



Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE **FROM:** LEE PRICE, MMC
CITY CLERK

SUBJECT: SEE BELOW

DATE: March 2, 2007

SUBJECT: HUMAN RIGHTS COMMISSION RESOLUTION ON SOCIAL SECURITY ADMINISTRATION "NO-MATCH" LETTERS PROPOSED DEPT. OF HOMELAND SECURITY REGULATION

SUPPLEMENTAL

At the Rules and Open Government Committee meeting of February 14, 2007, the chair of the Human Rights Commission requested that the committee have the opportunity to review all documents relating to the Commission's deliberations on this matter and submitted to the Office of the City Clerk the following information.

A handwritten signature in black ink, appearing to read "Lee Price".

LEE PRICE, MMC
City Clerk

San Jose' Human Rights Commission
Chair, Lawrence M. Boesch
City Hall
200 E. Santa Clara Street, T550
San Jose', CA 95113-1903
boesc@pacbell.net
15 February 2007

RECEIVED
San Jose City Clerk
2007 FEB 15 P 3:54

Via Hand-Delivery

Lee Price
City Clerk, MMC
City of San Jose'
200 E. Santa Clara Street
San Jose', CA 95113-1903

Re: **2/14/07 San Jose' Rules and Open Government Committee Agenda Item No. G-5
Deferred to 3/7/07 2:00 p.m. Rules Committee Calendar
Human Rights Commission (HRC) resolution on Social Security
Administration (SSA) "no-match" letters and proposed Dept. of Homeland
Security (DHS) regulation**

Dear Ms. Price:

In line with the direction from Vice-Mayor David Cortese yesterday, I am enclosing the following documentation that was considered by the Human Rights Commission at or before its 11/16/06 meeting, when passing this resolution unanimously, with no abstentions but with two absentees:

1. National Immigration Law Center, "Summary of U.S. Dept. of Homeland Security Proposed Rules 'Safe Harbor Procedures for Employers Who Receive a No-Match Letter'," 71 FR 34281-85 (June 14, 2006);
2. 11/2/06 letter from the Hon. Bennie G. Thompson, U.S. Congressman, 2d Dist. Mississippi, member of the House Homeland Security Committee, to Scott Farmer, C.E.O., Cintas Corporation, Mason, OH;
3. 11/3/06 press release, "San Jose' Community Leaders and Workers Tell Cintas to Stop Following Flawed 'No Match' Policy";
4. 11/13/06, 11/14-16/06 chronology;
5. Draft letter, HRC to Brian Snody, General Manager, Cintas Cleanroom Resources, San Jose', CA;
6. 10/24/06 Berkeley, CA report, Mayor Bates and Councilmember Worthington to Berkeley City Council, re "Opposition to New Homeland Security Rules Regarding 'No Match' Letters" with draft Resolution re same;
7. 6/9/06 DHS press release, "DHS Announces Federal Regulations to Improve Worksite Enforcement and Asks Congress to Approve Social Security 'No Match' Data Sharing";

8. 10/12/06 print-out of U.S. Chamber of Commerce webpage "U.S. Chamber Opposes Using 'No Match' Letters to Enforce Immigration Laws";
9. 8/14/06 press release, San Francisco Mayor Gavin Newsom, with two-page "Resolution Opposing the DHS's proposed rule on use of SSA 'no-match' letters to enforce immigration law";
10. Draft Santa Fe, NM ___/___/06 Resolution No. 2006-_____ "Declaring a Policy of Non-Discrimination Upon Receipt of a 'No-Match' Letter from the SSA";
11. Undated www.uniformjustice.com flier "Cintas:Hanging Immigrant Workers' Rights Out to Dry"; and
12. 11/14/06 Associated Press story, "Workers put on leave because of Social Security mismatches."

The 13th document enclosed, an 8/14/06 letter from Randel K. Johnson and Angelo I. Amador, vice-president and director, respectively, from the U.S. Chamber of Commerce, to Director, DHS, re "DHS Docket No. ICEB-2006-0004-Rulemaking Proceedings on Safe-Harbor Procedures for Employers Who Receive a No-Match Letter," may be useful to the Committee for its review prior to the 3/7/07 meeting.

As I understand it, Vice-Mayor Cortese surmised that these materials would be made available to the Mayor, Chair of the Rules and Open Government Committee, and to the Committee members, prior to the 3/7/07 meeting.

Thank you for your cooperation in this regard.

Very truly yours,



Lawrence M. Boesch
Chair, Human Rights Commission

Encs. (13)

LMB:tih

cc: The Honorable Chuck Reed, Mayor, City of San Jose' (with 13th enclosure only)
Vice-Mayor David Cortese (same)
Vilcia Rodriguez, San Jose' City Manager's Office (same)

SUMMARY OF U.S. DEPT. OF HOMELAND SECURITY PROPOSED RULES

**“Safe Harbor Procedures for Employers
Who Receive a No-Match Letter”**

71 FR 34281–85 (June 14, 2006).

July 2006

■ **Summary**

U.S. Immigration and Customs Enforcement (ICE), a bureau within the U.S. Dept. of Homeland Security (DHS), has issued proposed rules regarding an employer’s legal obligations upon receiving a letter from the Social Security Administration (SSA) stating that the information submitted for an employee does not match SSA records (otherwise known as an SSA “no-match” letter) or a notice from DHS that the immigration document establishing employment authorization presented by the employee does not match DHS records. Under the proposed rule, ICE could use the receipt of either of these letters as evidence that the employer has “constructive knowledge”¹ that an employee is unauthorized to work. The proposed rule includes “safe harbor” procedures that such an employer should follow in order to avoid liability under section 274A(a)(2) of the Immigration and Nationality Act.

These are *proposed* regulations and are subject to a 60-day public comment period. **Written comments must be submitted on or before August 14, 2006.** For a copy of the rule, see <http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-9303.pdf>.

■ **Reasons for proposed regulations**

Each year, SSA sends certain employers letters informing them of the fact that their Wage and Tax Statement (Form W-2) contains employee names and Social Security numbers (SSN) that do not match SSA records. While DHS acknowledges that there are many reasons for a no-match letter, including clerical errors and name changes, DHS claims that “one of the causes” of the no-match “is the submission of information for an alien who is not authorized to work in the United States and is using a false SSN or a SSN assigned to someone else.” According to DHS, the no-match letter “may be one of the only indicators to an employer that one of its employees may be an unauthorized alien.”

ICE sends a similar letter after it has conducted an I-9 audit under which it inspects an employer’s employment eligibility verification forms (Forms I-9) and determines there is a discrepancy with the immigration document presented by the employee to establish his/her work authorization as part of the I-9 process.

¹ As defined in 8 CFR 274a.1(l)(1).



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■ **"Safe-harbor" steps a "reasonable" employer should take upon receipt of a no-match letter**

Under the proposed regulations, an employer who receives a no-match letter from the SSA or DHS will *not* be deemed to have "constructive knowledge" that an employee is an unauthorized worker if the following "safe-harbor" steps are taken:

1. **Within 14 days** of receipt of the no-match letter, the employer would have to:
 - a. Check the employer's records to determine if the discrepancy is because of a typographical, transcribing or similar clerical error in the employer's records or in its communication to the SSA or DHS. If there is an error, the employer should correct its records, inform the relevant agency, and verify that the corrected name and SSN match agency records. The employer should also make a record of the manner, date, and time of the verification; or
 - b. Ask the employee to confirm that the information the employer has in its records is correct if the employer did not find any error in its own records. If the employee provides corrected information, the employer would correct its records, inform the relevant agency, and verify that the corrected name and SSN match agency records. If the employer's own records *are* correct, the employer should ask the employee to resolve the discrepancy with the relevant agency. In both instances, the employer should make a record of the manner, date, and time of the verification.
2. If the discrepancy is not resolved *within 60 days* of receipt of the no-match letter, the employer may reverify the employee's work authorization and identity by completing a new Form I-9. The employer and employee would have **3 days** to complete this form (or within 63 days of receipt of the no-match letter). An employee *cannot* use a document containing the SSN or alien number that is the subject of the no-match letter to establish work authorization or identity or both. Additionally, all documents used to prove identity or both identity and employment authorization must contain a photograph.
3. If the no-match is not resolved and the employer cannot verify the work authorization and identity of the employee, the employer must choose between terminating the employee or facing the risk that DHS may find that the employer had constructive knowledge that the employee was unauthorized to work, and is therefore in violation of immigration laws.

There may be other procedures that an employer *could* follow in response to a no-match letter that would be considered "reasonable" by DHS, but unless the employer follows the "safe-harbor" procedures outlined in the rule, there is a risk that DHS may find the employer had constructive knowledge that the employee was unauthorized to work. Additionally, DHS notes that even if an employer follows the safe-harbor procedures outlined above, it would not preclude DHS from finding that an employer had "actual" knowledge that an employee was unauthorized to work. In this instance, the burden would be on the government to prove that the employer had actual knowledge.

For more information, please contact:

Tyler Moran, National Immigration Law Center, 208.333.1424, moran@nilc.org.

BENNIE G. THOMPSON
SECOND DISTRICT, MISSISSIPPI

COMMITTEE ON
HOMELAND SECURITY
RANKING MEMBER

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Congress of the United States
House of Representatives
Washington, DC 20515-2402

November 2, 2006

VIA FIRST CLASS MAIL

Scott Farmer
Chief Executive Officer
Cintas Corporation
6800 Cintas Blvd.
Mason, OH 45040

Dear Mr. Farmer:

As Ranking Member of the House Homeland Security Committee, I am deeply troubled by Cintas' recent policy change regarding the Social Security Administration's "no match" letters. It is my understanding that hundreds of Cintas' immigrant workers have received these letters. I am extremely concerned about any potentially discriminatory actions targeting this community. Consequently, I am urging you to return to your previous "no match" policy, which is in line with current Department of Homeland Security (DHS) regulations.

Cintas' new policy, which threatens to terminate workers who do not re-verify their I-9 forms, appears to be a rash enactment of a *proposed* DHS regulation. Before this proposal becomes law, it must go through a "rule-making" process which could radically change the regulation or kill it altogether. By implementing this incomplete regulation, Cintas could violate federal immigration law's prohibition against re-verifying I-9 documents.

My apprehension over this new policy is echoed by the Equal Employment Opportunity Commission and the thousands of other comments submitted to the DHS in opposition to the proposed rule. The federal Equal Employment Opportunity Commission (EEOC) wrote to Homeland Security warning that its proposed rule "may create circumstances in which employers have incentives to take actions that violate ... non-discriminatory provisions."

The letter that you received from SSA clearly states: "This letter does not imply that you or your employee intentionally provided incorrect information about the employee's name or Social Security Number. It is not a basis, in and of itself, for you to take any adverse action against the employee, such as laying off, suspending, firing, or discriminating against the individual. **Any employer that uses the information in this letter to justify taking adverse action against an employee may violate state or**

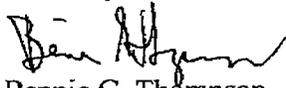
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| <input type="checkbox"/> 107 WEST MADISON STREET
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(601) 866-9003
(601) 866-9036: FAX
(800) 355-9003: IN ST. | <input type="checkbox"/> 509 HIGHWAY 82 WEST
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(662) 455-9003
(662) 453-0118: FAX | <input type="checkbox"/> 910 COURTHOUSE LANE
GREENVILLE, MS 38701
(662) 335-9003
(662) 334-1304: FAX | <input type="checkbox"/> 3607 MEGGAR EVERS BOULEVARD
JACKSON, MS 39213
(601) 982-8582
(601) 982-8583: FAX | <input type="checkbox"/> 263 EAST MAIN STREET
P.O. BOX 356
MARKS, MS 38646
(662) 326-9003
(662) 326-9003: FAX | <input type="checkbox"/> MOUND BAYOU CITY HALL
P.O. BOX 679
105 GREEN AVENUE, SUITE 106
MOUND BAYOU, MS 38762
(662) 741-9003
(662) 741-9002: FAX |
|---|--|---|--|---|---|

Federal law and be subject to legal consequences (emphasis added). Moreover, this letter makes no statement about your employee's immigration status."

In the past, Cintas met all of its legal obligations outlined in the letter by informing workers of a Social Security mismatch and respecting their privacy to correct the problem on their own accord. If employees are terminated due to Cintas' new policy, your company may be accused of illegal activities in violation of state and federal law.

I hope this letter has helped clarify any confusion Cintas has over the law. Please contact me or my Chief of Staff, I. Lanier Avant at 202.225.5876 as soon as possible to offer an update on this critical situation.

Sincerely,



Bennie G. Thompson
Member of Congress

Background Information on San Jose

San Jose Community Leaders and Workers Tell Cintas to Stop Following Flawed “No Match” Policy

11/3/2006

A diverse delegation went to Cintas’ San Jose facility on Tuesday, October 31, to demand that the company revoke its unjust “no match” policy. The delegation included representatives from government, community and faith-based organizations as well as workers from the plant.

Members of the delegation expressed concern about the company’s apparent adherence to a Department of Homeland Security proposal that encourages employers to fire workers who do not correct social security mismatches or re-verify to employers their work authorization. This proposal is not the law, unnecessarily threatens immigrant families’ livelihoods and may lead to discrimination on the job. Cintas’ response was giving out the phone number to its corporate headquarters in Cincinnati.

Workers presented plant management with a letter they signed requesting a copy of the Social Security Administration’s communication to Cintas notifying the company of mismatches. The company has refused to give workers a copy of the document.

Cintas gave San Jose workers until November 13 to reverify their information. If workers do not do so, they fear they will be terminated. Members of the delegation have promised to stand by workers until Cintas revokes this unnecessary policy.

“I am very worried about my children because my family could suffer because of this. All workers at Cintas have bills we have to pay, but I feel like none of this seems important to Cintas,” said one worker who asked to remain anonymous out of fear of retaliation.

Representatives from the Santa Clara County Office of Human Relations, American Civil Liberties Union, Most Holy Trinity Church, Our Lady of Guadalupe, Holy Redeemer Lutheran Church, La Trinidad United Methodist Church, Asian Pacific Islander Alliance, SIREN, FOCUS, Working Partnerships and UNITE HERE took part in the delegation.

11/13/06

Community Gathers for Prayer Vigil and Rally for Cintas Workers

After attention was paid to questionable application of a proposed DHS regulation, the San Jose Cintas changed their mind last Thursday, and told workers in a letter from plant manager Brian Snody, that no one would be fired. Workers were overjoyed, by what they thought was the end of the ordeal. Unfortunately, when the deadline arrived, workers who signed the letter requesting the original SSA correspondence, and two others active in organizing a union, were pulled one by one into the manager's office, and told they had till Thursday to rectify the "no match" issue or they would be fired, and until then they were laid off.

Outraged by the discriminatory, unethical, and possibly illegal policy Cintas was implementing, over sixty community members, clergy, civic leaders and union members rallied to the workers cause at a prayer vigil and rally in front of the plant on November 13th.

A steady rain did not dampen the spirits of those gathered. Many prayers were said for the workers. As a delegation entered the plant, those gathered outside chanted, cheered and made a lot of noise, enough to be heard in the plant. The delegation tried to get a straight answer on what Cintas' policy is, and encouraged the plant manager to consider the suffering of the workers. Mr. Snody was not forthcoming on any answers. He once again told the delegation the decisions are made in Cincinnati, the company's head quarters, and to contact VP of Communications, Pam Lowe (513-573-4017) to answer questions. When he was informed that Pam was not taking or returning calls, he was apologetic, but offered no alternative contact.

The workers were moved by the community support, but remain very concerned about what a termination will mean for their families, just one week before Thanksgiving.

11/14/06-11/16/06

All thirteen workers were called into the office and re-submit I-9 forms and one worker has been fired so far.

Brian Snody, General Manager
Cintas Cleanroom Resources
2221 Will Wool Dr.
San Jose, CA 95112

Dear Mr. Snody:

The San Jose Human Rights Commission is deeply troubled by Cintas' policy change regarding Social Security Administration "no match" letters. It is my understanding that hundreds of immigrant workers have received these letters at Cintas, including thirteen here in San Jose. Given that we represent a many of the diverse communities that make up the City of San Jose, we are extremely concerned about any potentially discriminatory actions targeting this communities. This is why I am asking you to return to your previous "no match" policy.

Cintas' new policy, which threatens to terminate workers who do not re-verify their I-9 forms, appears to be a rash enactment of a **proposed** Department of Homeland Security (DHS) regulation. Before this proposal becomes law, it must go through a "rule-making" process, which could radically change the regulation or kill it altogether. By implementing this incomplete regulation, Cintas could violate federal immigration law's prohibition against re-verifying I-9 documents.

Our apprehension over this new policy is echoed by the Equal Employment Opportunity Commission and the thousands of other comments submitted to the DHS in opposition to the proposed rule. The federal Equal Employment Opportunity Commission (EEOC) wrote to Homeland Security warning that its proposed rule "may create circumstances in which employers have incentives to take actions that violate ... non-discriminatory provisions."

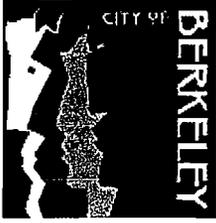
The letter that you received from SSA clearly states: "This letter does not imply that you or your employee intentionally provided incorrect information about the employee's name or Social Security Number. It is not a basis, in and of itself, for you to take any adverse action against the employee, such as laying off, suspending, firing, or discriminating against the individual. **Any employer that uses the information in this letter to justify taking adverse action against an employee may violate state or Federal law and be subject to legal consequences** (emphasis added). Moreover, this letter makes no statement about your employee's immigration status."

In the past, Cintas met all of its legal obligations outlined in the letter by informing workers of a Social Security mismatch and respecting their privacy to correct the problem on their own accord. If employees are terminated due to Cintas' new policy, your company may be accused of illegal activities in violation of state and federal law.

On November 16, 2006, the Human Rights Commission adopted a resolution opposing this new DHS rule, which we are forwarding to the City Council for consideration. We have enclosed a copy of that resolution with this letter.

Please contact me at _____ as soon as possible to give me an update on this critical situation.

Sincerely,



Office of the Mayor

CONSENT CALENDAR

October 24, 2006

To: Members of the City Council

From: Mayor Tom Bates and Councilmember Kriss Worthington

Subject: Opposition To New Homeland Security Rules Regarding "No Match" Letters

RECOMMENDATION:

That the City Council approve a resolution opposing new Department of Homeland Security rules that would hold employers liable for violating immigration law if they continue to employ workers who receive "no-match" letters from the Social Security Administration.

BACKGROUND:

The Department of Homeland Security has proposed a new rule that would hold employers liable for violating immigration law if they continue to employ workers who receive "no-match letters" from the Social Security Administration. No match letters are sent when there is a discrepancy between an employee's I-9 paperwork and Social Security Administration records. Under current law, the employer merely provides the worker with the "no match" letter so that the problem can be remedied.

Discrepancies between Social Security and employer records are commonplace and occur due to surname changes, marriage or divorce, clerical errors, common surnames, or differences in date-writing conventions. According to the federal government, as many as 10% of I-9's have a discrepancy.

The new rule would create burdensome, inappropriate, and unclear new requirements for employers by forcing them to act as agents of the federal government to enforce immigration law. It could also lead to a large number of law-abiding workers losing their jobs due to employers misunderstanding the rule, or using it as a device to fire, intimidate, harass, or underpay employees.

The "no match" rules changes are opposed by business, labor, and civil rights groups across the country.

This item will ask our federal representatives to oppose this rule change and require the City to avoid taking adverse action against a city employee who receives a "no-match" letter, except as specifically required by law.

FISCAL IMPACTS: None.

CONTACT PERSON: Mayor Tom Bates, 981-7100.

ATTACHMENTS: Draft Resolution, Department of Homeland Security press release, U.S. Chamber of Commerce Press Release

Resolution opposing the Department of Homeland Security's proposed rule on use of Social Security Administration "no-match" letters to enforce immigration law.

WHEREAS, The Department of Homeland Security (DHS) has proposed a rule, entitled "Safe Harbor Procedures for Employers Who Receive a No-Match Letter," that requires employers to take action upon receiving "no-match" letters, that the Social Security Administration sends to employers in the event of a discrepancy between an employee's name and Social Security information; and

WHEREAS, Many discrepancies between Social Security and employer records occur due to surname changes, marriage or divorce, clerical errors, common surnames, or differences in date-writing conventions; and

WHEREAS, The new rule would create burdensome, inappropriate, and unclear new requirements for employers by forcing them to act as agents of the federal government to enforce immigration law; and

WHEREAS, The new rule could lead to a large number of law-abiding workers losing their jobs due to employers misunderstanding the rule, or using it as a device to fire, intimidate, harass, or underpay employees; and

WHEREAS, The City of Berkeley values and relies upon the contributions of immigrant workers to the city's workforce, in both public and private sectors; and

WHEREAS, Our local, regional and national economies would be jeopardized by the loss of immigrant jobs in the wake of fear and confusion caused by the new and unclear enforcement of this rule; now, therefore, be it

RESOLVED, The City of Berkeley opposes the Department of Homeland Security's proposed rule on the use of Social Security Administration "no-match" letters to enforce immigration law, entitled "Safe Harbor Procedures for Employers Who Receive a No-Match Letter" and urges DHS to withdraw this confusing and unfair rule; and, be it

FURTHER RESOLVED, That the City of Berkeley requests that its federal representatives advocate against this proposed rule; and, be it

FURTHER RESOLVED, That, upon receipt of a "no-match" letter, the City of Berkeley will take no adverse action against any city employee listed on the letter except as required by law; and, be it

FURTHER RESOLVED, That the City of Berkeley will continue to comply with all legal requirements, will provide the employee with a copy of any "no-match" letter received, will prepare W-2c forms (Corrected Wage and Tax Statement) for any records we are able to correct and, for any record we are unable to correct, will instruct the employee to work directly with the Social Security Administration to make any necessary corrections.



DHS Announces Federal Regulations to Improve Worksite Enforcement and Asks Congress to Approve Social Security "No Match" Data Sharing

For Immediate Release
Office of the Press Secretary
Contact: 202-282-8010
June 9, 2006

President Bush recently announced that the Federal government would make it easier for employers to verify employment eligibility and continue to hold them to account for the workers they hire. To that end, the Department of Homeland Security (DHS) announced today the release of two Federal regulations to help businesses comply with current legal hiring requirements intended to reduce the employment of unauthorized aliens.

The first proposal would permit U.S. businesses to digitize their I-9 employment forms, which are used to verify eligibility to work in the United States. The other proposed regulation would set forth guidance for U.S. businesses when handling no-match letters from the Social Security Administration (SSA) concerning submitted employee Social Security numbers or from DHS concerning documents submitted by employees during the I-9 process.

"Most businesses want to do the right thing when it comes to employing legal workers," said Homeland Security Secretary Michael Chertoff. "These new regulations will give U.S. businesses the necessary tools to increase the likelihood that they are employing workers consistent with our laws. They also help us to identify and prosecute employers who are blatantly abusing our immigration system."

Typically, when a worker's Social Security number does not match the worker's name on tax or employment eligibility documents, the Federal government sends out a "no-match" letter asking them to resolve the discrepancy. In fact, out of 250 million wage reports the Social Security Administration (SSA) receives each year, as many as ten percent belong to employees whose names don't match their Social Security numbers.

Employers have also expressed their frustration with being required to keep paper forms or to store the forms on microfilm or microfiche when all other aspects of their record-keeping have been computerized. The interim regulation would give employers the option to sign and store Forms I-9 electronically. It is expected that many employers will experience cost savings by storing these forms electronically rather than using conventional filing and storage methods. In addition, because of the automated way in which electronic forms are completed and retained, they are less likely to contain errors. Finally, electronically retained forms are more easily searchable, which is important for verification, quality assurance and inspection purposes.

The "no match" regulation reviews the legal obligations of an employer, under current immigration law, when the employer receives a no-match letter from the SSA or DHS. It also describes "safe-harbor" procedures for employers to use in dealing with such a letter. If followed in good faith, these procedures would provide certainty that DHS will not find, based on a receipt of a "no-match" letter, the employer in violation of their legal obligations.

These proposed regulations are now subject to a 60-day public comment period, although the I-9 regulation will become effective on an interim basis as soon as it is published.

As Congress continues to consider comprehensive immigration reform, DHS continues to urge them to increase the authority of the SSA to share information about Social Security "no match" letters with DHS worksite enforcement agents. This information would allow DHS to learn which employers had received "no match" letters from SSA. It also assists investigators in identifying companies with the highest rate of immigration fraud.

"Identifying businesses that are habitually flagged for submitting mismatched Social Security numbers would

bolster our worksite enforcement efforts," added Secretary Chertoff. "Congressional approval of this legislation is critical to ensuring that U.S. businesses hire legal workers."

Chertoff also noted that fixing the problem of illegal immigration requires a comprehensive solution that must include a temporary worker program. A temporary worker program would replace illegal workers with lawful taxpayers, help us hold employers accountable, and let us know who is in our country and why they are here.

###

Related Information

- [Electronic Signature and Storage of Form I-9, Employment Eligibility Verification Interim Rule with Request for Comments, July 15, 2006](#)

Note: The no-match letter can be a letter to the employer from the Social Security Administration stating that the combination of name and social security account number submitted for an employee does not match the agency records, or a letter from the Department of Homeland Security notifying employer that the immigration-status or employment-authorization documentation presented or referenced by the employee is not consistent with DHS records.

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U.S. Chamber Opposes Using "No Match" Letters to Enforce Immigration Laws

The U.S. Chamber and other groups are opposing a proposed regulation that would use so-called Social Security Administration (SSA) "no match" letters as a means to enforce immigration laws against employers. No match letters are issued to employers who submit wage reports that do not agree with information in SSA's records. The SSA issues no-match letters for a number of reasons and employers should not be presumed guilty for what SSA readily admits could be a spelling error, name change due to marriage or divorce, or an incomplete W-2 form. In fact, the SSA warns the employers in its no match letters that it does not say anything about an employee's work authorization or immigration status.

The proposed rule would also impose a new burdensome and confusing set of actions on employers. It could make companies liable for knowingly hiring undocumented immigrants based merely on failure to follow procedures that might include laying off United States citizens, if they are unable to clear their records with the government within 60 days.

The Chamber calls the proposed regulation misguided and untimely, given that the issues that it attempts to address are better handled through the ongoing comprehensive immigration reform process.

This article is also available as an [RSS Feed](#).

This article originally appeared in uschamber.com Weekly, our free e-mail newsletter featuring commentary from Chamber President and CEO Tom Donohue, economic updates, regional news, and small business tips and tools. [Click here](#) for this week's complete issue or [become a subscriber](#)

Related Links

- Immigration Reform - A Missed Opportunity (Commentary)
- Immigration Issues (Issues)
- Chamber Calls for Extension of Seasonal Visa Exemption (Washington Update)
- U.S. Chamber Opposes Using "No Match" Letters to Enforce Immigration Laws (Washington Update)

Office of the Mayor
City & County of San Francisco



Gavin Newsom

FOR IMMEDIATE RELEASE:

Monday, August 14, 2006

Contact: Mayor's Office of Communications,
415-554-6131

*** STATEMENT ***

MAYOR NEWSOM CONDEMNS ACTION BY THE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY THAT CRIMINALIZES HARD WORKING SAN FRANCISCANS

Department of Homeland Security proposes new rule that would hold employers liable for violating immigration law if they continue to employ workers who receive "no-match letters" from the Social Security Administration.

"SSA no-match letters are not an appropriate tool for enforcing immigration law. In addition to creating unclear and burdensome new requirements for employers, they penalize workers regardless of their true immigration status. I am troubled by the possibility that many workers might be forced to work in an underground economy, less cooperation with law enforcement may occur, and fear of seeking medical treatment may be widespread.

As stated in the past, San Francisco is a city of compassion – we are a Sanctuary City. We are proud to provide City services and public protection to all people, no matter where they are from, and we do not ask for anyone's legal status.

Today, after conferring with local business and labor leaders, I submitted formal comments to the Department of Homeland Security in Washington that outlined my concerns. Tomorrow, I will introduce a resolution at the Board of Supervisors that puts San Francisco on the record in opposition of this troubling new law.

The federal government should fulfill its responsibility for enforcing immigration law, while we continue to protect the jobs of all San Franciscans, both documented and undocumented."

Resolution Attached

###

FILE NO.

RESOLUTION NO.

1 [Opposing the Department of Homeland Security's proposed rule to enforce immigration law.]

2
3 **Resolution opposing the Department of Homeland Security's proposed rule on use of**
4 **Social Security Administration "no-match" letters to enforce immigration law.**

5
6 WHEREAS, The Department of Homeland Security (DHS) has proposed a rule, entitled
7 "Safe Harbor Procedures for Employers Who Receive a No-Match Letter," that requires
8 employers to take action upon receiving "no-match" letters, that the Social Security
9 Administration sends to employers in the event of a discrepancy between an employee's
10 name and Social Security information; and

11 WHEREAS, Many discrepancies between Social Security and employer records
12 occur due to surname changes, marriage or divorce, clerical errors, common surnames, or
13 differences in date-writing conventions; and

14
15 WHEREAS, The new rule would create burdensome, inappropriate, and unclear
16 new requirements for employers by forcing them to act as agents of the federal government to
17 enforce immigration law; and

18 WHEREAS, The new rule could lead to a large number of law-abiding workers
19 losing their jobs due to employers misunderstanding the rule, or using it as a device to fire,
20 intimidate, harass, or underpay employees; and

21
22 WHEREAS, The City and County of San Francisco values and relies upon the
23 contributions of immigrant workers to the city's workforce, in both public and private sectors;
24 and

1 WHEREAS, Nearly one-third of San Franciscans are immigrants, and immigrant San
2 Franciscans contribute to several key industries, including hotels and restaurants,
3 construction and building trades, health care, and janitorial services; and

4 WHEREAS, These industries, the people they serve, and San Francisco's
5 economy would be jeopardized by the loss of immigrant jobs in the wake of fear and
6 confusion caused by the new and unclear enforcement of this rule; now, therefore, be it

7
8 RESOLVED, San Francisco opposes the Department of Homeland Security's
9 proposed rule on the use of Social Security Administration "no-match" letters to enforce
10 immigration law, entitled "Safe Harbor Procedures for Employers Who Receive a No-Match
11 Letter" and urges DHS to withdraw this confusing and unfair rule; and, be it

12 FURTHER RESOLVED, That the City and County of San Francisco requests that its
13 federal representatives advocate against this proposed rule; and, be it

14 FURTHER RESOLVED, That, upon receipt of a "no-match" letter, the City and
15 County of San Francisco will take no adverse action against any city employee listed on the
16 letter, including firing, laying off, suspending, retaliating, or discriminating against any such
17 employee, and that the City and County of San Francisco will not ask any employee to
18 provide documentation to re-verify immigration status, except as required by law; and, be it

19
20 FURTHER RESOLVED, That the City and County of San Francisco will continue to
21 comply with all legal requirements, will provide the employee with a copy of any "no-match"
22 letter received, will prepare W-2c forms (Corrected Wage and Tax Statement) for any records
23 we are able to correct and, for any record we are unable to correct, will instruct the employee
24 to work directly with the Social Security Administration to make any necessary corrections.
25

CITY OF SANTA FE, NEW MEXICO

RESOLUTION NO. 2006-____

INTRODUCED BY:

A RESOLUTION

DECLARING A POLICY OF NON-DISCRIMINATION UPON RECEIPT OF
A "NO-MATCH" LETTER FROM THE SOCIAL SECURITY ADMINISTRATION.

WHEREAS, the governing body of the city of Santa Fe has declared a policy of non-discrimination on the basis of a person's national origin, and that the City of Santa Fe will be a community where all persons will be treated equally, with respect and dignity, regardless of immigration status; and

WHEREAS, the Social Security Administration has sent to certain employers located in the City of Santa Fe so-called "No-Match" letters indicating that an employee's name and social security number as reported by the employer do not match; and

WHEREAS, most discrepancies between social security and employer records are due to marriage, divorce, clerical errors or name changes; and

WHEREAS, these letters are advisory, do not indicate any wrongdoing by either employer or employee, specifically state that they do not constitute any sort of notice of possible immigration violations, and are meant only to inform the workers and insure that their earnings are properly credited so that they will be entitled to collect Social Security monies at the appropriate time; and

WHEREAS, the Social Security administration is not an enforcement agency but, rather, a service agency charged with providing benefits to our nation's workers; and

WHEREAS, the "No-Match" letters can possibly be used by some employers to summarily fire, intimidate, harass and threaten employees; and

WHEREAS, the "No-Match" letters have been used by some employers both to take advantage of workers and to mitigate the efforts of labor organizations to obtain better wages and/or improve working conditions; and

WHEREAS, the "No-Match" letters contain strong language warning employers not to take adverse action against workers based on having received the SSA letter alone, and that any employer that uses the information in the letters to justify taking adverse action against an employee may violate state or Federal law and be subject to legal consequences, and

WHEREAS, employers comply with immigration law by asking their employees, within three days of being hired, to produce facially valid documents to verify their identities and authorization to work in the United States, and to fill out an INS Form I-9; and

WHEREAS employers, after receiving “No-Match” letters, who ask employees about their immigration status or insist that they re-verify their authorization to work in the United States may be violating the “document abuse” prohibition and anti-discrimination provisions of the Immigration Reform and Control Act;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF SANTA FE that, upon receipt of a “No-Match” letter, the City of Santa Fe will take no adverse action against any city employee listed on the notice, including firing, laying off, suspending, retaliating, or discriminating against any such employee, and that the City of Santa Fe will not ask any employee, either orally or in writing, to provide documentation to re-verify immigration status, except as required by law.

AND BE IT FURTHER RESOLVED that the City of Santa Fe will provide labor organizations with copies of any and all “No-Match” letters received and that, if interviews with employees are required, the City will notify local labor organizations.

AND BE IT FURTHER RESOLVED that the City of Santa Fe will continue to comply with all legal requirements, will provide the employee with a copy of any “No-Match” letter received, will prepare W-2c forms (Corrected Wage and Tax Statement) for any records we are able to correct and, for any record we are unable to correct, will instruct the employee to deal directly with the Social Security Administration to make any necessary corrections.

PASSED, APPROVED AND ADOPTED THIS _____ DAY OF _____, 2006.

DAVID COSS, MAYOR

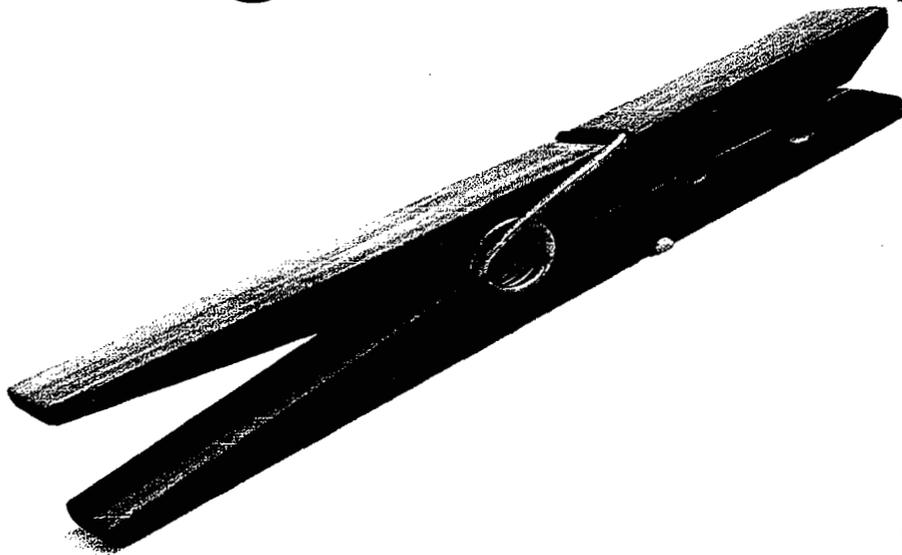
ATTEST:

YOLANDA VIGIL, CITY CLERK

APPROVED AS TO FORM:

FRANK D. KATZ, CITY ATTORNEY

Cintas: Hanging Immigrant Workers' Rights Out to Dry



With its recent attacks on immigrant workers, **Cintas is making laundry a dirty business.** The company, North America's largest uniform provider, is rashly following a controversial Department of Homeland Security proposal that threatens the livelihoods of immigrant workers throughout the United States.

The proposed regulation encourages companies to fire workers for not correcting social security number mismatches or re-verifying to employers their work authorization status. No employer—including Cintas—is obligated to re-check workers' documents simply based on a social security "no match" notification. **Cintas should respect workers' privacy to resolve social security issues on their own.**

All Cintas employees should work in an atmosphere free from harassment, intimidation and discrimination. **By standing with workers, we can ensure they get the respect they deserve!**



**Take Action for Cintas
Workers!
Where? When?**

To hear more about how you can help, call 800/872.8646 or visit www.uniformjustice.com!

Posted on Tue, Nov. 14, 2006

Workers put on leave because of Social Security mismatches

JULIANA BARBASSA
Associated Press

SAN FRANCISCO - Seven workers at a San Jose manufacturing plant were placed on unpaid leave in what could be the first example of a U.S. company following a pending homeland security proposal to prevent the employment of illegal immigrants.

Cintas, a Cincinnati-based uniform maker with 30,000 employees in five states, said the workers were taken off the job Monday after they failed to furnish valid Social Security numbers, which are usually needed to prove eligibility to work in the United States.

The seven workers had been given two months to verify their status after the company received a letter from the federal government saying the workers' names didn't match the numbers they submitted to the company, according to Mike Wallner, a Cintas spokesman.

"We believe Cintas has a very generous policy," Wallner said. "All the employees have to do is work out the discrepancies with the Social Security Administration."

Cintas has notified dozens of other employees at the company's four Bay Area plants asking them to clear up similar mismatches, several workers said. The employees are confused and fear losing their jobs, said Adilene Sandoval, who works in the company's South San Francisco plant and has received one of the warnings.

"I have nothing to fix - this is my name, this is my number," said Sandoval, who has worked for Cintas for more than five years and did not want to comment on her immigration status. "It doesn't seem fair to me that after so much time, they'll ask these questions."

Immigrant activists and labor organizers said the company was acting in accordance with an as-yet unapproved rule published in June by the Department of Homeland Security. The proposal would give companies 63 days to solve Social Security mismatches or risk being held liable for knowingly employing immigrants without proper work documents.

A statement Cintas officials distributed at one of the California plants in September explained the proposed guidelines and said the federal government had given the company a list of employees it would affect.

"These guidelines were proposed by the Department of Homeland Security, and would be enforced by Immigration and Customs Enforcement, and are not intended to discriminate against anyone," the statement said.

The rule, "Safe Harbor Procedures for Employers Who Receive a No-Match Letter," outlines steps an employer should take once the company is warned there's a question about the validity of employees' Social Security numbers.

The Social Security Administration advises employers in the letters themselves that a mismatch does not prove by itself that a worker is an illegal immigrant.

The regulation was opposed in its current form by several federal agencies, business groups and local officials, including the U.S. Equal Opportunity Employment Commission, the city of San Francisco and the U.S. Chamber of Commerce.

Opponents argued the rule's two-month deadline for clearing up discrepancies was not enough time and that requiring employers to take action might lead to discrimination based on national origin.

Last week, Mississippi Rep. Bennie Thompson, ranking member of the House Committee on Homeland Security, wrote Cintas CEO Scott Farmer to say the company's policy toward Social Security conflicts "appears to be a rash enactment of a proposed DHS regulation" that may never become law.

But company officials said they're only trying to follow government guidelines as best they can.

"Cintas has an obligation to make sure all employees are authorized to legally work in the United States," Wallner said.

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Safe Harbor for Employers Who Receive a No-Match Letter Rule

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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RANDEL K. JOHNSON

VICE PRESIDENT
LABOR, IMMIGRATION &
EMPLOYEE BENEFITS

ANGELO I. AMADOR

DIRECTOR
IMMIGRATION POLICY

August 14, 2006

VIA ELECTRONIC MAIL

Director
Regulatory Management Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
111 Massachusetts Avenue, N.W., 2nd Floor
Washington, DC 20529

RE: DHS Docket No. ICEB-2006-0004 – Rulemaking Proceedings on Safe-Harbor Procedures for Employers Who Receive a No-Match Letter

Dear Director:

On behalf of the United States Chamber of Commerce (“Chamber”) and the other groups listed below we would like to submit the following comments on the proposed rule cited above. The Chamber is the world’s largest business federation, representing more than three million businesses of every size, sector, and region.

The proposed rule would change existing regulations on how employers are expected to respond to “no-match letters” from the Social Security Administration (“SSA”) or the Department of Homeland Security (“DHS”). This is being done at a time in which both houses of Congress have passed legislation that includes new employment eligibility systems and enforcement mechanisms. Thus, the Chamber requests that the regulation be withdrawn until Congress acts regarding comprehensive immigration reform. In the alternative, the Chamber asks for clarification regarding the substantive issues presented by the regulation as well as additional time for employers to conform to the new system and process. No-match letter and overall employment eligibility and verification standards include companies and organizations across a wide spectrum of businesses and industries.

The Chamber understands several of the concerns expressed by DHS, however, we think that the proposed rule is untimely because it undermines the current legislative process. It also does not properly consider the economic ramifications of acting outside the Administration’s own stated goal of enacting comprehensive immigration reform. This proposed rule only muddies the waters during this critical time of debate. The Chamber believes that new rules on employment verification should occur within the context of comprehensive immigration reform.

We should let these discussions continue without adding new bureaucratic burdens on well-intentioned employers or penalizing needed hardworking immigrants.

I. Issues Addressed by the Proposed Regulation Should be Part of Comprehensive Immigration Reform Legislation.

DHS should let Congress continue to move the immigration debate forward as a whole and not section out areas to regulate; a piecemeal approach is not prudent. Both the Senate (S. 2611) and House (H.R. 4437) bills currently pending include stringent employment eligibility and verification systems and strengthened interior enforcement procedures. They also significantly change an employer's responsibilities when verifying the identity and work authorization eligibility of its workforce. Each measure specifically addresses the case when an employer receives a no-match letter from the SSA or from DHS. It is important to let this ongoing, fruitful debate run its course without undermining it with regulations that may lead to duplicative and possibly contradictory proposals. The proposed regulation should only be enacted as part of comprehensive immigration reform. To advance an enforcement-only regulation independently—without a legalization program for current unauthorized workers and a guest worker program to address our future workforce needs—is short-sighted and not responsive to our nation's economic needs.

Should DHS go forward with the proposed regulation, we request that it takes into consideration the substantive issues presented below that are of great concern to the Chamber, its members, and the other groups listed at the end of these comments:

II. What constitutes receipt according to DHS? When Do Employers "Receive" No-Match Letters?

The regulation does not state what happens in the instance where an SSA no-match letter goes directly to an employee at the employer's place of business. Is the employer considered to be on notice and have constructive knowledge? For this particular instance please outline what an employer should do to take advantage of the safe-harbor provision.

III. Constructive Knowledge and the Time Granted to an Employer to Take Reasonable Steps in Response to SSA No-match Letters and Written Notifications from DHS.

A. Constructive Knowledge Standard

The proposed regulation would significantly increase the scope of constructive knowledge in certain circumstances. It states that "the employer's obligations under current law, which is that if the employer fails to take reasonable steps after receiving such information, and if the employee is in fact an unauthorized alien, the employer may be found to have had

constructive knowledge of that fact.”¹ The regulation defines what constitutes a “reasonable response” by an employer to a no-match letter and mandates specific steps to be taken by the employer within defined periods of time. The regulation’s preamble suggests that taking such measures may allow the employer to avoid liability and mitigate or eliminate potential penalties, but leaves much unanswered.

B. What Constitutes a Reasonable Response?

The proposal states that within 14 days of receipt of the no-match notice, an employer must attempt to resolve the discrepancy by checking its personnel and payroll records to determine whether the discrepancy results from a clerical error. If it is simply a clerical mistake, the employer is to contact SSA and administratively correct the information. If it is not clerical, the employer must approach the employee and confirm that the information that was provided by the employee to the employer is indeed accurate. If there was an inadvertent mistake when transmitting the information, the employer should correct immediately and inform SSA. If however, the employee says that initial information provided is accurate, the employer must direct the employee to the local SSA office where the employee has to resolve the issue.

After an employer has determined that a discrepancy is not from a clerical error on the part of the employer, the proposed regulation states that the “employer takes reasonable steps, within 14 days, to attempt to resolve the discrepancy; such steps may include: . . . if [the records] are correct according to the employee, requesting the employee to resolve the discrepancy with the Social Security Administration, such as by visiting a Social Security Administration office.”² The regulation then goes on to state that if the discrepancy has not been resolved within 60 days, and if the employee’s identity and work authorization cannot be verified at that time, then employers “must choose between taking action to terminate the employee or facing the risk that DHS may find that the employer had constructive knowledge the employee was an unauthorized alien.”³ There are two main issues that arise from the above:

1. These timeframes (14 days and 60 days) are not practical or fair. Both large and small employers will be faced with challenges to meet this standard. Large employers may receive several no-match letters at a time, which are likely to include hundreds of names. Particularly in decentralized operations, the necessary follow-up and personnel interviews will take significant man hours to accomplish. As a result, it will be very difficult to resolve all of the letters in the prescribed time period. Small businesses face even more hurdles to comply. They often do not have a full-time administrative staff to address these issues in a 14-day timeframe. Small business owners often have to run the business, oversee bookkeeping, supervise employees and perform multiple administrative duties. Adding this clerical review and follow up with each employee will only add to these tasks. The 14-day period is accordingly not reasonable and will be unduly

¹ See Safe-Harbor Procedures for Employers Who Receive a No-Match Letter, 71 Fed. Reg. 34,282 (2006) to be codified at 8 CFR 274a) (proposed June 14, 2006).

² *Id.* at 34,285.

³ *Id.* at 34,283.

burdensome for small employers as well. The allotted time by which an employer must respond to a no-match is not an adequate, nor a reasonable time-period for an employer to have to act. We therefore request that this be changed to a reasonable time frame standard, which would then acknowledge the difference in sophistication of the over seven million employers in the United States.

2. It is also unclear from the regulation as to what occurs between the 14-day and 60-day time period and request clarification on the issue. It is our assumption that the employer has 14-days to inform the employee of the discrepancy and determine whether it is a clerical mistake. Thereafter, the employer has 60-days, from the date of receipt of the letter or notice, to ensure and confirm that the discrepancy has been rectified. Thus, an employee has less than two months to work out a resolution if there is an error between themselves and the Social Security Administration, which might not be enough time. Finally, it is the Chamber's reading and understanding that as a matter of fairness and reasonableness, an employer can continue to employ an employee between the 14 and 60-day period, even if there is an unresolved discrepancy.

IV. Requirement to Fill Out New I-9 Forms.

As noted above, the proposed regulation requires that employers verify the employee's identity and work authorization within 60 days following notice of a discrepancy and that "the employer complete a new I-9 Form for the employee, using the same procedures as if the employee were newly hired."⁴ This provision needs to be clarified for employers. Based on the proposed regulation, it seems that if there was simply a clerical error that is found within the 14-day window, the employer needs only to record that they spoke with SSA and it was worked out, but the employer does not need to complete a new I-9 Form for the employee that received a no-match. Also according to the regulation, if an employee could not resolve his or her issue with SSA regarding the no-match within 60 days, an employer may complete a new I-9 Form for that employee and continue to hire him or her as long as they do not use the disputed no-match documents to verify work authorization.

What is unclear is what an employer is to do if the employee does indeed resolve the no-match issue within the 60-day time period. Does the employer have to do a new I-9 Form to record the resolved social security number? It is the Chamber and the signatories' belief that requiring a new I-9 Form every time there is a discrepancy that must be corrected with the SSA would be a burdensome process for our employers, both financially and administratively. Oftentimes, large employers are informed of hundreds of no-matches on a monthly basis. These no-match letters are often the product of name changes for newly married or divorced employees who have not yet applied for a new social security card to reflect their new name. Having to enforce a blanket requirement that requires an employer and employee to fill out and complete new I-9 Forms for nearly every no-match would be unduly burdensome on the employer with minimal benefit to the government's interest.

⁴ See Safe-Harbor, 71 Fed. Reg. at 34,283.

Additionally, this process would create inconsistent results. For example, some employees change their names for any number of reasons and properly report this to the SSA. Therefore, these employees would not have a no-match, but the employee's name would be different from that listed on the original I-9 Form. This would require some employees who had a name change to fill out a new I-9 Form (those who initially forgot to report it to the SSA) but not others (those who had immediately reported their name change to the SSA). It would seem inconsistent to only require new I-9 Forms for some name changes but not others. Finally, we would like to caution DHS regarding the potential fallout from the implementation of this policy. It will create further incentives for fraud and misreporting. Employees required to fill out a new I-9 Form can simply provide new false information and documentation.

In the alternative, the employee should be required to provide documentation to the employer within a reasonable period of time, such as 120 days, establishing that the employee has corrected the discrepancy with the SSA. This additional time will allow for more accurate reporting. Otherwise, an employee may simply present new false documentation to the employer when filling out the new I-9 Form. This would not meet the objective sought by this additional requirement.

Finally, the actions an employer must take under the proposed regulation, when re-verification does not produce a satisfactory result, are vague. DHS needs to clearly state if it wants employers to terminate the employment relationship under such circumstances. Furthermore, if so, it must also state that employers should be indemnified from possible liability arising from the employee's termination in accordance with new protocol outlined in the regulation. For example, the proposed regulation states that if the "employee's identity and work authorization" is verified "even if the employee is in fact an unauthorized alien, the employer will not be considered to have constructive knowledge."⁵ However, the proposed regulation is unclear as to what an employer should do when a potential United States citizen or work-authorized alien is not able to satisfy the verification requirements in the time periods allotted.

Again, the current legislative proposals specifically and clearly provide indemnification from liability to an employer who terminates an employee after following the appropriate protocol—another reason to wait for the legislative process to work. It is unclear whether a regulation could legally provide for such indemnification. Meanwhile, this proposed regulation definitely has the potential of catching even the best-intentioned employers in a new array of litigation due to a myriad of conflicting federal laws and regulations, such as those dealing with civil rights.

V. Totality of the Circumstances Standard.

One of the ways that an employer can be notified of a name discrepancy is through written notification from DHS. The proposed regulation explains that DHS will take into account the totality of relevant circumstances when making a determination whether the employer had constructive knowledge that the alien was unauthorized to work. It, therefore,

⁵ See Safe-Harbor, 71 Fed. Reg. at 34,283.

seems that receipt of notification alone is not absolutely determinative regarding whether an employer had constructive knowledge. Please provide clarification whether this reading is accurate.

Regarding the receipt of a SSA no-match letter, a comparable standard to that of the totality of the relevant circumstances is not applied. Determining whether an employer had constructive knowledge is not purely an objective finding and there should be a comparable standard included in the regulation. Imputation of constructive knowledge in all instances should depend on the totality of relevant circumstances. An example that highlights the importance of SSA taking into account the totality of the circumstances is as follows: It is common that after an immigrant enters the US they informally change their name so to "Americanize" it. More often than not the immigrant does not file for a legal name change and, as a result, this can trigger a no-match and the employee can be subsequently discharged by the employer. It is an instance like this when SSA should take into account the totality of the circumstances. That is what is reasonable and equitable and conforms to the standard used by DHS as noted in the proposed regulation.

VI. Accuracy and Effectiveness of the System.

As previously noted, one of the ways by which an employer can be put on notice is by receiving a written notification from DHS. Unlike SSA, DHS does not have a mechanism in place that regularly checks and reports mismatched immigration documents. Rather, DHS generally is made aware of mismatched immigration documents in the context of an I-9 Forms audit. As noted in the proposed regulation, if an employer receives a letter from DHS, s/he is expected to resolve the issue by "tak[ing] reasonable steps, within 14 days of receiving the notice, to attempt to resolve the question raised by DHS about the immigration status document or the employment authorization document."⁶ However, DHS provides no specific guidance as to what those steps should be and what an employer should do to rectify the situation. We request that this process be outlined and explained and that time be provided for further comment.

In addition to the substantive issues addressed above, the proposed regulation would also adversely impact the U.S. economy and our country's national security.

VII. De-stabilizing Effect on the U.S. Economy.

It is estimated that annually 500,000 essential workers enter the U.S. to perform much needed labor without work authorization. Our economy not only absorbs these needed workers, but it depends on it for our current level of growth. There are currently an estimated 12 million unauthorized workers in the U.S. This proposed regulation will strip needed workers from employers without providing employers with an alternative legal channel by which to recruit to fill the gaps created by a combination of an aging workforce domestically, higher educational attainment by the domestic population, and a booming economy with full levels of employment.

⁶ See Safe-Harbor, 71 Fed. Reg. at 34,285.

It is well documented that about five percent of the total U.S. workforce has no work authorization. It could easily be deduced that an even smaller percentage of the total U.S. workforce is working with made up names and social security numbers. Nevertheless, this small percentage of essential workers is overrepresented in sectors of the economy and regions of the country where the gap between the availability of a domestic workforce and the jobs available is greater.

Increasing interior enforcement and strengthening the employment eligibility and verification system without a legalization program for current unauthorized workers and a guest worker program to address our future workforce needs would be detrimental to the U.S. economy and the stability of an essential workforce. This is precisely why the proposed regulation should be coupled with comprehensive immigration reform. Immigration reform must be comprehensive, not disjunctive.

VIII. Firing of Immigrant Workers and the Potential Growth of the Underground Economy.

Another reality of this proposal is that if an employer receives a no-match letter, many employees will simply be fired because employers will not want to risk liability by taking unnecessary steps to remedy the situation on behalf of the employee. If terminated, those who lack work authorization will not simply leave the U.S. Rather, they will likely enter the underground workforce. This is yet one more reason why this proposal should be part and parcel of comprehensive immigration reform. As stated, we request that the regulation be held until Congress negotiates a House and Senate compromise—given that both houses of Congress have spoken of their desire to legislate in this field by passing proposals, which are quite similar in the area of worker employment eligibility and verification.

Furthermore, this proposed regulation addresses the employers who are trying to comply with the law but it does not address those underground employers who are completely non-compliant and do not complete the required I-9 Form and instead pay workers under the table. These indeed are the bad actor employers, yet the regulation gives them a free pass. By not addressing this real and thriving underground economy and only proposing increased regulations on those employers trying to act in accordance with the law, this regulation acts as an incentive for employers and employees to enter the underground economy. Workers in the black-market economy do not pay taxes and remain in the shadows and employers are not held accountable. Creating further incentives to thrive only within the underground economy is neither sound economic policy nor in our country's national security interest.

IX. The Fine Line Between Compliance and Violation.

Out of fear of non-compliance with DHS's proposed regulation, employers might be extra vigilant in trying to verify an employee's identity and eligibility to work in the U.S. However, there is a fine line for the employer between ensuring that the workforce is legal and violating existing anti-discriminations laws. For example, should an employee present

documents other than a Social Security card when completing the I-9 Form and there is subsequently a no-match letter issued. The employer then confronts the employee and request to see the Social Security card. Clearly, this would present an issue regarding anti-discrimination laws already in effect. The Chamber requests that DHS provide clarification on how an employer should respond to such a situation.

X. Conclusion

As explained, the proposed regulations are misguided and will have an adverse effect on the nation's economy and its overall national security. For the reasons stated above, the Chamber urges DHS to withdraw this proposed regulation and to wait for Congress to finish its work on comprehensive immigration reform, as the Administration continues to insist.

We greatly appreciate the excellent relationship we have developed with the DHS and hope to continue to expand that relationship in the future as we work to address this important issue.

Respectfully submitted,



Randel K. Johnson
Vice President
Labor, Immigration and Employee Benefits



Angelo I. Amador
Director
Immigration Policy

Also on behalf of:

Associated Builders and Contractors

Associated General Contractors of America

American Hotel & Lodging Association

American Seniors Housing Association

College and University Professional Association for Human Resources

Ingersoll Rand Company

National Association of Convenience Stores

Professional Landcare Network

Retail Industry Leaders Association

Tree Care Industry Association