

# Electronic Employment Verification Systems and Comprehensive Immigration Reform

## LEGISLATIVE PRIORITIES

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### ■ Background

An electronic employment verification system (EEVS), through which the federal government would verify the employment eligibility of employers' new hires, often is viewed as an easy way to curtail the employment of unauthorized workers in the United States. Many immigrants' and workers' advocates, however, are justifiably leery of a nationwide EEVS, because most systems that have been proposed have been modeled on the U.S. Dept. of Homeland Security's (DHS's) employment eligibility verification Basic Pilot program. Since being implemented in 1997, the Basic Pilot has proven to have significant weaknesses, including its reliance on government databases that have unacceptably high error rates and the fact that employers have misused the program to discriminate against workers.<sup>1</sup> However, because the concept of an EEVS enjoys almost universal support in Congress, and therefore will almost certainly be incorporated into any comprehensive immigration reform bill, it is crucial that any proposed EEVS be designed so as to avoid negative consequences for workers, both immigrant and U.S.-born, as well as businesses.

If the current flaws in the Basic Pilot are not addressed *before* it is expanded to be implemented nationwide in the form of a congressionally mandated EEVS, it will prevent authorized workers from obtaining employment, cause certain businesses and industries to move into the unregulated underground cash economy, and create an incentive for employers and workers to circumvent the EEVS by misusing valid or counterfeit documents. Only about 15,000 employers nationwide (out of over 7 million) currently participate in the Basic Pilot, and its expansion to mandatory use by all employers would be a complicated and logistical challenge in the best of circumstances.

No amount of up-front planning and careful design would be of any use if an EEVS were to be implemented outside the context of comprehensive immigration reform. In that case, the new system would start out with the insurmountable handicap of 8 million unauthorized workers and their employers seeking to uncover and exploit the weaknesses inherent in any system. Any new EEVS will also face significant challenges if it is not also accompanied by increased enforcement of our nation's labor and employment laws for *all* workers. Unless an EEVS is accompanied by provisions strengthening labor protections and enforcement, unscrupulous employers will continue to have an incentive to evade their legal responsibilities by recruiting and exploiting unauthorized workers.

### ■ The following features would address the flaws in the existing Basic Pilot program:

- ❖ **Phase-in with objective benchmarks.** Phase-in EEVS at a reasonable rate, by size of employer, and provide for certification by the comptroller general that it meets requirements

<sup>1</sup> For a summary of NILC's concerns, see THE BASIC PILOT PROGRAM: NOT A MAGIC BULLET (NILC, Jan. 2007), [www.nilc.org/immsemplymnt/ircaempverif/basicpilot\\_nomagicbullet\\_2007-01-11.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/basicpilot_nomagicbullet_2007-01-11.pdf).



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regarding database accuracy, low error rates, privacy, and measurable employer compliance with system requirements before implementation and each phase of expansion. Such a phase-in will hold the government accountable for these reasonable and essential outcomes, providing an incentive to invest in proper planning and design features.

- ❖ **Application only to new hires.** Apply EEVS only to *new* hires, since the circularity in the workplace, with a turnover/separation rate of 40 percent (50-60 million employees) per year means that eventually most people will be verified by the new system in a relatively timely manner without forcing employers to go through old records and reverify all existing employees.
- ❖ **Antidiscrimination protections.** Require EEVS to comply with existing antidiscrimination protections in the Immigration and Nationality Act, and prohibit employers from misusing the system by (1) conducting employment eligibility verification before offering employment; (2) unlawfully reverifying workers' employment eligibility; (3) using it to deny workers employment benefits or otherwise interfere with their labor rights, or to engage in any other unlawful employment practice; (4) taking adverse action against workers whose status cannot initially be confirmed by the EEVS; or (5) selectively excluding certain people from consideration for employment due to the perceived likelihood that additional employment eligibility verification might be required, beyond what is required for other job applicants.
- ❖ **Due process protections against erroneous determinations.** Create due process protections that (1) allow workers to review and challenge the accuracy of the data in the EEVS; (2) require employers that participate in the EEVS to notify individuals that any information entered into the EEVS may be used for immigration enforcement; (3) require employers to provide detailed information about an individual's right to contest an EEVS finding, and the procedures for doing so; (4) clarify that an individual's failure to contest an EEVS finding does not constitute "knowledge" that an immigrant is undocumented under the current regulatory definition; and (5) create an administrative and judicial review process to challenge EEVS findings and that provides for remedies such as back pay and attorney's fees if it is determined that a worker was terminated due to DHS error.
- ❖ **Privacy and identity theft protections.** Create privacy and identity theft protections that protect information stored in the system from misuse and sale or other commercial use; and create civil and criminal penalties for unlawful use of information in the EEVS.
- ❖ **Studies of and reports on EEVS performance.** Require independent studies and reports to assess the accuracy of the DHS and Social Security Administration databases on which the EEVS must rely, the privacy and confidentiality of information in the databases, and whether the EEVS program is being implemented in a nondiscriminatory manner. Required reports should also assess if the EEVS is meeting the needs of both workers and businesses.
- ❖ **Workable documentation requirements.** Proposals to further limit which documents are acceptable to establish employees' identity must be flexible enough to recognize the fact that not all work-authorized individuals have the same documents. Under no circumstances should a REAL ID-compliant driver's license or ID card be required. No state is currently in compliance with REAL ID, and two states (Maine and Idaho) have decided not to implement the law.

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