United States Senate
COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP
WASHINGTON, DC 20510–6350

September 12, 2007

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

The Honorable Michael J. Astrue
Commissioner of Social Security
Social Security Administration
Baltimore, MD 21235

Dear Secretary Chertoff and Commissioner Astrue:

I write you today to ask for your cooperation in staying a rule that has the potential to harm small employers across the country. In June of 2006, the Department of Homeland Security (DHS) Bureau of Immigration and Customs Enforcement (BICE) issued a Proposed Rule on the Safe-Harbor Procedures for Employers Who Receive a No-Match Letter (71 Fed. Reg. 34281). The rule requires employers to take certain steps when they receive notice from the Social Security Administration (SSA) that an employee's name and social security number do not match, and to potentially terminate employees if the discrepancies cannot be resolved within a specified period of time.

As part of the rulemaking process, DHS was required under the Regulatory Flexibility Act (5 U.S.C 605(b)) to provide a Regulatory Flexibility Analysis demonstrating the economic impact of the regulation on small entities. Despite receiving thousands of comments from a variety of sources claiming that the regulation would be harmful, DHS published the final rule with a certification that the rule would not have a significant economic impact on a substantial number of small entities. This assessment of the final rule seems insufficient given the additional liability that employers would face upon receiving a "No-Match" letter from the SSA.

There are numerous explanations for why a lawfully employed individual would trigger a "No-Match" finding with the SSA, not the least of which is the error-laden database employed by the agency. Incorporating "No-Match" letters as a fundamental tool of U.S. immigration policy enforcement, and allowing businesses in receipt of "No-Match" letters only 90 days to resolve any discrepancies, would result in businesses spending additional time and money to clear up what in many cases will prove to be clerical errors on the part of the employee, the business, and the government.

Additionally, such a policy has the potential to lead to anti-Latino and anti-immigrant discrimination in the workplace, providing employers an incentive to terminate lawful employees with Latino surnames that happen to trigger a "No-Match" letter.

I understand that this regulation has been suspended temporarily, pending an October 1st hearing in a Federal district court. I urge you to reconsider your decision to implement this rule prior to issuing a complete Regulatory Flexibility Analysis as is required under the Regulatory Flexibility Act. Neither America's business owners nor the millions of employees who stand to be penalized as a result of poor record keeping should be subject to a policy that does not fully take into account the potential economic impact of its implementation.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me, or have a member of your staff contact Brian Rice of my staff at 224-5175.

Sincerely,

John F. Kerry
Chairman