Verify to seek verification of the identity
15 and employment eligibility of any indi-
16 vidual employed by the employer. If an em-
17 ployer chooses voluntarily to seek
18 verification of any individual employed by
19 the employer, the employer shall—

20 “(I) seek verification of all indi-
21 viduals employed by the employer; and

22 “(II) notify E-Verify whether the
23 individual is an existing or prospective
24 employee.

1 “(ii) EFFECT OF VERIFICATION DECI-
2 SION.—An employer’s decision not to vol-
3 untarily seek verification of its current
4 workforce under this subparagraph may
5 not be considered by any government agen-
6 cy in any proceeding, investigation, or re-
7 view provided for in this Act.

8 “(D) VERIFICATION.—Paragraph
9 (1)(C)(ii) shall apply to verifications pursuant
10 to this paragraph on the same basis as it ap-
11 plies to verifications pursuant to paragraph (1),
12 except that employers shall use a form des-
13 ignated or established by the Secretary by regu-
14 lation for purposes of this paragraph.

15 “(4) COPYING OF DOCUMENTATION PER-
16 MITTED.—Notwithstanding any other provision of
17 law, the person or entity—

18 “(A) may copy a document presented by
19 an individual under this subsection; and

20 “(B) may retain the copy for the purpose
21 of complying with the requirements under this
22 subsection.

23 “(5) LIMITATION ON USE OF FORMS.—A form
24 designated or established by the Secretary of Home-
25 land Security under this subsection and any infor-

1 mation contained in or appended to such form, may
2 not be used for purposes other than for the enforce-
3 ment or administration of this Act and any other
4 provision of Federal or State criminal law.

5 “(6) GOOD FAITH COMPLIANCE.—

6 “(A) IN GENERAL.—Except as otherwise
7 provided in this subsection, a person or entity
8 is considered to have complied with a require-
9 ment of this subsection notwithstanding a tech-
10 nical or procedural failure to meet such require-
11 ment if there was a good faith attempt to com-
12 ply with the requirement.

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

16 “(i) the failure is not de minimus;

17 “(ii) the Secretary of Homeland Secu-
18 rity has explained to the person or entity
19 the basis for the failure and why it is not
20 de minimus;

21 “(iii) the person or entity has been
22 provided a period of not less than 30 cal-
23 endar days (beginning after the date of the
24 explanation) within which to correct the
25 failure; and

1 employee in good-faith reliance on informa-
2 tion provided through the system estab-
3 lished under subsection (d); and

4 “(ii) has established compliance with
5 its obligations under subparagraphs (A)
6 and (B) of paragraph (1) and subsection
7 (b) absent a showing by the Secretary of
8 Homeland Security, by clear and con-
9 vincing evidence, that the employer had
10 knowledge that an employee is an unau-
11 thorized alien.

12 “(B) MITIGATION ELEMENT.—For pur-
13 poses of subparagraph (A)(i), if an employer
14 proves by a preponderance of the evidence that
15 the employer uses a reasonable, secure, and es-
16 tablished technology to authenticate the identity
17 of the new employee, that fact shall be taken
18 into account for purposes of determining good
19 faith use of the system established under sub-
20 section (d).

21 “(C) FAILURE TO SEEK AND OBTAIN
22 VERIFICATION.—Subject to the effective dates
23 and other deadlines applicable under subsection
24 (b), in the case of a person or entity in the
25 United States that hires, or continues to em-

1 relevant time, the person or entity can
2 make an inquiry until the end of the
3 first subsequent business day in which
4 the verification mechanism registers
5 no nonresponses and qualify for such
6 defense.

7 “(ii) FAILURE TO OBTAIN
8 VERIFICATION.—If the person or entity
9 has made the inquiry described in clause
10 (i)(I), but has not received an appropriate
11 verification of such identity and work eligi-
12 bility under such mechanism within the
13 time period specified under subsection
14 (d)(2) after the time the verification in-
15 quiry was received, the defense under sub-
16 paragraph (A) shall not be considered to
17 apply with respect to any employment after
18 the end of such time period.”.

19 **SEC. 12. PREEMPTION.**

20 Section 274A(h)(2) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as
22 follows:

23 “(2) PREEMPTION.—The provisions of this sec-
24 tion preempt any State or local law, ordinance, pol-
25 icy, or rule, including any criminal or civil fine or

1 penalty structure, to the extent they may relate to
2 the hiring, continued employment, or verification for
3 employment eligibility purposes, of unauthorized
4 aliens.”.

5 **SEC. 13. ACCESS TO INFORMATION.**

6 (a) **DEFINED TERM.**—In this section, the term “E-
7 Verify purposes” means—

8 (1) preventing identity theft, fraud, and misuse
9 of E-Verify; and

10 (2) administering and enforcing the provisions
11 of this Act and section 274A of the Immigration and
12 Nationality Act (8 U.S.C. 1324a) governing employ-
13 ment eligibility verification.

14 (b) **FEDERAL RECORDS.**—Notwithstanding any other
15 provision of law, including section 6103 of the Internal
16 Revenue Code of 1986, with respect to Employer Identi-
17 fication Number information, the Secretary of Homeland
18 Security shall have access to relevant Federal records de-
19 scribed in clauses (i) through (iii) of section
20 274A(d)(3)(G) of the Immigration and Nationality Act (8
21 U.S.C. 1324a(d)(3)(G) for E-Verify purposes.

22 (c) **FEDERAL COOPERATION.**—Any Federal agency
23 or other Federal Government entity possessing records de-
24 scribed in subsection (a) shall provide such assistance and
25 cooperation as the Secretary of Homeland Security may

1 request to resolve initial verification inquiries, further ac-
2 tion required results, cases in continuance, and final non-
3 confirmation results relating to such records or to other-
4 wise improve the accuracy of E-Verify.

5 (d) STATE COOPERATION.—

6 (1) DRIVER'S LICENSE INFORMATION.—Not-
7 withstanding section 2721 of title 18, United States
8 Code, or any other law, a State department of motor
9 vehicles may provide information described in section
10 274A(d)(3)(G)(iv) of the Immigration and Nation-
11 ality Act, as added by section 5(a) of this Act, ob-
12 tained by the department, including an individual's
13 photograph, to the Secretary of Homeland Security
14 for E-Verify purposes.

15 (2) INFORMATION SHARING AGREEMENTS.—
16 The Secretary of Homeland Security shall maximize
17 enrollment of States and other non-Federal Govern-
18 ment entities possessing information described in
19 section 274A(d)(3)(G)(iv) of the Immigration and
20 Nationality Act in information sharing agreements
21 that provide access to such information to the Sec-
22 retary for E-Verify purposes and fully implement
23 such agreements.

24 (3) CONDITIONS FOR FEDERAL GRANT FUND-
25 ING.—

1 (A) ECONOMIC DEVELOPMENT ASSISTANCE
2 GRANTS.—Section 3(4) of the Public Works
3 and Economic Development Act of 1965 (42
4 U.S.C. 3122(4)) is amended by adding at the
5 end the following:

6 “(C) GRANTS CONDITIONED ON INFORMA-
7 TION SHARING.—The term ‘eligible recipient’
8 does not include, with respect to grants author-
9 ized under section 201, 203, 205, or 207—

10 “(i) a State that—

11 “(I) does not provide access to
12 driver’s license or identity card infor-
13 mation (including photographs) main-
14 tained by the State department of
15 motor vehicles to the Secretary of
16 Homeland Security for E-Verify pur-
17 poses (as defined in section 13(a) of
18 the Higher Wages for American
19 Workers Act of 2021); or

20 “(II) does not provide such as-
21 sistance and cooperation as the Sec-
22 retary may request to resolve initial
23 verification inquiries, further action
24 required results, cases in continuance,

1 and final nonconfirmation results re-
2 lating to such records; or

3 “(ii) a city, or other political subdivi-
4 sion of a State described in clause (i), in-
5 cluding a special purpose unit of such
6 State or political subdivision engaged in
7 economic or infrastructure development ac-
8 tivities, or a consortium of such political
9 subdivisions.”.

10 (B) COMMUNITY DEVELOPMENT BLOCK
11 GRANTS.—Section 104 of the Housing and
12 Community Development Act of 1974 (42
13 U.S.C. 5304) is amended by adding at the end
14 the following:

15 “(n) PROTECTIONS FOR AUTHORIZED WORKERS.—

16 “(1) IN GENERAL.—Amounts appropriated to
17 carry out this title may not be obligated or expended
18 for any State (or any unit of general local govern-
19 ment that is a political subdivision of such State)
20 that—

21 “(A) does not provide access to driver’s li-
22 cense or identity card information (including
23 photographs) maintained by the State depart-
24 ment of motor vehicles to the Department of
25 Homeland Security for E-Verify purposes (as

1 defined in section 13(a) of the Higher Wages
2 for American Workers Act of 2021); or

3 “(B) does not provide such assistance and
4 cooperation as the Secretary may request to re-
5 solve initial verification inquiries, further action
6 required results, cases in continuance, and final
7 nonconfirmation results relating to such
8 records.

9 “(2) RETURNED AMOUNTS.—

10 “(A) STATE.—If a State receives funding
11 under this title during any period in which the
12 State is ineligible to receive such funding pursu-
13 ant to paragraph (1), the Secretary shall—

14 “(i) direct the State to immediately
15 return to the Secretary any such funding;
16 and

17 “(ii) reallocate amounts returned
18 under clause (i) for grants under this title
19 to other States that are not ineligible for
20 such funding.

21 “(B) UNIT OF GENERAL LOCAL GOVERN-
22 MENT.—If a unit of general local government
23 receives funding under this title during any pe-
24 riod in which it is ineligible for such funding
25 pursuant to paragraph (1)—

1 “(i) the local government shall return
2 any such amounts to the Secretary; and

3 “(ii) the Secretary shall reallocate
4 such amounts for grants under this title to
5 States and other units of general local gov-
6 ernment that are not ineligible for such
7 funding.

8 “(C) REALLOCATION RULES.—In reallo-
9 cating amounts pursuant to subparagraphs (A)
10 and (B), the Secretary—

11 “(i) shall apply the relevant allocation
12 formula under subsection (b), with all enti-
13 ties ineligible for funding pursuant to
14 paragraph (1) excluded; and

15 “(ii) shall not be subject to the rules
16 for reallocation under subsection (c).”.

17 (C) EFFECTIVE DATE.—The amendments
18 made by this paragraph shall take effect on the
19 date that is 1 year after the date of the enact-
20 ment of this Act.

21 **SEC. 14. FRAUD AND MISUSE OF DOCUMENTS.**

22 Section 1546(b) of title 18, United States Code, is
23 amended—

24 (1) in paragraph (1), by striking “identification
25 document,” and inserting “identification document

1 or document meant to establish work authorization
2 (including the documents described in section
3 274A(b) of the Immigration and Nationality Act (8
4 U.S.C. 1324a(b)),”); and

5 (2) in paragraph (2), by striking “identification
6 document” and inserting “identification document or
7 document meant to establish work authorization (in-
8 cluding the documents described in section 274A(b)
9 of the Immigration and Nationality Act (8 U.S.C.
10 1324a(b))),”.

11 **SEC. 15. FRAUD PREVENTION.**

12 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
13 **NUMBERS.**—The Secretary of Homeland Security, in con-
14 sultation with the Commissioner of Social Security, shall
15 establish a program in which Social Security account num-
16 bers that have been identified to be subject to unusual
17 multiple use through E-Verify or that are otherwise sus-
18 pected or determined to have been compromised by iden-
19 tity fraud, the Social Security account numbers of de-
20 ceased individuals, or other misuse, shall be blocked from
21 use by E-Verify unless the individual using such number
22 is able to establish, through secure and fair additional se-
23 curity procedures, as determined by the Secretary of
24 Homeland Security, that the individual is the legitimate
25 holder of the number.

1 (b) ALLOWING SUSPENSION OF USE OF CERTAIN SO-
2 CIAL SECURITY ACCOUNT NUMBERS.—The Secretary of
3 Homeland Security, in consultation with the Commis-
4 sioner of Social Security, shall establish a program which
5 shall provide a reliable, secure method by which victims
6 of identity fraud and other individuals may suspend or
7 limit the use of their Social Security account numbers or
8 other identifying information for purposes of E-Verify.
9 The Secretary may implement the program on a limited
10 pilot program basis before making it fully available to all
11 individuals.

12 (c) ALLOWING PARENTS TO PREVENT THEFT OF
13 THEIR CHILD’S IDENTITY.—The Secretary of Homeland
14 Security, in consultation with the Commissioner of Social
15 Security, shall establish a program which shall provide a
16 reliable, secure method by which parents or legal guard-
17 ians may suspend or limit the use of the Social Security
18 account number or other identifying information of a
19 minor under their care for the purposes of E-Verify. The
20 Secretary may implement the program on a limited pilot
21 program basis before making it fully available to all indi-
22 viduals.

1 **SEC. 16. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
2 **TION PROGRAMS.**

3 Pursuant to an agreement with the Commissioner of
4 Social Security, the Secretary of Homeland Security shall
5 continue to provide funds to the Commissioner for the full
6 costs of the responsibilities of the Commissioner under
7 section 274A of the Immigration and Nationality Act, as
8 amended by this Act.

9 **SEC. 17. INSPECTOR GENERAL AUDITS.**

10 (a) IN GENERAL.—Not later than 1 year after the
11 date of the enactment of this Act, the Inspector General
12 of the Social Security Administration, in order to uncover
13 evidence of individuals who are not authorized to work in
14 the United States, shall complete audits of—

15 (1) workers who dispute wages reported on
16 their Social Security account number because they
17 believe that their names and such numbers were
18 fraudulently used by others to secure employment;

19 (2) children's Social Security account numbers
20 that have been fraudulently used for work purposes;

21 (3) employers whose workers present significant
22 numbers of mismatched Social Security account
23 numbers or names for wage reporting;

24 (4) Social Security account numbers of de-
25 ceased individuals that were fraudulently used for
26 work purposes; and

1 (5) Social Security account numbers of retired
2 individuals that were potentially used fraudulently
3 for work purposes.

4 (b) SUBMISSION.—The Inspector General of the So-
5 cial Security Administration shall—

6 (1) submit the audits completed pursuant to
7 subsection (a) to—

8 (A) the Committee on Finance of the Sen-
9 ate;

10 (B) the Committee on the Judiciary of the
11 Senate;

12 (C) the Committee on Homeland Security
13 and Governmental Affairs of the Senate;

14 (D) the Committee on Ways and Means of
15 the House of Representatives;

16 (E) the Committee on the Judiciary of the
17 House of Representatives; and

18 (F) the Committee on Homeland Security
19 of the House of Representatives.

20 (2) make the information contained in such au-
21 dits available to Federal law enforcement.

22 **SEC. 18. RECRUITMENT, REFERRAL, AND CONTINUATION**
23 **OF EMPLOYMENT.**

24 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
25 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-

1 MENT.—Section 274A(a) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1324a(a)) is amended—

3 (1) in paragraph (1)(A), by striking “for a fee”;

4 (2) in paragraph (1), by amending subpara-
5 graph (B) to read as follows:

6 “(B) to hire, continue to employ, or to re-
7 cruit or refer for employment in the United
8 States an individual without complying with the
9 requirements of subsection (b).”; and

10 (3) in paragraph (2), by striking “after hiring
11 an alien for employment in accordance with para-
12 graph (1),” and inserting “after complying with
13 paragraph (1),”.

14 (b) EFFECTIVE DATE.—The amendments made by
15 subsection (a) shall take effect on the date that is 6
16 months after the date of the enactment of this Act to the
17 extent such amendments relate to continuation of employ-
18 ment.

19 **SEC. 19. DEFINITIONS.**

20 (a) IN GENERAL.—In this Act, the terms “agricul-
21 tural labor or services”, “date of hire”, “recruit”, “refer”,
22 and “unauthorized alien”, have the meanings given such
23 terms in section 274A(i) of the Immigration and Nation-
24 ality Act, as amended by subsection (b).

1 (b) AMENDMENTS TO THE IMMIGRATION AND NA-
2 TIONALITY ACT.—Section 274A of the Immigration and
3 Nationality Act (8 U.S.C. 1324a) is amended—

4 (1) in subsection (h), by striking paragraph (3);
5 and

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

7 “(i) DEFINITIONS.—In this section:

8 “(1) AGRICULTURAL LABOR OR SERVICES.—
9 The term ‘agricultural labor or services’—

10 “(A) has the meaning given such term by
11 the Secretary of Agriculture, by regulation; and

12 “(B) includes—

13 “(i) agricultural labor (as defined in
14 section 3121(g) of the Internal Revenue
15 Code of 1986);

16 “(ii) agriculture (as defined in section
17 3(f) of the Fair Labor Standards Act of
18 1938 (29 U.S.C. 203(f)));

19 “(iii) all activities required for the
20 preparation, processing, or manufacturing
21 of a product of agriculture (as defined in
22 such section 3(f)) for further distribution;
23 and

24 “(iv) the handling, planting, drying,
25 packing, packaging, processing, freezing,

1 or grading prior to delivery for storage of
2 any agricultural or horticultural com-
3 modity in its unmanufactured state.

4 “(2) DATE OF HIRE.—The term ‘date of hire’
5 means the date of commencement of employment for
6 wages or other remuneration.

7 “(3) RECRUIT.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), the term ‘recruit’ means the
10 act of soliciting a person who is in the United
11 States, directly or indirectly, and referring the
12 person to another with the intent of obtaining
13 employment for that person.

14 “(B) EXCEPTIONS.—The term ‘recruit’
15 only applies to persons or entities referring for
16 remuneration (whether on a retainer or contin-
17 gency basis) except that the term applies to—

18 “(i) union hiring halls that refer
19 union members or nonunion individuals
20 who pay union membership dues regardless
21 of whether they receive remuneration; and

22 “(ii) labor service entities or labor
23 service agencies, whether public, private,
24 for-profit, or nonprofit that recruit, dis-
25 patch, or otherwise facilitate the hiring of

1 laborers for any period of time by a third
2 party.

3 “(4) REFER.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), the term ‘refer’ means the
6 act of sending or directing a person who is in
7 the United States or transmitting documenta-
8 tion or information to another, directly or indi-
9 rectly, with the intent of obtaining employment
10 in the United States for such person.

11 “(B) EXCEPTIONS.—The term ‘refer’ only
12 applies to persons or entities referring for re-
13 munerated (whether on a retainer or contin-
14 gency basis) except that the term applies to—

15 “(i) union hiring halls that refer
16 union members or nonunion individuals
17 who pay union membership dues regardless
18 of whether they receive remuneration; and

19 “(ii) labor service entities or labor
20 service agencies, whether public, private,
21 for-profit, or nonprofit, that refer, dis-
22 patch, or otherwise facilitate the hiring of
23 laborers for any period of time by a third
24 party.

1 “(5) UNAUTHORIZED ALIEN.—The term ‘unau-
2 thorized alien’ means, with respect to the employ-
3 ment of an alien at a particular time, an alien who
4 is not—

5 “(A) an alien lawfully admitted for perma-
6 nent residence; or

7 “(B) otherwise authorized to be employed
8 under this Act or by the Secretary of Homeland
9 Security.”.