

Dear Member of Congress:

On behalf of the undersigned organizations representing business and labor stakeholders in the immigration debate, we respectfully urge Congress to prevent the Department of Homeland Security from expending funds to undertake any further activities related to its Social Security Number No-Match Rule until ongoing legal cases involving this controversial rule have been resolved.

It is very disappointing that the Department of Homeland Security has continued to promulgate and advocate rules on the proposed rule concerning the Social Security Administration's (SSA) "no-match" letters despite a current injunction issued by the U.S. District Court in Northern California. The injunction remains in effect today, and has been in no way altered by the government's reissuance of the rule issued in March of this year. We urge Congress to ensure that unless the injunction is lifted through a resolution by the courts, DHS should suspend further work on this proposed rule.

The reissuance of the DHS rule has provided an insecure and unstable environment for employers. The insistence of the DHS that it will issue SSA letters and the ambiguity of the "safe harbor" provisions has caused much confusion among businesses. The current procedures outlined by the new DHS recommendations to guarantee "safe harbor" for employers are inadvertent and unclear. The rule requires that upon receipt of a letter, employers must demonstrate a "reasonable response," and take steps to resolve the no-match issue within a given period of time. However, the rule does not provide specific guidelines for what those steps should be and measures they should take to ensure protection from liability. As a result, employers are placed in a precarious position in which they are pressured to become overly vigilant and selective in their hiring practices in an attempt to protect their businesses against the wide-ranging criminal and civil penalties that are connected to employment verification violations.

In addition to this, the databases that the SSA depends on are insufficient and unreliable. Much like E-Verify, the current databases are outdated, incomplete, and not easily identifiable with DHS records. Until it can be assured that these systems meet the 99.5% accuracy test, they cannot be relied upon to provide sufficient "constructive knowledge," to hold employers liable and employees subject to DHS rulemaking. Yet despite these untrustworthy and defective systems, the DHS continues to insist on an unprecedented "no-match" initiative that only serves to cause additional instability and uncertainty within the business and labor community.

Furthermore conflict arises from the impractical and unreasonable time frames that the DHS rule provides. According to the rule, DHS allows a 90-day period during which an employee must resolve the no-match issue. At the end of this period, an employer must either terminate the employee or face prosecution for non-compliance. The rule does not take into account the numerous circumstances under which an employee would be unable to resolve the issue during this given time period. Additionally, given the estimated 146,000 "no-match" letters that the SSA is currently holding for employers with ten or more "no-match," conflicts, should the DHS law go into effect it would cause the SSA to be bombarded with an overwhelming number of appeals. It is unreasonable to expect that the SSA, given their current resources and capabilities, will be able to rectify each issue within the allotted time

frame. The SSA is already struggling to meet its existing mandates. The disability claims backlog alone currently stands at 750,000 (47 percent increase from just one year ago), with a wait time of approximately 499 days each. As a result, it is predicted that 160,000 lawfully employed workers will lose their jobs due to no-match conflicts resulting from errors unrelated to employment verification.

Finally, the DHS rule was ultimately subject to an injunction in no small part due to an incomplete Regulatory Flexibility Act (RFA) analysis. The initial "RegFlex," analysis put forth by the DHS was conducted in an inappropriate manner that violates the RFA. It largely underestimates the effects that these new regulations would have on small businesses, and attempts through illegitimate means to justify their original assertion that the rule will not have a significant economic burden on small entities. The fact of the matter is that even according to the diluted statistics put forth by the commission, which claim that estimated compliance costs would range from \$3,009 for businesses with 5 employees, to \$33,759 to those with 500 or more, the rule represents a significant economic burden to be placed on small companies, especially given the challenges they already face with rising inflationary pressures and the current economic downturn.

Before the DHS proceeds with the implementation of this rule, all economic costs and the overwhelming impact on workers must be thoroughly analyzed. Furthermore, it must be made clear to employers and employees alike that they will not be charged with violations of this new rule until clear and specific procedures have been outlined by the agency. These are issues that are currently being settled in the courts. Until a resolution has been found, Congress should not allow DHS rulemaking to run parallel to judicial proceedings. The business and labor communities need assurances that they will not be subject to unfair and unsystematic DHS rulemaking. We urge Congress to prevent the implementation of the DHS rule until the case has run its due course in the court of law. Any failure to do so will result in devastating consequences for the business community and overall economic security.

Respectively submitted,