

Why DHS's Final Social Security "No-Match" Letter Rule is Bad for Workers, Employers, and the Economy

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On August 10, 2007, the U.S. Department of Homeland Security (DHS) announced that it had finalized its rule 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). The purpose of the SSA no-match letter is to inform workers that they are not getting credit for their earnings, which can affect their retirement, survivor, disability, or other benefits administered by SSA in the future. There are many factors that may trigger a no-match letter, including misspelled names, name changes, and database errors, and the letters themselves do not prove any wrongdoing by either employers or employees.

Under the new rule, U.S. Immigration and Customs Enforcement (ICE) can use the receipt by an employer of a no-match letter as evidence that the employer has "constructive knowledge" that the employee who is the subject of the letter is unauthorized to work. The rule includes "safe harbor" procedures that such an employer should follow in order to avoid liability under the Immigration and Nationality Act. Although the rule will cause enormous upheavals in the workplace and in the economy, it will have no impact on undocumented immigration.

- **The new rule hurts employment-authorized workers and U.S. citizens.**

- The SSA database is not an immigration database and does not have complete information about immigration status or work authorization. Using it for immigration enforcement will ensnare employment-authorized workers, resulting in unjust firings.
- According to all of the federal agencies involved, including DHS, a no-match letter does not indicate that the person who is its subject is undocumented. Many legitimate reasons, including employer error in entering data, can cause a worker to receive a no-match letter.
- In December 2006, SSA's Office of the Inspector General reported that 17.8 million of SSA's records contain discrepancies. Because of the large number of inaccuracies in SSA's database, many documented workers and women who have had a name change due to marriage or divorce will be mistakenly listed as a no-match.
- The no-match rule is also likely to lead to increased discrimination against foreign-born workers. As documented by the Government Accountability Office (GAO) in its three reports in the early 1990s, employers refused to hire "foreign-sounding" or "foreign-looking" workers because they feared penalties for hiring undocumented workers.

- **The new rule hurts good employers.**

- The new rule places new burdens on employers to enforce immigration law. Employers are not equipped to take on DHS's job and will be unable to fully understand the complexities of the immigration system or to become experts in identity or work authorization documents.



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- Employers who follow the new rule will feel the pain financially as they may have to fire some of their best workers who they have invested and trained for years. These same employers will bear the brunt of the unfair economic advantage that unscrupulous employers will have who will simply keep undocumented workers off the books.
- **The new rule helps “bad-apple” employers**
 - Some employers have used no-match letters to selectively retaliate against immigrant workers when they try to organize a union or otherwise exercise their workplace rights (file complaints for unpaid wages, workers’ compensation, sexual harassment, discrimination, etc.).
 - In documented cases from across the country, employers initially ignored SSA no-match letters and then decided to use them as a pretext to fire workers who participated in efforts to improve working conditions and wages. In the past, advocates and labor unions have been able successfully to go after these employers and prevent them from selectively using the no-match letters to retaliate against workers.
 - These unscrupulous employers will likely still ignore the no-match letters when it is convenient for them, but the new rule will now legitimize their adverse employment actions against workers because the employers will claim they are just following the law.
- **The new rule hurts SSA**
 - The new rule will create a lot of extra work for already-overburdened SSA field offices. According to the president of the National Council of Social Security Management Associations, walk-in traffic and phone calls to SSA field offices has increased significantly, while SSA is at its lowest staffing level since the early 1970s.
 - The additional phone calls and office visits that will result from the DHS rule will divert even more resources away from the hundreds of thousands of claimants who have filed for disability benefits. Currently, nearly three-quarters of a million hearings are pending, a growth of 130 percent in the last six years.
- **The new rule does not address the real need for comprehensive immigration reform**
 - The new rule does nothing to address the fact that we have over 7 million undocumented workers in our economy.
 - Undocumented workers who receive a no-match letter will not leave the country. Instead, they and their employers will move into the underground cash economy. This will result in billion-dollar losses in federal, state, and local tax revenues, unfair competition, and further exploitation and abuse of all workers by unscrupulous employers.
 - The only solution needed is legalization for the 7 million workers contributing to our economy.

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