

Dangerous Business: Implications of an EEVS for Latinos and the U.S. Workforce

Background

The issue of implementing a national employment eligibility verification system (EEVS) has emerged from the immigration debate. However, it is clear that such a system has dramatic implications for the entire U.S. workforce. Without extensive standards for maintaining quality data and vigorous worker protections, such a system would have dangerous consequences for millions of U.S. citizens and lawful workers. Furthermore, evidence strongly suggests that an EEVS would be especially harmful for Latino* workers. Two bills – the “Secure America Through Verification and Enforcement (SAVE) Act of 2007” (H.R. 4088), sponsored by Representatives Heath Shuler (D-NC) and Tom Tancredo (R-CO), and the “New Employee Verification Act of 2008” (H.R. 5515), sponsored by

Representative Sam Johnson (R-TX) – would mandate that every employer use an electronic program to check every worker’s identity and work eligibility against federal records held in the Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. An EEVS would resemble the voluntary Basic Pilot/E-Verify program, which is fraught with errors and employer abuse, even at its current experimental stage. It is important for policymakers to understand the significance of these proposals, because massively scaling up the flawed Basic Pilot/E-Verify model without serious attention to the reliability of data or the protections available to workers would expand a highly unreliable program at a serious cost to millions of U.S. citizens and lawful workers.

* The terms “Hispanic” and “Latino” are used interchangeably by the U.S. Census Bureau and throughout this document to identify persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, and Spanish descent; they may be of any race.

The National Council of La Raza (NCLR) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans.

Contact Catherine Singley at csingley@nclr.org for more information.

Even minor database errors would deny millions of lawful workers – including U.S. citizens – their right to work.

The EEVS process would determine employment eligibility by matching workers' identification information with federal records. If an individual's name and Social Security number correspond with the information in federal databases and the individual is authorized to work, the EEVS would automatically confirm the individual's eligibility. On the other hand, if the information an individual provides does not match federal records exactly, the EEVS would send the employer a "nonconfirmation" of eligibility based on the records mismatch. Proponents of EEVS praise the records mismatch notification as an effective tool for preventing undocumented immigrants from obtaining work. However, the reality is that a mismatch can also occur if the *database* – not the individual – supplies erroneous information. SSA's Office of the Inspector General estimates that an alarming 17.8 million Social Security records contain discrepancies that could cause an EEVS to produce "incorrect feedback"

about work eligibility. Of those erroneous and outdated records, 12.7 million belong to U.S. citizens.¹ The DHS database is notorious for similar, if not more egregious, inaccuracies. Given these rates of error and current hiring rates, an EEVS would refuse to confirm about 11,000 people per workday, which translates to more than 25 people per congressional district each workday.²

SCENARIO: Melissa Johnson, a native-born U.S. citizen, changed her surname from Moran to Johnson when she got married last year. Without updating her SSA records, Melissa filled out an I-9 tax form for her employer using the name Johnson. Since SSA is unable to match Melissa's Social Security number with her married name, the EEVS cannot confirm Melissa's work eligibility. It is unlikely that the system would provide Melissa a reason for the nonconfirmation and she would have to formally contest the EEVS finding with SSA.

Data entry errors would affect all types of workers, but would acutely impact workers with "ethnic" names.

By placing the burden of verification on the employer, an EEVS opens the door to human error. An employer's typo or a job applicant's poor handwriting is enough to confound an electronic verification system and block citizens and other authorized workers from employment. Especially likely victims of data entry mistakes are workers whose names are nontraditional or "ethnic." More often than not, these individuals – who are probably U.S. citizens or lawful workers – happen to be descendants of immigrants or are immigrants themselves. An employer is more likely to confuse the record of a worker who has three or four names – which is particularly true of Americans of Hispanic and Asian ancestry – than the record of a worker who has two names. The same applies for people with hyphenated or

accented names. Indeed, in its evaluation of Basic Pilot/E-Verify, SSA reports that lawful workers and U.S. citizens born outside the U.S. are 30 times more likely than native-born workers to be wrongly flagged as ineligible to work.

SCENARIO: In the tradition of his Latin American ancestors, José, a native of New York, has two last names; one is his mother's and the other is his father's. Born José Manuel Rivera Gonzalez, his co-workers know him as José Rivera. When his new boss enters his full name into an EEVS, she accidentally leaves out "Gonzalez." Because of this mistake, the EEVS is unable to match José's records and consequently misidentifies him as ineligible to work.

Employer misuse of the system would penalize lawful workers before they have a chance to correct their records.

Evaluations of Basic Pilot/E-Verify found that 47% of employers used the program to screen workers before they hired them, which violates the program's rules.³ Moreover, under the current proposals, employers are required to inform workers of a database mismatch, but evidence shows that 685,000 employers (9.4% of approximately seven million employers) would not do so.⁴ Preemployment screening is an extremely harmful practice, because people who are authorized to work but have errors in their records are denied jobs without ever knowing that a database error was the culprit, and without having an opportunity to correct the error. The more prevalent the belief that the EEVS creates bothersome procedures when there are errors, the more incentive employers have to use the system as a screening device without bothering to inform

job applicants of records mismatches. Whether deliberate or accidental, employer misuse of an EEVS is easy and likely, especially if an EEVS were to be implemented quickly with no road map and little enforcement capacity. This could cost millions of workers access to jobs every year.

SCENARIO: Mark D'Angelo is a certified high school chemistry teacher. Even though his state has a shortage of science teachers, Mark is turned down for a job by four different school districts. It isn't until Mark's fifth interview that a school principal notifies Mark that the EEVS has been unable to confirm his work eligibility. Only after being denied four job opportunities due to unlawful screening is Mark finally aware of the mismatch and able to contest the nonconfirmation with SSA.

A national EEVS would result in large-scale discrimination against workers who are perceived to be "foreign."

Worker verification is not a new practice. The Basic Pilot/E-Verify is only the latest phase of a long history of misguided efforts to address undocumented immigration in the context of the workplace. By imposing sanctions on employers who knowingly hire undocumented workers, the Immigration Reform and Control Act of 1986 (IRCA) set in motion a pattern of employer discrimination on the basis of nationality and citizenship status.⁵ According to a congressionally mandated General Accounting Office (GAO) report, areas with high Latino and Asian populations experience higher levels of discriminatory employment practices.⁶ Employers

have engaged in a wide range of unlawful selective hiring and reverification practices to weed out workers with a "foreign" appearance or surname. For example, some employers use the unlawful practice of preemployment screening, mentioned above, to screen only "foreign" or "ethnic" applicants. In other cases of abuse, some employers demand extra or "better" documents than legally required from people they believe to be immigrants. Others implement unlawful "citizen only" policies to avoid a potentially longer and more costly verification for these "error-prone" workers.⁷ Ironically, Congress anticipated these abuses before the 1986 law went into effect;

however, instead of including measures to prevent discrimination in the system in the first place, the law created – and subsequently underfunded – an office in the Department of Justice to address abuses after the fact.⁸

SCENARIO: Amy Gonzalez is a U.S. citizen and has lived in Georgia her entire life. She is considering a career change from customer service to advertising. However, now that a mandatory

EEVS is in place throughout the country, the business-owners in her town are getting nervous. To avoid getting hit with government sanctions for hiring undocumented workers, companies have decided to play it safe by hiring only people who are clearly not “ethnic,” which is a violation of the EEVS obligations. Since Amy is Hispanic American, it is now nearly impossible for her to find an employer who will invite her for an interview.

Worse than the “No Fly List” debacle, individuals wrongly placed on a “No Work List” would face more than just an inconvenience.

Implementing a nationwide EEVS in a short time span would likely overwhelm SSA, an agency that is already struggling to keep pace with its current demands. SSA’s primary purpose is to administer critical benefits to the public, including Supplemental Security Income, disability benefits, and retirement payments. With 751,767 disability cases pending, the average waiting time for a hearing decision from SSA is 499 days.⁹ An EEVS would further inundate SSA with appeals from workers contesting incorrect EEVS feedback. U.S. citizens and lawful workers simply cannot afford to be unemployed while they wait for SSA to clear their records. The so-called “No Fly List,” designed to catch terrorists trying to board commercial airplanes in the U.S., is notorious for ensnaring unlikely suspects – including grandmothers and babies – in a mass of red tape. The costs of errors in the “No Fly List” include long lines and missed flights. Similarly, in the name of blocking undocumented immigrants from the workforce, an EEVS is poised to create a “No Work List” of millions of citizens and lawful workers who are unable to work because of a

database or input error. For these individuals, the cost of addressing these mistakes is more than an inconvenience: it is their very livelihood.

SCENARIO: You and your children are U.S. citizens. Your son has just completed four years at the state university, making him the first person in your family to graduate from college. Although you did all you could to help him pay for school, he now faces enormous student loan bills. Eager for a steady paycheck, he applies for dozens of jobs and finally secures a position. However, a discrepancy in his records makes it impossible for an EEVS to confirm his work eligibility. His request to fix SSA’s mistake is only one of 67 million transactions that SSA will handle through its 1-800 number this year.¹⁰ To speed up the process, your son visits the local SSA field office in person, but since the office is open only during regular business hours, he is forced to take time off from his new job to do so. Without a means to pay his bills, the interest on his loans compounds, and he enters the workforce with even higher debt than when he graduated.

Conclusion

To date, Basic Pilot/E-Verify has a track record of errors and employer misuse. The evidence, together with the well-documented speculation about the viability of an EEVS, makes it very likely that the scenarios illustrated above will become everyday realities. Expanding this flawed

model across the entire workforce is a dangerous business that would put the livelihood of millions of U.S. citizens and lawful workers at stake. Congress should not force employers and workers to participate in an EEVS without careful consideration, benchmarks, and protections.

Endnotes

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