



One Hundred Tenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

September 7, 2007

The Honorable Michael Chertoff
Secretary
U.S. Department of Homeland Security
Washington, D. C. 20528

Dear Secretary Chertoff:

In August, you announced a number of border security and immigration enforcement initiatives that the Department of Homeland Security would be pursuing under current law. I am encouraged by the Department's commitment to enforce our laws, but one measure in particular – the “no-match” letter rule – has raised serious concerns.

Under the rule, the Department of Homeland Security may assume that employers have “constructive knowledge” that an employee is working without authorization if they do not follow specific requirements to remedy the receipt of a no-match letter from the Social Security Administration (SSA). Employers found to have constructive knowledge may be subject to criminal sanctions or civil liability. It is my understanding that the SSA expects to mail letters to approximately 140,000 employers in the first few months of implementation, affecting roughly 8.7 million employees. While worksite enforcement is an extremely important component of our Nation's overall immigration enforcement strategy, it must be implemented in a fair and lawful manner for it to be truly effective.

The continued existence of many small and medium sized businesses may rest upon the competent and well organized execution of this program. Thus, it is incumbent upon the Department to assure the program is implemented correctly. Unfortunately, implementing large, complex government programs has presented a number of challenges for the Department in the past. One such example is the Transportation Worker Identification Card, which was originally required five years ago. The government's inability to implement this card in a timely manner is directly related to bureaucratic mismanagement.

The extraordinary number of businesses and employees that this rule may affect demands that this program be operated effectively, efficiently and with minimal errors.

To assure that the implementation of this program contains only minimal errors, the program must be built upon a solid foundation. However, the bedrock of this program contains known and severe fault lines. SSA's no-match data has historically been marred by inaccuracies and thus may not be a suitable immigration enforcement tool.

When errors occur, this program must permit quick corrective action without excessive bureaucracy. The 90-day period given to employers to rectify data discrepancies with the SSA and the Department may be too brief for employers and employees alike to navigate through two large bureaucracies. Employers faced with no-match letters and a lack of time may seek to avoid the overly burdensome rule and terminate minority employees under the faulty assumption that they are unauthorized to work. Thus, this program may result in the unfortunate and arguably unintended consequence of promoting discrimination and the termination of many lawful employees.

Also troubling is that this new rule may fuel an underground market for counterfeit identity documents, making it easier for terrorists to go undetected. A rule that may promote unlawful practices and make it easier for people who intend upon harming this country to conceal their identities is simply bad policy and will not make America safer.

The Department should not move forward with implementing this rule until it provides a program that will both uphold the law and secure America. The Department must better engage the Congress and stakeholders to develop a strong and sound worksite enforcement program.

I thank you in advance for your consideration of this matter. If you have any questions, please contact Cherri Branson, Chief Oversight Counsel at 202-226-2616.

Sincerely,

A handwritten signature in black ink that reads "Bennie G. Thompson". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Bennie G. Thompson
Chairman

cc: Peter T. King, Ranking Member