

SSA “No-Match” Letters and DHS’s Proposed Regulations *What Advocates Should Know*

June 19, 2006

The Proposed Regulations

The U.S. Dept. of Homeland Security (DHS), Bureau of Immigration and Customs Enforcement (ICE), has released new federal regulations that are aimed at improving worksite enforcement, reducing the employment of unauthorized workers, and helping prevent the alleged use of false Social Security numbers (SSNs). The proposed regulations, entitled “Safe Harbor Procedures for Employers Who Receive a No-Match Letter,” published in the Federal Register on June 14, 2006, provide guidance for employers to follow when handling “no-match” letters received from either the Social Security Administration (SSA) or DHS. The proposed rules are subject to a 60-day public comment period. **Written comments must be submitted on or before August 14, 2006.**

These regulations are only proposed regulations, and employers are not required to follow these procedures upon receipt of a no-match letter from the SSA until the rules are finalized. While the DHS rules are merely proposed regulations, employers will undoubtedly be impacted by them. We are concerned that employers will start changing their policies and implementing the steps set forth in these proposed regulations. This could lead to thousands of workers losing their jobs over the next couple of months. Therefore, advocates need to be very vigilant about how employers react to these proposed regulations if they have received or receive a no-match letter over the summer months.

It is very likely that these proposed regulations will change after the 60-day public comment period. The final regulations may be very different from what DHS has proposed. For these reasons, it is important that advocates continue to educate workers and employers about their rights with respect to SSA no-match letters — and insist that employers wait until the proposed regulations are finalized.

What Advocates Can Do Now

Advocates should be prepared for the possibility that many more workers will be fired from their jobs based on the employer’s receipt of a no-match letter in the coming months. Advocates should take certain steps to prepare for upcoming worker firings in response to the proposed regulations.

Advocate responses should include educating employers and workers that:

- The DHS notice is simply a “proposed” regulation that is likely to change once it is finalized. This means that current law is still in effect (i.e., arbitration decisions holding that firing workers protected by a union contract is a violation of the “just cause” clause of the collective bargaining agreement).



LOS ANGELES (Headquarters)

3435 Wilshire Boulevard
Suite 2850
Los Angeles, CA 90010
213 639-3900
213 639-3911 fax

WASHINGTON, DC

1101 14th Street, NW
Suite 410
Washington, DC 20005
202 216-0261
202 216-0266 fax

OAKLAND, CA

405 14th Street
Suite 1400
Oakland, CA 94612
510 663-8282
510 663-2028 fax

- If employers change their policies or try to implement the steps set forth in the proposed regulations, they are subjecting themselves to greater liability and potential employment lawsuits if they do take adverse actions now before the regulation is finalized.
- Educate employers on the purpose of the SSA no-match letter and about the fact that there are many potential reasons for the discrepancies reported in such a letter. Employers therefore should not take adverse action against any employee based on receipt of a no-match letter.
- Under current law, the no-match letter is not a notice about a worker’s immigration status, and therefore employers should not be reverifying work authorization documents in response to the no-match letter.
- Advocates should educate workers about the purpose of no-match letters and advise workers not to disclose their immigration status.
- Advocates should put together rapid response teams to engage with employers who may take adverse action against workers because of the no-match letters.

For more information on advocate response to the SSA no-match letters, please see NILC’s SSA No-Match Toolkit, available at www.nilc.org/immsemplymnt/SSA-NM_Toolkit/index.htm. For more information, contact Tyler Moran at moran@nilc.org or Jennifer Lai at lai@nilc.org.