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AMENDMENT TO H.R. 1772
OFFERED BY Mr. Jeffries

Page 14, after line 22, insert the following:

1 “(cc) NOTICE OF NONCON-
2 FIRMATION.—Not later than 3
3 business days after an employer’s
4 receipt of a nonconfirmation, the
5 employer shall notify the indi-
6 vidual who is the subject of the
7 nonconfirmation, and provide in-
8 formation about filing an admin-
9 istrative appeal pursuant to sub-
10 paragraph (G). The nonconfirma-
11 tion notice shall be given to the
12 individual in writing. The indi-
13 vidual shall acknowledge the receipt of the
14 knowledge in writing, or in such
15 other manner as the Secretary
16 may specify, the receipt of the
17 nonconfirmation notice from the
18 employer. If the individual re-
19 fuses or fails to acknowledge the
20 receipt of the nonconfirmation

1 notice, the employer shall notify
2 the Secretary in such manner as
3 the Secretary may specify.”.

Page 20, after line 16, insert the following:

4 “(F) ADMINISTRATIVE REVIEW.—
5 “(i) IN GENERAL.—An individual who
6 is notified pursuant to subparagraph
7 ((‘)(ii)(V)(cc) of a nonconfirmation by the
8 employer may, not later than 15 business
9 days after the date that such notice is re-
10 ceived, file an administrative appeal of
11 such nonconfirmation. An individual sub-
12 ject to a nonconfirmation may file an ap-
13 peal thereof after the 15-day period if the
14 appeal is accompanied by evidence that the
15 individual did not receive timely notice of
16 a nonconfirmation, or that there was good
17 cause for the failure to file an appeal with-
18 in the 15-day period. All administrative ap-
19 peals shall be filed as follows:
20 “(I) CITIZENS OR NATIONALS OF
21 THE UNITED STATES.—An individual
22 claiming to be a citizen or national of
23 the United States shall file the admin-

1 administrative appeal with the Commis-
2 sioner.

3 “(II) ALIENS.—An individual
4 claiming to be an alien authorized to
5 work in the United States shall file
6 the administrative appeal with the
7 Secretary.

8 “(ii) ADMINSTRATIVE STAY OF NON-
9 CONFIRMATION.—The nonconfirmation
10 shall be automatically stayed upon the
11 timely filing of an administrative appeal,
12 and the stay shall remain in effect until
13 the resolution of the appeal, unless the
14 Secretary or the Commissioner terminates
15 the stay based on a determination that the
16 administrative appeal is frivolous or filed
17 for purposes of delay.

18 “(iii) REVIEW FOR ERROR.—The Sec-
19 retary and the Commissioner shall develop
20 procedures for resolving administrative ap-
21 peals regarding nonconfirmations based
22 upon the information that the individual
23 has provided, including any additional evi-
24 dence or argument that was not previously
25 considered. Any such additional evidence

1 or argument shall be filed within 15 days
2 of the date the appeal was originally filed.
3 Appeals shall be resolved within 30 days
4 after the individual has submitted all evi-
5 dence and arguments he or she wishes to
6 submit, or has stated in writing that there
7 is no additional evidence that he or she
8 wishes to submit. The Secretary and the
9 Commissioner may, on a case by case basis
10 for good cause, extend the filing and sub-
11 mission period in order to ensure accurate
12 resolution of an appeal, before him or her.
13 Administrative review under this para-
14 graph shall be limited to whether the non-
15 confirmation notice is supported by the
16 weight of the evidence.

17 “(iv) COMPENSATION FOR ERROR.- If
18 the individual was denied a stay under
19 clause (ii) and the Secretary makes a de-
20 termination that the nonconfirmation
21 issued for an individual was not caused by
22 an act or omission of the individual or the
23 employer, the Secretary shall compensate
24 the individual for lost wages in an amount
25 not exceeding \$75,000 and reasonable

1 costs and attorneys' fees incurred during
2 administrative and judicial review which
3 shall not exceed \$50,000. Amounts under
4 this clause may be adjusted to account for
5 inflation pursuant to the US Consumer
6 Price Index—All Urban Consumers (CPI-
7 U) compiled by the Bureau of Labor Sta-
8 tistics.

9 “(v) CALCULATION OF COMPENSA-
10 TION.—Lost wages shall be calculated
11 based on the wage rate and work schedule
12 that prevailed prior to termination. The in-
13 dividual shall be compensated for wages
14 lost beginning on the first scheduled work
15 day after employment was terminated and
16 ending 180 days after completion of the
17 administrative review process described in
18 this paragraph, or judicial review if any, or
19 the day after the individual is reinstated or
20 obtains employment elsewhere, whichever
21 occurs first. If the individual obtains em-
22 ployment elsewhere at a lower wage rate,
23 the individual shall be compensated for the
24 difference in wages for the period ending
25 180 days after completion of the adminis-

1 trative review process or judicial review, if
2 any. For purposes of determining an indi-
3 vidual's compensation for the loss of em-
4 ployment, such compensation shall not in-
5 clude any period in which the individual
6 was ineligible for employment in the
7 United States. Compensation or reimburse-
8 ment provided under this subparagraph
9 shall not be provided from funds appro-
10 priated in annual appropriations Acts to
11 the Secretary for the Department of
12 Homeland Security.

13 “(vi) TEMPORARY STAY OF FINAL AD-
14 MINISTRATIVE DECISION DENYING AP-
15 PEAL.—If the appeal is denied, the Sec-
16 retary shall stay the decision for a period
17 of 30 days to permit the individual to seek
18 judicial review of the decision under sub-
19 paragraph (ii). If a judicial action is
20 brought within this period, the stay shall
21 remain in effect until the resolution of the
22 case, unless the Court terminates the stay
23 based on a determination that the action
24 for judicial review is frivolous or filed for
25 purposes of delay.

1 “(G) JUDICIAL REVIEW.—

2 “(i) IN GENERAL.—After the Sec-
3 retary or the Commissioner makes a final
4 determination on an appeal filed by an in-
5 dividual under subparagraph (G), the indi-
6 vidual may obtain judicial review of such
7 determination in a civil action commenced
8 not later than 30 days after notice of such
9 decision.

10 “(ii) JURISDICTION.—A civil action
11 for such judicial review shall be brought in
12 the district court of the United States for
13 the judicial district in which the plaintiff
14 resides or, if the plaintiff does not reside
15 within any such judicial district, in the
16 District Court of the United States for the
17 District of Columbia.

18 “(iii) SERVICE.—The defendant is ei-
19 ther the Secretary or the Commissioner,
20 but not both, depending upon who issued
21 the administrative order under subpara-
22 graph (G). In addition to serving the de-
23 fendant, the plaintiff shall also serve the
24 Attorney General.

1 judicial review described in this para-
2 graph or the day after the individual
3 is reinstated or obtains employment
4 elsewhere, whichever occurs first. If
5 the individual obtains employment
6 elsewhere at a lower wage rate, the in-
7 dividual shall be compensated for the
8 difference in wages for the period end-
9 ing 180 days after completion of the
10 judicial review process. No lost wages
11 shall be awarded for any period of
12 time during which the individual was
13 not authorized to be employed in the
14 United States.

15 “(III) PAYMENT OF COMPENSA-
16 TION.—Notwithstanding any other
17 law, payment of compensation for lost
18 wages, costs and attorneys’ fees under
19 this paragraph, or compromise settle-
20 ments of the same, shall be made as
21 provided by section 1304 of title 31,
22 United States Code. Appropriations
23 made available to the Secretary or the
24 Commissioner, accounts provided for
25 under section 286 of the Immigration

1 and Nationality Act (8 U.S.C. 1356),
2 and funds from the Federal Old-Age
3 and Survivors Insurance Trust Fund
4 or the Federal Disability Insurance
5 Trust Fund shall not be available to
6 pay such compensation.

7 “(IV) EXCLUSIVE REMEDY.—

8 Awards of compensation for lost
9 wages, costs, and attorneys’ fees
10 under this paragraph shall be the ex-
11 clusive remedy for a finding under
12 subclause (I) that a final determina-
13 tion of the Secretary or the Commis-
14 sioner made under subparagraph (G)
15 was erroneous by reason of the neg-
16 ligence or recklessness of the Sec-
17 retary or the Commissioner.”.

Page 10 line 18 insert after “paragraph” the fol-
lowing:

18 “(10) BACKPAY REMEDIES.—Neither backpay
19 nor any other monetary remedy for unlawful employ-
20 ment practices, workplace injuries or other causes of
21 action giving rise to liability shall be denied to a
22 present or former employee on account of—

1 “(A) the employer’s or the employee’s fail-
2 ure to comply with the requirements of this sec-
3 tion in establishing or maintaining the employ-
4 ment relationship; the employee’s violation of
5 the provisions of federal law related to the em-
6 ployment verification system set forth in sub-
7 section (a); or

8 “(B) the employee’s continuing status as
9 an unauthorized alien both during and after
10 termination of employment.”.

