

## Comparison of Employment Eligibility Verification System Proposals in the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (HR 4437) and the Comprehensive Immigration Reform Act of 2006 (S. 2611)<sup>1</sup>

HR 4437, which passed the U.S. House of Representatives on December 16, 2005, includes its Employment Eligibility Verification System (EEVS) proposal in Title VII. S 2611, which passed the Senate on May 25, 2006, includes its EEVS proposal in Title III. The full text of both bills can be found at [thomas.loc.gov](http://thomas.loc.gov).

PROVISION	HR 4437	S 2611
<b>Unlawful employment of immigrants</b>	<ul style="list-style-type: none"> <li>■ Current law (unlawful for an employer to hire or to recruit or refer for a fee an immigrant “knowing” that the immigrant is unauthorized to work).</li> <li>■ Good faith defense doesn’t apply if employer doesn’t participate in the EEVS, or if the employer continues to employ an individual without verification from the EEVS.</li> <li>■ If the EEVS doesn’t respond to the employer’s inquiry within 3 working days (and the verification mechanism has registered that not all inquiries were responded to during the relevant time), the employer can still qualify for the good faith defense by making an inquiry on the first working day after the EEVS is able to respond to all inquires.</li> </ul>	<ul style="list-style-type: none"> <li>■ Unlawful for an employer to hire or to recruit or refer for a fee an immigrant with “knowing or reckless disregard” that the immigrant is unauthorized to work.</li> <li>■ Requires employers to comply with document verification requirements and participate in the EEVS. Good faith defense for employers who do so.</li> <li>■ The Secretary of Homeland Security (the “Secretary”) can require employer to certify that the employer is in compliance with requirements if the Secretary has “reasonable cause” to believe that the employer is not in compliance. Secretary will publish standards and methods for certification in Federal Register.</li> <li>■ Prohibits an employer from using a contract, subcontract or exchange with “knowing or reckless disregard” that the immigrant is unauthorized to work, or if the subcontractor didn’t comply with document verification requirements and participate in the EEVS. The employer hiring the immigrant must provide its EIN to the subcontractor (failure to provide the EIN is a recordkeeping violation), and the subcontractor must submit the employer’s EIN to the EEVS. DHS will use this information to identify employers who don’t comply with the requirements of this section.</li> </ul>
<b>Document verification requirements</b>	<ul style="list-style-type: none"> <li>■ Employers must attest, under penalty of perjury, and record on a form that they have verified that an individual is authorized to work by obtaining the individual’s SSN and identification or authorization number (if the individual is not a U.S. citizen), and examining the documents presented as proof of identity and employment eligibility.</li> <li>■ The employer has complied with the requirement to verify documents if the documents appear on their face to be genuine, reasonably appear to apply to the individual, and, if the documents bear an expiration date, that expiration date has not elapsed.</li> </ul>	<ul style="list-style-type: none"> <li>■ Employer must attest on a form that the employer has verified the identity and employment eligibility of employees by examining the documents prescribed in this section.</li> <li>■ The employer has complied with the requirement to verify documents if a “reasonable person” would conclude that the document examined is genuine and related to the employee.</li> <li>■ U.S. citizens must present a U.S. passport or driver’s license or identity card that complies with the REAL ID Act as proof of identity.</li> <li>■ LPRs must present a permanent resident card as proof of identity.</li> <li>■ Immigrants with employment authorization must present an employment</li> </ul>

<sup>1</sup> Summary does not include sections on employer compliance, penalties, and debarment from federal contracts.

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	<ul style="list-style-type: none"> <li>■ Maintains current list of documents to prove employment eligibility and identity, but identification documents must contain a photograph.</li> <li>■ Maintains current law regarding the requirement that individuals attest that they are employment authorized. Individuals must also present their SSN and identification or authorization number (if the individual does not attest that he or she is a U.S. citizen),</li> </ul>	<p>authorization card that (1) contains a photograph of the individual or other identifying information including the individual's name, date of birth, gender, and address; and (2) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use.</p> <ul style="list-style-type: none"> <li>■ If individuals cannot present the documents prescribed, they may present a document designated by the Secretary that (1) contains a photograph of the individual or other identifying information including the individual's name, date of birth, gender, and address; and (2) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use.</li> <li>■ Until an employer participates in the EEVS, employers may accept identity documents acceptable under current law.</li> <li>■ The Secretary has the authority to prohibit certain documents if they are found not reliable to establish identity or are being fraudulently used to an unacceptable degree. Findings must be published in the Federal Register.</li> <li>■ Individuals must attest on a form that they are employment-authorized. An individual who falsely represents that he or she is employment-authorized is subject to a fine of no more than \$5,000, a prison term of 3 years, or both.</li> </ul>
<b>Records that must be kept by employers</b>	<ul style="list-style-type: none"> <li>■ Employers must retain employer and employee attestations and the document that the employee submitted as proof of identity for 3 years after date of hire (or the completion of verification of previously-hired individuals), or 1 year after the individual's employment is terminated, whichever is longer (in the case of recruiting or referral for a free, 3 years after date of recruiting or referral).</li> </ul>	<ul style="list-style-type: none"> <li>■ Employers must retain employer and employee attestations and the document that the employee submitted as proof of identity for 5 years after date of hire, or 1 year after the individual's employment is terminated, whichever is longer (in the case of recruiting or referral for a free, 5 years after date of recruiting or referral).</li> <li>■ Employers must also maintain records of any action taken and copies of any correspondence written or received related to the verification of an individual's identity or employment authorization, including the employer EIN in the case of a subcontractor.</li> <li>■ Prohibits employers from using retained documents for any purpose other than complying with the requirements in the section.</li> </ul>
<b>EEVS: Requirements for participation</b>	<ul style="list-style-type: none"> <li>■ With respect to current and future employees, all employers — <i>and</i> those who recruit and refer<sup>2</sup> — must participate 6 years after date of enactment.</li> <li>■ Employers and those who recruit and refer may participate in the EEVS on a voluntary basis beginning 2 years after enactment, as long as it is done in a nondiscriminatory basis.</li> <li>■ Federal, state and local governments and employers working in a federal, state or local government building, military base, nuclear energy site, weapon site, airport, or site that contains critical</li> </ul>	<ul style="list-style-type: none"> <li>■ With respect to new hires, all employers must participate 18 months after the date that not less than \$400 million have been appropriated and made available to implement the EEVS.</li> <li>■ Employers may participate in the EEVS on a voluntary basis before they are required to.</li> <li>■ The Secretary has the authority to require the following employers to participate before the 18-month period with respect to <i>all</i> employees: (1) "critical" employers (based on an assessment of homeland security or national security needs); and (2) employers that the Secretary has</li> </ul>

<sup>2</sup> "Recruit" and "refer" generally means persons or entities recruiting or referring for pay; however, labor service agencies (public, private, private, for-profit, and nonprofit) that facilitate the hiring of workers (including hiring halls) are included in the definition whether or not they are paid.

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	<p>infrastructure (as defined by the Critical Infrastructure Protection Act of 2001) must use the EEVS to verify the employment authorization of all employees 3 years after enactment.</p>	<p>reasonable cause to believe have engaged in material violations related to unlawful employment of immigrants.</p> <ul style="list-style-type: none"> <li>■ Not less than 60 days before an employer's or class of employers' required participation in the EEVS is to begin, the Secretary must notify them in writing regarding his/her decision to require them to participate.</li> <li>■ Upon request, the Secretary must make training materials available to employers who participate in the EEVS.</li> <li>■ Employers must register to participate in the EEVS.</li> <li>■ If an employer fails to participate in the EEVS, a rebuttable presumption is created that the employer violated the law related to unlawful employment of immigrants.</li> <li>■ Employers are not liable for any employment-related action taken in good faith reliance on information provided by the EEVS.</li> </ul>
<p><b>EEVS: Design and operation of the EEVS</b></p>	<ul style="list-style-type: none"> <li>■ The EEVS must be designed and operated: <ul style="list-style-type: none"> <li>— To maximize its reliability and ease of use consistent with protecting the privacy and security of the underlying information;</li> <li>— To respond to all inquires regarding if individuals are authorized to be employed and to register all inquiries received;</li> <li>— With appropriate administrative, technical and physical safeguards to prevent unauthorized disclosure of personal information; and</li> <li>— To have reasonable safeguards against unlawful discriminatory practices based on national origin or citizenship status, including: (1) selective or unauthorized use of the EEVS to verify eligibility; (2) the use of the EEVS prior to an offer of employment; and (3) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification, beyond what is required for most job applicants, will be required.</li> </ul> </li> <li>■ DHS must establish and administer an EEVS through which the Secretary (or a designee): <ul style="list-style-type: none"> <li>— Responds to inquiries through a toll-free telephone line and other toll-free electronic media regarding an individual's identity and employment authorization by verifying the individual's name and alien authorization or identification number; and</li> <li>— Maintains records of each inquiry and the response and code provided.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ DHS, in cooperation with SSA, must implement an EEVS to determine whether: <ul style="list-style-type: none"> <li>— The identifying information submitted by the individual worker is consistent with information maintained by DHS and SSA; and</li> <li>— The worker is eligible for employment in the U.S.</li> </ul> </li> <li>■ DHS must: <ul style="list-style-type: none"> <li>— Respond to each inquiry made by a registered employer through the Internet or other electronic media, or over a toll-free telephone line, regarding an individual's identity and employment authorization; and</li> <li>— Maintain a record of each inquiry and the response provided.</li> </ul> </li> <li>■ SSA must: <ul style="list-style-type: none"> <li>— Establish a reliable, secure method to provide through the EEVS: (1) a determination of whether the name and SSN submitted by a worker is consistent with information maintained by the Commissioner of SSA (the "Commissioner"); (2) a determination of the citizenship status associated with such name and SSN; (3) a determination of whether the name and SSN belong to an individual who is deceased; (4) a determination of whether the name and SSN is blocked (see "Miscellaneous," below, for information); and (5) a confirmation or nonconfirmation notice in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the EEVS.</li> <li>— To the maximum extent possible, assign SSNs to employment-authorized immigrants by employing the enumeration procedure administered jointly by the Commissioner, the U.S. Secretary of State, and the Secretary of DHS.</li> </ul> </li> </ul>

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	<ul style="list-style-type: none"> <li>■ SSA, in consultation with DHS, must establish a reliable and secure method to verify the name and SSN presented by the individual. SSA cannot disclose SSN information except as provided for under the EEVS or Social Security Act.</li> </ul>	
<b>EEVS: Verification process</b>	<ul style="list-style-type: none"> <li>■ Requires employer and those who recruit and refer to use the EEVS to seek confirmation of an individual's identity and employment eligibility not later than 3 working days after the date of hire. If the EEVS doesn't respond to the employer's inquiry within 3 working days (and the verification mechanism has registered that not all inquiries were responded to during the relevant time), the employer can make an inquiry on the first working day after the EEVS is able to respond to all inquires.</li> <li>■ Prohibits recruiting and referring until verification is received from the EEVS.</li> <li>■ The EEVS, must provide a response to the employer no later than 3 working days after the initial inquiry. <ul style="list-style-type: none"> <li>— If the EEVS is able to confirm the individual's identity and employment eligibility, the EEVS must provide an appropriate code, which the employer must record on a form.</li> <li>— If the initial verification results in the EEVS being unable to confirm the individual's identity and employment eligibility, the EEVS must provide an appropriate code, which the employer must record on a form. DHS (in consultation with SSA) must specify an available secondary verification process to confirm the validity of information provided and to provide a response within 10 working days of the tentative nonverification.</li> <li>— When a final verification or nonverification is provided, the EEVS must provide an appropriate code, which the employer must record on a form.</li> </ul> </li> <li>■ If the employer receives a tentative nonverification notice, the employer must inform the individual. The individual has the right to contest the nonverification within a time period to be specified by DHS.</li> <li>■ If the individual does not contest the tentative nonverification notice within the time period specified, the nonverification notice becomes final.</li> </ul>	<ul style="list-style-type: none"> <li>■ Requires employer to use the EEVS to seek confirmation of an individual's identity and employment eligibility not later than 3 days after the date of hire.</li> <li>■ Employers must obtain from the individual and record: <ul style="list-style-type: none"> <li>— The individual's name and date of birth, and the state in which the person was born;</li> <li>— The individual's SSN;</li> <li>— The EIN of the individual's employer during any one of the 5 most recently completed calendar years (the employer is required to provide the EIN upon request from the individual);<sup>3</sup> and</li> <li>— In the case that the individual does not attest that he or she is a U.S. national, an "alien" identification or authorization number as the Secretary shall require.</li> </ul> </li> <li>■ The Secretary, through the EEVS, must provide a response to the employer no later than 10 days after the initial inquiry. <ul style="list-style-type: none"> <li>— If the EEVS is able to confirm the individual's identity and employment eligibility, DHS must provide a confirmation notice with an appropriate code.</li> <li>— If the initial verification results in the EEVS being unable to confirm the individual's identity and employment eligibility, DHS must conduct an automatic secondary manual verification. If after the secondary manual verification the EEVS still cannot confirm the individual's identity and employment eligibility, DHS must provide tentative nonconfirmation notice with an appropriate code.</li> </ul> </li> <li>■ If the employer receives a tentative nonconfirmation notice, the employer must record the code provided in the notice and provide the worker with a form (to be developed by the Secretary) not later than 3 days after receiving the notice that is available in a language other than English "as necessary and reasonable." The worker must acknowledge receipt of such notice in writing. The notice from the employer must include: <ul style="list-style-type: none"> <li>— Information about the reason for the notice;</li> <li>— The right to contest the notice;</li> <li>— Contact information for the appropriate agency and instructions for initiating a contest; and</li> <li>— A 24-hour toll-free number to respond to inquiries related to the notice.</li> </ul> </li> </ul>

<sup>3</sup> If the individual was not employed in the last 5 years, must affirmatively state on a form provided that the EIN is not provided because the individual was not employed in the U.S.

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<b>EEVS: Automatic final notice</b>	N/A	<ul style="list-style-type: none"> <li>■ If a final confirmation or nonconfirmation notice is not issued by the Secretary within 30 days after the individual contests a tentative nonconfirmation, the individual will automatically be confirmed as employment-authorized. The notice will remain in effect (1) during any continuous period of employment, unless the Secretary determines that the individual committed identity fraud; or (2) during the period that a person is temporarily authorized to be employed.</li> <li>■ The process of issuing an automatic final notice will remain in effect until the GAO can certify that the EEVS can issue a final confirmation of work eligibility to individuals who are eligible for employment within 30 days of the initial inquiry at least 99 percent of the time. If the GAO makes this certification, the automatic notice will be a final nonconfirmation notice. DHS has the authority to change this notice to a final confirmation notice, and must record the results of the determination in the EEVS within 12 months.</li> </ul>
<b>EEVS: Consequences of final nonconfirmation notice</b>	<ul style="list-style-type: none"> <li>■ Employer must terminate the worker. If the worker is not terminated, the employer must notify DHS. If the employer fails to terminate worker, a rebuttable presumption of violation is created.</li> </ul>	<ul style="list-style-type: none"> <li>■ Employer must terminate worker. If employer fails to terminate worker, a rebuttable presumption of violation is created.</li> <li>■ Requires employer to report to the Secretary any information relating to the worker that the Secretary determines would assist the enforcement or administration of the immigration laws.</li> </ul>
<b>EEVS: Annual reports and certification</b>	<ul style="list-style-type: none"> <li>■ Requires the Commissioner of Social Security, in consultation with the Secretary of Treasury, DHS and the Attorney General to submit to Congress a report not later than 9 months after the date of enactment that includes an evaluation of the following: <ul style="list-style-type: none"> <li>— A requirement that the SSN card is made of durable plastic and includes an encrypted, machine-readable electronic identification strip and a digital photograph (a "hardened" SSN card).</li> <li>— The creation of a unified database maintained by DHS and comprised of data from SSA and DHS for the purpose of conducting employment eligibility verification.</li> <li>— A requirement that all employers verify the employment eligibility of all new hires using a new hardened SSN card and a phone, electronic card-reading, or other mechanism to seek verification of employment eligibility.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ Requires the Secretary to submit to Congress annual reports (first report not more than 24 months after the date that not less than \$400 million have been appropriated and made available to the Secretary) that include: <ul style="list-style-type: none"> <li>— An assessment of whether the EEVS is able to correctly issue, within 30 days, a final confirmation notice in at least 99 percent of the cases in which the final notice relates to an individual who is employment-authorized.</li> <li>— If the system is able to issue final notices in at least 99 percent of cases, a certification of such assessment.</li> </ul> </li> <li>■ Requires the GAO to conduct annual studies and submit to Congress annual reports (first report not more than 24 months after the date that not less than \$400 million have been appropriated and made available to the Secretary) that evaluate the accuracy, integrity, and impact of the EEVS. The report must include, at minimum, the following: <ul style="list-style-type: none"> <li>— An assessment of DHS's annual report and certification regarding database accuracy;</li> </ul> </li> </ul>

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	<ul style="list-style-type: none"> <li>■ The report must include an evaluation of the following:                             <ul style="list-style-type: none"> <li>— The projected cost;</li> <li>— Administrability;</li> <li>— Potential effects on employers, employees, tax revenue and privacy;</li> <li>— The extent to which employer and employee compliance with immigration laws would be expected to improve; and</li> <li>— Any other relevant information.</li> </ul> </li> <li>■ The report must also examine alternatives to the hardened SSN card that involve lesser cost, lesser burden on those affected, or greater ease of administration.</li> <li>■ Not later than 3 months after the report is submitted to Congress, the Inspector General of SSA, in consultation with the Inspector General of the Dept. of Treasury, DHS and Dept. of Justice must submit an evaluation of the report to Congress.</li> <li>■ Requires DHS to submit to Congress annual reports (first report not later than one year after implementation of the EEVS) on the progress and problems associated with implementing the EEVS, including information related to the most effective use of the EEVS by small businesses.</li> </ul>	<ul style="list-style-type: none"> <li>— An assessment of EEVS performance with respect to the rate at which individuals who are eligible for employment are correctly approved within 30 days, including a separate assessment of such rate for nationals and immigrants;</li> <li>— An assessment of the privacy and security of the EEVS and its effects on identity theft or misuse of private data;</li> <li>— An assessment of the impact of the EEVS on the employment of unauthorized workers;</li> <li>— An assessment of the effects of the EEVS, including the effects of tentative nonconfirmations on unfair immigration-related employment practices and employment discrimination based on national origin or citizenship status;</li> <li>— An assessment of whether DHS and SSA have adequate resources to carry out the EEVS.</li> </ul>
<p><b>EEVS: Due process</b></p>	<ul style="list-style-type: none"> <li>■ Individuals who are fired due to an error in the EEVS may seek compensation through the Federal Tort Claims Act and injunctive relief. Class actions are prohibited.</li> </ul>	<ul style="list-style-type: none"> <li>■ The Secretary, in consultation with the Commissioner of SSA, must establish a process to permit individuals who contest an EEVS decision, or who seek to verify their own employment eligibility, are able to contact the appropriate agency to correct or update information in the EEVS in a “timely manner.”</li> <li>■ Creates an administrative and judicial review process.</li> <li>■ Individuals have 60 days after termination from employment to file an administrative appeal.                             <ul style="list-style-type: none"> <li>— DHS and SSA will develop procedures for reviewing appeals.</li> <li>— If the appeal results in a confirmation of the individual’s employment eligibility, DHS must determine if it was agency error.</li> <li>— If DHS determines that it was agency error, the individual is entitled to compensation for wages lost (calculated based on the wage rate and work schedule that prevailed prior to termination) beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the administrative review process or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first. Compensation will not include any period that the individual was ineligible for employment in the U.S.</li> </ul> </li> </ul>

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		<ul style="list-style-type: none"> <li>■ Individuals have 60 days after the administrative review decision to obtain judicial review of the decision by a civil action.                             <ul style="list-style-type: none"> <li>— A civil action must be brought in the district court for the judicial district in which the plaintiff resides or has a place of business, or, if the plaintiff does not reside within any such judicial district, in the District Court of the U.S. for the District of Columbia.</li> <li>— As part of the judicial review, DHS must file a certified copy of the administrative record compiled during the administrative appeal. The court has the power to affirm or reverse the administrative decision, with or without remanding the case for a rehearing.</li> </ul> </li> <li>■ If the court overturns the administrative decision, the individual is entitled to compensation for wages lost (calculated based on the wage rate and work schedule that prevailed prior to termination) beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the judicial review process or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first. Compensation will not include any period that the individual was ineligible for employment in the U.S.</li> </ul>
<p><b>EEVS: Protections against discrimination</b></p>	<ul style="list-style-type: none"> <li>■ The EEVS must be designed and operated:                             <ul style="list-style-type: none"> <li>— To have reasonable safeguards against unlawful discriminatory practices based on national origin or citizenship status, including: (1) selective or unauthorized use of the EEVS to verify eligibility; (2) the use of the EEVS prior to an offer of employment; and (3) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification, beyond what is required for most job applicants, will be required.</li> </ul> </li> <li>■ Prohibits employers from terminating the employment of an individual based on a tentative nonverification notice.</li> </ul>	<ul style="list-style-type: none"> <li>■ Amends section 274B of the INA relating to unfair immigration-related employment practices to explicitly apply to employment decisions related to the new EEVS;</li> <li>■ Expands the definition of “protected individual” under Section 274B to include LPRs, immigrants granted temporary residence, refugees, asylees, immigrants granted temporary protected status, nonimmigrants under 101(a)(15)(H)(ii)(c),<sup>4</sup> and immigrants granted parole.</li> <li>■ Makes it an unfair immigration-related employment practice to:                             <ul style="list-style-type: none"> <li>— Terminate or take adverse action based on a tentative nonconfirmation notice;</li> <li>— Use the EEVS for screening of an applicant prior to an offer of employment;</li> <li>— Use the EEVS for current employees beyond the first three days of their hire, or for reverification of an employee who has satisfied the EEVS requirements; or</li> <li>— Require an individual to make an inquiry under the self-verification procedures.</li> </ul> </li> <li>■ Increases fines for violation of section 274B as follows:                             <ul style="list-style-type: none"> <li>— For the first violation, a civil penalty of not less than \$1,000 and not more than \$4,000 for each individual discriminated against;</li> <li>— In the case of a person or entity previously subject to a single order, a civil penalty of not less than \$4,000 and not more than \$10,000 for each</li> </ul> </li> </ul>

<sup>4</sup> Immigrants granted the H-2C temporary guest worker status under S 2611.

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		<p>individual discriminated against;</p> <ul style="list-style-type: none"> <li>— In the case of a person or entity previously subject to more than one order, a civil penalty of not less than \$6,000 and not more than \$20,000 for each individual discriminated against; and</li> <li>— In the case of an employer requesting additional or different documentation than is required under the law, a civil penalty of not less than \$500 and not more than \$5,000 for each individual discriminated against.</li> </ul> <ul style="list-style-type: none"> <li>■ Provides an additional \$40 million to the Office of Special Counsel for Immigration-Related Unfair Employment Practices for an information campaign for each fiscal years 2007–09.</li> <li>■ The new provisions take effect 180 days after enactment.</li> </ul>
<p><b>EEVS: ID theft prevention and privacy protections</b></p>	<ul style="list-style-type: none"> <li>■ The EEVS must be designed and operated:                             <ul style="list-style-type: none"> <li>— To maximize its reliability and ease of use consistent with protecting the privacy and security of the underlying information; and</li> <li>— With appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information.</li> </ul> </li> <li>■ Notwithstanding any other provision of law, prohibits use of the EEVS by any department, bureau, or other agency of the U.S. government other than as provided for in this Act.</li> </ul>	<ul style="list-style-type: none"> <li>■ The EEVS can only collect and maintain the minimum data necessary to operate the system, and in no case can the data be other than:                             <ul style="list-style-type: none"> <li>— Information necessary to register employers;</li> <li>— Information necessary to initiate and respond to inquiries or contests;</li> <li>— Information necessary to establish and enforce compliance;</li> <li>— Information necessary to detect and prevent related identity fraud; and</li> <li>— Such information that the Secretary determined is necessary, subject to a 180 day notice and comment period in the Federal Register.</li> </ul> </li> <li>■ Makes it a misdemeanor (with a fine of \$1,000 for each violation) for anyone to willfully and knowingly collect and maintain data that is not required.</li> <li>■ Makes it a felony (with a fine under Title 18 or prison term of not more than 5 years, or both) to knowingly access, disclose, or use any information in the EEVS (1) for the purpose of committing identify fraud or assisting another person in committing identify fraud as defined by 18 USC § 1028; (2) for the purpose of unlawfully obtaining employment; or (3) for any purpose other than provided for under any provision of law.</li> </ul>
<p><b>Preemption of state and local law</b></p>	<ul style="list-style-type: none"> <li>■ Prohibits states and localities from imposing sanctions on employers who hire undocumented immigrants (current law).</li> <li>■ Prohibits states and localities from requiring, as a condition of conducting, continuing, or expanding a business, that a business provide, build, fund, or maintain a shelter, structure, or designated area for use by day laborers, or take steps that facilitate the employment of day laborers.</li> </ul>	<ul style="list-style-type: none"> <li>■ Prohibits states and localities from imposing sanctions on employers who hire undocumented immigrants (current law).</li> </ul>
<p><b>Information-sharing</b></p>	<p>N/A</p>	<ul style="list-style-type: none"> <li>■ Creates new exemption to confidentiality provisions of § 6103 of the Internal Revenue Code that would require SSA, upon written request by DHS, to disclose to DHS:                             <ul style="list-style-type: none"> <li>— Employer taxpayer identity information if the employer has filed W-2s that have more than 100 names that did not match SSA records or more</li> </ul> </li> </ul>

PROVISION	HR 4437	S 2611
		<ul style="list-style-type: none"> <li>— than 10 employees with the same SSN;</li> <li>— Employer taxpayer identity information of employers who filed W-2s when SSA believes there is identity fraud due to multiple persons filing returns of the same taxpayer identifying number;</li> <li>— Employer taxpayer identity information of employers who filed W-2s when SSA believes they are not participating in EEVS;</li> <li>— Upon certification by DHS that employer is not registered as participating in EEVS, taxpayer identity information on all its employees; and</li> <li>— Employer taxpayer identity information for every EEVS employer and taxpayer identity information for new employees.</li> </ul> <ul style="list-style-type: none"> <li>■ Restricts disclosure to establishing and enforcing employer participation in the EEVS, enforcement of many provisions of the INA, and the civil operation of the Alien Terrorist Removal Court.</li> <li>■ Provision sunsets after 3 years.</li> <li>■ Authorizes SSA to carry out responsibilities under this provision only to the extent DHS provides, in advance, funds to cover SSA costs.</li> </ul>
<b>Sunset Date</b>	<ul style="list-style-type: none"> <li>■ Requires DHS to terminate program two years after enactment unless further authorized by Congress.</li> </ul>	N/A
<b>Miscellaneous</b>	<ul style="list-style-type: none"> <li>■ When an employer submits the identical SSN in more than one instance, or when multiple employers have submitted the identical SSN in a manner that indicates possible fraudulent use of that number, DHS must conduct an investigation in order to ensure that no fraudulent use of an SSN has taken place. If DHS has selected a designee to administer the EEVS, the designee must share all pertinent information with DHS.</li> <li>■ SSA and DHS must update their information in a manner that promotes maximum accuracy and must provide a process for the prompt correction of erroneous information.</li> </ul>	<ul style="list-style-type: none"> <li>■ Creates an “employer compliance fund” that will collect all civil monetary penalties for unauthorized employment of immigrants. Funds will be used for enhancing and enforcing employer compliance with the law.</li> <li>■ Authorizes an annual increase (subject to appropriations) of not less than 2,200 ICE personnel for a 5-year period. Also requires DHS to ensure that not less than 25% of all hours expended by ICE personnel are used for immigration enforcement at the worksite.</li> <li>■ Requires the Commissioner to prevent fraudulent or other misuse of SSNs by establishing procedures under which an individual can block the use of his or her SSN under the EEVS and remove such block.</li> <li>■ Implementation of the new H-2C guest worker program relating to immigrants who are outside the U.S. may not be implemented until 18 months after \$400 million are appropriated to implement the EEVS.</li> <li>■ Requires the Secretary, in issuing documentation to employment authorized immigrants, to conspicuously state if there are any limits with respect to the limit or type of employment or employer.</li> </ul>