

BASIC INFORMATION BRIEF

Social Security Number Verification Service (SSNVS)

UPDATED: November 2009

■ Basic Facts About SSNVS

The Social Security Number Verification Service (SSNVS) is an online service of the Social Security Administration (SSA) that allows employers to voluntarily check, via the Internet, whether an employee's Social Security number (SSN) matches SSA's database. After running a small pilot program, in June 2005 the SSA expanded SSNVS access nationwide to *all employers*. According to SSA, SSNVS should only be used to verify SSNs and names to ensure that the records of current or former employees are correct for the purpose of completing the Internal Revenue Service (IRS) Wage and Tax Statement (Form W-2).¹

SSNVS does *not* confirm whether an employee has valid authorization to work in the U.S. It is only a reflection as to whether the employer's records match SSA's records.

SSNVS allows employers to match their record of employee names and SSNs with SSA's records once an official employer-employee relationship has been created, such as when an employee accepts a job offer, and when the employer is preparing and submitting W-2 forms. In contrast, SSA "no-match" letters are sent to employers by SSA *after* an employer has submitted W-2 forms and the agency is unable to match an employee's name and SSN. Employers may verify workers' SSNs through SSNVS even if they never received a no-match letter for their workers.²

Using SSNVS, employers can verify up to ten names and SSNs at a time. Employers can also upload a file containing up to 250,000 names and SSNs for verification purposes. In addition to employers, third parties, such as a payroll service, can use SSNVS.

At the end of 2005, when SSA extended SSNVS access to all employers, it reported that SSNVS processed about 25 million verifications for over 12,000 employers. In 2006, the number of verifications increased dramatically, almost doubling the total processed to 49 million.³ As of August 2008, SSNVS had processed more than 53 million verifications for more than 33,000 registered employers.⁴ This, however, is still a very low percentage of the 7.4 million employers nationwide.

■ How SSNVS Works

SSNVS allows employers to match their record of employee names and SSNs with SSA's records at any time after an official employer-employee relationship has been created, such as when an employee accepts a job offer, and when the employer is preparing and submitting W-2 forms.⁵

In order to use SSNVS, employers must first register and create a personal user ID and password on the SSA Business Services website. Employers must also read through and agree to a "User Registration Attestation,"⁶ which lays out the guidelines for proper use of SSNVS. SSA will then send the employer a letter with an activation code. Upon receipt of this code, employers can acti-

¹ *Social Security Number Verification Service (SSNVS) Handbook* (Social Security Administration, Dec. 2008), www.ssa.gov/employer/ssnvsHandbook.pdf (last visited Nov. 7, 2009; hereinafter "SSNVS Handbook").

² For more information on SSA no-match letters, see www.nilc.org/immsemplymnt/SSA-NM_Toolkit/index.htm.

³ *Controls Over Employee Verification Programs (A-03-06-15036)* (Office of the Inspector General, Social Security Administration, Sept. 2007), www.socialsecurity.gov/oig/ADOBEPDF/A-03-06-15036.pdf (last visited Nov. 7, 2009).

⁴ *Fiscal Year 2008 Inspector General Statement on the Social Security Administration's Major Management and Performance Challenges* (Office of the Inspector General, Social Security Administration, Nov. 2008), www.socialsecurity.gov/finance/2008/IG%20Mngt%20Challenges.pdf (last visited Nov. 7, 2009).

⁵ For detailed instructions on how the program works, see SSNVS Handbook, *supra* note 1.

⁶ *BSO Tutorial for Tax Year 2008: Social Security Number Verification Service (SSNVS)*, www.ssa.gov/employer/documents/TY08SSNVS.pdf (last visited Nov. 7, 2009).



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vate their account and begin using SSNVS by using their user ID, activation code, and password.

To access SSNVS, employers go to the SSA Business Services Online website and log in with their user ID and password. Once SSNVS has been accessed, the employer has two options: (1) enter up to 10 names and SSNs onto the SSA website; or (2) upload a file with up to 250,000 names and SSNs. SSNVS then provides the employer with a table that displays all of the responses on each name and SSN submitted. Each response will include a verification code. If the worker's information is verified, the employer will receive a "blank" in the verification results field. SSA will also indicate if a submitted SSN corresponds to a deceased individual. The following is a list of FAILED verification codes:

- 1 = SSN not in file (never issued)
- 2 = Name and DOB [date of birth] match; gender code does not match
- 3 = Name and gender code match; DOB does not match
- 4 = Name matches; DOB and gender code do not match
- 5 = Name does not match; DOB and gender code not checked
- 6 = SSN did not verify; other reason⁷

■ SSA's Suggested Steps for Each SSN That Fails Verification

SSA suggests that employers take certain steps if they receive a notification that an SSN failed verification through SSNVS, but explicitly states that this notification is not a basis in and of itself to fire a worker whose SSN does not match SSA's records. Employers should take the following steps:

- **Check employment records.** Employers should first compare the failed SSN to the employer's employment records to check for typographical errors. If an employer has already sent a W-2 form with an incorrect name and/or SSN, then the employer should submit a W-2c form (Corrected Wage and Tax Statement) to correct the incorrect information.
- **Ask the employee to check his/her SSN card.** If the employment records match what was submitted, the employer should then ask the employee to check his/her Social Security card and to inform the employer if there is any difference between the employer's records and his/her card.

⁷ SSNVS Handbook, *supra* note 1.

- **Ask the employee to resolve the problem by going to an SSA office.** If the employer's records and name and SSN match, the employer should ask the employee to check with the local SSA office to resolve the issue. The SSA website provides a sample letter that employers can give employees.⁸ The sample letter informs the employee that their information does not match SSA's records and advises employees to verify the information and/or contact an SSA office to resolve the issue. The employee should notify his/her employer of any changes. The sample letter states that the notice does not imply that the employee intentionally provided incorrect information and that the notice does not adversely affect his/her employment. However, the sample letter does not advise employers on how long they should give their employees to resolve a mismatch.
- **Document efforts to resolve the mismatch.** If the employee is unable to provide an SSN that can be successfully verified by SSNVS, SSA instructs employers to document its efforts to obtain the corrected information and keep these records for at least three years. SSA does not advise employers to fire the worker.

Reminder

SSA explicitly states that a mismatch is not a basis, in and of itself, for an employer to take any adverse action against an employee, such as laying off, suspending, firing, or discriminating.

■ Restrictions and Guidelines on Using SSNVS

In response to advocates' concerns about the use of SSNVS, the SSA has instituted certain restrictions on an employer's use of the system.⁹ These restrictions are also outlined in the User Registration Attestation, which a user has to agree to before obtaining access to SSNVS. Moreover, in order to ensure that employers are not misusing SSNVS, SSA generates reports to monitor identity controls, improper searches for valid names/SSNs, and incidents where users are verifying individuals not employed by the company, to ensure that employers are us-

⁸ "Sample Letter to Give Employees" (Social Security Administration), available from the SSNVS's "Information and Instructions to Verify Social Security Numbers Online" webpage, www.ssa.gov/employer/ssnv.htm#overview (last visited Nov. 7, 2009). See right-hand column of webpage for a hyperlink to the letter.

⁹ SSNVS Handbook, *supra* note 1.

ing SSNVS for its intended purpose.¹⁰ The restrictions are as follow:

- **Users may not use SSNVS to prescreen job applicants or contractors.** This means that an employer may not verify a person's name and SSN until an employer-employee relationship has been established. For SSA, an employer-employee relationship is established if an employer has offered a job and the employee has accepted the job or if the employee has completed his or her paperwork necessary for a payroll record.
- **Users may not take punitive action against an employee whose name and SSN do not match SSA's records.** SSA advises employers who use SSNVS that a mismatch does not imply that the employer or employee intentionally provided incorrect information. A mismatch response from SSNVS does not make any statement about an employee's immigration status and is not a basis, in and of itself, for taking adverse action against an employee. Doing so could subject an employer to antidiscrimination or labor law sanctions.
- **Users may not use SSNVS to discriminate against selected employees.** Employers may not use SSNVS to target individual workers or groups of workers to be screened by SSNVS. Employers may in fact be violating state or federal antidiscrimination laws if they do so. Any employer who misuses SSNVS to target workers for filing a wage and hour claim, or for union activity, is violating not only the terms of the SSNVS agreement but also state and federal laws
- **Third party uses of SSNVS are strictly limited to organizations that handle annual wage reporting responsibilities for employers and have an authorized and valid contract to do so.** SSNVS is not for individuals/companies that conduct identity verification, background checks, or other related services for employers or other parties.

Although SSA explicitly prohibits these practices, the only penalty for a user who misuses the system is that he or she will be prevented from further using SSNVS. SSA can ban specific users or an entire company. As of 2006, SSA's monitoring system has resulted in only four investigations of misuse of the system and the deactivation of one user's access to the system.¹¹ However, the

¹⁰ *Congressional Response Report: Monitoring the Use of Employee Verification Programs* (Office of the Inspector General, Social Security Administration, Sept. 2006), www.ssa.gov/oig/ADOBEPDF/A-03-06-36122.pdf (last visited Nov. 7, 2009).

¹¹ *Id.*

deactivation process has many limitations. For example, even if SSA blocks a user from the system, his/her company can still have access and can assign a new person to conduct verifications. Another limitation is that the only consequence for misusing the system is that a user's access is deactivated, but this does not mean that he/she cannot verify SSNs and names through other media, such as SSA's Agency Employer Customer Service or the U.S. Dept. of Homeland Security's (DHS's) E-Verify program.¹²

■ Concerns with the Use of SSNVS for Immigrant Workers

As a result of experience with SSA's no-match letter program and DHS's E-Verify, advocates have expressed concerns how SSNVS affects immigrant workers. Advocates are concerned that, although SSA has placed restrictions on how an employer can use SSNVS, and although SSA monitors the system, these policies are not enough to protect workers. The following are some of the concerns advocates have identified:

- **Immigrant workers may be adversely affected by SSNVS because of inaccuracies in SSA's records and employer misuse of the system.** For example, an SSA Inspector General report found that the database SSA uses for verification contains 17.8 million discrepancies related to name, date of birth, or citizenship status (i.e., 4.1 percent of the database's total records contain such discrepancies), with 12.7 million of such records pertaining to U.S. citizens.¹³ This database is also used for the E-Verify program,¹⁴ and studies have documented that employers take adverse action against workers based on database errors.¹⁵
- **SSNVS does not provide sufficient protections for workers.** Advocates are concerned that SSNVS does not provide sufficient protections for employees, in-

¹² *Id.* The only user whose account was deactivated began verifying SSNs and names through SSA's Agency Employer Customer Service until he was eventually blocked from that system. In 2005, he then obtained access to the Basic Pilot program.

¹³ *Accuracy of the Social Security Administration's Numident File* (Office of the Inspector General, Social Security Administration, Dec. 2006), www.socialsecurity.gov/oig/ADOBEPDF/auditxt/A-08-06-26100.htm (last visited Nov. 7, 2009).

¹⁴ *Basic Information Brief: DHS Basic Pilot/E-Verify Program* (NILC, Mar. 2008), www.nilc.org/immsemplymnt/ircaempverif/e-verify_infobrief_2008-03-13.pdf.

¹⁵ *Findings of the Web-Based Basic Pilot Evaluation* (Westat, Sept. 2007) (hereinafter "Westat 2007"), <http://tinyurl.com/2tdqqs> (last visited Nov. 7, 2009).

cluding adequate procedures for challenging incorrect information and for ensuring that workers are notified when records pertaining to them purportedly do not match SSA's records. Although SSA provides a sample letter for employers to give employees when they receive a mismatch notification, there is no requirement that employers actually use such a letter. SSA does not prohibit employers from taking adverse action against an employee based on a mismatch notification; SSA only *advises* employers not to take such action.

- **It may be possible for employers to use SSNVS to discriminate against immigrants or U.S. citizens who seem “foreign” by using it to prescreen job applicants.** Although SSNVS has not been independently studied specifically to ascertain how many employers use it to prescreen job applicants, an independent study of the E-Verify program found that a significant number of participating employers used that system to prescreen applicants, even though doing so was expressly prohibited.¹⁶

The antidiscrimination provision, which states that a company's policy concerning the use of SSNVS should be applied consistently to all workers, is inadequate and does not offer enough protections for workers. SSA has incorporated some of advocates' suggested language, but SSNVS still has fewer protections for workers than even the SSA's no-match letter program and E-Verify. As of 2006, SSA's monitoring system has resulted in only four investigations of misuse of the system and the deactivation of one user's access to the system.¹⁷ Yet according to an independent audit commissioned by the government, 42 percent of employers using E-Verify have misused it to prescreen applicants;¹⁸ it is safe, therefore, to assume that the number of employers that have misused SSNVS is significantly higher than four.

The four investigations were of users that employed the system to verify mortgage applicants and subcontractors for another company. There have not been any known investigations on selective screening or prescreening, or any investigations on whether any employers have taken adverse action against an employee who was the subject of a mismatch notification.

- **Employers can use SSNVS to verify workers' SSNs at any time during their employment.** Unlike E-Verify, which may be used to verify a worker's employment eligibility only within the first three days after employment the worker is hired, the use of

SSNVS to verify a worker's information is not similarly limited. This opens the possibility that employers could misuse SSNVS in order to retaliate against workers for exercising their workplace rights, including complaining about wage and hour violations, discrimination, health and safety violations — or for engaging in union organizing. For example, employers could knowingly hire undocumented workers and then decide to put them through SSNVS as a pretext to fire them if a labor dispute arises between the workers and the employer. There is a risk that employers may terminate those workers whose SSNs are not immediately confirmed.

- **SSNVS has minimal privacy protections.** For example, there is no certainty that parties who are not employers will be denied access to the system. Because SSNVS is Internet-based, outside parties may also be able to gain access to information that is accessible through it (all that is needed is an employer identification number and password). The risk of privacy breaches is significant.

SSNVS raises a number of questions and concerns that worker advocates must monitor closely. Because of the significant concern with the accuracy of government databases, workers, unions, organizers, and other worker advocates will need to make special efforts to educate themselves about SSNVS, the steps workers can take to challenge erroneous failed verifications, and how to ensure that workers are not wrongly fired or suspended.

Advocates must also be on the lookout for instances in which employers may be prescreening workers or otherwise using SSNVS in a way that violates the program's rules. For example, in California, under Labor Code Section 1198.5, current and former employees have a right to access their personnel files and records. Under the Illinois Personnel Record Review Act, employees in Illinois also have this right. Other states, including New York and Massachusetts, have similar laws. Employees and advocates can use these laws to check for employee prescreening and/or other abuses of SSNVS. Advocates should also review any collective bargaining agreements for other ways to access information in an employee's file. The SSA also generates Potential Fraud Identification Reports and SSNVS Failed MEF Check Reports useful for monitor prescreening and other abuses.¹⁹ Advocates can file Freedom of Information Act (FOIA) requests for such reports.

¹⁶ Westat 2007.

¹⁷ *Congressional Response Report*, *supra* note 10.

¹⁸ Westat 2007.

¹⁹ *Congressional Response Report*, *supra* note 10.

■ Workers' Rights

Like SSA's no-match letter program and E-Verify, SSNVS could adversely affect immigrant workers. For this reason, workers and advocates should be knowledgeable about the rights workers have and how workers can protect themselves from potential misuse of the system. The following is a list of these rights:

- Workers have a right not to be prescreened through SSNVS.
- An employer may not take punitive action against a worker if a worker's name and SSN do not match SSA's records
- An employer may not discriminate against selected employees.
- Workers have a right not to have their name and SSN verified through SSNVS by a third-party organization that does not handle annual wage reporting responsibilities for employers and does not have an authorized and valid contract to do so.
- Workers should be notified if their SSN does not match SSA's records and be given an opportunity to correct the problem.
- In most states, including California, current and former employees have a right to access their personnel records and files. This could help in identifying whether

a particular employer is using — and misusing — SSNVS.

If there is reason to believe that an employer is using SSNVS to prescreen workers prior to hire, or if an employer hires, fires, or suspends a worker based upon information received through SSNVS, a complaint should be filed with the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). The OSC is a government agency within the U.S. Dept. of Justice (the OSC is *not* part of DHS) that enforces the antidiscrimination provisions of the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b. Charge forms are available by telephone or through OSC's website. Workers may call the OSC's toll-free hotline at 800-255-7688 or 800-237-2515 (TDD for hearing impaired). There is also an automated employer hotline at 800-255-8155 or 800-362-2735 (TDD). The OSC can also be reached via its website, www.usdoj.gov/crt/osc. The OSC provides assistance and written outreach materials in multiple languages.

■ Contact NILC

Advocates should contact NILC for assistance on these issues. NILC is also interested in documenting employer abuse of SSNVS and any adverse impact it has on low-wage immigrant workers. Advocates with stories of such employer abuse should contact Mike Muñoz at munoz@nilc.org.