

The “New Employee Verification Act of 2009” (NEVA), H.R. 2028 Questions and Answers

Fundamental Principles

Question: *Is the “New Employee Verification Act” or NEVA a comprehensive immigration proposal?*

Answer: No. NEVA is focused on preventing unauthorized employment by creating an effective employment verification system. Doing so will secure our borders and protect jobs for U.S. workers. The bill does not address other immigration issues outside of worksite enforcement, including fences, border control agents, visas, or how to address those unauthorized workers already in this country.

Question: *Seems like everyone supports mandatory employment verification, so what is new about the bill’s approach?*

Answer: Mandatory verification involves an unprecedented intrusion into the employment process for the 95 percent of job applicants who are legal workers, most of them citizens. Such a system must protect legal workers while barring the employment of the unauthorized. This process needs to be done right. NEVA creates a workable verification system by building on the successes of the past while making needed adjustments to ensure successful implementation. For example, NEVA uses the existing data entry process used in new hire reporting by 90% of employers, includes database accuracy standards that Congress will closely oversee, and adds an optional identity authentication and security feature to further prevent identity theft.

Question: *Does NEVA help detect forged documents and deter identity fraud?*

Answer: Yes – NEVA requires mandatory verification of all newly hired employees; mandates the use of fewer, more secure identity documents (driver’s license with picture, U.S. passport, approved work authorization document); and includes an optional system for employers to authenticate and safeguard the identity of their employees using government-certified, private sector experts. NEVA also allows individuals to update their Social Security records as well as block the use of their Social Security number (SSN) within the verification system when they are not seeking work.

Basic Facts

Question: *Who must enroll in this new system?*

Answer: *All* employers and *all* newly hired workers will be required to participate in one of two electronic employment verification systems – EEVS or SEEVS as explained below. The current I-9 and E-Verify systems will remain intact until the new systems are fully implemented.

Question: What is the Electronic Employment Verification System (EEVS)?

Answer: The EEVS is a new mandatory program whereby employers will electronically verify the employment eligibility of all newly hired employees. Employers will verify fewer, more secure documents and receive employment verification for U.S. citizens through the Social Security Administration (SSA) and for non-citizens through the Department of Homeland Security (DHS). Information is entered into the system through each State's new hire reporting data entry system, a system already mandated by federal law to enhance child support enforcement.

Question: What is the Secure Electronic Employment Verification System (SEEVs)?

Answer: The SEEVs is an alternate voluntary system for employers which would also authenticate workers' actual identity (not just the documents they present) and "lock" that identity with the workers' biometric identifier.

Question: Who will administer the SEEVs program?

Answer: A network of government-certified, private sector experts would be created to authenticate new employees' identities utilizing existing background check and document screening tools. These experts will also safeguard the identity through biometrics, and confirm the individual's work authorization through the EEVS program.

Question: When are employers required to submit a request for work authorization?

Answer: Employers must submit a request for work authorization for new employees no sooner than the day the employee has accepted an offer of employment and no later than the third business day after they have reported for work.

Question: How long will it take employers and employees to receive a response?

Answer: It is anticipated that the response will be almost instantaneous, but must be sent within 3 business days of receiving the request. Then, employers have 3 business days to notify the employee of the response. This response will be either a "work authorized approval" or an "initial disapproval" that requires the employee to take additional action.

Question: Are there any restrictions on the use of data stored in the EEVS or SEEVs?

Answer: Yes – NEVA requires that the system only be used for verifying employment eligibility unless the employee consents otherwise or a federal court requires it. An employee is given the option of blocking his or her SSN so that it cannot be used by an imposter to gain work authorization. Also, once identity is authenticated, any biometric data must be stored separately from the individual's identifying information. The employee also has the option of having all biometric records deleted after authentication/verification has occurred or retaining these records to ease the process of changing jobs in the future.

Question: DHS has added a photo screening tool to E-Verify – which they describe as the beginning of biometric verification – and isn't this enough security to fix the problem?

Answer: The photo tool is not a biometric system. It requires the employer to look at and compare the picture on the document with an online photo. True biometrics, such as those used in SEEVS, do not require such subjective comparisons. Further, the photo tool is only a comparison between documents and does not verify the identity of the person presenting them. An imposter could defeat this system by having his own photo and identity in the databases or by using documents of someone who looks like him or her. SEEVS does not rely on document verification. It uses publicly available databases to verify the identity of the employee and associates a biometric with that identity, preventing an imposter from using that identity.

Protecting Employers and Employees

Question: Will U.S. citizens receive work authorization from a law enforcement agency?

Answer: No – U.S. citizens, native born or naturalized, will have their work authorization confirmed by the SSA, an agency they have always trusted. Only non-citizens will have their work authorization confirmed by the DHS.

Question: What can employees do if they are initially denied work authorization?

Answer: Employees have the right to contest any system response within 10 days of receiving notice of the response. Employees may also request an administrative review within 30 days, followed by a judicial review, of any decision that they believe wrongly denies them the opportunity to work.

Question: What happens to an employee who receives an initial disapproval and fails to contest the disapproval within the time allowed?

Answer: The employer must terminate employment.

Question: Are employees compensated if they are wrongly denied an opportunity to work?

Answer: Yes – an employee must be compensated for lost wages by the Federal Government for a work disapproval that was incorrect and not based on an act or omission of the employee.

Question: Are safeguards provided to protect an employee's personal information?

Answer: Yes – not only does NEVA provide strong penalties for those found guilty of misusing the information, but an advisory panel of experts is created to provide guidance on the best means of continuing to secure the privacy of employees.

Question: Do employees pay the cost of enrolling in the SEEVS?

Answer: No – employers who have voluntarily chosen to use the SEEVS program must pay all the costs associated with enrolling employees in the program.

Question: Are employees protected from discrimination?

Answer: Yes – employers are prohibited from taking any adverse employment action unless required to do so, screening an employee prior to extending an offer of employment, or screening current employees. By requiring all employees to be treated the same and by eliminating the subjectivity inherent in the current system, EEVS/SEEVS should help guard against discrimination.

Question: Does NEVA contain any protections for employers?

Answer: Yes – reliance on government approval of employment authorization through either system absolves the employer of liability if the government approval later turns out to be erroneous. NEVA also exempts employers who commit a violation of the law if it is the first violation and the employer properly used the EEVS. Finally, NEVA provides a safe-harbor for employers who use subcontractors without knowing that the subcontractor hires or continues to employ unauthorized workers.

Question: Does NEVA create more paperwork and administrative burdens on employers?

Answer: No – employers are required to attest electronically, by using either an Internet or a telephone connection, that they have obtained and reviewed the documents. Employers enter data through a system – the States’ new hire reporting process – already required by Federal law to enhance child support enforcement, and used by approximately 90% of employers. Records are stored electronically and paper forms are not required. NEVA reduces burdens on employers by consolidating the multiple and subjective document checks and data entry currently required in the I-9 and E-Verify processes.

Question: How does the bill address identity theft?

Answer: Under EEVS, workers are required to produce fewer, more secure identity documents and are required to be verified. Under the SEEVS program, individuals will be able to authenticate their identities and then “lock” those identities through a biometric identifier. Also, NEVA allows an individual to block the use of their SSN in the EEVS program during periods when they are not seeking employment.

Protecting the Social Security Administration

Question: Does NEVA create an unsustainable burden upon the SSA's resources?

Answer: No – most of the functions of the system are completely automated, electronic, and already exist. Employers would register in the program through a process 90% of employers already use, the State new hire reporting process. Also, as database accuracy is improved to reach required standards, fewer visits to Social Security offices will be required.

Question: Will money from the Social Security Trust Funds be used to verify employment eligibility?

Answer: No – the bill specifically prohibits using money in the trust funds for verifying employment eligibility and only allows the SSA to carry out its responsibilities to the extent that funds are appropriated in advance to cover the Agencies full costs.

Question: May illegal aliens receive Social Security benefits under the bill?

Answer: No – the bill prohibits quarters of credit towards Social Security benefits for any year if on the last day of the year the individual was not authorized to work in the United States.

Public Opinion

Question: Do you think the public will tolerate the use of biometrics as part of employment verification?

Answer: The HR Initiative for a Legal Workforce commissioned a national poll to explore the public's opinions on the issue. The results showed that nearly 8 in 10 people would endorse using biometrics in the employment verification process; and that many Americans are very familiar with this technology and already use biometrics in a current job, when traveling, when purchasing groceries, or in ensuring security in financial transactions.