SBA Office of Advocacy
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Fact Sheet

Advocacy: the voice of small business in government

Advocacy Sends Letter to DHS on the Impact of its Final Social Security "No Match" Rule on Small Business

On September 18, 2007, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) sent a letter to the Department of Homeland Security (DHS) concerning DHS' and Immigration and Customs Enforcement's (ICE) *Final Safe Harbor Procedures for Employers Who Receive a No-Match Letter Rule* [72 *Fed. Reg.* 45611 (August 15, 2007]. Under DHS/ICE's final rule, employers who receive a "no-match" letter from the Social Security Administration (SSA) indicating a discrepancy between an employee's name and social security number must now take certain actions to resolve those discrepancies. If the employer and employee are unable to correct the discrepancy within a specified timeframe, the employer is obligated to terminate the employee or be deemed to have "constructive knowledge" that the employee may be an unauthorized alien.

A complete copy of Advocacy's letter to DHS is available at: www.sba.gov/advo/laws/comments/.

- Federal regulations must undergo certain regulatory analyses before they are finalized, including an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act (RFA). An IRFA is required whenever a federal rule is expected to have a significant economic impact on a substantial number of small entities.

- DHS certified that the final "no match" rule would not have a significant economic impact on a substantial number of small entities. Advocacy believes that certification was improper because the rule would impose some legal obligations and costs on employers that DHS/ICE should have assessed.

- The final "no match" rule is now the subject of litigation in the Federal District Court for the Northern District of California. That litigation includes a claim by the Plaintiffs-Intervenors, San Francisco Chamber of Commerce, *et al.*, that DHS improperly certified the rule under the RFA. The small business groups involved in the litigation wrote to Advocacy asking the Chief Counsel to file an amicus brief in support of their RFA claim. Advocacy's letter to DHS offers assistance to satisfy their requirements under the RFA and states that Advocacy has authority to brief the court on the requirements of the RFA.

- Advocacy recommends that DHS stay the final rule pending completion of a proper RFA analysis. That analysis will allow the agency to determine whether a factual basis exists to certify the rule under the RFA, or whether an IRFA (including a discussion of feasible alternatives) is required. Advocacy also states that the agency's determination should be published in the *Federal Register* for public comment in accordance with the RFA.

For more information about rule, please visit Advocacy's Web page at www.sba.gov/advo or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 (or bruce.lundegren@sba.gov).