

# Legal Workforce Act of 2011(HR 2885)

The Legal Workforce Act (HR 2164) was introduced in the U.S. House of Representatives on June 14, 2011, by Rep. Lamar Smith (R-TX), and an amended version, HR 2885, was introduced on Sept. 12, 2011. The bill mandates the use of an electronic employment eligibility verification system (EEVS) by every employer in the United States. (Table was revised 9/13/11.)

PROVISION	SUMMARY
<b>Bill Purpose</b>	<ul style="list-style-type: none"> <li>■ Mandates employer use of previously voluntary electronic employment eligibility verification system that is “patterned” on E-Verify. (pp. 1, 37)</li> </ul>
<b>EEVS: Phase-in</b>	<ul style="list-style-type: none"> <li>■ Effective date for new hires:                             <ul style="list-style-type: none"> <li>• Employers with 10,000 or more employees: 6 months after date of enactment. (p. 19)</li> <li>• Employers with 500 to 9,999 employees: 12 months after date of enactment. (p. 19)</li> <li>• Employers with 20 to 499 employees: 18 months after date of enactment. (pp. 19-20)</li> <li>• Employers with 1 to 19 employees: 24 months after date of enactment. (p. 20)</li> </ul> </li> <li>■ Recruiters or “those referring and individual for employment” (other than agriculture): 12 months after date of enactment. (p. 20)</li> <li>■ Workers performing agricultural labor or services (as defined by section 101(a)(15)(H)(ii)(a)): 36 months after date of enactment. (pp. 20-21)</li> <li>■ Current E-Verify laws and policies are in effect until effective dates above. (pp. 21-22)</li> <li>■ For employers currently required to use E-Verify, including contractors under the Federal Acquisition Regulation, beginning on the date of enactment of the Legal Workforce Act, the Secretary may begin requiring participation. (pp. 33-34)</li> <li>■ Employers currently voluntarily enrolled in E-Verify, and any other employer who wants to comply with the new requirements, may comply with new requirements in the Legal Workforce Act beginning on the date of enactment. (p. 34)</li> </ul>
<b>EEVS: Document verification requirements</b>	<ul style="list-style-type: none"> <li>■ On the date of hire — defined as the date of actual commencement of employment for pay (p. 37) — employers using EEVS must attest, under penalty of perjury and using a form that will be established by the Secretary no later than 6 months after enactment, using an electronic or handwritten signature (p. 7), that they have obtained the required information and documentation from employees. (pp. 2-3)</li> <li>■ During the verification period, employees must provide their SSN and an alien identification or authorization number (from those who do not claim to be U.S. citizens). (p. 8)</li> <li>■ Documentation requirements: Must present either a document relating to the individual presenting it that proves both identity and employment authorization or a document relating to the individual presenting it that proves employment authorization and one document that proves identity. (p. 3)                             <ul style="list-style-type: none"> <li>• <u>Employment authorization and identity</u>: A current US passport or passport card, current LPR card with photograph, current employment authorization card with photograph, passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A or other document designated by the Secretary indicating nonimmigrant admission under the Compact of Free Association Between the U.S. and the FSM or RMI, or a document designated by the DHS Secretary that contains a photograph, biometric identifying data, and security features to make the document resistant to tampering, counterfeiting, and fraudulent use. Immigrants authorized to work incident to status may present a foreign passport with Form I-94 or Form I-94A or other document designated by the Secretary specifying the individual’s non-immigrant status, as long as the period of status has not expired. (pp. 4-6)</li> <li>• <u>Employment authorization</u>: SSN. (p. 6)</li> </ul> </li> </ul>

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	<ul style="list-style-type: none"> <li>• <b>Identity:</b> A current state-issued license or identification card containing a photograph, name, DOB, gender, height, eye color and address; current U.S. military identification; or Native American tribal identification document issued by a tribal entity recognized by the Bureau of Indian Affairs. In the case of an individual under 18 years of age, a parent or legal guardian attestation to the identity and age. (pp. 6-7)</li> <li>■ If the Secretary finds, by regulation, that a required type of document is not reliable to establish identity or is being used fraudulently to an unacceptable degree, the Secretary may prohibit, or impose conditions, on the use of such documents for identity and employment authorization purposes. (p. 7)</li> <li>■ Employers must retain a paper, microfiche, microfilm or electronic version of documents and make available for inspection to DHS, OSC or DOL for 3 years after the date of recruiting or referral of the individual. (p. 12) In the case of hiring an individual, the later of 3 years after the date the verification is completed or 1 year after the date of termination. (pp. 12-13) In the case of an existing employee, the later of 3 years after the date of verification or 1 year after termination. (p. 33)</li> <li>■ Forms for reverification must be retained and made available for inspection beginning on the date the reverification commences and ending on the date that is the later of 3 years after the date of such reverification or 1 year after the date the individual’s employment is terminated. (p. 26)</li> </ul>
<p><b>New Entities Required to Verify Employment Authorization</b></p>	<ul style="list-style-type: none"> <li>■ Secretary can direct a person or entity responsible for granting access to, protecting, securing, operating, administering, or regulating part of the critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001) to use EEVS to assist in the protection of critical infrastructure. (p. 46)</li> <li>■ New requirements effective 1 year after enactment. (p. 49)</li> <li>■ Requires entities that recruit and refer to use the EEVS to verify employment authorization and strikes current provision of law that specifies recruit and refer “for a fee.” (p. 47)</li> <li>■ “Refer” defined as the act of sending or directing a person who is in the U.S. or transmitting documentation or information to another, directly or indirectly, with the intent of obtaining employment in the U.S. for such person. (p. 48)</li> <li>■ “Recruit” defined as the act of soliciting a person in the U.S., directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. (p. 48)</li> <li>■ Specifies that union hiring halls, labor service entities, whether public, private, for-profit or nonprofit, that refer, dispatch or otherwise facilitate the hiring of laborers must use the EEVS. (pp. 48-49)</li> </ul>
<p><b>EEVS: Verification process</b></p>	<ul style="list-style-type: none"> <li>■ Employers are required to use the EEVS beginning on the date on which an offer of employment is extended and ending on the date that is 3 business days after hire or the period that recruiting or referring commences. (p. 22) However, a work authorized immigrant providing evidence from SSA that he has applied for an SSN, the employer has until three business days after the individual receives the SSN to use EEVS. (p. 23) The offer of employment may be conditioned on a final verification. (pp. 22-23)</li> <li>■ Before being hired, recruited or referred, individuals must attest, under penalty of perjury, that the person is a USC, LPR or employment-authorized. (pp. 7-8)</li> <li>■ Individuals must provide their SSN or authorization number issued by DHS (if not a USC). (p. 8) If an employer receives confirmation of an individual’s eligibility to employment, the employer will record it on a form with an appropriate code. (pp. 13-14)</li> <li>■ The system will provide confirmation or a tentative nonconfirmation of an individual’s identity and employment eligibility within 3 working days of the initial query. (p. 38)</li> <li>■ If an employer receives a final confirmation or nonconfirmation of a worker the employer must record on a form the appropriate code. (p. 39)</li> </ul>

**ABBREVIATIONS:** “Commissioner”: Commissioner of the Social Security Administration • DHS: U.S. Dept. of Homeland Security • DOL: U.S. Dept. of Labor • EEVS: electronic employment verification system • LPR: lawful permanent resident • OSC: Office of Special Council for Unfair Immigration-Related Employment Practices, U.S. Dept. of Justice • “Secretary”: Secretary of U.S. Dept. of Homeland Security • SSA: Social Security Administration • SSN: Social Security number • USC: U.S. citizen

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	<ul style="list-style-type: none"> <li>■ If an employer receives a tentative nonconfirmation of an individual’s identity or employment eligibility, the employer must notify the employee within a specified time period (<u>note</u>: there is no specific mention in the legislation of how or when). If the individual doesn’t contest the nonconfirmation, it will be considered final and the employer must record a code. (pp. 14-15)</li> <li>■ If an individual contests the nonconfirmation, the employer must use the secondary confirmation process. (p. 14) The Secretary, in consultation with the Commissioner, will establish a secondary verification process and provide a final confirmation or nonconfirmation within 10 working days of the receipt of the tentative nonconfirmation by the employee. The Secretary in consultation with the Commissioner can extend this deadline on a case-by-case basis. (pp. 38-39)</li> <li>■ A nonconfirmation is not considered final until the system provides a final confirmation/nonconfirmation in the specified period. (pp. 14-15)</li> <li>■ An employer can’t terminate an individual or rescind a job offer until the confirmation becomes final, but can terminate for other reasons. (p. 15)</li> <li>■ If an employer has received a final nonconfirmation, the employer may terminate employment of the individual or must notify the Secretary that employment was not terminated. (p. 17) Failure to do so constitutes an immigration violation. (pp. 17-18) Failure to terminate an individual after a final nonconfirmation creates a rebuttable presumption that the employer violated immigration law related to hiring and employing undocumented immigrants. (p. 18)</li> <li>■ If EEVS is not responding, the employer must make an inquiry by the end of the first subsequent working day in which the EEVS is able to respond to queries. (pp. 16-17)</li> </ul>
<p><b>Verification Exception for Agricultural Workers</b></p>	<ul style="list-style-type: none"> <li>■ Seasonal agricultural workers will not be considered new hires subject to verification if they are returning to employment for a former employer. (p. 18)</li> <li>■ Workers with a limited period of employment authorization are not subject to reverification until 36 months after enactment. (p. 25)</li> </ul>
<p><b>Reverification of Current Workers</b></p>	<ul style="list-style-type: none"> <li>■ Required for individuals with a limited period of employment authorization in the 3 business days before the date the individual’s employment authorization expires. (pp. 23-24) Effective dates:                         <ul style="list-style-type: none"> <li>• Employers with 10,000 or more employees: 6 months after date of enactment. (p. 24)</li> <li>• Employers with 500 to 9,999 employees: 12 months after date of enactment. (p. 24)</li> <li>• Employers with 20 to 499 employees: 18 months after date of enactment. (p. 24)</li> <li>• Employers with 1 to 19 employees: 24 months after date of enactment. (pp. 24-25)</li> <li>• Workers performing agricultural labor or services (as defined by section 101(a)(15)(H)(ii)(a)) or an employee recruited or referred by a farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act): 36 months. (p. 25)</li> </ul> </li> <li>■ Within 6 months of enactment for the following types of workers who have not already been verified under E-Verify (pp. 26-27):                         <ul style="list-style-type: none"> <li>• Federal, state, or local government employee. (p. 27)</li> <li>• Individuals who requires a Federal security clearance working in a Federal, State or local government building, a military base, a nuclear energy site, a weapons site, or an airport or other facility that requires workers to carry a Transportation Worker Identification Credential. (p. 27)</li> <li>• Workers assigned to a Federal contract, except the requirement doesn’t apply to: (1) individuals who have clearance under Homeland Security Presidential Directive 12 (HSDP 12 clearance); and (2) individuals who are administrative or overhead personnel, or are working solely on contracts that provide Commercial Off The Shelf goods or services as set forth in the FAR. Additionally, the obligation only applies</li> </ul> </li> </ul>

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	<p>to contracts over \$100,000. (pp. 27-28)</p> <ul style="list-style-type: none"> <li>■ Required for employers who are required to use the EEVS or who voluntarily use the EEVS no later than 30 days after receiving a notice of a mismatch on the employers wage and tax statements (presumably through an SSA no-match letter). (pp. 30-31)</li> <li>■ Required no later than 10 days after the Secretary and the Commissioner notify the employer that a worker may not be employment authorized due to use of another individual’s SSN. (p. 30)</li> <li>■ Beginning 30 days after enactment, employers may elect to reverify their workers. In that case, all individuals employed must be verified. An employer’s decision to do so may not be considered by any government agency in any proceedings, investigation or review. (p. 32)</li> </ul>
<b>Remedies</b>	<ul style="list-style-type: none"> <li>■ If a worker is fired because of an error in the EEVS, the worker can seek compensation through the Federal Tort Claims Act and seek injunctive relief to correct the error. Class actions are prohibited. (pp. 46-47)</li> </ul>
<b>SSN Monitoring and Controls and Mismatched W-2s</b>	<ul style="list-style-type: none"> <li>■ The Commissioner will notify employees annually (at the employee address as listed on the Wage and Tax Statement) if more than one employer reports income on their SSN and there is a pattern of unusual multiple uses and how to contact the SSA Fraud Hotline if they believe their identity may have been stolen. (p. 29)</li> <li>■ If the Commissioner confirms that the SSN was used without the person’s knowledge, the Secretary and the Commissioner will lock the SSN for employment eligibility purposes. The Secretary and the Commissioner will also notify employers of the individuals who falsely used the SSN that the employee may not be employment authorized. (pp. 29-30)</li> <li>■ SSA will notify employers if the employer submits one or more mismatched wage and tax statements (presumably through SSA no-match letters) or corrected wage and tax statements. (p. 31)</li> <li>■ Secretary in consultation with the Commissioner must establish a program to block the use of SSNs that have been used multiple times in the EEVS or have been suspected or determined to be compromised by identity theft or other misuse <u>unless</u> an individual can show he or she is the legitimate holder. (pp. 62-63)</li> <li>■ Creation of a program to permit victims of identity fraud to suspend or limit the use of their SSNs. Secretary may implement program on a pilot before making fully available. (p. 63)</li> </ul>
<b>Felony Violations for False Use of SSNs</b>	<ul style="list-style-type: none"> <li>■ An individual who knowingly provides an SSN or authorization number issued by DHS that does not belong to the individual and belongs to another person (p. 9) <u>or</u> an entity (e.g. employer, recruiter) that knowingly submits to the system an SSN or authorization number issued by DHS that does not belong to the individual being verified and belongs to another person will be fined under the federal criminal code, imprisoned not less than 1 year and not more than 15 years, or both. (pp. 42-43)</li> <li>■ If an individual or entity that knowingly provides an SSN or authorization number issued by DHS that does not belong to the individual during or in relation to a felony violation of section 1028A(c) re: aggravated identify theft, the individual will be fined under the federal criminal code, imprisoned for no more than 2 years, or both – in addition to the penalty for the felony. (pp. 9-10, 43)</li> <li>■ Courts are prohibited from placing an individual or entity who violates this section on probation, imposing concurrent prison terms (unless it is with another term of imprisonment imposed at the same time for an additional violation of this section), or reducing the term of imprisonment for a felony violation of section 1028A(c) to compensate for any separate terms of imprisonment imposed for a violation of this section. (pp. 10-12, 44-45)</li> </ul>
<b>Employer Penalties</b>	<ul style="list-style-type: none"> <li>■ Replaces the Attorney General with the Secretary of Homeland Security as the authority for establishing compliance procedures regarding complaints and investigations. (p. 54)</li> <li>■ Increases employer penalties for knowingly hiring or employing undocumented immigrants (p. 54-55) and for engaging in a pattern or practice</li> </ul>

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	<p>of violations. (p. 59)</p> <ul style="list-style-type: none"> <li>■ Penalties for failure to use the EEVS or for providing information that the employer knows or reasonably appears to be false. (p. 55)</li> <li>■ Repeat violators or employers who commit crimes under the Act can be considered for debarment from federal contracts, grants, or cooperative agreements. (pp. 56-58); however any decision to debar an entity is reviewable pursuant to the Federal Acquisition Regulation. (p. 58) Those without federal contracts will be referred to the Administrator of General Services to determine whether to list the employer on the “List of Parties Excluded from Federal Procurement.” (pp. 57-58)</li> </ul>
<p><b>Safe Harbor for Employers</b></p>	<ul style="list-style-type: none"> <li>■ An employer will have complied with the law, notwithstanding a technical or procedural failure to reach such requirement, if the employer attempted in good faith to meet the requirement. (p. 35)</li> <li>■ This employer protection provision does not apply if:                             <ul style="list-style-type: none"> <li>• The employer’s failure is not de minimus; (p. 36)</li> <li>• The Secretary has explained to the employer why this failure is not de minimus; (p. 36)</li> <li>• The employer was provided at least 30 days after the explanation to correct the failure; and (p. 36)</li> <li>• The employer does not voluntarily correct the failure. This employer protection provision also does not apply to employers who have a pattern or practice of violations. (p. 36)</li> </ul> </li> <li>■ No employer or entity shall be civilly liable for any action taken in good faith reliance on information provided through the EEVS. (p. 50)</li> <li>■ Employers are not liable to a job applicant, an employee, the Federal government, or a State or local government under Federal, State, or local criminal or civil law for any employment-related action taken with respect to the workers in good-faith reliance on information provided through the system. (pp. 49-50)</li> <li>■ Employer must have made an inquiry on an individual within the timeframes established in order to be eligible for the defense. (p. 51)</li> <li>■ If EEVS is not responding, the employer must make an inquiry by the end of the first subsequent working day in which the EEVS is able to respond to queries in order to be eligible for the defense. (pp. 15-16, 51-52)</li> <li>■ If the Secretary has certified to Congress that EEVS will not be fully operational within six months of enactment, the deadlines established for an employer to make an inquiry using EEVS will be extended by six months, but no other deadline extensions can be made. (p. 37)</li> <li>■ Civil fines for knowingly hiring or employing undocumented immigrants may be waived if the employer establishes the employer acted in good faith. (pp. 55-56)</li> <li>■ Standard of evidence: Secretary must establish by clear and convincing evidence that employer had knowledge an employee was not work authorized. (p. 50)</li> <li>■ Defense is eliminated if employer doesn’t correct after receiving notice. (p. 36)</li> </ul>
<p><b>Office for State and Local Government Complaints</b></p>	<ul style="list-style-type: none"> <li>■ Secretary must establish an office for State and local government agencies to submit information indicating potential violations of immigration law (with respect to the employment of unauthorized workers, failure to use EEVS as required, or the prohibition against employers requiring an individual to post an indemnity bond against potential liability relating to hiring, recruiting, or referring of the individual) generated in the normal course of law enforcement or other official activities in the State or locality. (p. 58)</li> <li>■ The Office must:                             <ul style="list-style-type: none"> <li>• Indicate to the complaining State or local agency within five business days of the filing of the complaint whether the Secretary will further investigate. (p. 58)</li> </ul> </li> </ul>

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	<ul style="list-style-type: none"> <li>• Investigate all complaints that have a substantial probability of validity on their face. (pp. 58-59)</li> <li>• Notify the complaining State or local agency of the results of any investigation. (p. 59)</li> <li>• Report to Congress annually the number of complaints received, the States and localities that filed complaints, and the resolution of the complaints investigated by the Secretary. (p. 59)</li> </ul>
<b>Design and Operation of the System</b>	<p>The system should be designed and operated (p. 39):</p> <ul style="list-style-type: none"> <li>■ To maximize its reliability and ease of use by persons and other entities consistent with insulating and protecting the privacy and security of the underlying information; (p. 39)</li> <li>■ To respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received; (p. 39)</li> <li>■ To comply with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; (p. 40)</li> <li>■ To have reasonable safeguards against the system’s resulting in unlawful discriminatory practices based on national origin or citizenship status, including: (i) the selective or unauthorized use of the system to verify eligibility; or (ii) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants; and (p. 40)</li> <li>■ To limit verification to the following individuals: (i) Job applicants, during the period beginning on the date on which the application is submitted and ending on the date on which the application is denied or if the application is not denied, the date on which the individual begins employment; (ii) Individuals hired, referred, or recruited as specified in the Act; (iii) employees as specified in the Act; (iv) Individuals seeking to confirm their own employment eligibility on a voluntary basis. (pp. 40-41)</li> </ul>
<b>DHS Responsibilities</b>	<ul style="list-style-type: none"> <li>■ The Secretary (in consultation with any designee selected to establish and administer the verification system) shall establish a reliable, secure method to compare names and alien identification or authorization numbers, any other information as determined by the Secretary, the correspondence of the name and numbers, whether the individual is employment authorized, and to the extent the Secretary determines to be feasible and appropriate, whether the records available to the Secretary verify the identity or status of a U.S. national. (p. 42)</li> <li>■ The Secretary shall establish and administer a verification system through which the Secretary (or designee of the Secretary which may be a nongovernmental entity): (pp. 37-38) <ul style="list-style-type: none"> <li>• Responds to inquiries as to a worker’s employment authorization and identity at any time through a toll-free telephone or other toll-free electronic media and (p. 38)</li> <li>• Maintain records of the inquiries made, verifications provided or not provided, and the codes to all inquires as evidence of an employer’s compliance. (p. 38)</li> </ul> </li> <li>■ The Secretary shall update DHS’s information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information. (p. 45)</li> </ul>
<b>SSA Responsibilities</b>	<ul style="list-style-type: none"> <li>■ The Commissioner, in consultation with the Secretary shall establish a reliable, secure method to verify names and SSNs, the correspondence of the name and SSN, and if an individual has presented an SSN that is not valid for employment. (p. 41)</li> <li>■ The Commissioner shall update SSA’s information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information. (p. 45)</li> </ul>
<b>Preemption of</b>	<ul style="list-style-type: none"> <li>■ Preempts any state or local law, ordinance, policy or rule, including any civil or criminal penalty related to hiring, continued employment or</li> </ul>

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<b>state and local law</b>	status verification for employment eligibility purposes. (pp. 52-53) ■ State or locality may exercise authority over business licensing and similar laws as a penalty for failure to use the EEVS. (p. 53)
<b>Biometric Employment Eligibility Verification Pilot Program</b>	■ Establishes a voluntary “Biometric Pilot” program using biometric to verify identity and employment authorization of new hires. (pp. 63-64) ■ To be established 48 months after date of enactment. (p. 63) ■ Participating employer can end participation after 1 year. (p. 64)
<b>Limits on Use of Forms</b>	■ A form designated or established by the Secretary and any information contained in it can only be used for purposes of enforcement of the Act and any other provision of Federal criminal law. (p. 35)
<b>Miscellaneous</b>	■ Nothing in the legislation shall be construed to authorize the issuance, use, or establishment of national ID cards. (p. 46) ■ Repeals current E-Verify statute (8 U.S.C. 1324(a) note), takes effect 36 months after enactment. (p. 53) ■ Ensures SSA receives full costs for administering the EEVS. (pp. 59-62)