

Social Security Administration (SSA) “No Match” Letters

By [Jacinta Ma](#) | March 25, 2019

The Social Security Administration (SSA) has [announced](#) that it will be issuing “no match” letters to employers informing them which employee’s W-2 information does not match information in SSA’s records. Resurrecting a practice that ended in 2012, the SSA will notify employers when name and Social Security information in wage and tax statements (Form W-2) does not match agency records. The letters inform employers that they need to take corrective action, but warn them not to “use this letter to take any adverse action against an employee.” These letters may have a disproportionate impact on immigrants, including those with valid Social Security numbers.

Background

To ensure the accuracy of earnings records that are used to determine social security benefits, beginning in 1993, the Social Security Administration (SSA) issued annual letters to both employees and employers to inform them of discrepancies between the information given by workers on their W-2s and the SSA’s records. Following instances where false positives due to clerical errors and other discrepancies led to workers incorrectly being identified in “no match” letters, DHS halted their use in 2012.

Reasons for “No Match”

A number of circumstances can cause a “no match” result. In addition to situations in which an individual does not have a valid social security number or has been a victim of identity theft, mismatches occur due to a number of administrative errors. “No match” letters may be generated due to a reporting or data-entry error by the employee, employer, or the SSA. They can also be generated when the employee has a name discrepancy, including an unreported name change or confusion arising from having hyphenated or multiple last names. Receiving a “no match” letter about an employee does not necessarily mean that an individual is not authorized to work.

History

Prior to 9/11, the SSA sent “no match” letters only to employers with high numbers of mismatches – those with about 10 percent of employees whose information did not match. In 2002, SSA began sending letters to employers whenever there was a mismatch, not just to employers with mismatches of 10 percent or more. As the volume of letters mailed out increased from 110,000 to 750,000, both employers and employees experienced confusion over what action was required once a letter was received.

Employers who have “constructive knowledge” that they are employing someone who does not have valid work authorization are subject to stiff penalties if they continue to employ that person. In 2006, the federal government issued proposed regulations to change the definition of “constructive knowledge” to include receipt of an SSA “no match” letter. The regulation included steps the employer could take to correct the employee’s record (including ultimately terminating the employee if the record could not be corrected) in order to gain “safe harbor” from potential prosecution for employing an unauthorized worker. DHS published the final regulation on August 15, 2007.

Subsequently, litigation challenging the rule was filed and a preliminary injunction blocking the implementation of the regulation was issued. Eventually, federal courts determined that a “no match” letter by itself is not sufficient to demonstrate

constructive knowledge that a worker is undocumented. In 2009, DHS rescinded the regulation, stating that other tools available to DHS, including E-Verify and ICE’s Mutual Agreement Between Government and Employers (IMAGE), were more effective at detecting and thwarting unauthorized employment and noting that a [report](#) by the SSA Inspector General had questioned “the efficacy of the continuing use of no-match letters.” In 2012, DHS stopped the use of “no match” letters entirely.

Resources

In the resources below, employers and employees can find more information about this issue and steps to take if they receive a “no match” letter.

General overview articles about the issue: [Social Security Administration No Match Letters to Employers Make Another Come Back](#) by Jackson Lewis and [Social Security Mismatch Letters to Resume](#) by Patrick Shen.

[SSA website about Employer Correction Request Notices \(EDCOR\)](#), also known as “no match” letters, which provides sample letters, steps to take if an employer receives a notice, and FAQs.

[Social Security Number Verification Service \(SSNVS\) Handbook page](#) that explains “What to do if an SSN fails to verify” and is clear that “a mismatch is not a basis, in and of itself, for you to take any adverse action against an employee, such as laying off, suspending, firing or discriminating.” (Full Handbook can be found [here](#).)

[U.S. DOJ Civil Rights Division “No Match” Guidance page](#) which provides information aimed at employees and employers about their rights and responsibilities.

[Information for Immigrant Workers](#) from the DC Bar Pro Bono Center published in September, 2011.

Litigation: [National Immigration Law Center page](#) on “no match”-related litigation including a 9th Circuit Court of Appeals decision finding that an employer who receives a “no-match” letter cannot use that by itself as a

determination about whether or not the worker is eligible to be employed in the United States.



Related Topics

[Enforcement](#)