



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.