# Proposals to Improve the Electronic Employment

# Verification and Worksite Enforcement System

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Before the

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Border Security, and International Law
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Thank you, Chairwoman Lofgren and Ranking Member King, for the opportunity to appear before the subcommittee to discuss the federal electronic employment verification (EEV) program, formerly known as Basic Pilot. This program helps prevent the employment of illegal aliens by enabling employers to electronically verify the work eligibility of new hires directly with the appropriate federal agencies, and is widely considered to be one of the most effective tools available to foster increased compliance with immigration laws. After ten years of experience, evaluations and improvements, we know that the EEV system works. It is efficient and accurate, it has safeguards to prevent wrongful termination and discrimination, and employers enrolled in the web-based program report that it is easier to use than the existing I-9 paperwork system and brings no disruption to the company or to legal workers.

The main problem with the EEV program is that it is now voluntary—those employers who wish to excuse themselves from the law can choose not to participate. Requiring all employers to use this system will disrupt illegal hiring practices that disadvantage law-abiding employers and make it harder for illegal aliens to deceive employers with false documents and claims.

In addition, steps must be taken at the federal agency level to detect, deter and punish identity theft – specifically, the use of stolen valid Social Security numbers and immigration documents by illegal aliens to thwart the verification process. Finally, because some illegal employment occurs "off the books" and outside the reach of the EEV system, the verification program must be accompanied by a vigorous ICE worksite enforcement and removal effort.

**Background.**  I am a Senior Policy Analyst with the Center for Immigration Studies (CIS)[1], based in Washington, DC.  The Center is a non-partisan, independent research institute devoted to the study of immigration policy and the impact of immigration on American society.

Our research shows that the fiscal costs of a large illegal alien population are substantial.  We estimate that the annual cost to the federal government is roughly $10 billion per year, even after accounting for any taxes paid by illegal aliens.  These costs are primarily for Medicaid, health care for the uninsured, food assistance programs, the federal prison and court systems, and education funding.  State taxpayers incur millions of dollars of additional annual costs from illegal immigration, primarily for Medicaid, education, health care, incarceration, and public assistance in various forms, including public housing.

Illegal workers take jobs that could be filled by the large number of native or legal immigrant workers who are currently un- or under-employed.  Illegal immigration contributes significantly to the size of the population living in poverty and needing social services.  Our research shows that they do not "take jobs Americans won't do," but mainly take low-skill jobs at lower wages than employers would have to offer to legal workers, causing labor market distortions and depressing wages in low-skill sectors.[2]  No economic evidence exists to support the notion that America suffers from a shortage of low-skilled workers.

 The problem of illegal immigration cannot be solved with border control measures alone.  Despite stepped up efforts along parts of the border, many illegal migrants still are able to elude the Border Patrol.  In addition, it is believed that as many as 40% of illegal aliens arrive here on planes or ships, and overstayed their visa.   For this reason, interior enforcement, including workplace compliance, is a critical tool.

The Department of Homeland Security (DHS) has stepped up workplace enforcement activities.  Firm actions against rogue employers will always be needed to protect workers from exploitation and to deter others, but are costly on many levels.  The New Bedford raid resulted in 361 illegal alien arrests, but required 11 months of investigation and preparation by ICE and utilized 300 federal agents.  To make a dent in the level of illegal employment, workplace enforcement needs to be balanced with compliance programs such as EEV.

Research indicates that this approach would bring a noticeable decline in the size of the illegal alien population without placing an unreasonable burden on employers.[3]  The EEV program takes the guesswork out of determining a new employee's status, so that employers do not have to become quasi-immigration agents, making judgments regarding an applicant's immigration status that they are not qualified to make.  Further, the EEV program helps ensure that businesses have a stable workforce that is less

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[1] www.cis.org.

[2] *Dropping Out:  Immigrant Entry and Native Exit From the Labor Market, 2000-2005*, by Steven A. Camarota, March, 2006, http://www.cis.org/articles/2006/back206.html.

[3] *Attrition Through Enforcement:  A Cost-Effective Strategy to Shrink the Illegal Population*, Jessica M. Vaughan, Center for Immigration Studies, April 2006, http://www.cis.org/articles/2006/back406.html.

susceptible to identity fraud and less likely to be disrupted by the increasing level of federal workplace enforcement activity.

**History of Basic Pilot.**  It is widely recognized that employment is the most common incentive for illegal immigration to the United States.  In 1986, with the passage of the Immigration Reform and Control Act, it became illegal for employers to knowingly hire illegal aliens.  The law required employees to produce documents establishing eligibility for work, but provided no way for employers to ascertain if the documents are legitimate.  This spawned a huge counterfeit document industry and enabled employers who deliberately ignore immigration laws to get away with accepting fraudulent documents, while holding out the specter of discrimination charges against those conscientious employers who might inspect documents too closely.

In 1997, the bipartisan blue-ribbon Commission on Immigration Reform, headed by former Democratic Texas Congresswoman and civil rights icon Barbara Jordan, concluded:  "Reducing the employment magnet is the linchpin of a comprehensive strategy to deter unlawful migration**. . . .** Strategies to deter unlawful entries and visa overstays require both a reliable process for verifying authorization to work and an enforcement capacity to ensure that employers adhere to all immigration-related labor standards. The Commission supports implementation of pilot programs to test what we believe is the most promising option for verifying work authorization: a computerized registry based on the social security number."[4]

Three pilot programs were introduced in 1997 and the most successful, known as Basic Pilot, was reauthorized and expanded by Congress in 2004.  An independent evaluation carried out by Temple University's Institute for Survey Research and the private research firm Westat found that Basic Pilot did reduce unauthorized employment among participating employers (the program is currently voluntary).[5]  The study said that the program did this in two ways.  It identified illegal aliens who had submitted false Social Security numbers or immigration documents and it deterred illegal aliens from seeking jobs at employers who participated in the program.  A majority of the participating employers surveyed (64%) said that the number of illegal workers applying for work had been reduced under Basic Pilot and nearly all (95%) felt that the program had reduced the likelihood that they would hire illegal aliens.

**EEV is Efficient, Accurate and Easy to Use.**  Participating employers must electronically verify the status of *all* newly-hired workers within three days of hire, using information that an employee is already required to provide on the Form I-9.  Employers key information (name, date of birth, and Social Security number or immigration documentation) into a simple form accessible on the DHS web site and transmit it to DHS.  DHS then transmits the information to SSA, which checks the validity of the Social Security number, name, date of birth, and citizenship provided by the worker.  The data on non-citizens is confirmed by SSA, and then referred back to DHS to verify work

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[4] U.S. Commission on Immigration Reform, *1997 Report to Congress Executive Summary*, p. xxxiv. Available at www.utexas.edu/lbj/uscir/bacoming/ex-summary.pdf.

[5] *Findings of the Basic Pilot Evaluation,* Institute for Survey Research (Temple University) and Westat, June 2002 and *Report to Congress on the Basic Pilot Program,* Department of Homeland Security/U.S. Citizenship and Immigration Services, June 2004, p. 3.  Available at www.uscis.gov/graphics/aboutus/repsstudies.

authorization according to that agency's immigration records. According to USCIS, nearly all queries (92%) receive a positive response within seconds.[6] If the system cannot immediately verify status, the query is referred to other DHS offices in the field that process immigration applications, in case the non-citizen has very recently been approved to work. Some of these cases are resolved very quickly, even within one day. Others may take up to ten days.

If neither agency can confirm work authorization on the individual, the employer receives a tentative non-confirmation response. The employer is supposed to check the accuracy of the information it submitted (e.g. for misspellings or transposed numbers) and either resubmit to DHS or ask the employee to resolve the problem with SSA or DHS. If workers do not contest or resolve the non-confirmation finding within eight working days, the EEV system issues a final non-confirmation notice, and employers are required to either immediately terminate the employee or notify DHS that they are continuing to employ the person (possibly inviting an investigation and penalties).

The EEV program relies on the databases maintained by the Social Security Administration and Department of Homeland Security. These agencies recognize the need to return accurate results to employers, so that authorized workers are not denied employment. Some organizations, including the Chamber of Commerce, National Immigration Law Center and ethnic advocacy groups, have objected to mandatory verification on the grounds that some authorized individuals could be denied employment due to errors in the database. While "false negatives" are theoretically a possibility, the system has safeguards built in to ensure that a tentative non-confirmation does not result in termination. Upon receipt of a tentative non-confirmation, employers have the chance to correct any data entry errors that may have been made, and the employee has a chance to correct any erroneous or out-dated information in the federal record. One common reason for a discrepancy is that the worker recently was married or divorced, but neglected to notify the SSA. Some workers may be known by their middle name, and use that on a job application, but find that the Social Security record has the full legal name. Mandatory use of EEV will actually increase the accuracy of these federal databases by providing further impetus for workers to update or correct the Social Security database well before it is time for them to begin collecting Social Security benefits.

As for the immigration records, DHS has taken steps to make the EEV system more interoperable with all the various sub-systems that could confirm an alien's work authorization, including recent immigrants, temporary workers, refugees and asylees, those who change status, and other special cases. Most of the criticisms raising this objection are based on the early evaluations of Basic Pilot, and the issues have since been addressed. For instance, the first evaluation of Basic Pilot in 2002 noted that sometimes a new immigrant's data would not be entered into the system for 6-9 months, meaning he could wrongfully be denied authorization. By 2005 it only took 10-12 days for this information to make it into the system. Following the appropriation of more than $100 million in federal funding earmarked for Basic Pilot last year, DHS is now in the process of doing four new upgrades to make all but a tiny percentage of cases instantaneously

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[6] Statement of Jock Scharfen, USCIS, before the House Judiciary Subcommittee on Immigration, April 24, 2007.

approvable. According to testimony from USCIS earlier this week, 92 percent of cases are approved instantaneously in 2006.

The real-life experience of the state of Arizona is instructive. Arizona has been verifying the Social Security numbers using a system similar to EEV for all 42,000 state employees about every five weeks since the fall of 2005. These regular audits reportedly turned up only 409 no-matches over the year, most of which were caused by the kind of name changes described above, meaning more than 99.9 percent of the state employees were verified without a problem.

**Employers Positive About EEV.** Evaluations of EEV/Basic Pilot have found virtually unanimous satisfaction with the program. The most recent, an audit by the Social Security Administration, found 100% of Basic Pilot/EEV users to be satisfied.[7] An independent evaluation of Basic Pilot commissioned by DHS also found that participating employers overwhelmingly report positive experiences with the program – 96 percent think that it is an effective tool for status verification.[8] Among other findings:

* 92% of employers thought the verification did not overburden their staff.
* 93% of employers thought Basic Pilot was easier than the existing I-9 process.
DHS provides a variety of options for administering the program that are designed to accommodate all types of employers (a complete description is available at www.uscis.gov/graphics/services).

Sue Kraft, Vice President of Corporate Administration and Human Resources at Purvis Systems, an information technology services corporation based in Middletown, Rhode Island, who has used Basic Pilot for over two years, says, "It is very, very simple to use. You get a quick response – no more than 15 seconds." Similarly, Lisa Rosa-Smith, the human resources administrative assistant at the Comfort Inn in Warwick, Rhode Island, reports that she has had "no problems" with the system, and believes that it helps them avoid hiring illegal aliens. The attitudes of human resources professionals nationwide is similarly enthusiastic – a recent survey by the Society of Human Resource Management found that 92% of its members support electronic immigration status verification.[9]

One indicator of the success of EEV has been the rapid growth in the number of employers enrolled. More than 16,000 employers have signed up to date, and the number is growing at the rate of 1,000 a month. This growth is certain to continue, as awareness of the benefits of participation grows, and as several states have passed legislation mandating use of the program either for all employers or for state agencies and their contractors.[10]

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[7] *Congressional Response Report: Employer Feedback on the SSA's Verification Programs,* Office of the Inspector General, Social Security Administration, A-03-06-26106, December, 2006.
[8] Temple/Westat study, p. 102.
[9] *2006 Access to Human Capital and Employment Verification: Survey Report* by Jessica Collison, Society for Human Resource Management, March, 2006.
[10] Colorado requires state agencies and their contractors to use it, and a similar law in Georgia goes into effect on July 1, 2007. The Oklahoma legislature has passed a law to require all employers to use it, and similar bills are being considered in Missouri, Rhode Island, Oregon, and other states.

**Options to Improve the EEV Program.**

**1. Mandatory Participation**. EEV is clearly working well for those employers using it, but as long as the majority of employers are not participating, it will never be able to make a noticeable dent in the problem of illegal employment. Despite the benefits, unless required to, most employers will just never get around to it, can't be bothered or believe they already have a legal workforce. Other companies see an advantage to hiring illegal workers and will go through the motions of completing the required I-9 paperwork, but prefer to look the other way or, in some cases, actively encourage the submission of fraudulent documents. Because federal enforcement of illegal hiring practices has been a low priority for DHS for many years, there is little risk of prosecution or sanctions for non-compliance.[11]

Companies who must compete with scofflaws are at a disadvantage. This is not hypothetical – for example, a landscaper in Orange County, California tells of his decision to enroll in Basic Pilot. He had no trouble finding labor, though he had to offer a dollar an hour more than his competitors – and that was the problem. His competitors, still hiring illegal aliens, were underbidding him on commercial landscaping contracts and he was forced to drop out.[12]

Congress has a responsibility to level the playing field and ensure that conscientious employers who perform their due diligence in hiring are not put at a disadvantage for doing so. The most obvious way to do this is to make participation in EEV mandatory. Participation can be phased in according to a variety of factors. Larger companies could be enrolled first, or those in sectors of the economy with more pronounced problems of illegal employment.

If the program were to be made mandatory, most businesses would be able to comply. Already, 78 percent of small businesses (<100 employees) use the Internet[13], and the number is expected to continue to climb over time. Companies not wishing to establish Internet connectivity can hire one of more than 300 private-sector "designated agents" to conduct the EEV check for them, much as many companies use private payroll, background checking or tax services.

The implementation of a mandatory version of the EEV program has the potential to affect a large share of the illegal alien population within just a few years. Many of these workers are employed in sectors such as construction, food service, hospitality, and farming, where the turnover rates are high. This suggests that a mandate to verify all new hires could potentially deny employment to as many as half of the illegal alien job-seekers over a period of several years. A large share of the illegal population, when denied easy access to employment, will return home voluntarily. One recent study found

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[11] "Immigration Enforcement Within the United States," Alison Siskin, et al, Congressional Research Service Report for Congress, April 6, 2006, pp. 36-42. http://www.fas.org/sgp/crs/misc/RL33351.pdf.
[12] "Immigrant Employment Verification and Small Business," testimony of Mark Krikorian, Center for Immigration Studies, before the U.S. House of Representative Small Business Committee, Subcommittee on Workforce, Empowerment and Government Programs, June 27,2006. www.cis.org/articles/2006/msktestimony062706.html.
[13] Jupiter Research, quoted in a 12/15/06 e-Week.com story.

that robust worksite enforcement had the potential to reduce the illegal Mexican population by as much as 40 percent over five years.[14]

If the program is made mandatory, it is important that certain processes that have been honed over the 10-year pilot phase of EEV be preserved in order to maintain the efficiency and effectiveness of the program. Current practice is to undertake manual confirmation only when an employee contests a tentative non-confirmation result. Those who do not contest a tentative non-confirmation are assumed to be ineligible, and the agencies need not spend more time investigating. This "self-weeding" feature will be even more necessary as the volume of queries increases. If the more costly and time-consuming manual verification process must be launched before determining if an employee will contest, as has been proposed in the STRIVE Act, for example, the Verification Office will quickly become bogged down trying to verify many thousands of unverifiable cases.

It is not necessary to institute a new "default confirmation" process to protect employees whose status is unclear. Currently, if an employee is not immediately verifiable, the system issues a tentative non-confirmation, which is the equivalent of a default confirmation. Those with a tentative non-confirmation may stay on the job until the discrepancy is resolved, any errors are corrected and the manual confirmation process plays out. The latest Social Security Administration audit found that the vast majority of employers (86%) are dealing with tentative non-confirmations in an appropriate way, and there has been no widespread discrimination or mistreatment of those whose eligibility is harder to determine. A default confirmation process would eliminate any incentive for the federal agencies to rapidly return a final decision. As for ineligible workers, it is better for them to be terminated sooner rather than later.

Lawmakers should resist the temptation to include cumbersome administrative and judicial review rights for employees who are not confirmed. Only a small handful of individuals out of millions of queries over the years have ever experienced a problem, and these very few cases are resolved through the Department of Justice's Office of Special Counsel for Unfair Employment Practices.

**2) Address Identity Fraud.** The EEV system can detect bogus immigration documents and Social Security numbers, but it often cannot detect when an imposter is using a stolen identity. Use of stolen Social Security numbers by illegal aliens and their employers has grown rapidly in recent years as word gots around that the verification system can be fooled in this way and as worksite enforcement was neglected. While this limitation represents a vulnerability, it is not a fatal flaw, and a number of options exist to drastically reduce the weakness.

**A. Compliance Unit.** Congress should support the fledgling efforts of the USCIS Verification Office to develop a fraud detection capability in the EEV program, as outlined in testimony earlier this week, by providing them with resources to acquire the staff and technology to greatly expand the new monitoring and compliance unit. This unit will help guard against discrimination by ensuring that employers are using the program appropriately. Equally important, it will work with ICE to detect and investigate

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[14] "Migrants' Networks: An Estimable Model of Illegal Mexican Immigration," by Aldo Colussi, University of Pennsylvania, November, 2003.

identity fraud and other problems that may indicate violations of the law.   The compliance unit should institute a thorough in-person worksite audit process using teams of experienced agents/compliance officers to double check employer and employee claims, both on a random basis and to follow up on leads generated by electronically monitoring queries.  In addition, the Social Security Administration should be directly to routinely share information on possible immigration violations with DHS.

   **B.  Social Security Number Verification System.**  The Social Security Administration offers a free electronic verification service (Social Security Number Verification System, or SSNVS) so that employers can audit their payroll records.[15]  It was introduced in June, 2005 and more than 19,600 employers used it last year, verifying 25.7 million employees, making it larger than the EEV program.  The SSA will identify any discrepancies between what employees have reported and the information on file with the agency.  Most of the discrepancies involve name changes (due to marriage, for example), but the audits can also turn up indicators of fraud that may point to an illegal worker.  Companies wishing to weed out illegal workers who are already on the payroll can use this tool.  Arizona has been performing SSNVS audits for more than a year, and has found the practice to very effective in ensuring a legal work force.[16]  The North Carolina state auditor has performed SSNVS audits on its largest employers and established it as a mandatory "best practice" for all public employers.  Congress could require all employers to perform SSNVS audits as an alternative to retroactive EEV screening, as has been proposed in previous years.

   **C.  Enhanced Employee Screening.**  Employers who wish to do more than the bare minimum to limit their vulnerability to identity fraud, either because they have a compelling business need, such as defense contractors or others working in sensitive areas, or because their industry attracts a large number of illegal workers, such as meatpacking or construction, can also work with immigration law services companies in the private sector to receive training in the detection of fraudulent documents and other best practices for additional protection beyond what electronic verification provides.  The cost of these enhanced verification services would be minimal compared to the potential cost of becoming the subject of a workplace raid by ICE.

   **D.  Biometrics for the Future.**  It has been proposed that the identity fraud issue be addressed through the creation of a "tamper-proof" biometric work identification card, perhaps by adding biometric features to the Social Security card.  While this might be a desirable goal for the future and deserves further study, it will not help improve the existing electronic verification process.  It would take several years and billions of dollars to issue biometric cards to the more than 150 million eligible workers in this country.

   Even if every legal worker had a biometric card to prove it, very few, if any, employers have the capability to biometrically authenticate the identity and eligibility of a job applicant.  Some have already complained that EEV, which relies on paperwork and numeric identification, represents a disproportionate hardship for small businesses, although I believe this has been greatly exaggerated, particularly with the availability of

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[15] See http://www.ssa.gov/employer/ssnv.htm.
[16]"State effort proves that Social Security info can be verified," by Richard Ruelas, *Arizona Republic*, October 16, 2006.  http://www.azcentral.com/news/columns/articles/1016ruelas1016.html.

third-party designated agents. While many barbershops, snowball stands, and gas stations do use computers and the Internet on a regular basis, it is hard to imagine them acquiring fingerprint readers or retina scanners at this point, much less learn to operate them correctly and with integrity. It is not fair to expect the communities around the nation that are shouldering the burden of illegal immigration to wait for such technology to become available and affordable before they see serious immigration law enforcement.

The EEV system is both fair and effective because it places responsibility for verification on federal agencies, where it belongs. It does not expect employers to make judgments about the authenticity of documents or identity that they are not qualified to make. Employers must only transmit information and then take action based on the response of DHS and SSA.

**3) Boost Worksite Enforcement**. Mandatory electronic verification is an effective way to help employers comply with immigration laws, but there must also be a corresponding enforcement effort directed at those employers who seek to evade the law. ICE has improved its record in the last two years, but the number of illegal aliens removed as a result of worksite enforcement is still a drop in the bucket. Research suggests that many employed illegal aliens are working "off the books,"[17] and thus beyond the reach of the EEV system. In addition to providing ICE with additional resources, staff, and legal tools to address this problem, Congress should consider other approaches to shrink the underground work force. For example, at least one state has passed a law that would prevent companies from claiming as business expenses any workers who are not legal employees or independent contractors. Such an approach will presumably increase income and payroll tax revenues as well.

**Conclusion.** Mandatory verification of immigration status for new employment is not a silver bullet. Rather, it should be considered as one key part of a larger strategy to gradually shrink the illegal population through firm enforcement and establishing a climate of compliance. This strategy acknowledges that the population of more than 12 million illegal immigrants realistically cannot be apprehended and deported one by one. Nor should the federal government enact a mass amnesty to legalize this population. Instead, lawmakers should rely on an array of policies to increase the day-to-day enforcement of immigration laws, prevent employment, and encourage voluntary observance of immigration laws. Other proven tools include electronic status verification for public benefits, immigration law training for state and local law enforcement and public agency employees, strict standards for drivers' licensing, and rigorous identification standards for financial institutions, and encouragement of state and local laws and ordinances to reinforce federal goals. Adoption of these policies will convince a large number of illegal aliens that they would be better off returning home on their own, thereby easing the burden on local communities and enabling federal authorities to concentrate their resources on the most problematic cases.

Respectfully submitted by:

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[17] See Camarota, *The High Cost of Cheap Labor*, by Steven Camarota, p. 17.

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