

DHS Safe Harbor Rule Initial Regulatory Flexibility Analysis

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

703-780-1850

April 17, 2008

Counting costs

RFA

- Employer only
- Cost per firm
- Benefits irrelevant
- No direct link to decision making
- Paperwork burdens dominate employer costs
- Unintended consequences ignored

EO 12866, CRA & PRA

- Employer, employee & third parties
 - Aggregate cost
 - Benefits essential
 - Explicit decision making criteria in EO & PRA
 - DHS claims no new cognizable burdens
 - Unintended consequences dominate
-

EO 12866/CRA Issues

- ❑ ‘Economically significant’ and ‘major’
 - Threshold: \$100 million in effects in any one year
 - DHS acknowledges ~\$950 to ~\$1,600 million in costs
 - Simulation is required to characterize the cost distribution
 - ❑ IRFA severely understates total cost
 - Significant costs excluded
 - ❑ Costs attributed to the law
 - ❑ Costs borne by employees and third parties
 - ❑ Predictable but unintended consequences
 - Significant technical issues
 - ❑ Baseline (cf. EPA’s 1998 PCB disposal rule)
 - ❑ Costs ‘attributable to the law’
 - ❑ Opportunity costs borne by workers
-

Unintended Consequences

- Authorized workers and third parties
 - Forced unemployment
 - Increased theft of matched names/SSNs
 - Loss of privacy, worker/citizen surveillance
 - Unauthorized workers
 - Changes form not fact of legal violations
 - Switch to independent contractors
 - Movement to underground economy
 - More regulation predictable
 - Market forces will generate adaptive responses
 - Adaptive responses require more regulation
 - The case of the 'too often' letter
-

Annual Costs: Per Employer

Employee Size Categories	Number of Employers Receiving No-Match Letters (Exhibit 4)	DHS Estimate of Compliance Cost per Firm, \$ (Exhibit 21)									
		Percent of Employees Assumed to be Unauthorized									
		10%		20%		40%		60%		80%	
1-4	0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5-9	4,866	\$ 3,737	\$ 3,633	\$ 3,425	\$ 3,217	\$ 3,009					
10-19	24,840	\$ 4,020	\$ 3,891	\$ 3,634	\$ 3,376	\$ 3,119					
20-49	46,102	\$ 5,786	\$ 5,568	\$ 5,132	\$ 4,695	\$ 4,259					
50-99	23,286	\$ 7,517	\$ 7,214	\$ 6,606	\$ 5,998	\$ 5,391					
100-499	33,653	\$ 22,488	\$ 7,214	\$ 18,469	\$ 15,789	\$ 13,110					
500+	8,088	\$ 33,759	\$ 21,148	\$ 27,462	\$ 23,265	\$ 19,067					
All	140,835										

Source: DHS, Initial Regulatory Flexibility Analysis

Annual Costs: Aggregate

Employee Size Categories	Number of Employers Receiving No-Match Letters (Exhibit 4)	Implied DHS Estimate of Total Compliance Cost, \$ Millions (implied by Exhibit 21 but not reported)									
		Percent of Employees Assumed to be Unauthorized									
		10%		20%		40%		60%		80%	
1-4	0	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5-9	4,866	\$ 18	\$ 18	\$ 17	\$ 16	\$ 15	\$ 15	\$ 14	\$ 13	\$ 12	\$ 11
10-19	24,840	\$ 100	\$ 97	\$ 90	\$ 84	\$ 77	\$ 71	\$ 65	\$ 59	\$ 53	\$ 47
20-49	46,102	\$ 267	\$ 257	\$ 237	\$ 216	\$ 196	\$ 175	\$ 154	\$ 133	\$ 112	\$ 91
50-99	23,286	\$ 175	\$ 168	\$ 154	\$ 140	\$ 126	\$ 112	\$ 98	\$ 84	\$ 70	\$ 56
100-499	33,653	\$ 757	\$ 743	\$ 682	\$ 621	\$ 560	\$ 499	\$ 438	\$ 377	\$ 316	\$ 255
500+	8,088	\$ 273	\$ 267	\$ 242	\$ 222	\$ 197	\$ 177	\$ 157	\$ 137	\$ 117	\$ 97
All	140,835	\$ 1,590	\$ 1,553	\$ 1,441	\$ 1,329	\$ 1,217	\$ 1,105	\$ 993	\$ 881	\$ 769	\$ 657

Source: DHS, Initial Regulatory Flexibility Analysis

Number of Unauthorized Workers Visiting SSA Field Offices

Employee Size Categories	Number of Employers Receiving No-Match Letters (Exhibit 4)	Reported Number of No Match Employees (Exhibit A.5)	Number of Authorized Employees Expected to Seek SSA Assistance Resolving Mismatched Records (Assumes 33% of Authorized No-Matches)				
			Source: IRFA at 26				
			Percent of Employees Assumed to be Unauthorized				
			10%	20%	40%	60%	80%
1-4	0	0	0	0	0	0	0
5-9	4,866	84,732	25,420	22,595	16,946	11,298	5,649
10-19	24,840	770,529	231,159	205,474	154,106	102,737	51,369
20-49	46,102	1,088,449	326,535	290,253	217,690	145,127	72,563
50-99	23,286	2,557,994	767,398	682,132	511,599	341,066	170,533
100-499	33,653	4,661,954	1,398,586	1,243,188	932,391	621,594	310,797
500+	8,088						
Total	140,835	9,163,658	2,749,097	2,443,642	1,832,732	1,221,821	610,911

Source: DHS, Initial Regulatory Flexibility Analysis

Incremental Costs to SSA

Employee Size Categories	Number of Employers Receiving No-Match Letters (Exhibit 4)	Reported Number of No Match Employees (Exhibit A.5)	Implied Incremental Government Outlays to Serve Authorized Employees Expected to Seek SSA Assistance Resolving Mismatched Records, \$ Millions (Assumes \$100 per Case)				
			Percent of Employees Assumed to be Unauthorized				
			10%	20%	40%	60%	80%
1-4	0	0	\$ -	\$ -	\$ -	\$ -	\$ -
5-9	4,866	84,732	\$ 3	\$ 2	\$ 2	\$ 1	\$ 1
10-19	24,840	770,529	\$ 23	\$ 21	\$ 15	\$ 10	\$ 5
20-49	46,102	1,088,449	\$ 33	\$ 29	\$ 22	\$ 15	\$ 7
50-99	23,286	2,557,994	\$ 77	\$ 68	\$ 51	\$ 34	\$ 17
100-499	33,653	4,661,954	\$ 140	\$ 124	\$ 93	\$ 62	\$ 31
Total	140,835	9,078,926	\$ 275	\$ 244	\$ 183	\$ 122	\$ 61

Forced Unemployment Among Authorized Workers

Employee Size Categories	Number of Employers Receiving No-Match Letters (Exhibit 4)	Reported Number of No Match Employees (Exhibit A.5)	Implied but Unreported Number of Authorized Employees Terminated					
			Percent of Employees Assumed to be Unauthorized					
			10%	20%	40%	60%	80%	
1-4	0	0	0	0	0	0	0	0
5-9	4,866	84,732	1,525	1,356	1,017	678	339	
10-19	24,840							
20-49	46,102	770,529	13,870	12,328	9,246	6,164	3,082	
50-99	23,286	1,088,449	19,592	17,415	13,061	8,708	4,354	
100-499	33,653	2,557,994	46,044	40,928	30,696	20,464	10,232	
500+	8,088	4,661,954	83,915	74,591	55,943	37,296	18,648	
Total	140,835	9,163,658						
Number of No-Match Employees Terminated			164,946	146,619	109,964	73,310	36,655	
Percent of No-Match Employees Terminated			1.80%	1.60%	1.20%	0.80%	0.40%	

Source: DHS, Initial Regulatory Flexibility Analysis

Opportunity Cost of Forced Unemployment: Individual

An Illustration

7%		Real interest rate of authorized worker
\$25,000		Value of annual labor foregone
15		Years of Forced Unemployment
\$227,697.85		Present value of stream of losses

Opportunity Cost of Forced Unemployment: Aggregate

Employee Size Categories	Number of Employers Receiving No-Match Letters (Exhibit 4)	Reported Number of No Match Employees (Exhibit A.5)	Implied Social Costs of Forced Unemployment, \$ Millions				
			(\$225,000 Present Value per Case)				
			Percent of Employees Assumed to be Unauthorized				
			10%	20%	40%	60%	80%
1-4	0	0	\$ -	\$ -	\$ -	\$ -	\$ -
5-9	4,866	84,732	\$ 343	\$ 305	\$ 229	\$ 153	\$ 76
10-19	24,840						
20-49	46,102	770,529	\$ 3,121	\$ 2,774	\$ 2,080	\$ 1,387	\$ 693
50-99	23,286	1,088,449	\$ 4,408	\$ 3,918	\$ 2,939	\$ 1,959	\$ 980
100-499	33,653	2,557,994	\$ 10,360	\$ 9,209	\$ 6,907	\$ 4,604	\$ 2,302
500+	8,088	4,661,954	\$ 18,881	\$ 16,783	\$ 12,587	\$ 8,392	\$ 4,196
Total	140,835	9,078,926	\$ 37,113	\$ 32,989	\$ 24,742	\$ 16,495	\$ 8,247

Source: DHS, Initial Regulatory Flexibility Analysis ; and author's calculations

Take Home Messages: EO 12866 & CRA

- ❑ Safe harbor rule is clearly ‘economically significant’ (EO 12866) and ‘major’ (CRA)
 - ❑ Procedures in place since 1981 require a Regulatory Impact Analysis
 - Comprehensive alternatives assessment
 - Benefits, costs and other impacts
 - Uncertainty analysis also required (> \$1 billion)
 - ❑ Distribution of % no-matches who are authorized
 - ❑ Distribution of % authorized no-matches forced into unemployment
-

Take Home Messages: Paperwork

- ❑ Safe harbor rule clearly imposes new paperwork burdens as defined in PRA
 - ❑ Procedural requirements
 - 60-day notice and request for comment
 - DHS' submission of ICR to OMB must respond to (not just acknowledge) public comments it receives
 - 30-day public comment period to OMB on DHS' burden estimates
 - Information Quality Act applies
 - ❑ DHS compliance issues (2007 ICB)
 - 6 known 'bootlegs' in 2006
 - Total budget: 98 million hours (\$2.6 billion) in 2006
-