

## **Information-Sharing by SSA and SSA's Role in the Secure Border Initiative**

**15. Sharing No-Match Data.** With whom is SSA legally authorized to share its no-match data and with whom does it share such data? What is the status of any change in data-sharing with DHS? Please discuss current and future plans and discussions with DHS and IRS as regards sharing information related to aliens.

- Is SSA considering changing its NWA (non work alien) data so that A-numbers and/or admission numbers (I-94 numbers) are provided?
- Is DHS, or SSA, putting out a government contract to make the SSA NWA system compatible with ICE's systems?
- To what extent is ESF (earnings suspense fund) data permitted to be shared with other government agencies under current law? Which agencies?
- To what extent are worker names and SSNs presently identified by IRS to SSA and/or DHS as individuals filing tax returns based on ITINs?

**Answer.** SSA sends no-match data to IRS with all W-2 data, but has no authority to share this data with other agencies. To our knowledge, IRS does not share no-match information from SSA with any other agency. The Commissioner of SSA shares with DHS reports of work activity on non-work accounts, but the usefulness of this data for immigration enforcement is questionable. It takes SSA two years to pull information together before reporting, data lacks numerical identifiers such as A-numbers and/or admission numbers (I-94), the information is formatted by SSN, and many individuals who used non-work accounts are work-authorized (even if they haven't returned to remove the non-work restriction). ICE had an interest in this information. After successfully tracking down only a portion of individuals with work reported under non-work SSNs, ICE found that about one-third actually had work authorization.

**16. SSN No-Match Letters.** Please provide copies of SSA's policy guidance on no-match letters and our related questions below:

- Please summarize SSA's current policy concerning the issuance of no-match letters? When are these issued? How many did it issue in TY05 and TY06?
- What is the employer obligation in response to a no-match letter from SSA?
- How does an IRS no-match letter differ from an SSA no-match, and when are IRS letters issued? What is the employer obligation in response to a no-match letter from IRS?

- Does SSA have current authority to identify no-match accounts to IRS? DHS?
- How many employers are reporting no-match data? How many employee records show no-match data? How much is in the earnings suspense fund, and how much has been properly allocated as a result of the no-match program?

**Answer.** SSA has not changed its policy on issuing no-match letters since our last meeting in March 2005. SSA first sends Decentralized Correspondence (DECOR) letters to employer, employees, and self-employed individuals who file W-2/self-employment reports with a name/SSN combination that does not match SSA records. After two weeks, SSA sends Educational Correspondence (EDCOR) letters to employers if more than 10 W-2s in wage report do not match SSA's records and the no-matches exceed 0.5 of the W-2 items in the report. Employers who file 11 to 2,200 Forms W-2 will receive a letter if 11 or more of the wage items in the report are no-matches. SSA also notifies employers who file more than 2,200 Forms W-2 if the no-matches exceed 0.5 percent of the total number of Form W-2 items in the file. SSA provides the reported employee's name, SSN, reported earnings, and tax year with a request that the employer provide the correct employee name and SSN.

The SSA no-match letter specifically states that employers should not use the letter to take any adverse action against employees and that doing so could violate state and federal law and subject the employer to legal consequences.

Employers receiving no-match letters should first check their records to see if there is already a copy of the Social Security card against which to check for error. The employers should then ask the employee to check his/her SSN card to make sure that both the employee's name and SSN were accurately reported by the employer. Employers should also ask the employee to show his/her Social Security card. If the employer and the employee are unable to resolve the issue, the employer should ask the employee to contact the local SSA office. The employer should not send any background documentation to SSA. If a Form W-2c is prepared, the employer should send only the Form W-2c (Corrected Wage and Tax Statement). If the correct information cannot be obtained and a Form W-2c cannot be prepared, the employer should retain the documentation and should not send copies to SSA. Employers should document efforts made to obtain the corrected information in their records in the event IRS contacts the employer. This documentation should be retained, consistent with all payroll records, for four years. (See RM 01105.027, 12/09/2004, "Handling Inquires Related to SSA Letter on No-Match Names and Social Security Numbers (SSNs)", <https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0101105027!opendocument>).

#### **17. Payroll Guidance to Employers when SSA Delayed in Issuing SSN.**

Please provide employers the current guidance to make FICA deductions when an employment-authorized foreign national is working awaiting initial issuance of SSN, and any IRS-origin information or IRS links to guidance on income tax deductions. Please provide copies of any policy memos or guidance from either SSA or IRS, on employers fulfilling their withholding agent responsibilities while waiting for the employee's SSN. What should an employer do with respect to an employee who has not obtained an SSN

by the time an employer return must be filed? Does either IRS or SSA penalize an employer who pays wages to an employee without making income tax or FICA deductions? How should both income tax and FICA deductions be made while an employee is waiting for SSN?

**Answer.** An SSN is not legally required for individuals to start employment, but employers must have an SSN for each of their employees when annual income tax reporting is required. However, employers can still comply with reporting requirements if an SSN has not been issued at the time of reporting. If an application for an SSN has been made but it has not yet been received when the W-2 is issued, employers that paper file should write “applied for” in box d and employers that use magnetic tape should put all zeros in box 4. SSA has no policy on the use of placeholders, though IRS should be contacted regarding its policy on the issue.

**18. Secure Border Initiative.** Please explain SSA’s role in the interior enforcement strategy of ICE’s Secure Border Initiative. ICE reports that millions of US workers have supplied to their employers SSNs that do not match their names in SSA’s records or have registered “000-00-0000” as an SSN, which allegedly indicates a lack of work authorization and will be used to target immigration violators. (See News Release, *Department of Homeland Security unveils comprehensive immigration enforcement strategy for the nation’s interior*, April 20, 2006). However, as SSA points out in its no-match letter to employers, a mismatch can be explained by several reasons, is not per se evidence that a worker is unauthorized, and should not serve as the sole basis for termination of employment. Additionally, for new employees who have applied for an SSN but have not received the card before the W-2 is filed, SSA instructs employers to “Enter all zeros in the SSN block if filing electronically or on magnetic media” and “Applied for” in box (d) on paper forms W-2 and, when an SSN is received, to file Form W-2c with SSA showing the SSN assigned. (See Employer’s Guide To Filing Timely And Accurate W-2 Wage Reports, Social Security Administration Office of Income Security Programs, SSA Pub. No. 16-004, ICN 361752, April 2004). ICE has informally assured us that it will judiciously exercise its discretion in prosecuting employers who report all zeros or mismatched SSN data. However, we are concerned that ICE’s strategy will make employers, to the detriment of themselves and the economy, reluctant to commence employment pending SSN issuance, which can take many months. Further, corporations with many H and L workers, will repeatedly file W-2s showing all zeros for employees awaiting SSN issuance, which may be construed improperly as a pattern of hiring unauthorized workers, resulting in highly disruptive and costly proceedings.

- Can SSA educate ICE about the possible explanations for mismatched data or the reporting of zeros and the reasons for SSA’s employer guidance not to terminate employment based on mismatch data alone?
- ICE is proposing that employers who receive no match letters be deemed to have constructive knowledge of unauthorized employment. If adopted, how should employers reconcile this with SSA’s guidance not to presume that a mismatch indicates unauthorized employment?

**Answer.** There can be many legitimate reasons for mismatches in the names and SSNs in SSA's database. Therefore, no-match letters have limited utility for immigration enforcement. SSA allows employers to use "000-00-000" instead of an SSN for individual employees who are waiting for an SSN. SSA has informed ICE of its opposition to the proposed ICE regulation that employers who receive a no match letter be deemed to have constructive knowledge of unauthorized employment. No-match letters are educational notices only and they are not meant to be used for enforcement.

### **19. Conflicting Legal Obligations in Resolving Notification of Mismatch**

**Data.** Currently, when an employer receives an SSA no-match letter, it faces conflicting guidance from SSA (to resolve discrepancies), ICE (to avoid the "knowing" hire of unauthorized workers) the Office of Special Counsel for Immigration Related Unfair Employment Practices of the Department of Justice (OSC) (to avoid citizenship discrimination), the IRS (to pay withholding taxes, possibly face a fine, but to accept an employee's "corrected" W-2, even with the same mismatched data). These tensions create an untenable situation for employers who want to comply with the law. Would SSA be willing to coordinate with ICE, IRS and OSC to provide consistent advice to employers on this issue?

**Answer.** No. The problem arises because each of these agencies has different missions. SSA consistently advises employers and other government agencies that no-match letters are educational notices that should not be used as evidence of unauthorized employment. SSA understands that employers in practice sometimes use these notices to terminate employment, but SSA provides clear advice to employers that they should not use them for this purpose and it is not able to control what employers do after providing these clear instructions. SSA has given ICE its objections to the proposed regulation, but it cannot control what ICE or other administrative agencies do. SSA does not know what, if any, position the Administration has taken. The only recourse for others is to deal with DHS directly or go to Congress in order to resolve any confusion that employers who receive no-match letters may have regarding the conflicting positions of different agencies.

**20. False SSNs.** How should an individual report past use of a false SSN? What does SSA do once a non-citizen has filed such a report? Does SSA share this information with any other agency? Please provide any written policy guidance.

**Answer.** SSA has procedures to correct mistakes in the use of social security numbers, whether those mistakes are because the individual used another person's card, an invalid number, or a mistakenly transposed number. These types of corrections are not uncommon. SSA wants to make sure that the right earnings go to the right person's account. With a valid SSN, the individual making the correction must provide evidence of work under the "incorrect" number, such as W-2s and old pay stubs bearing the applicant's name. SSA does not share this information with other agencies. The IRS is not concerned with these corrections if the individual making the corrections has paid taxes. SSA's procedures for correcting discrepancies are part of the POMS under Records Maintenance. See <https://s044a90.ssa.gov/apps10/poms.nsf/lx/0102201001!opendocument>