

## Social Security No-Match Letters Worry Immigrants, Bosses

By Laura D. Francis

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- Employers sent about 575,000 letters since March
- Worker advocates, Dems fear employer overreaction

The Social Security Administration has revived an old practice of notifying employers of mismatches between information on tax forms and the agency's records.

Starting in March, the SSA began sending employer correction request notices, also known as "no-match letters," to employers with at least one employee whose name and Social Security number combination on a filed W-2 doesn't match SSA records. The letters instruct employers to register for the agency's Business Services Online and correct the mismatch within 60 days.

Some 575,000 employers already have received letters.

The return of no-match letters, which haven't been sent to employers for more than a decade, already is stirring controversy among advocacy groups and some Democratic lawmakers. The move is viewed as another Trump administration policy targeting immigrants, sparking concerns that companies could fire employees pre-emptively, fearing that they might lack work authorization.

### 'Scare Tactic'

"These no-match letters are simply one more scare tactic meant to target immigrant communities," Rep. Jesús "Chuy" García (D-Ill.) said at a press conference. When the Bush administration sent the letters, "workers were fired, including many U.S. citizens and legal permanent residents," he said.

García is behind a letter signed by him and 46 other Democratic lawmakers asking that the SSA end the practice. A group of 140 advocacy organizations, led by the National Immigration Law Center, also is opposing the letters.

The return of no-match letters likely flows from President Donald Trump's Buy American and Hire American executive order, "given the timing," Paul Virtue of Mayer Brown in Washington said. The SSA first indicated its intent to resume the letters last July.

"The idea is increased enforcement across the board" with the aim that it will open up jobs for U.S. workers, said Virtue, a former executive associate commissioner for programs at the Immigration and Naturalization Service.

But SSA says it's trying to make sure workers get the Social Security benefits they're due.

“Social Security is committed to maintaining the accuracy of earnings records used to determine benefit amounts to ensure people get the benefits they have earned,” the agency said in an email. If a worker’s name and Social Security number on a W-2 don’t match agency records, then the worker’s account can’t be credited, it said.

“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,” the agency said.

### **Nothing New**

The government’s practice of sending no-match letters dates back to 1993, picking up steam after the terrorist attacks of Sept. 11, 2001. The Homeland Security Department attempted to issue a regulation in 2007 governing how the letters would be used for immigration enforcement purposes, but it was blocked by a federal judge in California in 2007 and rescinded in 2009.

Letters stopped going to employers in 2007. However, the SSA continued sending letters to workers until 2012, when the practice was stopped entirely.

What’s different now is the online registration requirement, said Becki Young of Grossman, Young & Hammond in Silver Spring, Md. “The old no-match letters would give you the Social Security numbers that were problematic,” she said. Now, employers have to create an account just to see where the mismatches are, she said.

“It certainly does suggest that they’re going to be more organized about it” this time around, Young said. And online registration increases the potential for information sharing with other federal agencies, such as Immigration and Customs Enforcement, she said.

An ICE spokeswoman deferred to SSA on the specific question of information sharing related to no-match letters. However, she said ICE does share information and “works collaboratively” with a number of other federal agencies in connection with its work-site enforcement efforts.

### **Data Sharing Unlikely**

It appears unlikely that ICE will be able to access SSA data.

“Data from W2s is tax information and disclosure is governed by the Internal Revenue Service,” the SSA said.

That data, which comes from the SSA’s Earnings Suspense File, is “considered return information that is protected by the very, very strict privacy protections that are attached to everyone’s tax returns,” said Jessie Hahn, a labor and employment policy attorney with the National Immigration Law Center. There are “no exceptions,” she said.

The file is where the SSA deposits Social Security funds that it can’t assign to an individual worker’s account because of a data mismatch.

In fact, the DHS repeatedly has tried to gain access to the information and has been denied, Hahn said.

“There’s no correlation” between getting a no-match letter and being the subject of an ICE audit “or raids for that matter,” Virtue said. ICE already has ramped up its work-site enforcement efforts independent of SSA’s actions, following former Director Thomas Homan’s October 2017 promise to at least quadruple the agency’s work-site enforcement efforts.

### Employer Reactions Key

But that isn’t likely to stop employers—especially those without ready access to legal counsel—from having the knee-jerk reaction that receipt of a no-match letter means they have undocumented workers on the books.

“That’s definitely a concern and that’s definitely what happened in the past,” Young said.

There’s also a concern that unscrupulous employers could use the letters to retaliate against workers for vindicating their rights, Hahn said. She mentioned an employer in California that in 2017 used a no-match letter received 10 years earlier to scare a worker into dropping a sexual harassment complaint. The worker had never been told of the letter or given the opportunity to correct the mismatch, Hahn said.

However, firing an employee without allowing him or her a chance to correct a mismatch can land a company in legal trouble.

In 2008, the U.S. Court of Appeals for the Ninth Circuit held that receiving a no-match letter isn’t enough to prove that an employer knew or should have known that a worker was undocumented. Aramark Facility Services therefore was wrong to fire employees who weren’t able to resolve the mismatch in the time frame the company required, the court said.

“Employers definitely should consult an attorney if they receive one of these letters and they have any concerns,” Young said.

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