



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.

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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.

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

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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 \(Washington Update\)](#)

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