



No-Match Regulations Chamber Comments and Reports Summary

- **The Regulatory Flexibility Act (“RFA”)** – The RFA protects small businesses by giving them a voice in the rulemaking process. For all rules with a significant economic impact on a substantial number of small businesses, the federal government must assess the rule’s impact on small business and consider less burdensome alternatives by conducting an Initial Regulatory Flexibility Analysis (“IRFA”) and seeking public comment.
- **Cost to Employers** – The IRFA shows the cost of the regulation for employers to be at least one billion dollars per year. Depending on which of the scenarios DHS examined that one assumes is true, the aggregate cost *to employers* ranges from \$1 billion to \$1.6 billion per year.
- **Number of Employers Affected** – DHS assumes the number of employers affected will be about 140,000, but the SSA sends no match letters to about *one million* employers. SSA also is recommending an expansion of the programs to send out letters to all employers that have even one discrepancy, currently eight to ten million discrepancies are reported each year. For this reason, the IRFA significantly understates the likely cost of the proposed rule.
- **Constructive Knowledge Expansion** – The final regulation attempts to shift the burden of proof to employers, so in a prosecution they would be presumed guilty until they can prove otherwise.
- **Costs Imposed on Authorized Workers** – According to the IRFA, the no-match regulation would result in an estimated 37,000 to 165,000 Americans and other authorized workers becoming unemployable. These legitimate workers would not be able to prove their identities to the government’s satisfaction, and they are most likely to be people least able to cope with government bureaucracy. The IRFA simply ignores the terrible hardship this will cause, and the proposed rule contains nothing to ameliorate it.
- **No True Safe-Harbor Provided** – Employers could still be sued under the anti-discrimination provisions or equal employment opportunity laws when following these regulations.
- **No Alternatives Seriously Considered** – The IRFA did not include a genuine examination of alternatives, nor did it examine cost-effectiveness critically. DHS merely acknowledges that the rule would require employers to act cost-*ineffectively* to minimize their risk of legal liability for discrimination.
- **Other Issues** – DHS did not take into account the unintended consequences. The rule can be predicted to increase identity theft, shift unauthorized workers into the underground economy, and create the “need” for more regulations to address each new problem caused by this regulation. Both this rule and its predictable successors raise new issues concerning the privacy and security of personal data stored in government databases, and the potential for these data to be compromised by security lapses or used for inappropriate purposes, such as surveillance.