

BARSAMIAN & MOODY

A Professional Corporation
Attorneys at Law

1141 West Shaw Avenue, Suite 104
Fresno, CA 93711-3704

Tel: (559) 248-2360

E-Mail: laborlaw@theemployerslawfirm.com

Fax: (559) 248-2370

MEMORANDUM

TO: All Employers

FROM: Barsamian & Moody

DATE: June 6, 2019

RE: Social Security Changes Course on Mismatch Letters

The Social Security Administration has just changed course on its approach to the mismatch letters they have been sending out this year. As we reported over two months ago, SSA began sending out mismatch letters which instructed employers to log on to SSA's Business Services Online site to obtain a report of the mismatched names and numbers, and gave employers 60 days to correct any errors.

In response to an inquiry from Congressman Jim Costa, SSA has now clarified that if employers choose to not obtain the mismatched names and numbers and correct errors, SSA will not take any negative action against the employer. A copy of the SSA letter to Rep. Costa is attached. This is in direct conflict with the mismatch letters themselves, but this new clarification is welcome. It also reaffirms the prohibition against SSA sharing the mismatch information with other federal agencies, and employers can hopefully rely upon SSA adhering to that prohibition.

This is not to say that there is there is no advantage in following through with the mismatch letter and checking the names and numbers for accuracy. If an employer is audited, by ICE for example, ICE is likely to ask if the ever obtained a mismatch letter, and the auditor is going to want to know what, if anything, the employer did in response to the mismatch letter. If the employer can say that they checked the names and numbers, corrected any errors, and otherwise followed up with the course of action we previously proscribed, the employer will be able to show that it has done all it can do to ensure that it has accurate information. Likewise, because a mismatched Social Security number, by itself, is not grounds to conclude a person is ineligible to work, using the online system does not create an argument that the employer was aware an employee was ineligible to work.

We will continue to keep you up to date as needed. If you have any questions, please do not hesitate to contact us.



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.