

Social Security Administration
Retirement, Survivors and Disability Insurance
Employer Correction Request

(Insert SSA Address)

EMPLOYER'S NAME
STREET ADDRESS
CITY, STATE ZIP

Why You Are Getting This Letter

You reported **X#** employee names and Social Security numbers (SSN) on the Wage and Tax Statements (Forms W-2) for tax year xxxx that do not match our records. We need corrected information from you so that we can reconcile employer wage reports and credit your employees' earnings to their Social Security records. It is important because these records can determine if someone is entitled to Social Security retirement, disability, and survivors benefits, and how much he or she can receive. If the information you report to us is incorrect, your employee may not get benefits he or she is due.

There are a number of reasons why reported names and SSNs may not agree with our records, such as typographical errors, unreported name changes, and inaccurate or incomplete employer records.

SOCIAL SECURITY NO-MATCH LETTER TOOLKIT

National Immigration Law Center



MARCH 2019

ESTABLISHED IN 1979, THE NATIONAL IMMIGRATION LAW CENTER is one of the leading organizations in the United States exclusively dedicated to defending and advancing the rights of low-income immigrants and their families. At NILC, we believe that all people who live in the U.S. — regardless of immigration or economic status — should have the opportunity to achieve their full potential. Over the years, NILC has been at the forefront of many of the country’s greatest challenges when it comes to immigration issues, including landmark legal decisions and protecting fundamental human and civil rights. We play a major leadership role in advancing policies that promote the ability of low-income immigrants to prosper and thrive.

Headquartered in Los Angeles with an office in Washington, DC, NILC employs a core set of strategies — impact litigation, policy advocacy, and strategic communications — in a range of key program areas that impact the lives and wellbeing of low-income immigrants, including: immigration status and reform; access to health care and economic opportunities; immigration enforcement reform and justice; and education. For more information, visit www.NILC.org.

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FREQUENTLY ASKED QUESTIONS Social Security No-Match Letters

A RESOURCE FOR WORKERS AND EMPLOYERS

MARCH 2019

The Social Security Administration (SSA) announced in July 2018 via its **Employer Correction Request Notices (EDCOR)** webpage that, beginning in the spring of 2019, it will send “**Employer Correction Request**” letters, also known as “**no-match letters**,” to every employer that has at least one Social Security “no-match.”¹

The SSA announcement reflects a *significant change in policy*.

What are SSA no-match letters?

Each year, employers file a Wage and Tax Statement (**Form W-2**) with the Social Security Administration and the Internal Revenue Service (IRS) to report how much they paid their employees and how much they deducted in taxes from employees’ wages throughout the year.² SSA sends a no-match letter when the names or Social Security numbers (SSNs) listed on an employer’s Form W-2 do not match SSA’s records. The **no-match letter** may list one or more workers whose personal information does not match SSA’s records.³

The letter’s purpose is to notify workers and employers of the discrepancy and to alert workers that they are not receiving proper credit for their earnings, which can affect future retirement or disability benefits administered by SSA.

Who receives no-match letters?

In the past, SSA has sent two types of no-match letter: (1) a letter sent directly to workers at their home, and (2) a **letter sent directly to employers** listing an employee (or multiple employees) with no-match issues.⁴ This spring, SSA will reinstate the practice of sending the *second type* of letter.

Why does the SSA send a no-match letter about a worker?

According to SSA, there may be several reasons why information submitted for a worker does not match SSA records, including:

¹ <https://www.ssa.gov/employer/notices.html>.

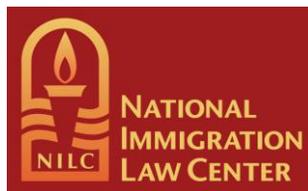
² Form W-2, Wage and Tax Statement, <https://www.irs.gov/forms-pubs/about-form-w-2>.

³ <https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf> (hereinafter “Employer Correction Request”).

⁴ *Id.*

The information in this document does not constitute legal advice and does not replace the advice of an experienced employment or immigration attorney.

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- a typographical or clerical error was made on a Form W-2 or Form W-4,⁵ such as misspelling a name or transposing a number in the SSN;
- the worker's name has changed (due to marriage, divorce, or other reason);
- information provided on either the Form W-2 or W-4 is incomplete or incorrect; or
- the worker's middle name was transposed (for example, "David Juan Jimenez" instead of "Juan David Jimenez").

What action(s) should an employer take in response to receiving a no-match letter?

The no-match letter suggests that employers:⁶

- review the employee's name and SSN information that was submitted on the Form W-2 and
- provide any necessary corrections on the Form W2-C within 60 days of receiving the no-match.

If the employer asks an employee to make corrections to the information that was submitted on the Form W-2, the employer should give the employee a reasonable amount of time to do so.⁷ "Reasonable amount of time" is not defined by statute or regulation in the SSA no-match context, but 120 days is likely a reasonable amount of time.⁸

Does being named in a no-match letter indicate that a worker lacks work authorization or is undocumented?

No. The no-match letter itself states that it does not make any statement about an employee's immigration status,⁹ and there is agency guidance and legal authority stating that

⁵ Form W-4, Employee's Withholding Allowance Certificate, <https://www.irs.gov/forms-pubs/about-form-w-4>. Employees complete the Form W-4 so their employers can withhold the correct amount of income tax from their pay.

⁶ Employer Correction Request, footnote 3 (above), p. 2.

⁷ *Frequently Asked Questions about Name/Social Security Number "No-Matches"* (Immigrant and Employee Rights Section, U.S. Dept. of Justice; document undated) (hereinafter "DOJ FAQ"), <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf>, p. 2. (The Immigrant and Employee Rights Section was previously called the Office of Special Counsel of Immigration-Related Unfair Employment Practices, or OSC.)

⁸ *Id.* The DOJ FAQ states that a "reasonable period of time" depends on the totality of the circumstances" and notes that "in the E-Verify context SSA has the ability to put a tentative nonconfirmation into continuance for up to 120 days," because it can take that long to resolve a discrepancy in SSA's database.

Additionally, in the context of immigration enforcement (I-9 Employment Eligibility Verification Form audits, not SSA no-matches), joint guidance from the U.S. Dept. of Justice (DOJ) and U.S. Immigration and Customs Enforcement (ICE) states that an "employer should recognize that some documents may take up to or more than 120 days to obtain. The reasonableness of a timeframe should be determined on a case-by-case basis." *Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits* (U.S. Immigration & Customs Enforcement and Office of Special Counsel for Immigration-Related Unfair Employment Practices; document undated), <https://www.ice.gov/sites/default/files/documents/Document/2015/i9-guidance.pdf>, p. 5.

⁹ "This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or SSN. This letter does not address your employee's work authorization or immigration status." Employer Correction Request, footnote 3 (above), p. 1.

inclusion of a worker's name on an SSA no-match letter makes no statement about the worker's immigration status.¹⁰

In fact, according to a 2006 report by the SSA Office of the Inspector General, errors in SSA's database impact immigrants *and* native-born U.S. citizens. At the time of the report, the inspector general noted that out of the estimated 17.8 million records in SSA's database that would generate a no-match letter, 12.7 million (or over 70 percent of the records with errors) pertained to native-born U.S. citizens.¹¹

Should an employer fire an employee based solely on the employee being named in a no-match letter?

No. An employer should not fire a worker based solely upon the employee being named in one or more SSA no-match letters received by the employer. *The SSA itself advises employers not to take adverse action against an employee named in a no-match letter.*

Such adverse action may include “**laying off, suspending, firing, or discriminating against that individual**” just because their information does not match SSA records. According to the SSA, “**Any of those actions could, in fact, violate State or Federal law and subject [the employer] to legal consequences.**”¹² Specifically, taking such adverse actions could violate the Immigration and Nationality Act's (INA's) antidiscrimination provisions and subject an employer to **enforcement from the U.S. Justice Department and monetary penalties.**¹³ In addition, an employer could be found liable and subjected to monetary penalties under other state and federal employment laws.

That a person is named in an SSA no-match letter does not provide information about the person's immigration status; the SSA does not maintain immigration status records and is not an immigration enforcement authority. Therefore, if an employer receives multiple no-match letters for the same worker (using the same SSN), this indicates only that a discrepancy at SSA remains unresolved, not that the worker lacks employment authorization.

¹⁰ “There are many possible reasons for a no-match letter, many of which have nothing to do with an individual's immigration status or work authorization. Because of this, an employer should not assume that an employee referenced in a no-match letter is not work authorized, and should not take adverse action against the referenced employee based on that assumption. Such action could subject the employer to liability under the anti-discrimination provision of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1324b.” DOJ FAQ, footnote 7 (above), p. 1.

And in *Aramark Facility Services v. SEIU, Local 1877*, the Ninth Circuit Court of Appeals stated that SSA no-match letters “do not indicate that the government suspects the workers of using fraudulent documents. Rather, they merely indicate that the worker's earnings were not being properly credited, *one explanation of which* is fraudulent SSNs” (emphasis in the original). *Aramark Facility Services v. SEIU, Local 1877*, 530 F.3d 817, 828 (9th Cir. 2008).

¹¹ Marielena Hincapié, Tyler Moran, and Michele Waslin, “The Social Security Administration No-Match Program: Inefficient, Ineffective, and Costly,” *Immigration Policy In Focus* (Immigration Policy Center, May 2008), p. 4, citing *Congressional Response Report: Accuracy of the Social Security Administration's Numident File* (report no. A-08-06-26100, Office of the Inspector General, Social Security Administration, Dec. 18, 2006), <https://oig.ssa.gov/congressional-response-report-accuracy-social-security-administrations-numident-file>.

¹² Employer Correction Request, footnote 3 (above), p. 1.

¹³ See footnote 10, above.

Do no-match letters affect workers' employment or labor rights?

No. For workers who have filed an administrative labor claim or workplace-based lawsuit against an employer, the no-match letter does not impact the worker's right to continue the proceeding, nor does it diminish the worker's right to engage in protected concerted activity.

Workers who are members of a labor union may have additional rights (in addition to those discussed here) and should contact their union representative immediately when they learn that they have been named in a no-match letter.

In the past, employers have misunderstood the letter's implications and unnecessarily fired workers named in no-match letters. In addition, unscrupulous employers have misused receiving the letter as an excuse to interfere with labor organizing campaigns or to retaliate against workers who have been injured on the job or who complain of unpaid wages or other labor violations. The fact that one or more employees are named in a no-match letter does not warrant or justify such actions by their employer and, depending on the underlying facts, it's likely that such actions are unlawful.

What was the Department of Homeland Security "safe-harbor" no-match rule, and why did DHS rescind it?

In August 2007, under the George W. Bush administration, the U.S. Department of Homeland Security (DHS) finalized a **proposed rule** regarding an employer's legal obligations upon receiving an SSA no-match letter.¹⁴ Under that rule, U.S. Immigration and Customs Enforcement (ICE) could have used an employer's receipt of a no-match letter as evidence that the employer had "constructive knowledge" that the employee named in the letter was not authorized to work in the U.S. The rule included procedures that such an employer would have to follow to avoid liability under immigration law.

NILC and several partners filed a lawsuit challenging the rule on several grounds.¹⁵ On October 10, 2007, the U.S. district court issued a preliminary injunction stopping the rule from going into effect because of a series of flaws in the rule. DHS **rescinded the rule** effective November 6, 2009.¹⁶ The rule never took effect.

Are SSA no-match letters a form of immigration enforcement? Can a no-match letter lead to immigration enforcement at a worksite?

No. No-match letters are not a form of immigration enforcement, and SSA does not have any authority to enforce immigration law. A worker's inclusion in a no-match letter does not provide information about the worker's immigration status.

Currently, we have no reason to believe that SSA is sharing specific information (regarding the issuance of no-match letters) with DHS. If SSA began sharing this no-match information with DHS, this practice would likely be unlawful.

What should workers do if their employer tells them that their names and SSNs appear in an SSA no-match letter?

Workers whose employers tells them that their personal information appears in an SSA no-match letter should not panic. Being listed in a no-match letter does not mean they are

¹⁴ 72 FR 45611 (Aug. 15, 2007), <https://www.govinfo.gov/app/details/FR-2007-08-15/E7-16066>.

¹⁵ *American Federation of Labor v. Chertoff*, 552 F. Supp. 2d 999 (N.D. Cal. 2007).

¹⁶ 74 FR 51447 (Oct. 7, 2009), <https://www.govinfo.gov/app/details/FR-2009-10-07/E9-24200>.

ineligible to be employed in the U.S. If possible, such workers should review the information contained in the Form W-2 (that the employer originally submitted for the employee) and provide any needed corrections.

However, a worker should not provide an employer with an SSN that is not their own. Providing such an SSN exposes the worker to possible criminal liability under federal law. If the SSN the worker gave the employer at the time they were hired is not theirs, the worker should not provide that same SSN to the employer as part of a no-match inquiry or subsequent reverification of employment eligibility.

In addition, a worker's *immigration status* is a *private* matter. Workers should avoid talking to anyone at their workplace about their immigration status.

What should a worker do if their employer tries to reverify their immigration status after they are named in an SSA no-match letter?

Employers have no legal obligation to reverify a worker's immigration status based solely on having received an SSA no-match letter that names the worker.¹⁷ In fact, an employer who requires employees of certain national origin, racial, or ethnic groups to reverify their immigration status or employment eligibility based solely on having received a no-match letter may be liable for committing national origin discrimination in violation of the antidiscrimination provisions of federal immigration law.¹⁸

If an employer conducts a nondiscriminatory workplace-wide reverification, then employees must be allowed to choose which documents to provide their employer in that process. Workers do not have to provide an SSN to legally obtain or maintain employment in the United States, unless their employer uses E-Verify.¹⁹

¹⁷ In a 1997 letter, the general counsel of the U.S. Immigration and Naturalization Service, the agency that formerly administered U.S. immigration law and regulations, stated that the agency would not consider an SSA no-match "by itself to put the employer on notice that the employee is unauthorized to work, or to require reverification of documents or further inquiry as to the employee's work authorization." Letter from David A. Martin, General Counsel, Immigration & Naturalization Service, to Bruce R. Larson, Esq. (Dec. 23, 1997).

¹⁸ See 8 U.S.C. § 1324b.

¹⁹ Employees may voluntarily provide their Social Security numbers on Form I-9 unless the employer participates in the E-Verify program. Employees whose employers use E-Verify must provide their employers with their Social Security numbers. Employees who can satisfy Form I-9 requirements may work while awaiting their Social Security numbers. "Completing Section 1 of Form I-9," *Handbook for Employers M-274* (U.S. Citizenship & Immigration Services), <https://www.uscis.gov/i-9-central/30-completing-section-1-form-i-9>.

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Know Your Rights about the Social Security No-Match Letter

MARCH 2019

The Social Security Administration (SSA) announced in July 2018 via its Employer Correction Request Notices (EDCOR) webpage that, beginning in the spring of 2019, it will send “**Employer Correction Request**” letters, also known as “**no-match letters**,” to every employer that has at least one Social Security “no-match.” The SSA announcement reflects a significant change in policy.

THE SOCIAL SECURITY ADMINISTRATION can send “no-match” letters to workers and employers when the workers’ names and Social Security numbers do not match. The stated purpose of these letters is to ensure that the Social Security payments an employer makes on an employee’s behalf are properly credited to the employee’s name in the Social Security system. In these letters, SSA requests that employers correct the no-match by presenting updated name and SSN information for any employee listed in the letter, using an IRS Form W-2c. SSA has announced it will resume sending no-match letters to employers in the spring of 2019. Many employers continue to be concerned and confused about no-match letters, *so it is important that you know your rights.*

YOUR RIGHTS

If your employer says it has received information from SSA that your name and Social Security number (SSN) do not match, here is what you should know:

- Your employer **should not** discipline or fire you *only* because of a no-match letter. In fact, the no-match letter states very clearly that employers are *not* supposed to “take adverse action” against you because information about you appears in the no-match letter. In other words, your employer should not fire you, change your work assignments, or reduce your pay based on a no-match letter. An employer that does so may be violating the law.
- When you were hired, you should have filled out an **I-9 form** and shown your employer documents that prove your identity and eligibility to work in the U.S. After you have completed that form, you do not have to answer any other questions from your employer about your *immigration status* except in limited circumstances. If your SSN is listed in a no-match letter, this is *not* evidence that you are undocumented. If your employer asks you for proof of your immigration status or your eligibility to work simply because it received a no-match letter, the employer may be violating the law.
- The no-match letter requests that your employer update your name and SSN on IRS Form W-2c. SSA is attempting to ensure the accuracy of *your* earnings record. Therefore, your employer may contact you to correct your personal information on your W-2 form.
- When you were hired, if you showed your employer identity and work authorization documents that *did not belong to you*, do not show those documents again to your employer. A worker who does so may be violating the law.
- *All non-U.S. citizen workers* have the right to remain silent about their immigration status, the right to work without being retaliated against, the right to organize with coworkers, and the right to be paid properly for their work.

The information in this document does not constitute legal advice and does not replace the advice of an experienced employment or immigration attorney.

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DO	DO NOT
<ul style="list-style-type: none"> ☑ Present your employer with a letter requesting more information. ☑ Ask your employer for a copy of the original no-match letter. ☑ Ask your employer when the company received the no-match letter. If it received the letter some time ago, ask why it is just informing you now. ☑ Review the information contained in the W-2 form (that your employer originally submitted for you), if possible, and provide any needed corrections. ☑ Tell your employer that you want a coworker, community advocate, or union representative present in any meetings with management about the letter. ☑ If you are represented by a labor union, immediately contact your union representative. Your union contract with the employer may give you more rights if you are listed in a no-match letter. ☑ Attend worker meetings on no-match and get workers involved. ☑ Contact a community organization if you feel that you have been singled out because of your citizenship status or national origin, or if you feel your boss is retaliating against you. 	<ul style="list-style-type: none"> ☒ Don't panic or be afraid! Being listed in a no-match letter does <i>not</i> mean you're ineligible to be employed in the U.S. ☒ Don't talk to anyone at your workplace about your immigration status. Doing so may carry serious legal consequences for you and your coworkers. ☒ Don't quit your job just because your employer tells you that your Social Security number was listed in a no-match letter. ☒ Don't notify your employer if you got a no-match letter at home. Just because you got one does not mean that your boss will also get a letter. ☒ Don't give (or re-give) your employer a Social Security number that does not belong to you. Doing so may carry serious legal consequences for you. ☒ Don't forget that immigration law has anti-discrimination protections for workers. If your boss chooses to reverify your employment eligibility, the employer must follow the law while doing so. The employer may not choose which documents you are allowed to present in order to comply with the Form I-9 requirements.

APPENDIX

Samples and Additional Resources

General Sample Letter from Worker's Attorney to Employer (At-Will Employment)

(National Immigration Law Center)

www.nilc.org/wp-content/uploads/2019/03/SSA-No-Match-Sample-Letter-2019.pdf

Letter and Enclosure from SSA Commissioner Andrew Saul to Rep. Richard E. Neal (D-MA 1st) Regarding SSA No-Match Letters

www.nilc.org/wp-content/uploads/2019/12/COSS-to-Neal-EDCOR-No-Match-Letter-2019-08-07.pdf

Letter and Enclosure from SSA Acting Commissioner Nancy Berryhill to Rep. Jim Costa (D-CA 16th) Regarding SSA No-Match Letters

www.nilc.org/wp-content/uploads/2019/10/ACOSS-to-Costa-EDCOR-2019-06-03.pdf

Letter from 164 Advocacy Organizations to SSA Calling for End to No-Match Letters

www.nilc.org/wp-content/uploads/2019/10/Ltr-to-Acting-SSA-Com-Berryhill-2019-05-02.pdf

Letter from 47 Members of Congress Calling for End to No-Match Letters

www.nilc.org/wp-content/uploads/2019/10/Ltr-from-MOC-to-Acting-SSA-Com-Berryhill-2019-05-02.pdf

Employers: What You Need to Know About Social Security Administration No-Match Letters

(NYC Commission on Human Rights, Mayor's Office of Immigrant Affairs)

www.nilc.org/wp-content/uploads/2019/12/SSANoMatchLetter-Factsheet-English-2019-11-26.pdf

Guidance to Employers on SSA No-Match Letters

(New Jersey Office of the Attorney General and NJ Dept. of Labor and Workforce Development)

www.nilc.org/wp-content/uploads/2020/09/NJ-LWD-OAG-DCR-Letter-2020-03-09.pdf

Employer Correction Request ("No-Match Letter")

(Social Security Administration)

www.nilc.org/wp-content/uploads/2019/12/EmployerCorrectionRequest-2019-10.pdf

Attachment: Helpful Information about Our Free Online Wage Reporting Services

(Social Security Administration)

www.nilc.org/wp-content/uploads/2019/12/EDCOR-Letter-Final-Attachment-2019-09-16.pdf

Frequently Asked Questions About Name/Social Security Number "No Matches"

(Immigrant and Employee Rights Section, U.S. Department of Justice)

www.nilc.org/wp-content/uploads/2019/03/FAQs-re-no-matches-DOJ.pdf

Name and Social Security Number (SSN) "No-Matches": Information for Employees

(Immigrant and Employee Rights Section, U.S. Department of Justice)

www.nilc.org/wp-content/uploads/2019/03/no-match-info-Employees.pdf

Name and Social Security Number (SSN) "No-Matches": Information for Employers

(Immigrant and Employee Rights Section, U.S. Department of Justice)

www.nilc.org/wp-content/uploads/2019/03/no-match-info-Employers.pdf

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**GENERAL SAMPLE LETTER FROM WORKER'S ATTORNEY TO EMPLOYER
(AT-WILL EMPLOYMENT)**

[Employer Name]
[Employer Address]
[Date]

Re: Social Security No-Match Letter(s) for **[Client(s) Name]**

Dear **[Employer Name]**:

I am writing you because my client, **[Client Name]**, believes you received information from the Social Security Administration (SSA) stating that his name and Social Security number (SSN) do not match SSA's records. This is likely an "EDCOR" no-match letter;¹ SSA is sending these letters to thousands of employers across the country.

As you know, each year employers file a Wage and Tax Statement (Form W-2) with SSA and the Internal Revenue Service (IRS) to report how much they paid their employees and how much they deducted in taxes from their employees' wages throughout the year. SSA sends a no-match letter when the names or SSNs listed on an employer's Form W-2 do not match SSA's records. The letter's purpose is to notify workers and employers of the discrepancy and to alert workers that they are not receiving proper credit for their earnings, which can affect future retirement or disability benefits administered by SSA.

There are many reasons why a no-match may exist — a name change, input errors by SSA staff, and reporting errors by an employer or employee are all recognized causes of no-matches. In response to a no-match letter, SSA directs you to "review the name and SSN information you submitted on the Form W-2" and provide SSA with corrected information."² If you wish to speak to **[Client Name]** to confirm his name and/or SSN, contact me directly.

Importantly, you should not take *any* adverse action — up to and including termination — against **[Client Name]** based solely upon the receipt of one or more SSA no-match letters. Doing so may be illegal under federal or state law.

The SSA itself advises you against taking adverse action against **[Client Name]**, *including* "laying off, suspending, firing, or discriminating against that individual" just

¹ SSA Employer Correction Request,
<https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>.

² *Id.* In a sample letter that employers can give to employees in the event of a mismatch, the SSA states that the employee should "[c]heck to see if the information above matches the name and Social Security Number on your social security card. If it does not match, please provide me with the exact information as it is shown on your Social Security card" [sic]. The subsequent bulleted sentence in the letter says, "If the information above matches your card, please check with any local Social Security office to resolve the issue. Once resolved, please inform me of any changes."
<https://www.ssa.gov/employer/notices/SSNVSampleLetter.pdf>.

because his information does not match SSA records.³ In fact, doing so could subject you to enforcement by the U.S. Department of Justice and monetary penalties under other state and federal employment laws.⁴

Some employers who receive no-match letters mistakenly believe that the letter indicates that a worker is not authorized to work legally in the United States. Federal agency guidance, legal authority, and the no-match letter itself confirm that a no-match letter **does not** “make any statement about an employee’s immigration status.”⁵

You should not ask my client to prove his identity or work authorization solely as a result of receiving a no-match letter.⁶ You have **no legal obligation** to reverify my client’s

³ SSA Employer Correction Request, <https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>.

⁴ *Id.* Department of Justice FAQs state that taking adverse action against an employee “could subject the employer to liability under the anti discrimination provision of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1324b.” <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf>.

⁵ SSA Employer Correction Request, <https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>. “This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or SSN. This letter does not address your employee’s work authorization or immigration status.”

There is also Department of Justice guidance and legal authority confirming that a no-match letter does not indicate a worker’s immigration status. See the Department of Justice Immigrant and Employee Rights Section (formerly Office of Special Counsel), *Frequently Asked Questions about Name/Social Security Number “No-Matches.”* “There are many possible reasons for a no-match letter, many of which have nothing to do with an individual’s immigration status or work authorization. Because of this, an employer should not assume that an employee referenced in a no-match letter is not work authorized, and should not take adverse action against the referenced employee based on that assumption.” <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf>.

See also *Aramark Facility Services v. SEIU, Local 1877*. In that case, the Ninth Circuit stated that SSA no-match letters “do not indicate that the government suspects the workers of using fraudulent documents. Rather, they merely indicate that the worker’s earnings were not being properly credited, one explanation of which is fraudulent SSNs.” *Aramark Facility Services v. SEIU, Local 1877*, 530 F.3d 817, 828 (9th Cir. 2008).

⁶ SSA Employer Correction Request, <https://www.ssa.gov/employer/notices/EmployerCorrectionRequest.pdf>; Department of Justice Office Immigrant and Employee Rights Section (formerly Office of Special Counsel), *Frequently Asked Questions About Name/Social Security Number “No-Matches,”* <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf>. Upon receipt of no-match letters, an employer *could* choose to conduct a workplace-wide reverification of all workers’ immigration documents; however, the employer faces possible liability. Reverifications of workers’ immigration status must not violate the antidiscrimination protections of the Immigration and Nationality Act; the antidiscrimination provisions of applicable federal, state, and local law; the anti-retaliation provisions of the National Labor Relations Act, Fair Labor Standards Act, or any other relevant federal, state, and local law. Additionally, in a 1997 letter, the general counsel of the U.S. Immigration and Naturalization Service (the agency that formerly administered U.S. immigration law and regulations) stated that the agency would not consider an SSA no-match “by itself to put the employer on notice that the employee is unauthorized to work, or to require reverification of documents or further inquiry as to the employee’s work authorization.” Letter from David A. Martin,

immigration status based solely upon receipt of an SSA no-match letter.⁷ If you do require employees of certain national origin, racial, or ethnic groups to reverify their identity or employment eligibility based solely upon receipt of a no-match letter, **you may be liable** for having committed national origin discrimination in violation of the antidiscrimination provisions of federal immigration law.⁸

Again, if you wish to speak to [CLIENT NAME] about a no-match letter you received from SSA, please contact me.

Sincerely,

General Counsel, Immigration & Naturalization Service, to Bruce R. Larson, Esq. (Dec. 23, 1997) (AILA Doc. No. 98011391).

⁷ In a 1997 letter, the General Counsel of the U.S. Immigration and Naturalization Service (INS, the agency that formerly administered U.S. immigration law and regulations) stated that the agency would not consider an SSA no-match “by itself to put the employer on notice that the employee is unauthorized to work, or to require reverification of documents or further inquiry as to the employee’s work authorization.” Letter from David A. Martin, General Counsel, Immigration & Naturalization Service, to Bruce R. Larson, Esq. (Dec. 23, 1997) (AILA Doc. No. 98011391).

⁸ See 8 U.S.C. § 1324b.

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SOCIAL SECURITY

The Commissioner

August 7, 2019

The Honorable Richard E. Neal
Chairman, Committee on Ways and Means
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your June 28, 2019 letter regarding the agency's resumption of mailing Educational Correspondence (EDCOR)/Employer Correction Request (i.e. "no-match") letters earlier this year. The agency decided to resume mailing revised EDCOR letters as another tool to improve wage reporting and earnings history accuracy. I appreciate that we agree on the importance of that goal. I understand your concerns regarding the potential for employers to misunderstand the letters' intent.

From the outset of the plan to send the letters, the agency has been proactive in engaging the employer community regarding online services, and informing them about what employers should and should not do upon receipt of an EDCOR letter. The letters specifically advise employers not to take adverse action against an employee based on the letter.

Enclosed, we provide responses to your specific questions. I hope you find this information helpful. If you have further questions, please contact me or have your staff contact Eric Skidmore, our Acting Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030. We are sending similar responses to the cosigners of your letter.

Sincerely,

Andrew Saul
Commissioner

Enclosures

1. Rationale for Policy Change:

- a) **Why did SSA reverse its prior position and resume mailing employer no-match letters, when past experience clearly demonstrated that the letters are ineffective and an inefficient use of resources?**

RESPONSE: We resumed sending the letters to improve the accuracy of earnings records. We revised the EDCOR letter to make them more effective. The new EDCOR letter:

- does not include Social Security Numbers (SSN), consistent with the Social Security Number Fraud Prevention Act of 2017 (P.L. 115-59);
- is mailed to all employers who submit at least one name and SSN on a Form-W2 for an employee that does not match our records; and,
- educates employers about online services available through Business Services Online (BSO), which helps employers submit accurate wage reports by reducing the instances of no-matches before, during, and after they submit wage reports.

Removing SSNs from the revised letters incentivizes employers to use our online tools to view and correct no-matches. Early data shows an increase in employers using our online wage reporting tools.

- b) **The OIG report cited above found that SSA's Decentralized Correspondence (DECOR) letters, which are sent directly to workers, were more effective than the employer EDCOR letters in correcting earnings records, which supports SSA's mission. Why isn't SSA sending DECOR letters to workers instead of EDCOR letters to employers?**

RESPONSE: We receive more than 7 million no matches from Forms W-2. It is more cost efficient to send a single letter to an employer than to send a letter to each of that employer's employees. Notifying the employer also gives us another chance to encourage the employer to use online services, which identifies most no-matches before the employer submits the wage report.

- c) **In the past, SSA discontinued sending no-match letters due to budget concerns. SSA's budget problems are well-documented and ongoing, and have led to excessive wait times for appeals hearings, on the toll-free telephone assistance lines, in SSA field offices, and in SSA's processing centers. Given these problems, why did SSA choose to resume sending the letters?**

RESPONSE: The Earnings Suspense File has more than \$1.5 trillion in uncredited wages and we need to do what we reasonably can to address this problem and not continue to add wages to the file. Sending the revised EDCOR letters provides a more cost-efficient means to improve the accuracy of our wage records than mailing individual DECOR letters. We maximize outreach by sending letters to all employers with one or more no-match. To reduce operational impact, the letters instruct employers to view and correct no-matches through BSO and provide our specialized BSO telephone number for questions.

BSO allows employers to report wages, view status including mismatches, and see errors and error notices for wage reports. By comparison, not only are DECOR letters more expensive because we would have to mail so many more of them, but they would also likely drive more traffic to field offices and frontline operations.

- d) **Why did SSA decide to send vastly more letters in 2019 — to any employer with at least one no-match — than it had in most prior years, when it sent letters only to employers above a certain threshold number or percentage of no-matches?**

RESPONSE: Based on OIG’s report, we are sending EDCOR letters to all employers who submit at least one no-match. OIG found that “about 74 percent of employers who reported wage items with mismatched names and SSNs did not receive an EDCOR letter primarily because of the Agency’s criteria for issuing the letters.”

2. Number of letters:

- a) **How many no-match letters are being sent in 2019, and how many have already been sent?**

RESPONSE: We have mailed 577,349 of the approximately 800,000 letters we are sending in 2019.

- b) **On what date did SSA begin mailing the 2019 letters? What is the timing of their distribution (e.g., in batches, or on a rolling basis)?**

RESPONSE: On March 29, 2019, we began mailing batches of the 2019 letters for tax year 2018 for employers who filed their wage reports electronically. We mailed batches of 225,000 letters every two weeks, with the third batch of the remaining 127,349 letters mailed on April 26, 2019.

- c) **Please provide a table showing the distribution by state of: (i) the total number of letters to be sent in 2019; and (ii) the number of letters already sent.**

RESPONSE: In the following table, we provide the total number of letters we have mailed thus far. Currently, we cannot provide a breakdown by state of the unsent letters, but we will do so when we have that data.

State	Letters per State	State	Letters per State	State	Letters per State
AK	577	KY	4,261	OH	9,451
AL	4,246	LA	4,649	OK	6,449
AR	2,882	MA	13,352	OR	12,398
AS	13	MD	11,405	PA	12,181
AZ	8,781	ME	1,390	PR	1,463
CA	124,376	MI	9,584	RI	2,163
CO	10,895	MN	9,263	SC	4,769
CT	8,102	MO	6,315	SD	951
DC	2,027	MP	18	TN	7,781
DE	1,566	MS	2,351	TX	51,249
FL	29,544	MT	988	UT	8,047
GA	15,162	NC	15,266	VA	13,308
GU	65	ND	841	VI	35
HI	1,014	NE	2,803	VT	641
IA	3,393	NH	1,425	WA	17,367
ID	3,129	NJ	24,666	WI	10,250
IL	27,903	NM	3,310	WV	699
IN	8,134	NV	7,084	WY	817
KS	5,300	NY	41,245		

**Five letters were sent to overseas U.S. base employers.*

- d) **Please provide the number of letters that will be sent in 2019 to: (i) employers employing 20 or fewer total wage earners; and (ii) employers employing 5 or fewer total wage earners.**

RESPONSE: We used Employer Identification Numbers (EIN) to identify unique employers. We identified the number of employees attributable to each unique employer by the number of Forms W-2 submitted under a given EIN. The numbers below reflect letters mailed thus far and we cannot provide data at this time for the remaining letters.

Employer Category	Letters Sent
Employers with 5 or less employees	71,162
Employers with 6 to 20 employees	164,904

- e) **Please provide the number of letters that will be sent in 2019 to: (i) employers with 10 or more no-matches; (ii) employers with 100 or more no-matches; employers whose no-matches make up at least 0.5 percent of their total W-2 employees; and (iv) employers whose no-matches make up at least 10 percent of their total W-2 employees.**

RESPONSE: The following reflects the number of EDCOR letters we have already sent and we cannot provide at this time data for the remaining letters.

- 10 or more no-matches = 96,896
- 100 or more no-matches = 11,625
- No-matches make up at least 0.5 percent of W-2 employees = 83,898
- No-matches make up at least 10 percent of W-2 employees = 320,464

3. Cost:

- a) **What is the total estimated cost to SSA of the 2019 no-match letters and related mailings, including EDCOR Announcement letters, Employer Correction Request letters, and Third Party Provider Notification letters? Please include all direct costs plus the costs of increased inquiries or visits to field offices, the National 800 Number, the Business Services office or phone number, and the Business Services Online (BSO) portal.**

RESPONSE: We estimate our start-up costs for the EDCOR mailing activities and associated work to be about \$1.9 million. This includes a one-time announcement letter mailing and system updates. We estimate the ongoing cost to the agency to be approximately \$1.6 million annually.

- b) **As described above, EDCOR letters were determined to be "not effective" in correcting earnings reports, and "not a cost-effective use of resources." What evidence does SSA now have to demonstrate that resuming these letters is an effective use of the agency's limited resources?**

RESPONSE: The Earnings Suspense File has more than \$1.5 trillion in uncredited wages, and we need to do what we can to address this problem and not continue to add wages to the file. EDCOR letters are part of an overall strategy and they will have some positive effect. They also allow us to drive employers to online service tools and we have already seen increased usage. It is too soon to determine the effectiveness of the revised letters.

4. Past Experience:

- a) **What was the last year in which SSA sent EDCOR letters to employers? How many letters were sent that year, and what criteria were used to determine which employers would receive them? What was the total estimated cost of this activity (including direct and indirect costs) in that year?**

RESPONSE: We last sent EDCOR letters in 2006 for tax year 2005. We sent 137,905 letters to employers who reported more than 10 no-matches that represented more than 0.5 percent of the Forms W-2 submitted by that employer. We estimate the total cost for this activity was approximately \$200,000. We note that fiscal year 2006 costs were lower than our most recent EDCOR mailings due to the following:

- Notice volumes were almost 5 times lower;
- Postage rates were about 35 percent lower; and
- Our cost per workyear for this activity was about 40 percent lower.

- b) **How many individuals were identified through the EDCOR process as not matching in that year, and for how many of these individuals did employers provide updated records to SSA?**

RESPONSE: Out of the 137,905 EDCOR letters we mailed in 2006, we identified about 8.6 million no-matches with 3,060 records corrected through Forms W-2C.

- 5. Why do the letters give employers only 60 days to correct the no-matches? In contrast, the Department of Justice and the Department of Homeland Security generally consider 120 days to be a reasonable amount of time to obtain employment documentation, while also acknowledging that it may take even longer to obtain some documents.**

RESPONSE: We understand this timeframe has generated concerns within the business community and we will remove it from future mailings.

6. What if any training or instructions did SSA's front-line staff receive with regard to no-match letters or assisting workers or employers who are attempting to correct a discrepancy? Please provide a copy of any such materials.

RESPONSE: Prior to reinstating the mailing of EDCOR letters, we provided:

- refresher training for telephone support personnel in our Office of Central Operations (OCO) who handle incoming calls from employers.
- an email reminder and sample of the new EDCOR notice to our Regional Employer Services Liaison Officers (ESLO) and we provide ad hoc information and materials as-needed.
- instructions to our regional offices, field offices, and teleservice centers informing them that we were starting outreach and releasing “Third Party Provider Notifications” and EDCOR Announcement Letters starting in July 2018.
- policy guidance to our regional offices, field offices, and teleservice centers explaining the updated EDCOR letters, and instructions for referring inquiries on the letter to our Business Services Branch.
- training for technicians specific to the information in the updated EDCOR letter and instructions for handling inquiries about the information.

We are monitoring employer feedback and using that information to provide OCO and ESLOs additional information and training.

Please see enclosed appendix for the relevant POMS sections, which are sensitive and not to be shared with the public.

7. Data Sharing:

- a) **SSA's June 3, 2019, letter to several Members of Congress acknowledged that no-match letter data is protected under Section 6103 of the Internal Revenue Code, which establishes strict protections for tax information. Moreover, both court rulings and SSA's own operating procedures explicitly recognize that SSA may not share with DHS or other agencies information relating to no-match letters (such as the identities of the employers receiving the letters), because it derives from tax information. Does this remain SSA's current policy and practice? Do you anticipate any changes for the future?**

RESPONSE: Forms W-2 data, including the EDCOR letter data, is considered Federal Tax Information (FTI) under section 6103 of the Internal Revenue Code (IRC); thus, we are prohibited from sharing this information with other agencies unless authorized by IRC section 6103. These disclosure policies are documented in our POMS, GN 03320.001.C.3. Disclosure of Tax Return Information. We will continue to comply with the law.

- b) **Is information relating to the BSO portal also protected from disclosure to other agencies under Section 6103? Is there any policy or practice under which SSA shares BSO information (such as employer registration information) with DHS or other agencies?**

RESPONSE: Information submitted through BSO for wage reporting purposes is protected under section 6103 of the IRC. While we are not aware of requests for BSO related information, if we receive a request, we will review it on a case-by-case basis factoring in disclosure law. We process all wage reports as an agent of IRS; thus, we share all Forms W-2 information with IRS on a daily basis, and include an indicator code when the name and SSN do not match our records.

- c) **Do the answers to 7(a) or 7(b) change if DHS demonstrates that a particular employer is already under investigation by DHS or its sub-agencies, and if so, under what statutory authority does SSA disclose tax information? In that situation, does DHS have the authority to obtain confirmation from SSA as to whether the employer has received a no-match letter? If so, how many times has SSA provided such information in the past year?**

RESPONSE: Periodically, we receive ad-hoc requests for information, including FTI, from various law enforcement agencies, including DHS, to support criminal investigations. We evaluate each request on a case-by-case basis and determine whether we can disclose according to the law, our regulations, and policies. In all cases, we will only disclose FTI as authorized by section 6103 of the IRC.

- d) **How does SSA interpret 8 U.S.C. 1360(b), including any potential conflict with the provisions of Section 6103? Does SSA share any information or data with other agencies under this provision? If so, please list all instances of such information sharing in the past year.**

RESPONSE: Section 1360(b) of the Immigration and Nationality Act (INA) does not conflict with section 6103 of the IRC. Section 1360(b) of the INA requires that we provide information in our records that DHS needs to *identify and locate* aliens in the U.S. FTI does not belong to SSA; therefore, we cannot disclose it for such purposes. Accordingly, we disclose to DHS information from our records (i.e., the alien's SSN, name, date of birth, place of birth, and address information) needed to fulfill requirements of section 1360(b) of the INA. We do not disclose information to locate or identify an alien under 8 U.S.C. 1360(b) to any other agencies.

- e) **Since January 2017, please list any instances in which DHS has formally or informally requested information from SSA regarding wage earner information that is: (a) contained in the Earnings Suspense File; (b) related to an employer's use of E-Verify; or (c) related to an immigration or criminal investigation or audit of an employer.**

RESPONSE:

- Contained in the Earnings Suspense File (ESF): In October 2017, DHS USCIS inquired about receiving the Nonwork Alien File (also known as the NWALIEN file or NWAF) and ESF, and in February 2018, it submitted a formal request for the files. We determined that we could share the NWALIEN with USCIS and provided reimbursement costs; however, USCIS advised us it did not want to proceed. We determined that we could not provide the ESF due to FTI restrictions in section 6103 of the IRC.
 - Related to employer's use of E-Verify: We do not maintain information in our records related to employer use of E-Verify, which is a DHS USCIS program.
 - Related to an immigration or criminal investigation or audit of an employer: Periodically, we receive ad-hoc requests for information, including FTI, from various law enforcement agencies, including DHS, to support criminal investigations. We evaluate each request on a case-by-case basis and determine whether we can disclose according to the law, our regulations, and policies. In all cases, we will only disclose FTI as authorized by section 6103 of the IRC.
- f) **What is the current status of sending the Nonwork Alien (NWALIEN) file to DHS, and the related data exchange agreement? Has it or will it be sent in 2019, and if so, when? What restrictions, statutory or otherwise, govern how DHS can use this information?**

RESPONSE: We provided the NWALIEN file to DHS from 1999 through 2006. In 2007, the prior agreement expired. At that time, we also determined DHS would need to reimburse us for creating and sharing the NWALIEN file because it is not part of our core mission work. DHS never pursued a new agreement.

As mentioned in our response to 7(e), in February 2018, USCIS submitted a request for the NWALIEN file and ESF. In August 2018, we informed USCIS that we could share the NWALIEN file and provided estimated start-up costs. USCIS said they would review and get back to us. In November 2018, USCIS indicated they did not wish to proceed. We defer to DHS USCIS as to what restrictions, statutory or otherwise, govern its use of the NWALIEN file.

- g) **Other than the NWALIEN exchange with DHS and the authorized sharing of Form W-2 information with IRS, can you confirm that SSA does not, and has not in the past, share any data relating to EDCOR letters, no-matches, or the Earnings Suspense File with other agencies, such as DHS or IRS? Under what authority is that information prohibited from being shared? If data is shared, what restrictions are in place regarding how those agencies may or may not use the SSA data for other purposes, including immigration enforcement, and what is the statutory basis for those restrictions?**

RESPONSE: We process all wage reports as an agent of IRS; thus, we share all Forms W-2 information with IRS on a daily basis, and include an indicator code when the name and SSN do not match our records. We maintain the ESF as part of our responsibilities to support the wage reporting process on behalf of the IRS in accordance with section 232 of the Social Security Act.

We do not disclose EDCOR data, no-matches, or the ESF with federal agencies other than the IRS, unless authorized by IRC section 6103. We defer to IRS regarding its disclosure of FTL.



SOCIAL SECURITY
The Commissioner

June 3, 2019

The Honorable Jim Costa
House of Representatives
Washington, DC 20515

Dear Mr. Costa:

Thank you for your April 11, 2019 letter regarding our resumption of mailing Educational Correspondence (EDCOR)/Employer Correction Request (i.e. “no-match”) letters. Last year, we decided to resume mailing revised EDCOR letters to improve the accuracy of our wage reporting process. We use wage information to determine eligibility for, and the amount of, Social Security benefits that a worker – and his or her spouse or dependents – may receive. If we cannot match the name and Social Security Number (SSN) reported by the employer on a Form W-2, we cannot credit earnings to the employee’s record, which may cause errors to the benefits the employee is due.

Accordingly, our current EDCOR letters inform employers whenever they submit at least one name and SSN combination on Form W-2 that does not match our records. The letters advise employers that corrections are needed for us to properly post the employee’s earnings to the correct record, while also educating employers and encouraging them to use our online wage reporting tools to improve the accuracy of their wage reporting. Employers who use our online tools can eliminate most mismatches before submitting their wage reports, and can view and correct wage reports we could not post to an individual’s earnings record. This should have a positive effect on the accuracy of our wage reporting process. We have seen an increase in businesses using our online electronic wage reporting system and an increase in the number of users who have registered for authorization to view detailed name/SSN mismatch error information.

Enclosed, we provide responses to your specific questions. We hope you find this information helpful. If you have further questions, please contact me or have your staff contact Royce Min, our Acting Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030. We are sending similar responses to the cosigners of your letter.

Sincerely,

Nancy A. Berryhill
Acting Commissioner

1. How did SSA decide to reinstate the practice of sending non-match letters? Did SSA consult with Department of Homeland Security, Department of Labor, Department of Justice, Department of the Treasury, or the White House in making this decision? If so, which agencies were consulted?

We decided to resume sending the letters to improve the accuracy of our wage reporting process. However, the current EDCOR letter contains key differences from our previous letters. Specifically, the new EDCOR letter:

- does not include any Social Security Numbers (SSNs), consistent with the *Social Security Number Fraud Prevention Act of 2017* (P.L. 115-59);
- is mailed to all employers who submit at least one name and SSN on a Form-W2 for an employee that does not match our records; and,
- educates employers about online services available through Business Services Online (BSO), which helps employers submit accurate wage reports by reducing the instances of no-matches before, during, and after they submit wage reports.

This last change – encouraging employers to our free and easy-to-use online services – is consistent with SSA OIG reports that concluded we should focus efforts on encouraging use of online employer tools.

Because we process wage reports as an agent of the Internal Revenue Service (IRS), we vetted the revised EDCOR letter with IRS. Consistent with longstanding SSA practice, we engaged in pre-deliberative discussions both internally and externally with relevant stakeholders throughout the executive branch.

2. Who is receiving these letters? Is SSA attempting to reconcile W-2s and social security records for every employee in the United States? If not, how does SSA determine which employers to review? How many letters were sent and how many letters does SSA anticipate sending?

As noted above, we are sending the revised EDCOR letter to employers that submit at least one name and SSN on a Form W-2 for an employee that does not match our records (no-matches). The current letters will cover all no-matches for tax year 2018. As of April 26, 2019, we have mailed 577,349 letters. Later this fall, we plan to mail the remaining letters generated from processing paper Forms W-2 that do not match our records for tax year 2018.

3. The no-match letter asks each employer to provide any corrections within 60 days of receipt of the letter. What are the consequences for non-compliance?

These are educational letters intended to alert employers of a no-match, and to provide useful information about the online tools they can use to improve the accuracy of their wage reporting. However, if the information the employer reported is incorrect, eventually the employee may not receive the correct Social Security benefit that is due. Accordingly, we ask employers to take timely action on no-matches to ensure their employees' wages are posted correctly to our records. However, we do not take any action, nor are there any SSA-related consequences, for employers' non-compliance with our letters.

4. In implementing this program, has SSA shared any information about employers and employees whose records do not match with other agencies?

Forms W-2 data, including the EDCOR letter data, is considered Federal Tax Information under section 6103 of the Internal Revenue Code (IRC); thus, we are prohibited from sharing this information with other agencies unless for a specific purpose authorized under IRC section 6103. We note that, because we process all wage reports as an agent of the IRS and its work, we share all Forms W-2 information with IRS on a daily basis, and include an indicator code when the name and SSN do not match our records.

5. If it is discovered that an employee was undocumented and/or was not authorized to work in the United States, what actions would SSA take?

As noted in the EDCOR letter, a name and SSN no-match is not an indication of an employee's work authorization or immigration status. Because a no-match provides insufficient information to determine its cause, SSA takes no specific actions other than to send the EDCOR letter to the employer to try to resolve the no-match and ensure proper crediting of wages to employee records. SSA is not a law enforcement agency and our role is limited in scope to trying to ensure we credit each employee with his or her earnings to determine eligibility for and the amount of program benefits. Additionally, the EDCOR letter specifically advises employers not to take an adverse action against an employee based on the letter.

Accurate wage information is vital to the administration of our programs. We hope that by sending EDCOR letters to all employers, we will help them reconcile name and SSN no-matches, and, over time, use our online services to prevent such no-matches on the front-end. This will help improve the accuracy of our wage records, and ultimately ensure employees receive the benefits they are due.

6. In the letter sent to employers, SSA described reasons why the records may not be reconciled. What proportion of these records does SSA anticipate are incorrect because an employee used a false name or social security number? What proportion does SSA anticipate are incorrect because of a name change, clerical or typographical error, or incomplete information?

We do not know why an individual's name and SSN combination do not match our records – whether it is a problem with the name or the SSN – and we do not know why employers do not make corrections. As part of our annual wage reporting process, we make every attempt to match employer reported Forms W-2 for its employees to our records. Initially, about six percent of Forms W-2 have an invalid name/SSN combination. However, by using 25 automated program routines that identify commonly occurring errors and discrepancies, such as compound hyphenated surnames or transposed digits of an SSN, we are able to post about half of these wage reports to our records. In FY 2018, we posted over 284 million earnings items to individual's records. We do not know the reason for the remaining three percent that we could not match. Although we may not know the reason for these no-matches, it is clear that the earlier employers become aware of the errors, the easier it is to resolve them. For example, as years pass, employees may no longer work for the same company, or move. Swift corrections allows us to credit wages appropriately, keep earnings off the Earnings Suspense File and prevent future scrambled earnings workloads for the agency.

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Acting Commissioner Nancy Berryhill
Social Security Administration
Office of the Commissioner
6401 Security Blvd # 900
Baltimore, MD 21235-0001

May 2, 2019

Dear Acting Commissioner Nancy Berryhill,

The Social Security Administration (SSA) recently announced that it has resumed sending no-match letters to employers whose tax filings include employees whose names and Social Security numbers (SSNs) do not match SSA records. While we applaud the SSA's intention to ensure that all workers in the U.S. receive the full benefits to which they are entitled, we strongly condemn the practice of sending these employer "no-match" letters (known as Employer Correction Request Notices or EDCOR letters). No-match letters will not solve the problem of earnings that are not properly assigned to an employee's record, but they will create a host of significant negative collateral consequences. We request that the SSA immediately halt sending no-match letters. SSA should stop this ill-advised practice because it will make workers less secure in their employment and cause unnecessary job loss, generate longer delays for beneficiaries of core SSA programs, and will not solve the problem it is purported to address.

First, no-match letters are unnecessary and ineffective. SSA has other ways to help ensure that workers are appropriately credited for their earnings. For example, instead of sending no-match letters to employers (EDCOR letters), SSA could send a similar letter that already exists (known as Decentralized Correspondence or DECOR Notice) directly to employees. These employee letters have the same intended benefit of the employer letters (notifying workers of discrepancies) and none of the risk. Additionally, employer letters have proven highly ineffective in the past. According to SSA's Office of the Inspector General, employer no-match letters accounted for only 2 percent or less of all corrections to SSA's records. Moreover, SSA already uses other methods for continually identifying and correcting errors in its records.

Second, U.S. citizens will likely be fired because of no-match letters. A Government Accountability Office report found that most SSA database discrepancies correspond to U.S.-born citizens, not to unauthorized workers. Yet many employers will assume incorrectly that a no-match letter indicates a worker lacks immigration status. In this era of heightened immigration enforcement, it is very likely that no-match letters will lead employers to fire U.S. citizens and work-authorized immigrants without giving them a chance to correct discrepancies identified by SSA.

Third, no-match letters will make workers more vulnerable to employer abuse. When no-match letters were last issued (over a decade ago), some unscrupulous employers used them to retaliate against workers. We believe workers who are organizing or trying to assert their labor rights will face the same abuses due to the issuance of no-match letters in 2019.

Fourth, SSA resources should not be diverted away from SSA's core mission towards furthering this Administration's extreme immigration enforcement agenda. SSA is currently experiencing well-documented challenges to providing timely services to the 67 million beneficiaries it serves each year through its core programs of old-age, disability, survivor and Medicare benefits. The no-match letter program – which SSA discontinued in 2011 due to budgetary concerns – is a distraction from SSA's core mission. The Department of Homeland Security (DHS) has already requested access to SSA's databases – specifically the Earnings Suspense File (ESF) – for the stated purpose of identifying and deporting potential noncitizens. SSA has rightly denied this request. Clearly, SSA is not an immigration enforcement agency and has no Congressional mandate to serve the Administration's mass deportation agenda.

Lastly, if SSA sends no-match letters, there will be a marked increase in inquiries to SSA. This will create extra work for already-overburdened SSA field offices, generate additional phone calls and office visits, and divert precious resources away from the millions of elderly and disabled claimants who have filed for benefits.

We request that SSA immediately halt sending EDCOR no-match letters. Given the harm these letters create and the fact that SSA is under no mandate to send them, their use should be stopped at once.

Respectfully,

The National Immigration Law Center

National Organizations

America's Voice
American Federation of State, County and
Municipal Employees (AFSCME)
Asian Americans Advancing Justice | AAJC
Asian Pacific American Labor Alliance, AFL-
CIO
Autistic Self Advocacy Network
Catholic Legal Immigration Network, Inc.
(CLINIC)
Center for Law and Social Policy (CLASP)
Centro de los Derechos del Migrante, Inc.
Coalition on Human Needs
Congregation of Our Lady of Charity of the
Good Shepherd, US Provinces
Disciples Center for Public Witness
Economic Policy Institute Policy Center
Equal Rights Advocates
Equal Voice Action
Fair Immigration Reform Movement (FIRM)
Family Values @ Work
Freedom for Immigrants

Freedom Network USA
Hispanic Federation
Holy Spirit Missionary Sisters, USA - JPIC
Immigrant Defense Project
Immigrant Legal Resource Center (ILRC)
Immigration Hub
Interfaith Worker Justice
Jobs with Justice Education Fund
Justice at Last
Justice in Aging
Justice in Motion
LA RED, Faith in Action
Labor & Employment Committee, National
Lawyers Guild
LatinoJustice PRLDEF
Legal Aid at Work
Mi Familia Vota
NAACP
National Advocacy Center of the Sisters of the
Good Shepherd
National Center for Transgender Equality

National Committee to Preserve Social Security and Medicare
National Domestic Workers Alliance (NDWA)
National Employment Law Project (NELP)
National Employment Lawyers Association (NELA)
National Health Law Program
National Korean American Service & Education Consortium (NAKASEC)
National Legal Advocacy Network
National LGBTQ Task Force
NETWORK Lobby for Catholic Social Justice
PFLAG National

Provincial Council Clerics of St. Viator
Service Employees International Union (SEIU)
Sisters of Mercy of the Americas - Institute Justice Team
Social Security Works
Sugar Law Center for Economic & Social Justice
United Farm Workers (UFW)
United Food and Commercial Workers International Union (UFCW)
United We Dream
Workplace Fairness

State and Local Organizations

Advocates for Basic Legal Equality, Inc.
Amend Law LLC
Arkansas United
Asian Americans Advancing Justice – Asian Law Caucus
Asian Americans Advancing Justice – Los Angeles
Associations of Legal Aid Attorneys –UAW Local 2325
Brandworkers
Brazilian Women's Group
Brazilian Worker Center
Casa Latina
Casa San Jose
Catholic Social Services of Fall River
Center for Health Progress
Centro Autonomo
Centro de Comunidad y Justicia
Centro de Trabajadores Unidos
Centro Legal de la Raza
Chelsea Collaborative, Inc.
Chicago Community and Workers' Rights
Chicago Workers Collaborative
Christensen Legal
Civil Legal Advice and Resource Office (CLARO)
Cleveland Jobs with Justice
Coalition for Humane Immigrant Rights (CHIRLA)
Colin Immigration Law

Columbia Legal Services
Community Legal Services of Philadelphia
Community Service Society of New York
CRLA Foundation
El CENTRO de Igualdad y Derechos
Empire Justice Center
End Domestic Abuse WI
Faith and Justice Worker Center
Friends of Broward Detainees
Greater Boston Legal Services
HIAS Pennsylvania
Higuera & VanDerhoef PLLC
Hispanic Center of Western Michigan
Holy Cross House
Immigrant Legal Advocacy Project (ILAP)
Immigrant Worker Center Collaborative
Indivisible Vashon
Inland Coalition for Immigrant Justice
Inland Empire Labor Council, AFL-CIO
Justice at Work
Justice at Work (Pennsylvania)
Justice Center of Southeast Massachusetts LLC
KIWA (Koreatown Immigrant Workers Alliance)
La Comunidad, Inc.
Latin American Legal Defense and Education Fund
Law Office of Rocio S. Becerril
Law Offices of Sonia Parras
Lawyers for Civil Rights

Legal Council for Health Justice
Lower Columbia Hispanic Council
Lynn Worker Center
Macomb Immigrant Service Center
Maine Equal Justice
Make the Road New York
March and Rally Los Angeles
Massachusetts Coalition for Occupational
Safety & Health Immigrant Worker Center
Massachusetts Immigrant and Refugee
Advocacy Coalition (MIRA)
Massachusetts Law Reform Institute
Matahari Women Workers' Center
Metrowest Worker Center
Michigan Immigrant Rights Center
MK Law, LLC
National Lawyers Guild, Indiana
National Lawyers Guild, NYC
National Employment Lawyer's Association
NY
New Jersey Policy Perspective
New Mexico Center on Law and Poverty
New Mexico Immigrant Law Center
New York Immigration Coalition
NorCal Resist
North Carolina Justice Center
Northwest Immigrant Rights Project
Northwest Workers' Justice Project
Oakland Law Collaborative
OneAmerica
Pennsylvania Immigration and Citizenship
Coalition
Pennsylvania Immigration and Citizenship
Coalition
People's Law Office
Philaposh
Public Counsel
Public Justice Center
Rapid Response Team for Just Immigration
Reform
Reformed Church of Highland Park
Robert M Cheverie & Assoc.
Santa Clara County Wage Theft Coalition
Santa Fe Dreamers Project
Seattle Community Law Center
SEIU 32 BJ

Silver State Equality
Sisters and Brothers of Immigrants
Southeast Immigrant Rights Network (SEIRN)
Southern Poverty Law Center
St Joseph Valley Project Jobs with Justice
Street Level Health Project
Tennessee Immigrant and Refugee Rights
Coalition
United Steelworkers, District 4
Vashon - SURJ ~ Showing Up for Racial Justice
Virginia Civic Engagement Table
Voz Workers' Rights Education Project
Warehouse Workers for Justice
Washington State Alliance for Retired
Americans
Welcome Project Inc.,
Workers' Rights Clinic, James E. Rogers
College of Law

Congress of the United States
Washington, DC 20515

May 2, 2019

Nancy Berryhill
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

RE: Employer Correction Request Notices

Dear Acting Commissioner Berryhill:

We are writing to strongly oppose the directive to impose Employer Correction Request Notices also referred to as “No-Match Letters.” This action will cause numerous problems by diverting resources away from frontline workers whose primary mission is administering benefits. Additionally, this rule can result in increased discrimination and abuses against U.S. workers, particularly women.

The Social Security Administration’s (SSA) current policy already uses “front-end validation routines” to identify and address possible errors in worker names and Social Security Numbers, such as typographical errors, transpositions, and misspellings. We do not oppose the routine practice of removing records from the Earnings Suspense File (ESF). In fact, these first validation processes resolve approximately 60 percent of the reports initially categorized as mismatches.¹ On the other hand, the cost of producing and mailing No-Match Letters and handling follow-up calls to employers was approximately \$1.3 million and resulted in only 35,000 items being removed from the ESF with a case file of 39 million inaccurate records.

The \$1.3 million “No-Match Letter” production cost can be used for better means to serve America’s growing Social Security beneficiary population -- growing at a rate of nearly 1 million yearly. These investments could include: (1) sending earning statements to American wage earners, as the law requires, but is not being done; (2) more fully staffing existing field offices and re-opening those that have been closed in underserved areas; (3) hiring additional SSA customer service staff to operate the 1-800 number, so the American people are not confronted with long waits and busy signals; (4) clear disability back logs; (5) increasing SSA’s core operating budget; (6) increasing field office hours; (7) improve technological advancements to aid in clearing backlogs, and (8) hiring additional administrative law judges (ALJ).

It is imperative to recognize that many legal workers -- including U.S. citizens -- will receive No-Match Letters because of clerical errors, unreported name changes, and other discrepancies in their records. The consequences include: (1) causing the firing of employment-authorized workers and U.S. citizens; (2) imposing additional costs and fees on employers; (3) increased discriminations and abuses on the basis of citizenship, nationality, or by pursuing unfair

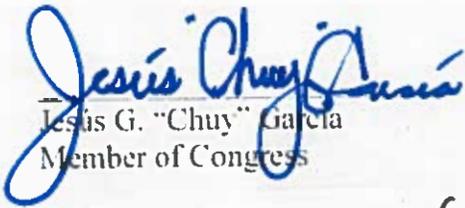
¹ Hincapié, Marielena, Tyler Moran, and Michele Waslin. “The Social Security Administration No Match Program Inefficient, Ineffective, and Costly.” *Immigration Policy in Focus*6, no. 2 (May 2008). Accessed March 15, 2019.
<https://www.americanimmigrationcouncil.org/sites/default/files/research/InFocusSSANo-Match05-08.pdf>

documentary practices in violation of the Immigration and Nationality Act (INA); and ultimately, (4) overwhelming SSA by diverting resources away from its mission of processing benefits in a timely way.

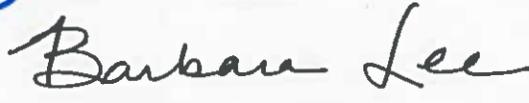
For the reasons above, we urge you to immediately suspend the employer No-Match letter program. Experience has proven that the program does not effectively serve its purpose and causes harmful impacts on the Social Security Administration, American workers and small businesses – serious consequences which outweigh any benefits derived from them.

Thank you for the opportunity to comment on the upcoming directive.

Sincerely,


Jesús G. "Chuy" García
Member of Congress

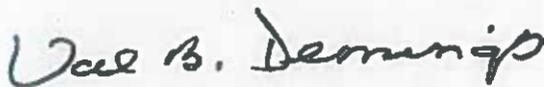

Raúl M. Grijalva
Member of Congress

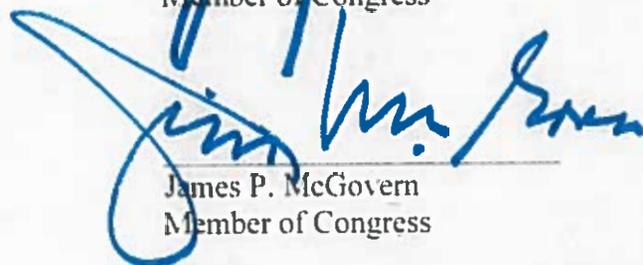

Barbara Lee
Member of Congress


Debbie Mucarsel-Powell
Member of Congress


Josh Harder
Member of Congress


Jimmy Panetta
Member of Congress


Val Demings
Member of Congress


James P. McGovern
Member of Congress


Jamie Raskin
Member of Congress


Gilbert R. Cisneros
Member of Congress

Nanette Diaz Barragan

Nanette Diaz Barragan
Member of Congress

J. Luis Correa

J. Luis Correa
Member of Congress

Dwight Evans

Dwight Evans
Member of Congress

Ruben Gallego

Ruben Gallego
Member of Congress

Deb Haaland

Deb Haaland
Member of Congress

Mark Pocan

Mark Pocan
Member of Congress

Darren Soto

Darren Soto
Member of Congress

Pramila Jayapal

Pramila Jayapal
Member of Congress

Ilhan Omar

Ilhan Omar
Member of Congress

Jimmy Gomez

Jimmy Gomez
Member of Congress

Susan Wild

Susan Wild
Member of Congress

Grace F. Napolitano

Grace F. Napolitano
Member of Congress

Lori Trahan

Lori Trahan
Member of Congress

Adriano Espaillat

Adriano Espaillat
Member of Congress



T.J. Cox
Member of Congress



Yvette D. Clarke
Member of Congress



Sheila Jackson Lee
Member of Congress



Jim Costa
Member of Congress



Lucille Roybal-Allard
Member of Congress



Eleanor Holmes Norton
Member of Congress



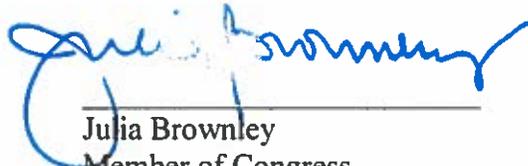
Danny K. Davis
Member of Congress



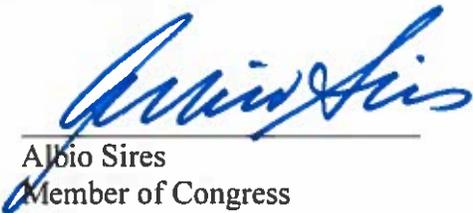
Joaquin Castro
Member of Congress



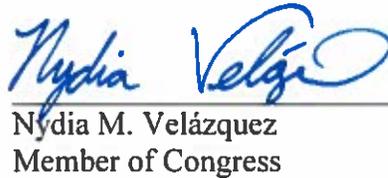
Juan Vargas
Member of Congress



Julia Brownley
Member of Congress



Albio Sires
Member of Congress



Nydia M. Velázquez
Member of Congress



Lloyd Doggett
Member of Congress



Linda T. Sánchez
Member of Congress



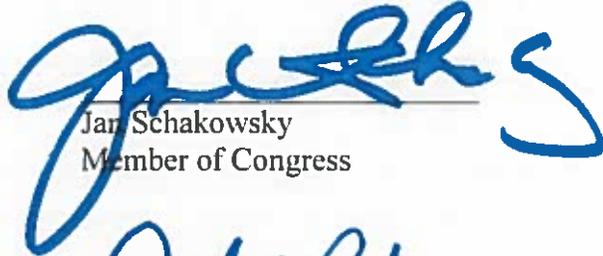
Scott Peters
Member of Congress



Al Green
Member of Congress



Alcee L. Hastings
Member of Congress



Jan Schakowsky
Member of Congress



Gregorio Kilili Camacho Sablan
Member of Congress



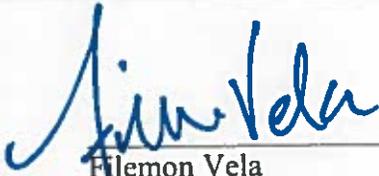
Judy Chu
Member of Congress



Tony Cárdenas
Member of Congress



Bonnie Watson Coleman
Member of Congress



Filemon Vela
Member of Congress

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Employers: What You Need to Know About Social Security Administration No-Match Letters

What is an “SSA no-match” letter?

A Social Security Administration (SSA) no-match letter, officially called an “Employer Correction Request” notice, is an educational letter intended to alert an employer about a discrepancy between the information the employer filed and the SSA’s records that may affect the accuracy of an employee’s earnings record for purposes of Social Security benefits. The letter advises that the reported employee name and/or Social Security number (SSN) does not match the name and/or SSN in the SSA’s records. The SSA resumed issuing these letters to employers in March 2019, after several years of not doing so.

Does receipt of an SSA no-match letter serve as notice of wrongdoing by an employer or employee?

No. A discrepancy may exist for many reasons, including typos, clerical errors, or unreported name changes. The SSA letter states: “*This letter does not imply that you [the employer] or your employee intentionally gave the government wrong information about the employee’s name or SSN.*”¹

Does receipt of an SSA no-match letter demonstrate that an employee is undocumented or otherwise without work authorization?

No. As noted above, discrepancies prompting the SSA to issue a no-match letter may arise for a number of reasons. The SSA letter states: “*This letter does not address your employee’s work authorization or immigration status.*” The U.S. Department of Justice has also advised that employers should not assume that any named employees have an issue with their immigration status because of the receipt of a letter.²

What should employers who receive a no-match letter do?

The no-match letter provides instructions on how to view and correct name and SSN mismatches. Employers should provide employees a copy of the letter so employees can help ensure the SSA has accurate information. The SSA provides further information on its website, which contains sample notices, step-by-step instructions, and FAQs: <https://www.ssa.gov/employer/notices.html>.

As stated in the SSA letter: “*Do not take adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because this letter identifies a mismatch between his or her SSN or name as reported to us.*”

Is there a deadline for providing corrections?

No. There is no deadline. The SSA describes no-match letters as “educational letters intended to alert employers of a no-match.”

Furthermore, the SSA has stated that it is not a law enforcement agency and, in early June, confirmed with Congressional officials that it “does not take any action, nor are there any SSA-related consequences, for employers’ non-compliance with [no-match] letters.”³

Does the SSA share any information about employers and employees whose records do not match with other agencies?

According to the SSA, no-match letter data is protected federal tax information and, therefore, SSA is “prohibited from sharing this information with other agencies unless for a specific purpose authorized under

¹ Sample Social Security Administration Retirement, Survivors, and Disability Insurance Employer Correction Request, available at <https://www.ssa.gov/employer/notices/EDCOR%20Letter%20-%20Final%209-16-19508.docx.pdf>

² Department of Justice, Frequently Asked Questions about Name/Social Security Number “No Matches,” <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/29/FAQs.pdf>

³ Social Security Administration Acting Commissioner Nancy A. Berryhill, Letter on Educational Correspondence (EDCOR)/Employer Correction Request (i.e. “no-match”) letters addressed to Hon. Jim Acosta (June 3, 2019).

⁴ Social Security Administration, Questions Employers Ask for the Employer Correction Request Notice, available at <https://www.ssa.gov/employer/notices/Questions%20Employers%20Ask%20Final.pdf>

[Internal Revenue Code section] 6103.”⁴ The SSA does share no-match information with the Internal Revenue Service (IRS) because the SSA is considered an agent of the IRS.

How can employers and employees learn more?

Employers may wish to consult with legal counsel or industry associations. Employees may wish to consult their workplace representatives and/or seek legal assistance in addressing corrections, where appropriate. New Yorkers in need of immigration legal help may call 311 and say “ActionNYC” or “immigration legal services” for referrals.

SSA No-Match Letters and Avoiding Discrimination under the New York City Human Rights Law

Taking an adverse action against an employee due to a discrepancy, such as putting an employee on leave or terminating employment, could violate the NYC Human Rights Law (NYCHRL). Among other protections, the NYCHRL prohibits employers from discriminating against an employee, even in part, because of the employee’s actual or perceived immigration status, national origin, or membership in any other protected class. An employer who uses the receipt of a no-match letter to discriminate or retaliate against an employee could be subject to civil penalties up to \$250,000 and be required to pay compensatory damages to the impacted employee. State and federal law also prohibit discrimination and also carry penalties.

The following are examples of NYCHRL violations involving no-match letters:

- An employer receives a no-match letter that lists an employee who emigrated from the Philippines. The employer has long looked for a reason to discharge the employee because of their accent, even though it has no impact on their ability to do their job, and the employee is legally able to work. With receipt of the no-match letter, the employer discharges the employee.
- An employer receives a no-match letter indicating no match issues. The employer assumes that the listing of a British immigrant worker was due to a mistake in the information provided by the employee. The employer gives the employee a copy of the letter and takes no further action. However, the employer suspects that several other workers listed in the no-match letter, who are immigrants from Mexico, do not have legal immigration status. The employer requires them to fill out new I-9 forms and bring in original proof of work authorization. Some workers do not bring in this information; the employer subsequently terminates their employment. Because the employer only required employees of Mexican origin to provide documentation, this employer will be liable for discrimination based on national origin and immigration status under the NYCHRL.
- An employee has been outspoken at work about unfair terms and conditions for Black employees. The employer later receives a no-match letter indicating a no match issue for that employee. The employer decides to fire the employee in response to the employee’s complaints of discrimination and uses the no-match letter as a pretext for the firing. This employer will be liable for retaliation under the NYCHRL because he has taken an adverse action against an employee due to the employee’s engagement in protected activity.

Additional resources for employers:

Legal Enforcement Guidance on Discrimination on the Basis of Immigration Status and National Origin:
<https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/immigration-guidance.pdf>

How to Avoid Discrimination in the I-9 and Employment Verification Process:
<https://www.justice.gov/crt/page/file/1132606/download>

Information for Employers on Citizenship Status Discrimination:
<https://www.justice.gov/crt/page/file/1080256/download>

U.S. Department of Justice’s SSA No-Match Guidance:
<https://www.justice.gov/crt/ssa-no-match-guidance-page>



PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

OFFICE OF THE ATTORNEY GENERAL
RJ HUGHES JUSTICE COMPLEX
25 MARKET STREET, BOX 080
TRENTON, NJ 08625-0080

GURBIR S. GREWAL
Attorney General

ROBERT ASARO-ANGELO
Commissioner

RACHEL WAINER APTER
Director

Dear Employer:

This past March, the Social Security Administration (SSA) began sending “Employer Correction Request” letters, sometimes referred to as “no-match letters,” to employers that have one or more Social Security “no-match.” On behalf of the New Jersey Department of Labor and Workforce Development and the New Jersey Division on Civil Rights, we write to provide critical information about no-match letters and to affirm our commitment to protecting workers and immigrant communities.

What is a no-match letter? A no-match letter informs an employer that the information it filed in its Wage and Tax Statement (Form W-2) about one or more of its employees’ names and social security numbers does not match the information in the SSA’s records. The letter’s purpose is to notify the employer of the discrepancy, which can affect the accuracy of the employee’s earnings record for the purposes of Social Security benefits.

Here is some of the most important information to know if you receive a no-match letter:

- **A no-match letter provides no information about an employee’s immigration status.** As stated in the SSA’s October 2019 sample no-match letter: “This letter does not address your employee’s work authorization or immigration status.” Discrepancies between information reported to the SSA and SSA records could exist for many reasons, including typographical errors, name changes, or errors in either the SSA’s database or the employer’s records.
- **You should not take any adverse action against an employee based solely on the fact that the employee’s name is listed in a no-match letter.** As stated in the SSA’s October 2019 sample no-match letter: “Do not take any adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because this letter identifies a mismatch between his or her SSN or name as reported to us. Those actions could violate state or federal law and subject you to legal consequences.”
- **You must continue to pay an employee’s wages for all work performed even if you have received a no-match letter listing that employee’s name.** Withholding of wages owed to an employee for work already performed based on the receipt of a no-match letter listing that employee would violate the Wage Payment Law. *See* N.J.S.A. 34:11-4.2. In addition, an employee who has filed an administrative labor claim or workplace-based lawsuit against an employer may continue that proceeding regardless of whether the employee has been listed in a no-match letter.

- **Taking adverse action against an employee based on unfounded assumptions relating to national origin or other protected categories is unlawful discrimination in violation of the New Jersey Law Against Discrimination (LAD).** The LAD prohibits an employer from discriminating against an employee due to their actual or perceived national origin, nationality, race, ethnicity, and other protected characteristics. Therefore, if an employer, for example, takes adverse action against an employee listed in a no-match letter based solely on the fact that the person was born outside of the United States, this would violate the LAD and constitute unlawful disparate treatment.
- **Adopting a policy or practice of automatically taking adverse action against an employee based solely on the receipt of a no-match letter may constitute unlawful discrimination in violation of the LAD.** The LAD also prohibits employers from engaging in any policy or practice that has a disparate impact on employees due to their national origin, nationality, race, or ethnicity. An employer engaging in such a policy or practice violates the LAD, unless the employer can demonstrate that no alternative policy or practice could be adopted that would serve the employer's legitimate, non-discriminatory business interest with less of a disparate impact. Such interests may include avoiding liability for knowingly employing workers who lack work authorization. Because it is likely not the least discriminatory means of addressing this or any other legitimate, non-discriminatory business interest, taking adverse action against an employee based solely on a no-match letter may violate the LAD. Less discriminatory means of addressing your concerns as an employer include: (1) reviewing the name and social security number information that you submitted on the Form W-2 and providing the SSA with corrections, if any are appropriate; and (2) asking the employees to verify or correct the information that you submitted to the SSA on the Form W-2, and giving them a reasonable amount of time to do so.
- **You have no legal obligation to re-verify an employee's immigration status based solely on having received a no-match letter that lists that employee's name.** Requiring only those employees of a certain national origin, nationality, race, or ethnicity to re-verify their immigration status based on a no-match letter could violate state and federal antidiscrimination laws, including the LAD. If you choose to conduct a re-verification of immigration status, you should do so in a non-discriminatory manner that includes all employees listed in the no-match letter, and you must allow employees to choose which documents they provide.

You should be aware that our offices possess broad authority to investigate potential violations of the LAD and the Wage Payment Law, to initiate proceedings to protect the rights of workers, and to recover unpaid wages. Violations of these laws may also be punished by fines and administrative penalties. We urge you to review any applicable laws, including the LAD and the Wage Payment Law, carefully to ensure you do not take unlawful action in response to receiving a no-match letter. We will enforce the law according to its terms, and we will not tolerate wage theft or discriminatory practices against workers of any national origin, nationality, race, or ethnicity.

Do not hesitate to contact the Division of Wage & Hour Compliance at (609) 292-2305 with any questions about compliance with labor laws or the Division on Civil Rights at (973) 648-2700 with any questions about compliance with the Law Against Discrimination.

Sincerely,



Gurbir S. Grewal
Attorney General



Robert Asaro-Angelo
Commissioner of Labor



Rachel Wainer Apter
Director, Division on Civil Rights

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Social Security Administration
Retirement, Survivors and Disability Insurance
Employer Correction Request

(Insert SSA Address)
(Insert SSA Address)

Date:
EIN:
Tax Year:
Receipt Year:
WFID:
Version #:
W3 Sequence #:
Processed W2 Count:

EMPLOYER'S NAME
STREET ADDRESS
CITY, STATE ZIP

Why You Are Getting This Letter

You reported **X#** employee names and Social Security numbers (SSNs) on the Wage and Tax Statements (Forms W-2) for tax year **xxxx** that do not match our records. There are a number of reasons why reported names and SSNs may not agree with our records, such as typographical errors, unreported name changes, and inaccurate or incomplete employer records. However, when the information reported does not match our records, we cannot credit employees' earnings to their Social Security records. Accurate earnings records are important because these records can determine if someone is entitled to Social Security retirement, disability, and survivors benefits, and how much he or she can receive.

This letter provides useful information about *free* online wage reporting tools, including how to view and correct name and SSN mismatches.

IMPORTANT: This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or SSN. This letter does not address your employee's work authorization or immigration status.

Do not take adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because this letter identifies a mismatch between his or her SSN or name as reported to us. Those actions could violate state or federal law and subject you to legal consequences.

See Next Page

Visit socialsecurity.gov

SSA will not supply the entire nine-digit SSN

SSA does not mail lists of the name/SSN mismatches, nor do we provide the information by telephone. In SSA's *free* Business Services Online (BSO), SSA will show the name and only the last four (4) digits of the SSN. Please see the attachment to learn how to register for and use BSO.

If You Have Any Questions

If you have any questions, please call our toll-free at **1-800-772-6270** (TTY **1-800-325-0778**) between 7 a.m. and 7 p.m., Eastern Time zone, Monday through Friday, or send us an email to **employerinfo@ssa.gov**. We can answer most questions over the phone or by e-mail. We cannot provide names/SSNs over the phone or by e-mail. If you call, please have this letter with you. It will help us answer your questions.

General wage reporting information is available on our website at www.ssa.gov/employer.

For more detailed information, please see the enclosed attachment.

Social Security Administration

Attachment

Attachment - Helpful Information about Our Free Online Wage Reporting Services

Resources

To help you get started, visit the Employer Correction Request Notices page at www.ssa.gov/employer/notices.html. Here you will find many useful resources, including videos and instructions to help you view name/SSN mismatches.

You need a Business Services Online account to view a mismatch

Whether you filed your W-2s on paper or electronically, you can only view the name and SSN mismatches referred to in this letter at SSA's Business Services Online (BSO) website. You must have a *free* BSO Suite for Employers account that includes "Report Wages" and "View Wage Report Name/SSN Errors" services to view the name/SSN mismatch.

Step-by-step instructions to register for a BSO Account

1. Start at www.ssa.gov/bsowelcome.htm. Select the Register button in the upper right side.
2. Read the User Registration Attestation page and select I Accept.
3. Provide your personal information. Then, select the Next button at the bottom of the screen.
4. Create a password and choose five security questions in case you forget your password. Select the Next button at the bottom of the screen.
5. Read the Review and Submit screen. Read the User Certification for Online Services box and check the I Accept button. At the bottom of the page, select the Submit button.
6. We will provide you with a User ID. Please keep this information handy because you will need it every time you log into BSO. Select the Next button.
7. On the Select Service Suites page, check the SSA Services Suite for Employers box. At the bottom of the page, select the Next button.
8. If the Employer information has not been entered, you will see a red message with a blue link at the top of the page. Please select the blue link, Add Your Employer Information, to continue.
9. Read the certification information on the screen and then select the I Accept button at the bottom.
10. Enter your employer information. If you don't know the company's full name, you can look it up by entering the Employer Identification Number and selecting the Look Up Name button. Then, select the Submit Employer Information button.
11. Select the Request Access to BSO Services button to add the ability to see name/SSN mismatches.
12. Once again, check the SSA Services Suite for Employers button and select the Next button at the bottom.
13. Review the employer information you previously provided and select the Next button.
14. Answer YES to the two questions on the page.
 - a. Do you want to report wages to Social Security and/or test wage files using AccuWage and,
 - b. Do you want to View Wage Report Name SSN Errors?

Select the Next button.

15. On the next screen, we recommend answering Yes to the Social Security Number Verification Service or SSNVS. Select the Next button.
16. We will show you all of the services for which you signed up. Please select the Confirm button at the bottom of the page.
17. This page is your receipt of the services you selected. You can print your summary for your records by selecting the Print button on this screen.
18. SSA will mail a notice, including activation code(s), to the employer at the address the Internal Revenue Service has in their records.
19. Select Log Out in the upper left corner of the page.

Activation Code

Activation codes for name SSN errors and SSNVS will come in the same letter, but on separate pieces of paper. It can take between 10-14 business days for your employer to receive this code. Once your employer receives it, your employer will provide it to you. You will need to enter the code within 60 days of requesting it.

1. Start at www.ssa.gov/bsowelcome.htm. Select the Log In button.
2. At the Log In to Online Services page, type your User Name and password. Read and Select the, I have read and agree to these terms box. Select the Log In button.
3. The Business Services Online Main Menu screen will appear displaying the services to which you have access. The options to manage your account, services, and update employer information appear on the left side of the page.
4. Select Enter Activation Codes.
5. Enter your Activation Code and select Activate Services.
6. You are now at the Confirmation page.

If you already have a BSO account

If you already have a BSO account, but do not have the option to View Wage Report Name/SSN Errors you can add it. For detailed instructions, go to www.ssa.gov/employer/notices/roleAddingInstructions.pdf.

Viewing Mismatches

Once you have a BSO User ID, password, and View Wage Report Name/SSN Errors access, you may view the name/SSN mismatch through BSO.

1. Start at www.ssa.gov/bsowelcome.htm. Select the Log In button.
2. At the Log In to Online Services page, type your User Name and password. Read and Select the, I have read and agree to these terms box. Select the Log In button.
3. This will open the Business Services Online Main Menu. Select Report Wages to Social Security.
4. Read the Wage Reporting Attestation statement and select the I Accept button.

5. You are now at the Electronic Wage Reporting home screen. Select the View Employer Report Status link. The link is in the middle of the page in the Employer Report Status box.
6. Use the drop-down menu to select the tax year that the wages were earned. The current tax year is the default value. Select the Continue button.
7. You are now on the Search Results page.
8. Identify the corresponding report by hovering over the Report Details hyperlink located in the last column to the right titled Details. The Wage File Identifier or WFID, report version and report number will display, which should correspond with your letter. Once you have identified the corresponding report, select the Report Details link.
9. You are now at the Report Details page. It displays details and errors identified in the submitted file. To view the name/SSN mismatch errors, select the Error Details link.
10. The Error Details page displays the name/SSN combinations that do not match SSA's records.
11. You can print his page by selecting the Print Page button at the bottom of the page.
12. Select Log Out at the top of the page.

Helpful Tips about Resolving Name/SSN Mismatches

Resolving a mismatch

- You may have made a typographical error when submitting your report. You can correct a typographical error by submitting a Form W-2C (Corrected Wage and Tax Statement) to correct the error. See section titled **Correcting mismatches with a W-2C**.
- You may have accurately reported an employee's SSN and name based on your employment records, but an error in your records caused the mismatch. Ask your employee to check their Social Security card and inform you of any name or SSN difference between your records and his or her card. You should report the SSN and name as they appear on the employee's Social Security card. Correct your records and correct the error by submitting Form W-2C. See section titled **Correcting mismatches with a W-2C**.
- If your employment records and the employee's Social Security card match, ask the employee to check with any local Social Security office to resolve the issue. Once the employee has contacted the Social Security office, they should inform you of any changes. Correct your records accordingly and submit Form W-2C if necessary. See section titled **Correcting mismatches with a W-2C**.
- If you are unable to resolve the mismatch using these tips, you will not be able to correct the corresponding error at this time. There is no need to take any further action.

Correcting mismatches with a W-2C

Submit a Form W-2C to correct any name/SSN mismatch as soon as you can. You may use your own software to create a W-2C file to upload to SSA. We also offer a *free* W-2C online service. Both of these options are only available through BSO.

File Upload

1. Start at www.ssa.gov/bsowelcome.htm. Select the Log In button.
2. At the Log In to Online Services page, type your User Name and password. Select the Log In button.
3. This will open the Business Services Online Main Menu. Select Report Wages to Social Security.
4. Read the Wage Reporting Attestation statement and select the I Accept button.
5. You are now at the Electronic Wage Reporting home screen. Select the blue tab titled Upload Formatted Wage File tab. Then select the Submit/Resubmit a Formatted Wage File link.
6. Read this page for steps you can take to ensure your file is formatted correctly. Select Continue.
7. To choose the type of wage file you want to submit select the second button, New W-2Cs/ W-3Cs to correct mistakes on previously processed W-2 forms. Select Continue.
8. Either enter the name of your wage file in the Choose file field or select Browse to locate a file from your computer. Select Submit to upload your file.
9. Next is a summary of your report and it includes a unique WFID you can use to track your file. Save this information for your records.
10. Select Log Out in the upper left corner of the page.

Online Method

1. Start at www.ssa.gov/bsowelcome.htm. Select the Log In button.
2. At the Log In to Online Services page, type your User Name and password. Select the Log In button.
3. This will open the Business Services Online Main Menu. Select Report Wages to Social Security.
4. Read the Wage Reporting Attestation statement and select the I Accept button.
5. You are now at the Electronic Wage Reporting home screen. Select the blue tab titled, Forms W-2C/W-3C Online. Then, select the Create Resume Forms W-2C/W-3C Online link.
6. Answer the three questions on the Before You Create Your Forms page.
 - a. First, "For which tax year is the wage report being corrected?"
 - b. Next, "For whom are you filing?"
 - c. Finally, "Have you received a reconciliation letter?"

Select Continue.

7. Enter or review the following fields:
 - a. Employer Information,

- b. Contact Person information,
- c. Kind of Payer, and
- d. Kind of Employer

Select Continue

8. To correct an employee's name or SSN, complete Boxes D through I. When you are finished entering your corrections, select Save and Go to W-2C List. A Form W-3C is created for each W-2C online report.
9. The system may display a name/SSN mismatch alert if the information you entered does not match our records. If you have the social security card and verified the SSN and name are correct, select the box to override the alert. If you have additional corrections, select Save and Start Next W-2C box. If you are finished entering your corrections, select Save and Go to W-2C List.
10. If you have verified all the information, select Continue to W-3C Preview.
11. Review the displayed data. If the information is correct, select Continue at the bottom of the page.
12. Print Forms W-2C/W-3C that you have not submitted yet. Select Continue.
13. Select the check box attesting to the accuracy of the report and select Submit this Wage Report Correction.
14. Next is the Confirmation page. Select OK in the pop-up window to print the page.
15. Select Go to Save Official PDF to go to the next page.
16. Save the official PDF file to your hard drive so you can reference it later because the file will only be available in BSO for 30 days.
17. Select Log Out in the upper left corner of the page.

Paper W-2Cs

If you need to mail paper W-2C forms to SSA, please mail them to:
SSA/WBDOC
P.O. Box 3333
Wilkes-Barre, PA 18767-3333

Visit www.ssa.gov/employer/paperFormInstr.htm for instructions on how to complete paper W-2c forms.

Visit www.ssa.gov/employer/bsohbnew.htm for more information about electronic W-2Cs.

Social Security Number Verification Service (SSNVS)

We provide the *free* SSNVS through BSO that allows you to compare reported employees' names and SSNs with our records before filing Forms W-2. Using SSNVS can significantly reduce errors. Visit www.ssa.gov/employer/ssnv.htm for more information about SSNVS, and how to sign up for this *free* service.

Definition of Terms

EIN	Employer Identification Number
Tax year	Year when wages were earned
Receipt Year	Year SSA processed your W-2 report
WFID	Wage File Identifier is used to track files and wage reports through SSA's processing system.
Version #	Most files are Version 1, but if SSA has to process your report more than once then we use a sequential number: 2, 3, etc. to help track the file.
W3 Sequence #	This is a special identifier for SSA to track your report after it was processed.
Processed W-2 Count	The number of W-2 forms in your report.
Business Services Online (BSO)	BSO is Social Security's free suite of services that allows you to file W-2/W-2Cs online, view the status of your wage reports, and view any errors in your report. It also allows you to verify your employees' names and Social Security numbers against our records using the <i>free</i> Social Security Number Verification Service.

FREQUENTLY ASKED QUESTIONS ABOUT NAME/SOCIAL SECURITY NUMBER “NO-MATCHES”

What is an SSA No-Match Letter? It is a written notice issued by the Social Security Administration (SSA) to an employer, usually in response to an employee wage report, advising that the name or Social Security number (SSN) reported by the employer for one or more employees does not “match” a name or SSN combination reflected in SSA’s records. The letter cautions employers against taking any adverse employment action against a referenced employee based solely on receipt of the letter, and explicitly states that the letter makes no statement about the referenced employee’s immigration status. Rather, the letter simply reports an apparent error in either the employer’s records or SSA’s records, and seeks the employer’s and, if necessary, the employee’s assistance in conforming those records. For more information on the SSA’s No-Match letter program, see <http://www.socialsecurity.gov/employer/noMatchNotices.htm>.

If an employee's name and SSN don't match SSA's records, doesn't that mean the employee is not authorized to work? No. There are many possible reasons for a no-match letter, many of which have nothing to do with an individual’s immigration status or work authorization. Because of this, an employer should not assume that an employee referenced in a no-match letter is not work authorized, and should not take adverse action against the referenced employee based on that assumption. Such action could subject the employer to liability under the anti-discrimination provision of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1324b.

What is the anti-discrimination provision of the INA? The anti-discrimination provision of the INA prohibits discrimination on the basis of national origin, citizenship status or immigration status, document abuse during the employment eligibility verification process and retaliation.

How does SSA determine when a no-match letter should be issued? After SSA processes wage reports submitted by employers, the agency tries to resolve name/SSN discrepancies by sending no-match letters to employees, employers and self-employed individuals to inform them when a reported name or SSN does not match SSA’s records.

Are there sources of information other than SSA no-match letters suggesting possible name/SSN no-matches? Yes. Other organizations issue notices or provide alerts similar to SSA no-match letters. They include:

- commercial businesses that conduct employee background checks;
- third-party identity theft inquiries; and
- health providers providing services to an employee under an employer-provided health plan.

Information from these sources can be received by employers and employees by mail, email, other electronic format or by telephone. Such reports or alerts, however, should be treated cautiously, and should not be used as conclusive evidence of employment authorization, as these third party reporting entities have no legal authority to determine an individual’s work authority and may not have access to current information contained in SSA’s databases. However, as in the case of responding to no-match letters originating directly from SSA, an employer should at a minimum follow the same policies, procedures and timelines as it does for SSA no-match letters.

What might cause a no-match? There are many reasons for a no-match notice, including but not limited to: (1) an unreported name change due to marriage, divorce or naturalization; (2) input errors by SSA staff; (3) reporting errors by an employer or employee; (4) identity theft; (5) errors in reporting proper culturally based hyphenated or multiple surnames; and (6) fraud.

What action should an employer take upon receipt of an SSA no-match letter or other notice of a no-match? To confirm that a reporting or input error is not the cause of a no-match, an employer, with the assistance of the referenced employee, should confirm that the name and SSN reported accurately reflects the referenced employee’s name and SSN. If no error is discovered, the employer should then advise the referenced employee to contact the local SSA office to address the reported no-match. An employer should not use the no-match letter or other no-

match notice by itself as the reason for taking any adverse employment action against the referenced employee. In addition, employers should not use the receipt of a no-match letter or other no-match notice (or the fact that an employee raises any objection to the employer's no-match response procedures) as a basis to either retaliate against the employee or otherwise subject the employee to heightened scrutiny. Doing so may violate the anti-discrimination provision of the INA, or other state or Federal equal employment opportunity or labor laws. While not required to do so, an employer may schedule (and document) periodic meetings or other communications with the employee during the resolution period to keep abreast of the employee's efforts to resolve the no-match, and to determine whether the employee needs more time to resolve the no-match than initially contemplated.

Do no-match letters or other no-match notices create “constructive knowledge” that an employee is not authorized to work? The mere receipt of a no-match letter or other no-match notice does not, standing alone, constitute “constructive knowledge” on the part of an employer that the referenced employee is not work authorized. Only the Department of Homeland Security (DHS) is legally authorized to conclusively determine an individual's authorization to work. It is recommended that an employer give a referenced employee a reasonable period of time to address and correct information contained in a no-match letter or other no-match notice.

What is a “reasonable period of time”? There are no Federal statutes or regulations in effect that define a “reasonable period of time” in connection with the resolution of a no-match notice. As a practical matter, a “reasonable period of time” depends on the totality of the circumstances. Of note, in the E-Verify context SSA has the ability to put a tentative nonconfirmation into continuance for up to 120 days. This recognizes that it can sometimes take that long to resolve a discrepancy in SSA's database.

What is the relationship between E-Verify Notices of Tentative Nonconfirmation (TNC) and SSA No-Match Letters? Both rely upon SSA databases. However, DHS's E-Verify program is specifically designed to verify an employee's work authorization and provides workers with an opportunity to correct the SSA databases before making that determination. For more information on the E-Verify program, see http://www.dhs.gov/files/programs/gc_1185221678150.shtm. In contrast reports simply indicating that an employee's name and SSN do not match SSA's records do not make any statement about an employee's work authorization.

How can employers minimize the receipt of SSA No-match Letters? Employers can use the Social Security Number Verification Service (SSNVS). SSA offers this free online service that allows registered users (employers and authorized third-party submitters) to verify the names and SSNs of employees against SSA records. Telephone Number Employer Verification (TNEV) is very similar to SSNVS, but it is an automated telephone service that allows registered users to verify names and SSNs over the telephone without speaking to an agent. Verifying SSNs through SSNVS and TNEV allows SSA to properly credit the correct earnings to the correct individual's earnings record. These services can only be used for wage reporting purposes. An employer's use of SSNVS or TNEV for any other reason (*e.g.*, to verify work authorization) is improper and may violate the anti-discrimination provision of the INA. For more information, go to www.socialsecurity.gov/employer, or contact OSC at the telephone numbers indicated below.

For more information on the anti-discrimination provision of the Immigration and Nationality Act, call OSC through its employer telephone hotline at **(800) 255-8155** or visit OSC's Website:

<http://www.justice.gov/crt/osc>



Name and Social Security Number (SSN) “No-Matches” Information for Employees

WHAT EMPLOYEES SHOULD KNOW:

- Name/SSN no-matches can result from simple administrative errors.
- You should contact the Social Security Administration (SSA) as soon as possible to update your records following a name change due to marriage, divorce or some other reason.
- You should double-check your name and SSN on your Social Security card for errors.
- If you receive a no-match notice or discover an error on your Social Security card, an SSA representative can review it with you.
- Your employer may periodically ask for information on the status of your efforts to address and resolve the no match.

EMPLOYEES SHOULD REQUEST:

- Notice from their employer of the nature and source of any reported name/SSN no-match.
- An opportunity to review and correct name/SSN errors in employer records.
- Continued employment while addressing and resolving a reported name/SSN no-match.
- A reasonable period of time to gather documents and resolve a reported name/SSN no-match with SSA
- Equal treatment under the employer’s policies regarding name/SSN no-matches regardless of citizenship status or national origin.

EMPLOYEES SHOULD CALL OSC’S HOTLINE IF AN EMPLOYER:

- Attempts to immediately reverify an employee’s employment eligibility by requesting the completion of a new Form I-9 based solely on receipt of a no-match notice.
- Terminates, suspends or takes any other adverse action affecting an employee’s employment based only on the notice of name/SSN no-match.
- Fails to provide a reasonable period of time for an employee to address and resolve the reported no-match.
- Follows different procedures for different classes of employees based on national origin or citizenship status.
- Requires an employee to produce specific documents to address the no-match.
- Requires an employee to produce specific written evidence from the SSA or any other governmental entity that the no-match has been resolved.

**For more information on the anti-discrimination provision of the Immigration and Nationality Act call OSC through its employee telephone hotline or visit OSC’s Website:
1-800-255-7688/1-800-237-2525 (Hearing Impaired/TDD)
Website: <http://www.justice.gov/crt/osc/>**



Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice Civil Rights Division

Name and Social Security Number (SSN) “No-Matches” Information for Employers

DO:

1. Recognize that name/SSN no-matches can result because of simple administrative errors.
2. Check the reported no-match information against your personnel records.
3. Inform the employee of the no-match notice.
4. Ask the employee to confirm his/her name/SSN reflected in your personnel records.
5. Advise the employee to contact the Social Security Administration (SSA) to correct and/or update his or her SSA records.
6. Give the employee a reasonable period of time to address a reported no-match with the local SSA office.
7. Follow the same procedures for all employees regardless of citizenship status or national origin.
8. Periodically meet with or otherwise contact the employee to learn and document the status of the employee’s efforts to address and resolve the no-match.
9. Review any document the employee chooses to offer showing resolution of the no-match.
10. Submit any employer or employee corrections to the SSA.

DON’T:

1. Assume the no-match conveys information regarding the employee’s immigration status or actual work authority.
2. Use the receipt of a no-match notice alone as a basis to terminate, suspend or take other adverse action against the employee.
3. Attempt to immediately reverify the employee’s employment eligibility by requesting the completion of a new Form I-9 based solely on the no-match notice.
4. Follow different procedures for different classes of employees based on national origin or citizenship status.
5. Require the employee to produce specific I-9 documents to address the no-match.
6. Require the employee to provide a written report of SSA verification (as it may not always be obtainable).

For more information on the anti-discrimination provision of the Immigration and Nationality Act, call OSC through its employer telephone hotline or visit OSC’s Website:

**Employers: 1-800-255-8155 (TDD: 1-800-237-2525)
Website: <http://www.justice.gov/crt/about/osc/>**