

Low-Wage Immigrant Worker Coalition: DHS Revised “No-Match” Rule Still Badly Flawed
Rule will harm the economy and American workers

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The Low Wage Immigrant Worker Coalition, which is co-convened by the American Federation of Labor – Congress of Industrial Organizations, Change to Win, Interfaith Worker Justice, Jobs with Justice, the National Council of La Raza, the National Day Laborer Organizing Network, the National Employment Law Project, and the National Immigration Law Center, today sharply criticized the U.S. Dept. of Homeland Security (DHS) for reissuing its 2007 Social Security Administration (SSA) no-match rule, in its own words, “without change.” The Coalition, which brings together a diverse set of labor and community organizations representing tens of millions of U.S. and immigrant workers, expressed frustration with the Administration for failing to address the deep problems that prompted a federal district court to issue an injunction against the earlier rule after it drew fire from representatives of worker, business, and privacy organizations. If implemented, the rule will result in massive layoffs of U.S. citizens and lawful immigrant workers and enormous costs to businesses just when the economy is experiencing a significant downturn.

The supplemental proposed rule purports to clarify DHS’s August 2007 final rule regarding an employer’s legal obligations upon receiving a “no-match letter” from SSA stating that information submitted for an employee does not match SSA records. The core of the proposed rule would make employers vulnerable to immigration enforcement actions unless they fire workers who are unable to correct such errors within 90 days.

Implementation of the identical August 2007 rule was preliminarily enjoined by the United States District Court for the Northern District of California on October 10, 2007, in part because “the government’s proposal to disseminate no-match letters affecting more than eight million workers will, under the mandated time line, result in the termination of employment to lawfully employed workers. . . .” The judge also found that “if allowed to proceed, the mailing of no-match letters, accompanied by DHS’s guidance letter, would result in irreparable harm to innocent workers and employers.” Shortly after the decision, DHS asked the Court to suspend the litigation while it revised the rule so it would pass legal muster and address the concerns raised by the Court. The supplemental rule issued today, however, does not change the 2007 rule.

SSA no-match letters are sent each year to workers and employers in an attempt to correct discrepancies in SSA’s records that prevent workers from receiving credit for their earnings. The letters are not and have never been an immigration-enforcement tool, and they are ill-suited to that purpose. While undocumented workers are among the millions of workers who receive no-match letters each year, many legal workers – including U.S. citizens – receive letters because of clerical errors, unreported name changes, and other discrepancies in their records. According to the Office of the Inspector General at SSA, of the 17.8 million discrepancies in the SSA database that could result in a no-match letter, 12.7 million (or over 70 percent) pertain to native-born U.S. citizens.

If the rule is finalized, it will cause significant upheavals in the workplace and in particular, certain sectors of our economy; many lawful U.S. workers will not be able to resolve discrepancies with SSA within the allotted time and will be fired; and many employers will misunderstand the nature of the letters, mistakenly assuming that they provide information about a worker’s immigration status, and immediately fire, lay-off, or demote such workers—particularly those who look or sound foreign—without giving them a chance to correct discrepancies.

A particularly galling aspect of the rule is that it will only apply to employers who report their workers to SSA and collect payroll taxes. Those who pay cash under the table, or who misclassify their workers as “independent contractors,” will not be affected because they do not receive no-match letters.

The Low Wage Immigrant Worker Coalition agrees that major reforms must be made to our immigration system, but strongly condemns ill-targeted changes such as the no-match rule. The rule will simply exacerbate the problems we have seen with the no-match letters over the years, and will continue to undermine the rights of all workers.

The government's supplemental rule and additional information on the no-match letters are available online at: http://www.nilc.org/immsemplymnt/SSA_Related_Info/index.htm.
