

DHS Safe Harbor Rule Initial Regulatory Flexibility Analysis

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

703-780-1850

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This presentation summarizes work performed on contract to the United States Chamber of Commerce.

Richard B. Belzer

Mini-CV

Employment

- 2006-present
 - Managing Editor, [Neutral Source](#) [501(c)(3)]
- 2001-present
 - President, Regulatory Checkbook [501(c)(3)]
 - Independent consulting
- 1998-2001: Washington University in St. Louis
- 1988-1998: Office of Management and Budget

Education

- 1989: PhD, Harvard University
- 1982: MPP, Harvard Kennedy School
- 1980: MS, UC Davis
- 1979: BS, UC Davis

Other

- American Economic Association
 - Society for Risk Analysis
 - Society for Benefit Cost Analysis
-

Scope of the Task

- Perform an independent and objective review of the IRFA
 - Evaluate compliance with established procedures (EO 12866, CRA, IQG, PRA)
 - Examine methodology, data, analysis, and inferences
 - Apply accepted standards in economics
 - OMB Circular A-4 (EO 12866)
 - Conventional principles of benefit-cost analysis
 - Do not engage in policy advocacy
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Results

- My analysis assumes DHS' methodology, data, analysis, and inferences are all correct
 - Value-added of my work is limited
 - I report implications DHS did not acknowledge
 - I identify significant methodological errors but do not try to estimate their magnitude
 - I identify predictable unintended consequences but do not try to estimate their magnitude
-

EO 12866 and Congressional Review Act

- EO 12866 and OMB Circular A-4
 - 'Economically significant' if > \$100 million/y
 - Triggers Regulatory Impact Analysis requirement
 - Formal quantitative uncertainty analysis if > \$1 billion/y
 - Congressional Review Act
 - 'Major' if > \$100 million/y
 - 5 USC 801 et seq. apply
 - Congressional notification requirements
 - Expedited procedures for joint resolution of disapproval
-

Paperwork Reduction Act and Information Quality Act

□ Paperwork Reduction Act

- DHS claims no new paperwork burden created
- Most costs in IRFA are paperwork burdens

□ Information Quality Act

- All agencies required to have IQG by Oct 2002
 - DHS has not complied
 - DHS [publicly denies](#) that it disseminates 'influential scientific information' or is covered by 2005 OMB guidance requiring peer review for matters exceeding \$500 million
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Sources Used in My Review

Federal Register notice

Federal Register / Vol. 73, No. 59 / Wednesday, March 26, 2008 / Proposed Rules **15953**

relating to the termination and replacement of unauthorized workers, DHS finds that those costs cannot properly be considered costs of this rule. The INA expressly prohibits employers from knowingly hiring or knowingly continuing to employ an alien who is not authorized to work in the United States. If an employer performs the due diligence described in the rule, and loses the services of unauthorized employees as a result, those costs of terminating and/or

replacing illegal workers are attributable to the INA, not to this rule.

Table 1 below, summarizes the average cost per firm that DHS estimates will be incurred by businesses that receive a no-match letter and choose to adopt the safe harbor procedures set forth in this rule. Because DHS does not have adequate data to estimate the percentage of unauthorized employees whose SSNs are listed on no-match letters, for the purpose of this analysis, DHS estimated costs based on various ratios of authorized to unauthorized

workers (i.e. 20% unauthorized—80% authorized). As Table 1 shows, the expected costs of adopting the safe harbor procedures in this rule are relatively small on an average cost per firm basis. In interpreting these costs, these estimates were based on a series of assumptions which are explained in detail in the small entity impact analysis included in the docket. Consequently, the costs a specific firm incurs may be higher or lower than the average firm costs estimated in Table 1.

TABLE 1.—TOTAL COSTS PER FIRM BY EMPLOYMENT SIZE CLASS

Employment size class	Percentage of current no-match employees assumed to be unauthorized				
	10%	20%	40%	60%	80%
5-9	\$3,737	\$3,633	\$3,425	\$3,217	\$3,009
10-19	4,020	3,891	3,634	3,376	3,119
20-49	5,786	5,568	5,132	4,695	4,259
50-99	7,517	7,214	6,606	5,998	5,391
100-499	22,488	21,148	18,469	15,789	13,110
500+	33,759	31,660	27,462	23,265	19,067

Table 1 does not reflect the termination or replacement costs of unauthorized workers. The termination

costs are considered on an average cost per firm basis. To the extent that some small entities incur direct costs that are higher

than the average, they may face possible liability based in part on their failure to respond to no-match letters. Employers would continue to

Final Report
Small Entity Impact Analysis:
Supplemental Proposed Rule
"Safe-Harbor Procedures for
Employers Who Receive a No-Match Letter"

Contract No.:
GS-23F-0048P
Order No.:
HSCEOP-07-F-01430
Project No.:
1309-000

Submitted By:
Econometrica, Inc.
4416 East-West Highway, Suite 215
Bethesda, Maryland 20814

January 15, 2008

ECONOMETRICA, INC.

Initial Regulatory Flexibility Analysis

DHS Cost Estimates (1)

- ❑ Table 1: “Total Costs per Firm by Employment Class Size”
 - ❑ No Table 2: “Total Costs by Employment Class Size”
 - ~\$1 to \$1.6 billion/year
 - Easily exceeds thresholds under EO 12866 and CRA
 - ❑ DHS acknowledged but didn’t count other significant costs
 - Included: Direct employer costs adhering to safe harbor
 - Excluded: Direct employer costs DHS attributes to statute
 - Excluded: All indirect costs (employers, employees, and 3rd parties)
 - ❑ Total social costs are much greater
 - Costs DHS attributes to statute are likely to be very high
 - Costs borne by authorized employees are demonstrably very high
 - Significant unintended consequences are readily predictable
-

DHS Cost Estimates (2)

- ❑ IRFA includes a major modeling error
 - EDCOR letters are counted
 - ❑ 9,163,658 no-match employees
 - ❑ 140,835 employers
 - ❑ No impact is assumed if no-matches < 10
 - Employer DECOR letters are not counted
 - ❑ Using TY 2002 data from SSA IG...
 - ...1,922,851 no-match employer DECOR letters...
 - ...sent to 883,715 employers, 86% of whom are exempt from current EDCOR letters
 - ❑ Even if the DHS model were correct, direct employer costs should be ~ 7x higher (\$7-11 billion/year)
-

DHS Analysis Ignores Predictable Unintended Consequences

- Costs to authorized workers and third parties
 - Workers who cannot resolve mismatches forced into unemployment
 - Increased theft of matched names/SSNs
 - Loss of privacy, worker/citizen surveillance
-

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The New York Times
nytimes.com

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May 24, 2008

270 Illegal Immigrants Sent to Prison in Federal Push

By [JULIA PRESTON](#)

Correction Appended

WATERLOO, Iowa — In temporary courtrooms at a fairgrounds here, 260 illegal immigrants were sentenced this week to five months in prison for working at a meatpacking plant with false documents. Two others received lesser sentences, while another eight were convicted of a separate crime.

If the immigrants did not plead guilty, Mr. Dummermuth said he would try them on felony identity theft charges that carry a mandatory two-year minimum jail sentence. In many cases, court documents show, the immigrants were working under real Social Security numbers or immigration visas, known as green cards, that belonged to other people.

DHS Analysis Ignores Predictable Unintended Consequences

- Costs to authorized workers and third parties
 - Workers who cannot resolve mismatches forced into unemployment
 - Increased theft of matched names/SSNs (cf. Agriprocessors case)
 - Loss of privacy, worker/citizen surveillance
 - Less than expected reduction in unauthorized workers
 - Changes the form but not the fact of statutory violations
 - Switch to independent contractors
 - Movement to underground economy
 - More regulations will be necessary
 - Market forces will generate adaptive responses
 - Adaptive responses require more regulation
 - The case of the 'too often' letter
-

Detailed Tables

1. DHS Estimate, Annual Cost per Employer^[1]
2. DHS Estimate, Total Annual Employer Costs^[2]
3. DHS Estimate, New SSA Field Office Visits^[2]
4. Belzer Estimate, Implied Increase in SSA Costs^[2,3]
5. DHS Estimate, Authorized Worker Unemployment^[2]
6. Belzer Estimate, Total Annual Cost of Forced Unemployment of Authorized Workers^[2,4]

^[1] Stated in DHS analysis.

^[2] Implied by DHS analysis.

^[3] Assumes SSA cost = \$100 per visit.

^[4] Assumes \$25k annual value of employment, 15 years, 7% discount rate.

[1] DHS Reported Estimate: Annual Cost Per Employer

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	10%	20%	40%	60%	80%
5-9	\$3,737	\$3,633	\$3,425	\$3,217	\$3,009
10-19	4,020	3,891	3,634	3,376	3,119
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50-99	7,517	7,214	6,606	5,998	5,391
100-499	22,488	21,148	18,469	15,789	13,110
500+	33,759	31,660	27,462	23,265	19,067

Also reported in: DHS, *Initial Regulatory Flexibility Analysis*, Exhibit 21.

[1] DHS Reported Estimate: Annual Cost Per Employer

Employee Size Categories	Number of Employers Receiving No-Match Letters (Exhibit 4)	DHS Estimate of Compliance Cost per Firm, \$ (Exhibit 21)				
		<i>Percent of Employees Assumed to be Unauthorized</i>				
		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	\$ 21,148	\$ 18,469	\$ 15,789	\$ 13,110
500+	8,088	\$ 33,759	\$ 31,360	\$ 27,462	\$ 23,265	\$ 19,067
All	140,835					

Source: DHS, *Initial Regulatory Flexibility Analysis*, Exhibits 4 and 21.

[2] DHS Implied Estimate: Total Annual Employer Costs

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	
10-19	24,840	\$ 100	\$ 97	\$ 90	\$ 84	\$ 77	\$ 71	\$ 65	\$ 59	\$ 53	
20-49	46,102	\$ 267	\$ 257	\$ 237	\$ 216	\$ 196	\$ 175	\$ 154	\$ 133	\$ 112	
50-99	23,286	\$ 175	\$ 168	\$ 154	\$ 140	\$ 126	\$ 112	\$ 98	\$ 84	\$ 70	
100-499	33,653	\$ 757	\$ 712	\$ 622	\$ 531	\$ 441	\$ 350	\$ 259	\$ 168	\$ 77	
500+	8,088	\$ 273	\$ 254	\$ 222	\$ 188	\$ 154	\$ 119	\$ 84	\$ 49	\$ 14	
All	140,835	\$ 1,590	\$ 1,504	\$ 1,341	\$ 1,175	\$ 1,009	\$ 844	\$ 679	\$ 514	\$ 349	

Source: DHS, *Initial Regulatory Flexibility Analysis*, derived from Exhibits 4, 25, and 21.

[3] DHS Implied Estimate New SSA Field Office Visits

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*.

[4] Belzer Estimate: Implied Increase in SSA Costs

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

[5] DHS Implied Estimate: Authorized Worker Unemployment

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 for a Individual

An Illustration

DHS says if an authorized worker cannot resolve mismatched data in 90 days, it probably cannot be done. This worker will abandon the labor market. She loses the value of her marginal product over the span of her unemployment. Assuming workers like her are uniformly distributed, the expected span of forced unemployment is one-half of her working lifetime. Future wages are worth less to her than current wages, so she discounted them by her real interest rate.

This example is intended to be a reasonable approximation of the average, not an extreme value representing a highly unusual case.

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

Belzer Estimate: Total Annual Cost of Forced Unemployment

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						
10-19	24,840	84,732	\$ 343	\$ 305	\$ 229	\$ 153	\$ 76
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.
Excess precision reported for reproducibility only.

Conclusions:

Costs, Benefits, and Alternatives

- ❑ The proposed rule is clearly ‘economically significant’ (EO 12866) and ‘major’ (CRA)
 - ❑ EO procedures in place since 1981 require a Regulatory Impact Analysis (RIA), including:
 - A comprehensive assessment of alternatives
 - Objective estimates of costs and benefits
 - ❑ An uncertainty analysis is required (> \$1 billion)
 - ❑ A carefully performed RIA would help DHS
 - Reduce unintended consequences
 - Identify more effective and less costly ways to achieve its legitimate goals
-

Conclusions:

Paperwork Burdens

- ❑ Most direct employer costs DHS acknowledges are paperwork burdens (44 USC Chapter 35)
- ❑ DHS is noncompliant; says no new burdens created
- ❑ Paperwork Reduction Act procedural requirements
 - 60-day notice and request for comment
 - DHS submits Information Collection Request to OMB, must respond to (not just acknowledge) public comments it received
 - 30-day public comment period at OMB
 - Information Quality Act applies (§ 3516 note, 2002 OMB Guidelines)
- ❑ DHS has significant PRA noncompliance issues
 - High incidence of 'bootlegs' (6 in 2006)^[1]
 - Total ICB: 98 million hours (\$2.6 billion) in 2006^[1]

^[1] Source: OMB, *2007 Information Collection Budget*.

Questions?

Richard B. Belzer, Ph.D.
PO Box 319
Mt. Vernon, VA 22121
(703) 780-1850
rbbelzer@post.harvard.edu
