

Essential Worker Immigration Coalition

Employment Verification Systems

Comparison Between Senate (Title III) and House (Title VII) Versions

6/14/06

Issue	S. 2611	HR 4437
*Intent required for employer liability for hiring or continuing to employ an unauthorized worker	Knowing or with reckless disregard.	Nothing on Title VII, but plenty of stuff on Title II with regards to assisting the undocumented with reckless disregard standard.
Prohibition on using a contract, subcontract, or exchange with an unauthorized worker	Cannot use contract labor knowing or in reckless disregard of the alien's unauthorized status or that contractor failed to use the system. Includes information sharing and reporting requirements requiring the supplier employer to provide the user employer with its EIN and for the user employer to submit the EIN to the system.	Safe Harbor for Contractors, not liable with respect to the hiring or continuation of employment of an unauthorized alien by a subcontractor, unless the contractor knew that the subcontractor hired or continued to employ such alien in violation of the law.
*Rebuttable presumption of unlawful hiring	No provision	Only if continue to employ after final nonconfirmation.
Employer defense	Good faith compliance with document verification and electronic employment verification system is an affirmative defense	Good faith compliance with document verification and electronic employment verification system is an affirmative defense
Internal review and certification	Secretary can require an employer certify compliance or that it has instituted a program to come into compliance if the Secretary has reasonable cause to believe that the employer failed to comply	No Provision.

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General requirement for document verification.	Employer shall verify that the individual is eligible for employment under a new system by taking specific steps.	Employer shall both comply with current I-9 procedures and then re-verify under new program based on Basic Pilot.
Employer attestation of examining documents	Employer compliance based on whether reasonable person would conclude that the documents examined are genuine and relates to the individual presenting them.	Employer compliance based on whether the “document reasonably appears on its face to be genuine” and “reasonably appears to pertain to the individual whose identity and work eligibility is being verified.”
Employer registration before using system	Registration required.	No Provision.
Documents establishing both employment eligibility and identity	No provision -- only contains a single section regarding documents establishing identity.	No Provision.
Documents evidencing employment eligibility	No provision -- only contains a single section regarding documents establishing identity.	No Provision.
Documents establishing identity	For US nationals: Passport or REAL ID compliant ID; for permanent residents, a permanent resident card; for other aliens, an employment authorization card; or for those that are unable to obtain above documents, a document designated by the Secretary with various identifying information and security features.	No Provision.
Employee Attestation requirements	Must attest either a US national, permanent resident, or work authorized; violations incur a fine up to \$5,000 or up to 3 years imprisonment	No Provision.

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*Retention of attestations	Later of 5 years after date of hiring or 1 year after termination	Keeps current timeframes intact; later of three years after the date of hiring or one year after date of termination.
Retention of other documents	Employer required to retain related documents including copies of identification presented and clarification documents; prohibiting from using for other purposes.	No Provision.
Electronic Employment Verification System (EEVS) – initial response	Within 10 days after submission of an inquiry, confirmation or tentative nonconfirmation returned.	No timeframe specified.
EEVS – verification process in case of a tentative nonconfirmation	Employer must notify employee within three days of a tentative nonconfirmation and within 10 days an individual may contest. Tentative nonconfirmation notices are in effect until finalized or for 30 days. After 30 days, the notice is either final confirmation or final nonconfirmation. It is final confirmation during the initial period and unless it is certified that 99 percent of the time the system works correctly. After such a certification is issues, the system will issue final nonconfirmation notices instead.	Follows current Basic Pilot Program with no set timeframes for a final or default confirmation/non-confirmation to be issued.

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EEVS – Responsibilities of Commissioner of Social Security	Whether name, DOB, and SSN match information on file; determination of citizenship status associated with SSN; whether the individual assigned to the number has been reported as deceased; determination of whether name or number blocked; issuing confirmation or nonconfirmation notice. Also establishes a process so that individuals can block the use of their SSN under the system or remove such block.	Whether name, DOB, and SSN match information on file.
EEVS – Responsibilities of the Secretary	Whether name and alien identification number match information on file and whether authorized to be employed.	Whether name and alien identification number match information on file and whether authorized to be employed.
EEVS – other provisions	Secretary must design system to allow individuals to verify own employment eligibility and a process to update and correct information.	No similar language in House version.
*EEVS – Implementation timeline	All employers must participate within 18 months of enactment, some, such as critical infrastructure, sooner.	All employers must participate within 2 years from enactment.
*EEVS – requirements to re-verify existing workforce of critical infrastructure	Critical employers may be required to re-verify existing workforce (after 180 days).	Everyone must re-verify. Federal, State and Local governments and some critical infrastructure – 3 years. All Others – 6 years.
*EEVS – requirements to re-verify existing workforce with reasonable cause	Secretary may require re-verification if he has reasonable cause to believe the employer has engaged in material violations of the unlawful hiring, continued hiring, or contract labor provisions of the bill.	Everyone must re-verify.

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*EEVS – Standards	Standards set, but implementation of system is not contingent upon standards being met; GAO report required, but no certification requirement except as to performance of system with respect to default confirmations/nonconfirmations for unresolved tentative nonconfirmations after 30 days.	No standards set. DHS to present yearly report to Congress on problems with EEVS, but no certification requirement nor implementation of system contingent upon any standards being met.
EEVS – failure to participate	Violation of requirement to use system, rebuttable presumption of violation of hiring unauthorized worker.	Violation of requirement to use system, loose good faith defense.
EEVS – information from individuals	Obtain name, date of birth, SSN, identification number for non-nationals; keep form for required period.	Obtain name, date of birth, SSN, identification number for non-nationals; keep form for required period.
EEVS – time for employer to submit information to system	3 working days after hire or other reasonable time set by the Secretary	3 working days after hire.
EEVS – process	Nonconfirmation info must be provided to employee in writing; tentative nonconfirmation becomes final within 10 days if not contested; termination based on tentative nonconfirmation prohibited.	Nonconfirmation info must be provided to employee in writing; tentative nonconfirmation becomes final within 10 days if not contested; termination based on tentative nonconfirmation prohibited.
EEVS – consequences of nonconfirmation	Employer must terminate worker; provide Secretary with information to assist enforcing immigration laws.	Employer must terminate worker; but not required to provide Secretary with information to assist enforcing immigration laws.
EEVS – protection from liability	Participating employers are not liable for employment-related actions taken in good faith reliance on information provided by the system.	Participating employers are not liable for employment-related actions taken in good faith reliance on information provided by the system.

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*EEVS – fees	No provision.	No provision.
EEVS – Reports	GAO required to produce annual study and report.	DHS required to produce annual report.
Compliance – general	The Secretary is given authority to establish various procedures to accept and investigate complaints.	No similar language in House version.
*Compliance – penalties for hiring or continue to employ unauthorized aliens	Civil penalties for hiring or continuing to employ an unauthorized worker are set at \$500 to \$4,000. Repeat violators over a 12 month period may be subject to a fine of \$4,000 to \$10,000. Repeat violators over a two year period that failed to comply with a previously issued order may be fined between \$6,000 and \$20,000.	Civil penalties for hiring or continuing to employ an unauthorized worker are set at \$5,000 to \$7,500. Repeat violators may be subject to a fine of \$10,000 to \$15,000. Repeat violators over a two year period that failed to comply with a previously issued order may be fined between \$25,000 and \$40,000.
*Compliance – penalties for paperwork violations.	Civil penalties for recordkeeping or verification practices are set at \$200 to \$2,000. Repeat violators over a one year period may be subject to a fine of \$400 to \$4,000. Repeat violators over a two year period that failed to comply with a previously issued order may be fined \$6,000.	Civil penalties for recordkeeping or verification practices are set at \$1,000 to \$25,000.

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Mitigation of Civil Money Penalties for Smaller Employers	No similar language in Senate version.	Civil penalties are reduced significantly for small employers. However, given how large the House penalties are, even with the reduction the penalties are mostly higher for small businesses under the House version.
Exemption from Penalty for Initial Good Faith Violation	No similar language in Senate version.	In the case of imposition of a civil penalty with respect to a paperwork violation or a violation for hiring or continuation of employment, the penalty otherwise imposed shall be waived if the violator establishes that it was the first such violation of such provision by the violator and the violator acted in good faith.
*Compliance – amounts received	Civil penalties received are deposited into the Employer Compliance Fund and will be used to enhance and enforce employer compliance.	No similar language in House version.
Compliance – other penalties	The Secretary is authorized to establish additional penalties for violations, including cease and desist orders compliance plans, and suspended fines. Fines may be reduced in the Secretary’s discretion based on hiring volume, compliance history, etc. Penalties may be adjusted for inflation every four years. Employers may petition for review in Circuit Court within 45 days.	No similar language in House version.

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*Compliance – costs and attorneys fees	If an employer substantially prevails on the merits appealing agency action, it may recover costs and fees up to \$25,000.	No similar language in House version.
System Error	Employees wrongly denied employment due to government error may recover lost wages from the government.	Must use Federal Tort Claims Act.
Criminal penalties	For a pattern and practice of knowingly violating unlawful hiring or failure to use EEVS, an employer may be subject to a criminal penalty of no more than \$20,000 for each unauthorized alien and/or imprisonment for no more than 3 years for the entire pattern or practice.	For a pattern and practice of knowingly violating unlawful hiring or failure to use EEVS, an employer may be subject to a criminal penalty of no more than \$50,000 for each unauthorized alien and/or imprisonment for no less than 1 year.
Prohibitions on Indemnity Bonds	Employer cannot require individuals to post indemnity bonds. \$10,000 penalty per violation, plus return of amounts received	No similar language in House version.
*Debarment for federal contractors	Five year debarment for repeat violators or those violating criminal provisions; the Administrator of GSA may waive or limit provisions; suspension of contracts possible based on adequate evidence of violations that could lead to debarment	No similar language in House version.
Effective date	180 days after enactment.	Date of enactment.
Additional worksite enforcement and fraud detection agents	Authorizes 2,200 additional worksite enforcement investigators per year for 5 years	No similar language in this title, but plenty in other titles.

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Antidiscrimination provisions	Expands classes of aliens protected under section 274B; 274B is also amended to make it an unfair immigration related employment practice to take adverse action due to a tentative nonconfirmation, use the system to screen applicants prior to making employment offer, using the system, after the employee's first 3 days; and requiring an employee to make an inquiry under self-verification procedures	No similar language in House version.
Disclosure of taxpayer identity information	Authorizes IRS sharing of particular data with DHS for three years, including related to multiple people filing returns with the same taxpayer identification numbers and multiple records where data reported to IRS does not meet SSN data held by Social Security.	No similar language in House version.
*TWP tie in to EEVS	TWP does not come into effect until 18 months after \$400 million have been appropriated for the EEVS.	No similar language in House version, but also no TWP in House version.

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