NEW EMPLOYEE VERIFICATION ACT (HR 5515)
Myths and Facts

May 19, 2008

The New Employee Verification Act of 2008 ("NEVA," HR 5515), introduced by Reps. Sam Johnson (R-TX), Kevin Brady (R-TX), and Paul Ryan (R-WI) on February 28, 2008, would create a mandatory electronic employment verification system (EEVS) that would require all 7 million employers in the U.S. to query federal government databases to check the employment eligibility of newly-hired employees — U.S. citizens and immigrants alike.[1]

NEVA has been framed as providing an alternative to the EEVS that would be required by the controversial Secure America through Verification and Enforcement Act of 2007 ("SAVE," HR 4088, introduced by Reps. Heath Shuler, D-NC, and Tom Tancredo, R-CO) because NEVA appears to address some of the inadequacies of the Basic Pilot/E-Verify electronic employment eligibility verification program upon which that bill relies.[2] However, NEVA fails to address the SAVE Act's most fundamental problems, such as

- its reliance on the same seriously flawed Social Security Administration (SSA) database;
- the damage it would do to our economy by failing to provide a path to legal status for the over 7 million undocumented workers currently in the U.S.; and
- the significant new administrative burdens it would impose on SSA.

The following are some myths and facts about the bill:

MYTH #1: NEVA "ensures a legal workforce."[3]

FACT: **NEVA cannot "ensure" a legal workforce because it would rely on a flawed database and do nothing to reform the broken immigration system that causes illegal immigration.** In fact, NEVA would actually cause the undocumented workforce to grow because the bill's mandatory EEVS is not paired with a path to legal status for the 7 million undocumented workers in our economy. These workers would not simply leave the country if a mandatory EEVS were implemented. Rather, they and their employers would find ways around the flawed new system — for example, by moving "off the books" into the underground cash economy or by misclassifying workers as "independent contractors." These illegal actions would have grave consequences for our economy. The Congressional Budget Office recently estimated that the mandatory EEVS in the Shuler-Tancredo SAVE Act would decrease Social Security Trust Fund revenue by more than $22 billion over ten years because, like NEVA, it would increase the number of employers and workers who enter the black market, outside of the tax system.

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[1] For an analysis of NEVA, *see* REP. SAM JOHNSON'S "NEW EMPLOYEE VERIFICATION ACT": ANOTHER VERSION OF THE SHULER-TANCREDO BILL (NILC, Apr. 8, 2008), www.nilc.org/immsemplymnt/ircaempverif/johnson_EEVS_2008-03-21.pdf.

[2] For an analysis of the SAVE Act, *see* SHULER-TANCREDO EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM: POORLY DESIGNED, DANGEROUS FOR THE ECONOMY (NILC, Feb. 1, 2008), www.nilc.org/immsemplymnt/ircaempverif/shuler_EEVS_2008-02-01.pdf.

[3] Letter from Sam Johnson to House colleagues (Mar. 4, 2008).

MYTH #2: NEVA would help "protect the integrity of the Social Security System."[4]

FACT: NEVA would further cripple our Social Security system. Due to underfunding, the system is straining to accomplish its core mission of providing benefits to millions of elderly individuals and people with disabilities, forcing severely disabled workers to wait up to two years before being accepted into the program. Those most knowledgeable about SSA have testified that the current problems could become much worse and the system would be in danger of collapse if administering a nationwide mandatory EEVS were added to its responsibilities.

While NEVA does require funds to be appropriated to SSA in advance of EEVS implementation, according to former Rep. Barbara Kennelly (now president and chief executive officer of the National Committee to Preserve Social Security and Medicare), "Even though the authors of these bills have the highest expectations that sufficient appropriations will be provided to cover these costs, recent experience with Medicare Part D leads us to believe that SSA would not be provided with sufficient resources to handle this massive new workload."[5]

Even if the program were to be fully funded, according to Greg Heineman, president of the National Council of Social Security Management Associations, Inc., "the infrastructure required to increase the staff and systems capacity and capability to provide these services could not be provided overnight."[6] For example, it takes three to four years to properly prepare claims representatives to perform their duties. Heineman states that "[t]he bottom line is that SSA is not in a position to provide the additional services called for in the current proposed immigration verification legislation, and requiring SSA to provide these services would cause the agency to fall further behind in the areas currently causing pain to many Americans."[7]

MYTH #3: The EEVS created by NEVA "would be superior to the federal government's existing program, known as E-Verify, because it would rely on a more accurate, up-to-date database."[8]

FACT: NEVA would rely on the same error-prone databases as E-Verify. NEVA proposes to use the child support database (the National Directory of New Hires) for employment eligibility verification purposes, but that directory relies on the same SSA database as the current E-Verify system to verify the names and Social Security numbers of workers.[9] In SSA's database (the "Numident" file), 17.8 million (or 4.1 percent of its) records contain errors or discrepancies, and 12.7 million of those erroneous records belong to U.S. citizens. These errors would not be fixed by NEVA.

MYTH #4: NEVA would require SSA and the U.S. Dept. of Homeland Security (DHS) to "certify the accuracy of the system in advance of full implementation, and annually thereafter."[10]

FACT: NEVA would not require that database accuracy standards be certified before the system could be implemented. Such a requirement is essential to give any EEVS a chance actually to

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[4] Statement by Rep. Sam Johnson, House Committee on Ways and Means, Subcommittees on Social Security and Oversight, transcript from *Rep. Michael R. McNulty Holds a Hearing on Employment Eligibility Verification Systems – Committee Hearing* (CQ Transcriptions, Inc., May 6, 2008).

[5] Barbara B. Kennelly, *Testimony Before the Subcommittee on Social Security of the House Committee on Ways and Means*, May, 7, 2008, http://waysandmeans.house.gov/hearings.asp?formmode=view&id=6894, emphasis added.

[6] Greg Heineman, *Testimony Before the Subcommittee on Social Security of the House Committee on Ways and Means*, May, 7, 2008, http://waysandmeans.house.gov/hearings.asp?formmode=view&id=6895, emphasis added.

[7] *Id.* emphasis added.

[8] "SHRM: 'New Employee Verification Act' Better than Fed's E-Verify System," Occupational Health & Safety, Mar. 3, 2008, www.ohsonline.com/articles/59026/.

[9] PRESERVE THE CHILD SUPPORT SYSTEM: DON'T LET THE NEW HIRE DATABASE BE HIJACKED FOR IMMIGRANT EMPLOYMENT VERIFICATION (Center for Law and Social Policy, May 6, 2008), www.clasp.org/publications/new_hire_database_fact_sheet.pdf.

[10] Rep. Denise Moore (D-KS), *Testimony Before the Subcommittee on Social Security of the House Committee on Ways and Means*, May, 7, 2008, http://waysandmeans.house.gov/hearings.asp?formmode=view&id=6891.

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work, because otherwise database errors would force 3.6 million workers to either visit an SSA office to resolve discrepancies or lose their jobs.[11] Rather than <u>requiring</u> that the standards be met before implementation, section 102(a) of the bill states that the Employment Verification Advisory Panel it would create shall "recommend" to SSA and DHS standards of database accuracy that "should" be met.

> **MYTH #5: NEVA would curtail the "creation of new government bureaucracies to administer the employment verification system."[12]**

FACT: NEVA would impose large new administrative costs by requiring federal and state governments to commandeer the child support database, the National Directory of New Hires (NDNH), for use by the new EEVS. While the NDNH is an existing system used by employers, it is not currently structured to verify employment eligibility. For example, the NDNH <u>does not</u> collect information about whether a worker is a U.S. citizen or a noncitizen, or any other information related to a worker's immigration or work-authorization status, which is essential for any EEVS. Adding these new database fields would be an enormous bureaucratic undertaking, because not only would the NDNH have to be reprogrammed; <u>every state child support agency and every employer using an automated payroll system would also have to reprogram its system</u>.[13] This would impose large administrative costs on states and on employers.

> **MYTH #6: NEVA would guard against "both identity theft and any possible invasion of our privacy."[14]**

FACT: While NEVA would take some steps to guard workers' information, it still would raise serious privacy concerns. The Association for Computing Machinery (ACM), the world's largest educational and scientific computing society, concluded that the "secure" EEVS that the bill proposes to create "poses very serious privacy and security risks."[15] According to Eugene Spafford, who testified on behalf of ACM before the Social Security Subcommittee on NEVA, "The proposed legislation implies that biometric technologies are adequate to provide security and accuracy in the system. However, biometric technology is not yet mature enough for such a large-scale application. Furthermore, there are <u>privacy and accuracy concerns</u> with most biometric systems that have yet to be addressed. We recommend that biometrics not be mandated in the legislation."[16]

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[11] Greg Heineman, *supra* note 6.

[12] Johnson letter, *supra* note 3.

[13] *See* PRESERVE THE CHILD SUPPORT SYSTEM, *supra* note 9.

[14] "Johnson and Colleagues Introduce Legislation to Ensure Legal U.S. Workforce: American People Are Tired of Broken Laws and Broken Promises," Ways and Means Republican Press Office, Feb. 28, 2008, http://republicans.waysandmeans.house.gov/showarticle.asp?ID=289.

[15] Eugene Spafford, Professor of Computer Science and Director, Center for Education and Research in Information Assurance and Security, Purdue University, on behalf of the Association for Computing Machinery, *Testimony Before the Subcommittee on Social Security of the House Committee on Ways and Means*, May, 7, 2008, http://waysandmeans.house.gov/hearings.asp?formmode=view&id=6898.

[16] *Id.*, emphasis added.