# CONGRESSIONAL BUDGET OFFICE
# COST ESTIMATE

December 13, 2005

## H.R. 4437
## Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005

*As ordered reported by the House Committee on the Judiciary on December 8, 2005*

## SUMMARY


H.R. 4437 would direct the Department of Homeland Security (DHS) and the Social Security Administration (SSA) to extend and expand a system to verify the eligibility of certain people for employment in the United States. The bill also would require DHS to reimburse counties along the southern U.S. border for costs relating to the detention of illegal aliens, increase the number of border inspection personnel, deploy radiation portal monitors at ports of entry, and establish an Office of Air and Marine Operations within DHS. The bill would establish mandatory minimum prison sentences for a number of offenses relating to illegal entry into the United States and would establish civil and criminal penalties for such crimes. Finally, H.R. 4437 would make many other amendments to current law and changes to existing DHS procedures that aim to increase the security of U.S. borders.

CBO estimates that implementing H.R. 4437 would cost about $1.9 billion over the 2006-2010 period, assuming appropriation of the necessary amounts. Such costs would continue and grow significantly after 2010 as additional requirements of the bill would be implemented. Enacting the bill could affect direct spending and revenues, but we estimate that any such effects would not be significant.

H.R. 4437 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on employers and other entities that hire, recruit, or refer individuals for employment. CBO expects that the aggregate direct costs to comply with those mandates would exceed the annual threshold for both intergovernmental and private-sector mandates ($62 million for intergovernmental mandates in 2005 and $123 million for private-sector mandates in 2005, adjusted annually for inflation) in at least one of the first five years the bill is in effect.

Other provisions of the bill contain no intergovernmental or private-sector mandates; some would benefit local governments.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4437 is shown in the following table. The cost of this legislation falls within budget functions 650 (Social Security) and 750 (administration of justice).

| | By Fiscal Year, in Millions of Dollars | | | | |
|---|---|---|---|---|---|
| | 2006 | 2007 | 2008 | 2009 | 2010 |
| **CHANGES IN SPENDING SUBJECT TO APPROPRIATION** | | | | | |
| Employment Eligibility Verification System | | | | | |
| Estimated Authorization Level | 19 | 108 | 58 | 134 | 95 |
| Estimated Outlays | 17 | 99 | 63 | 128 | 99 |
| Payments to Counties Along Southern U.S. Border | | | | | |
| Estimated Authorization Level | 0 | 100 | 100 | 100 | 100 |
| Estimated Outlays | 0 | 25 | 65 | 100 | 100 |
| Federal Prison System | | | | | |
| Estimated Authorization Level | 0 | 17 | 151 | 46 | 183 |
| Estimated Outlays | 0 | 17 | 48 | 92 | 131 |
| Additional Port of Entry Inspectors and Canine | | | | | |
| Estimated Authorization Level | 0 | 24 | 73 | 128 | 193 |
| Estimated Outlays | 0 | 22 | 70 | 126 | 190 |
| Radiation Portal Monitors at Ports of Entry | | | | | |
| Estimated Authorization Level | 277 | 20 | 20 | 20 | 20 |
| Estimated Outlays | 139 | 158 | 20 | 20 | 20 |
| Office of Air and Marine Operations | | | | | |
| Estimated Authorization Level | 0 | 20 | 16 | 17 | 17 |
| Estimated Outlays | 0 | 19 | 17 | 17 | 17 |
| Additional Funding for Inspector General | | | | | |
| Estimated Authorization Level | 0 | 4 | 5 | 6 | 0 |
| Estimated Outlays | 0 | 4 | 5 | 6 | 0 |
| Other Programs | | | | | |
| Estimated Authorization Level | 0 | 7 | 5 | 5 | 5 |
| Estimated Outlays | 0 | 5 | 5 | 5 | 5 |
| Total Changes | | | | | |
| Estimated Authorization Level | 296 | 299 | 428 | 457 | 613 |
| Estimated Outlays | 156 | 349 | 293 | 493 | 563 |

## BASIS OF ESTIMATE

For this estimate, CBO assumes that the bill will be enacted near the start of calendar year 2006 and that the amounts necessary to implement the bill will be appropriated for each year. CBO estimates that implementing H.R. 4437 would cost about $1.9 billion over the 2006-2010 period, assuming appropriation of the necessary funds. Enacting the bill also could affect direct spending and revenues, but we estimate that any such effects would not be significant.

### Spending Subject to Appropriation

We assume that the necessary amounts will be appropriated by the start of each fiscal year after 2006, that supplemental appropriations will be provided early in calendar year 2006 for initial program needs, and that spending will follow the historical spending patterns for these or similar activities.

**Employment Eligibility Verification System.** H.R. 4437 would direct DHS, within two years of the bill's enactment, to extend and expand a system to verify the eligibility of persons for employment in the United States. CBO estimates that this would cost about $405 million over the 2006-2010 period, including $185 million for DHS, $200 million for SSA, and $20 million for other federal agencies.

*Requirements of H.R. 4437.* DHS and SSA currently operate an employment eligibility verification system known as the basic pilot. This system is available to employers nationwide, but its use is voluntary and is restricted to checking the status of new hires. All inquiries to that system are handled through the Internet, and the pilot program expires in late 2008. H.R. 4437 would require DHS to set up a toll-free telephone line or other toll-free electronic media to respond within three working days to inquiries from employers seeking verification of employment eligibility and would require the department to maintain records of all inquiries and responses.

The bill would require all employers to use the new system for newly hired employees upon its establishment. Within three years of the bill's enactment (in 2009), federal, state, and local governments, as well as certain other private employers, would have to use the system to check the eligibility of all of their employees (i.e., both new hires and the existing workforce). Within six years of enactment (in 2012), all other employers would have to do so for all of their workforces.

*Number of Inquiries Expected.* According to the Bureau of Labor Statistics (BLS), new hires at nonfarm establishments average about 4.6 million each month, or about 50 million to

55 million at an annual rate. (That does not mean that 50 million people change jobs every year because some people change jobs several times in a year. Nevertheless, each new hire would—after mid-2008—go through the employment verification system proposed in H.R. 4437.) The annual volume of new hires will equal about 55 million to 60 million in 2008 through 2015, CBO assumes. Employees of federal, state, and local governments and certain other sectors—chiefly, nongovernment employees who work at government installations, airports, nuclear power facilities, and "critical infrastructure" facilities—would become subject to verification in 2009; CBO estimates that would be about 25 million people. Finally, all other employees would become subject to verification under the bill in 2012, six years after enactment. CBO estimates that about 120 million employees would need to have their eligibility to work in the U.S. verified by 2012, although many of those people would have been newly hired after 2008 and would thus represent repeat cases. Those figures represent lower-bound estimates of the total volume of verifications because the BLS data on which they are based omit agricultural employment.

*Costs to DHS.* Under the bill, DHS would have primary responsibility for establishing and maintaining the system. Based on information from DHS, CBO estimates that it would cost the department about $100 million over the 2006-2008 period for upgrades to the basic pilot system to handle the huge increase in inquiries that would result from H.R. 4437. This one-time cost would include enhancements of software, hardware, databases, and other technological components of the new employment eligibility system.

In addition, DHS would have to hire personnel to respond to inquiries within three working days (as required by the bill), staff the toll-free telephone line, and maintain records of the inquiries and responses. Based on information from DHS, CBO expects that staff would be hired during 2008 and costs would reach $35 million annually, beginning in fiscal year 2009. Under the bill, the agency's cost to process employment verification inquiries would increase substantially after 2010 when all private employers would be required to check the eligibility of their entire workforce by 2012.

*Costs to SSA.* The SSA's responsibilities under the bill would include providing DHS with continued, secure access to its database of Social Security numbers and handling phone inquiries, personal visits, and requests for replacement cards from people seeking to clear a "nonverified" response to their current or prospective employer. Based on information from the agency, CBO estimates SSA's costs at $9 million in 2006, about $200 million over the 2006-2010 period, and about $640 million over the 2006-2015 period. Under the bill, the agency's cost to process employment verification inquiries would increase substantially after 2010 when all private employers would be required to check the eligibility of their entire workforce by 2012.

*Costs to Other Federal Agencies*. Finally, federal agencies themselves would be among the employers required to verify the legal status of their workforce in 2009, three years after the bill's enactment. There are slightly over 4 million federal government employees, including military personnel on active duty. CBO assumes that it would cost agencies an average of $4 per employee to comply with the verification requirement. (The requirement would apply even if agencies had previously performed a security clearance or other exhaustive check.) That cost, incurred by agencies' personnel offices, consists of assembling the data for initial submission and following up the relatively few, but labor-intensive, cases that the automated system would initially fail to match. CBO estimates that federal agencies would spend approximately $18 million in 2009 to submit their employees' basic data to the DHS system and to reconcile the few cases that would be returned as "nonverifiable." The federal government would also spend an estimated $1 million annually to verify its new hires through the automated system.

**Payments to Counties Along Southern U.S. Border.** H.R. 4437 would direct DHS to reimburse counties within 25 miles of the southern U.S. border for the costs of detaining, housing, and transporting illegal aliens. The bill would authorize funding of up to $100 million annually for such reimbursements. Based on the costs reported by these counties in recent years for the detention and housing of illegal aliens, CBO estimates that implementing this provision would cost $100 million for each of fiscal years 2007 through 2010.

**Federal Prison System.** H.R. 4437 would establish mandatory minimum prison sentences for a wide range of offenses involving illegal entry into the United States. The U.S. Sentencing Commission analyzed the bill's impact on the federal prison population. Based on this analysis, CBO estimates that the longer sentences required under the bill would increase the prison population by about 7,000 person-years over the 2006-2010 period. According to the Bureau of Prisons, for an increase in the federal prison population of this magnitude, it would spend about $24,000 a year (at 2005 prices) to house each additional prisoner. CBO estimates that the cost to support those additional prisoners would total $170 million over the 2006-2010 period.

In addition, according to the Bureau of Prisons, construction of a new prison would be required when the annual increase in the prison population exceeds 1,150. Based on the anticipated increase in the cumulative prison population over the 2006-2010 period, we estimate that this annual threshold would be exceeded in 2008 and 2010. Thus, CBO expects two new prisons would need to be built to accommodate the additional prisoners resulting from enactment of H.R. 4437. We estimate that each facility would cost $115 million, construction would begin in 2008, and some spending would occur after 2010.

**Additional Port-of-Entry Inspectors and Canine Detection Teams.** H.R. 4437 would direct DHS to increase the number of port-of-entry inspectors by 250 in each of fiscal years 2007 through 2010. Currently, there are about 19,000 inspectors, so this would represent an increase of just over 1 percent annually. In addition, for each of fiscal years 2007 through 2011, the bill would require DHS to increase the number of canine detection teams by at least 25 percent over the number of such positions for the preceding year. (Currently, there are a total of 647 canine detection teams, each consisting of one officer and one dog.)

Based on information from DHS, CBO estimates that it costs about $100,000 a year to hire an additional inspector and $130,000 a year for each new canine detection team, including salaries, benefits, training, and support costs. Assuming that each annual cohort required by the bill would be hired over the course of a year, we estimate that implementing this provision would cost $400 million over the 2007-2010 period, with spending split evenly between the inspectors and the canine detection teams.

**Radiation Portal Monitors at Ports of Entry.** H.R. 4437 would direct DHS, within one year of the bill's enactment, to deploy radiation portal monitors at U.S. ports of entry selected by the agency to facilitate the screening of inbound cargo for concealed nuclear and radiological material. Based on information from DHS, we expect that the agency would implement the bill by deploying such monitors at all U.S. ports.

According to DHS, there are 613 radiation portal monitors currently deployed at 110 points of entry in 85 U.S. ports, leaving a total of 270 points of entry that lack these devices. Because the unmonitored ports generally experience lesser volumes of inbound cargo, CBO assumes that remaining points of entry would need, on average, four monitors. The radiation portal monitors that are currently used cost $280,000 each, but a more effective device is now available at a cost of $470,000 per unit.

Assuming that the roughly 1,000 additional monitors required to implement H.R. 4437 would include approximately equal numbers of monitors of each type ($280,000 and $470,000 models), the costs to deploy the monitors at the remaining ports would be about $400 million. However, because $125 million has already been appropriated for fiscal year 2006 for monitors, we estimate that implementing H.R. 4437 would cost about $280 million over the 2006-2007 period.

In addition, we expect that there would be some maintenance and replacement costs for those monitors in subsequent years. CBO estimates that such costs would probably be no more than 10 percent of the initial cost of the new monitors, or about $20 million annually.

**Office of Air and Marine Operations.** H.R. 4437 would establish an Office of Air and Marine Operations within DHS that would be headed by an Assistant Secretary who would

report directly to the Secretary of Homeland Security. We expect that this office would consist of about 1,200 personnel currently in the Bureau of Customs and Border Protection who direct and carry out aviation and marine operations.

As a new agency within DHS, the Office of Air and Marine Operations would need its own human resources, legal, finance, technical support, and other administrative offices. Based on the number of support personnel at other federal agencies that employ between 1,000 and 2,000 persons, CBO estimates that it would cost about $16 million annually for these functions, beginning in fiscal year 2007. This estimated annual cost represents about 10 percent of current spending for the transferred personnel and assumes that some existing administrative staff would be transferred to the new office. In addition, we estimate that there would be one-time costs of about $4 million to relocate personnel and carry out other activities necessary to establish a new agency within DHS.

**Additional Funding for Inspector General.** H.R. 4437 would authorize the appropriation of sums necessary to increase funding above the current level for the DHS Office of the Inspector General (IG) by 5 percent for fiscal year 2007, 6 percent for 2008, and 7 percent for 2009. For fiscal year 2006, $83 million was appropriated for the IG. We estimate that implementing this provision for increases in IG funding would cost $4 million in 2007, $5 million in 2008, and $6 million in 2009.

**Other Programs.** H.R. 4437 would direct DHS to establish a university-based Center of Excellence for Border Security. Based on spending for similar university programs already established by DHS, we estimate that implementing this provision would require funding of about $5 million annually, beginning in fiscal year 2007.

In addition, the bill would require DHS and the Government Accountability Office to prepare various reports relating to improving border security. The bill would also direct SSA to study possible enhancements to Social Security cards, such as making them of durable plastic and adding a machine-readable identification strip and a digital photograph of the holder. (An earlier SSA study, published in 1997, estimated total costs of $5 billion to $10 billion, depending on the features chosen, for replacing the 277 million cards then in circulation.) CBO estimates that the costs to prepare these reports would total about $2 million.

**Border Patrol in Virgin Islands.** H.R. 4312 would direct DHS, by September 30, 2006, to establish at least one border patrol unit for the U.S. Virgin Islands. However, the Department of Homeland Security Appropriations Act, 2006 (Public Law 109-90) already directs DHS to determine whether or not a border patrol unit in the Virgin Islands is necessary and, if deemed necessary, to establish such a unit by March 1, 2006. CBO cannot predict whether this unit will be established under Public Law 109-90. Based on information from DHS,

however, CBO expects that a unit in the Virgin Islands would probably cost no more than $1 million annually.

### Direct Spending and Receipts

H.R. 4437 would establish new and increased civil and criminal penalties for various crimes involving illegal immigration. Thus, the federal government might collect additional fines if the bill is enacted. Collections of civil fines are recorded in the budget as revenues. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant.

## INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4437 would impose intergovernmental and private-sector mandates, as defined in UMRA, on employers and other entities that hire, recruit, or refer individuals for employment. CBO expects that the aggregate direct costs to comply with those mandates would exceed the annual threshold for both intergovernmental and private-sector mandates ($62 million for intergovernmental mandates in 2005 and $123 million for private-sector mandates in 2005, adjusted annually for inflation) in at least one of the first five years the bill is in effect.

### Verification When Hiring, Recruiting, or Referring Individuals

The bill would require state and local governments, private-sector employers, and other entities that recruit or refer employees, to submit names, Social Security numbers, and other identifying information of the individuals they hire, recruit, or refer to the employee verification system administered by DHS. Verification information would have to be submitted by the end of three working days after the date of hire or before recruiting or referring a potential employee. Such employers and entities also would be required to maintain a record of the verification for a specific amount of time in a form that would be available for government inspection. The bill would require that the mandatory inquiry about employment eligibility and recordkeeping for new employees begin two years after the date of enactment of this bill.

**Verification of Previously Hired Employees**

All government employers, certain private employers that are part of the critical infrastructure of the United States, and entities that employ persons in government buildings, would be required within three years after the date of enactment to verify the identity and employment eligibility of all individuals employed by that entity who have not been previously subject to such an inquiry. Other private-sector employers would be required within six years after enactment to verify the identity and employment eligibility of all individuals employed by the entity who have not been previously subject to such an inquiry. A record of the verification for those previously hired employees also would have to be maintained by the employers for a specific amount of time in a form that would be available for government inspection.

Current law requires employers to attest that they have verified that the individual they are hiring, recruiting, or referring for employment in the United States is not an unauthorized alien by examining certain documents. Some employers voluntarily use the employment verification system to confirm the name and Social Security number of individuals. Requiring all employers and other entities to do such inquiries would impose new intergovernmental and private-sector mandates on employers. The direct cost of the mandates would be the incremental cost to prepare and verify the employment eligibility of an individual through a toll-free telephone number or Web-based system and to maintain records.

Based on information from state and local employers and representatives from personnel offices, the requirement to verify previously hired employees would be costly. Some employers with modern personnel systems would need to purchase software patches to enable their computer systems to compile and transmit the data. Smaller employers would need to manually submit the data through a toll-free phone number or Web-based system. Because of the large number of entities that would be required to prepare and submit information on previously hired individuals, however, CBO expects that the aggregate direct costs to comply with those mandates would exceed the annual threshold for both intergovernmental and private-sector mandates in at least one of the first five years the bill is in effect.

This bill would create a new program to reimburse the costs incurred by some county sheriffs' offices to detain and transport aliens who are not lawfully present in the United States. Those governments would benefit from up to $100 million annually for this program and any costs would be incurred voluntarily as conditions of receiving federal assistance.

## PREVIOUS CBO ESTIMATE

On December 6, 2005, CBO transmitted a cost estimate for H.R. 4312, the Border Security and Terrorism Prevention Act of 2005, as ordered reported by the House Committee on Homeland Security on November 17, 2005. We estimated that implementing that bill would cost $870 million over the 2006-2010 period, assuming appropriation of the necessary amounts. Several of the provisions in H.R. 4437 are identical to provisions in H.R. 4312, and CBO's estimates for those provisions are unchanged.

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