



# How to Respond to Social Security No-Match Letters

By Roy Maurer

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**A**bout 575,000 employers have received employer correction request notices, also known as "no-match letters," since March, alerting them about discrepancies between a worker's Social Security number and government records.

The Social Security Administration (SSA) has resurrected the practice (<https://www.ssa.gov/employer/notices.html>) of notifying employers with at least one employee whose name and Social Security number combination on a filed W-2 doesn't match SSA records.

"In the past few weeks, no-match letters have returned with a vengeance," said Becki Young, a partner at Grossman Young & Hammond in Silver Spring, Md. "For nearly two decades beginning in 1993, the SSA sent out no-match letters with regularity. In 2012 they stopped due to various complaints and lawsuits from labor unions, immigrant advocates and the business community."

The return of the no-match letters has set off concerns about a range of compliance issues and fears that employers will fire workers they believe might lack work authorization.

"It's fairly short, seemingly benign, and often directed at your payroll or tax department, but, make no mistake about it, this letter can open a Pandora's box full of I-9 compliance issues, with no easy answers," said John Fay, president of the LawLogix division of Hyland Software, headquartered in Phoenix, a company that specializes in cloud-based I-9, E-Verify and immigration compliance services.

It's important to know that the letter does not mean that an employee is not authorized for employment and an employer cannot use the letter alone as a basis to take adverse action such as suspending, firing or discriminating against an employee, just because his or her Social Security number or name does not match SSA records, said Ali Brodie, a partner and co-chair of the Immigration Practice at Fox Rothschild based in the Los Angeles and Denver offices.

Mismatches could result from a variety of reasons, including typographical errors, name changes, fraud and identity theft.

*[SHRM members-only HR Q&As: What action should employers take in response to Social Security no-match letters? ([www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/social-security-no-match.aspx](http://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/social-security-no-match.aspx))]*

## Employer Responsibilities

Young outlined four main compliance areas to consider:

- Correcting the records mismatch.
- Tax reporting obligations.
- Anti-discrimination provisions.
- Immigration and I-9 requirements.

"No-match letters have had a long and somewhat complicated relationship with immigration and I-9 compliance," Fay said. "The former Immigration and Naturalization Service and its successor, Immigration and Customs Enforcement (ICE), have historically told employers that receipt of one of these seemingly innocuous letters actually creates an affirmative duty to investigate the reason for the discrepancy. ICE does not want employers to ignore what could be telltale signs that an employee is actually not authorized to work. The agency has even warned that failure to follow up with an employee in certain circumstances could lead to a finding of constructive knowledge of unauthorized employment."

But acting upon no-match discrepancies is not that simple. The Immigrant and Employee Rights section of the Department of Justice has stated that receipt of a no-match letter on its own *does not* mean that the employer has constructive knowledge of unauthorized employment, and taking action "may be considered an unfair documentary practice or evidence of discrimination based on citizenship, national original or immigration status," Fay said.

"Employers could potentially face discrimination lawsuits for being overly zealous in responding to no-match letters," Young said. "For this reason, it is recommended that employers establish and implement a written policy and procedure for responding to no-match letters and for maintaining records of their responses. Employers should be careful to apply the policy consistently to all employees to avoid claims of discrimination."

## Steps for Employers

The SSA is instructing employers to register online through the agency's business services system (<https://www.ssa.gov/employer/notices/HowToRegisterForBSO.pdf>) and correct the mismatch within 60 days. Registering online is the only way employers can view the names and Social Security numbers that need correction. That's a change from letters issued before the 2012 moratorium, when Social Security numbers in question were listed in the letters.

One option is to ignore the letter. "The SSA has no enforcement authority and cannot penalize employers for reporting incorrect information," Young said. "An argument could be made that the new no-match letters, which do not provide any identifying details, do not trigger a duty to investigate or implicate constructive knowledge. However, in the current climate of heightened immigration enforcement ... the more conservative route upon receiving one of the new no-match letters is to register, retrieve the list of mismatches and take reasonable steps to inquire and correct the mismatch."

Addressing mismatch issues is likely to be seen as evidence of good faith in the event of an eventual ICE audit or raid, she added.

"It's worth noting that during an ICE I-9 audit, the notice of inspection usually requests employer records concerning receipt of no-match letters and evidence as to how the company responded to the letters," Brodie said.

Fay outlined the following steps for employers in receipt of a Social Security no-match letter:

- Register online to find out which workers have discrepancies in their SSA files.
- Inform affected employees of the no-match notice and ask that they confirm the name and SSN reflected in your employment records.
- Advise the workers to contact the SSA to correct their SSA records. Give employees a reasonable period of time to do this.
- Stay in contact with the affected workers to learn and document the status of their efforts to address and resolve the issue.
- Review documents the employee chooses to offer that show the mismatch is resolved.
- Submit any employer corrections to the SSA.

Fay reminded employers *not* to attempt to reverify the employee's employment eligibility by requesting the worker to complete a new Form I-9, produce specific I-9 documents to address the mismatch or provide verification of a resolution with the SSA.

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