

NATIONAL IMMIGRATION LAW CENTER

Basic Information Brief: SSA "NO-MATCH" LETTERS

February 2005

Each year, employers file a Wage and Tax Statement (Form W-2) with the Social Security Administration (SSA) and the Internal Revenue Service (IRS) to report how much they paid their employees throughout the year. The SSA processes about 240 million W-2s sent by about 6.5 million employers either via electronic media or on paper. These W-2s record the wages earned by about 145 million workers annually. While the SSA is able to post about 96.4 percent of all reported earnings to the accounts of the individuals who earned them, those earnings that cannot be matched are posted to the SSA's Earnings Suspense File (ESF), which by 2003 had grown to approximately \$421 billion in wages, representing about 244 million wage items that could not be posted correctly. Workers' wages remain in the ESF until the name/SSN can be matched and posted to an individual's earnings record.

According to SSA officials, as of Dec. 10, 2004, the agency had sent no-match letters to 121,577 employers regarding 7,284,885 W-2s containing employee names or SSNs that do not match SSA records. In addition, the SSA had sent approximately 9.1 million letters requesting information regarding specific employees based on the data provided by their employers on W-2 forms. The SSA sent 7,605,907 of the letters directly to workers at their home addresses, but it sent an additional 1,510,086 letters to workers' employers because either the SSA had no addresses for the workers or the addresses the agency had were incorrect.

In 2005, the SSA plans to send a similar number of no-match letters based on the same criteria used in 2004. That is, employers will receive a letter if the W-2s they file result in a "no-match" for at least 10 employees, or if at least one-half of one percent of the total number of names and SSNs they report on W-2 forms for tax year 2004 do not match SSA records. The 2005 letters will be mailed out in late February or early March.

What is an SSA no-match letter?

An SSA "no-match" letter is a letter sent by SSA when the names or SSNs listed on the employer's W-2 forms do not agree with SSA records. SSA sends no-match letters to employees at their home address, when it has such information, or directly to employers. Attached to each no-match letter sent to employers is a list of employees for whom the SSA database could not find a match. The purpose of the SSA no-match letter is to notify workers and their employers of the discrepancy, and that employees are not receiving proper credit for their earnings, which can affect future retirement or disability benefits administered by SSA.

A large proportion of employers who receive the SSA notice employ low-wage immigrant workers, and many no-match names are Latino, Asian, or other names frequently misspelled by employers.

There are many reasons for computer no-matches, and the no-match letters themselves do not prove any wrongdoing by either employer or employees. However, employer misuse of these SSA letters has caused great harm to low-wage workers nationwide. Although workers and



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their union representatives usually never see the lists, employers sometimes use them to fire employees or lay off workers temporarily without pay. The letters have also been used to undermine or eliminate organizing activity at worksites.

In 2002, SSA had changed its policy and began sending no-match letters to any employer who had at least one employee with information that did not match SSA's records. SSA sent these letters to a total of 950,000 employers throughout 2002. This created a lot of confusion and chaos for both employers and employees who were unaware of each other's responsibilities and how to respond to the no-match letters. The result was that thousands of workers, mainly low wage immigrant workers, lost their jobs, and many employers also lost hard working employees they had trained and invested time and resource into. The sheer number of no-match letters sent out in 2002 created a crisis in the immigrant worker community, but also created an organizing opportunity.

Throughout 2002, many immigrant and labor rights groups across the country worked together to educate community members about the SSA no-match letters, met with regional SSA offices as part of diverse coalitions which included representatives of labor, immigrant rights, and interfaith groups, as well as local elected officials and other stakeholders. Similar delegations were very effective in meeting with employers who were trying to abuse the no-match letter, particularly to interfere with workers' rights to organize a union. Some groups met with their Congressional delegations to raise concerns about the impact of the no-match letters, and others organized locally to have their local city councils pass resolutions regarding employers' proper responses to the SSA no-match letters. Simultaneously, national immigrant rights and labor groups continued meeting with SSA to express concerns over the impact of the letters, including providing input into the language SSA would use for the 2003 no-match letters.

In December 2002, SSA made a decision to change its policy regarding the no-match letter program in 2003. Specifically, SSA realized that despite the huge number of letters it sent out, much of the new information provided by employers still contained discrepancies, or that the information had already been corrected. As a result, has decided to roll back the number of no-match letters it sends out in 2003. In 2003, SSA sent no-match letters to employers who reported a no-match for at least 10 employees, or who reported no-matches for at least ½ of one percent of the total number of items it reports on the W-2 for tax year 2002. SSA sent out letters to 126,250 employers, in comparison to the more than 950,000 letters sent out in 2002 that created so many problems.

In 2004, SSA revised the no-match letter to employers. This letter contains strong language warning employers not to take adverse action against workers based on having received the SSA letter alone, including laying off, suspending, firing, or discriminating against an individual who appears on the list. While the letter requests that employers respond within 60 days, it makes clear that this deadline is simply a recommendation to employers intended to assist SSA in correcting the information, and this timeline is now at the end of the letter rather than at the outset.

SSA will continue sending the employee letters to workers' home addresses, but where there is an incomplete or missing address SSA will also send that letter to the employer.

➤ ***If an employer received a no-match letter, does that mean the IRS will fine them?***

No. Although previous versions of the SSA no-match letter made reference to a potential fine by the Internal Revenue Service (IRS) causing a lot of panic and confusion among employers and workers in past years, the IRS had actually not imposed any such fines based on the no-match letter.

In late 2003, the IRS has issued long-awaited guidance concerning penalties associated with SSA no-match letters. The guidance makes clear that simply receiving a no-match letter does not mean that the IRS will automatically issue a fine against an employer: “IRS penalty notices relating to mismatched [tax identification numbers] are issued based on IRS systems, not SSA systems.” An employer will not be fined if the reporting error is caused by “events beyond the filer’s control,” and the employer acts in a “responsible manner” after being notified of an error. The guidance specifies that, “if the employer received a social security number from its employee, relied on that number in good faith, and used it on a Form W-2,” the employer will be able to show that his reporting error was beyond his control. ***As of this date, the IRS has not issued any fines based on an SSA no-match letter.***

As with the 2003 letter, this year’s no-match letter does not contain the reference to any IRS fine. Also, at the bottom of the first page, the letter states “IMPORTANT: This letter does not imply that you or your employee intentionally gave the government wrong information about the employee’s name or Social Security Number. Nor does it make any statement about the employee’s immigration status.”

WHAT ARE THE PROBLEMS CREATED BY THE SSA NO-MATCH LETTERS?

Multiple SSA letters cause confusion for both employers and employees.

Many employers are confused by the no-match program because it is unclear what they are required to do in response to the letters. This is exacerbated by the fact that there are various types of letters aimed at correcting the same problem of mismatches. For example, SSA sends letters directly to employees at their home address when it has current addresses for them. When SSA does not have an address for an employee it also sends employers a “Request for Employer Information,” which lists a specific individual (as opposed to a group of employees). Thus, an employer might receive this Request for Employer Information about certain employees, but a week later that same employer might receive a no-match letter listing a group of employees with mismatches. The employer might then fire the worker for whom it received an individual letter, and not take any action against employees on the broader list. Finally, although the letters come from SSA’s Baltimore, Maryland or Wilkes-Barre, Pennsylvania national offices, some local SSA offices apparently also send similar no-match letters to local employers. Multiple letters are confusing to employers and increase the risk of discrimination against certain employees.

Employers and employees confuse no-match letters with notices of immigration violations.

When employers receive no-match letters, they and their workers often mistakenly believe they are receiving notices of immigration violations. In many states where the no-match letters have

had negative consequences for workers, employers participate in a separate government pilot program to verify employees' work authorization through the databases of both SSA and the Immigration and Naturalization Service (INS). Although the pilot program and SSA no-match letters are completely unrelated, they are sufficiently similar in appearance to add to the confusion.

- *In March 2003, a California employer that also participates in the Basic Pilot program received an SSA no-match letter listing over 500 workers. This employer was confused about what steps it was required to take with respect to the workers appearing on the no-match letter versus those new hires it has checked through the Basic Pilot program. This employer assumed that receipt of an SSA no-match letter was equivalent to the situation where the Basic Pilot cannot confirm the person was authorized to work, and therefore thought they should reverify the immigration status of workers appearing on the no-match letters.*

Some employers fire workers on the list before the workers have a chance to show they are mistakenly on the list.

SSA account errors frequently occur when employers or SSA staff incorrectly enters data. Errors also arise when workers incorrectly report data, or when computers incorrectly read data. Employers should provide workers with ample time to deal with the SSA bureaucracy in straightening out errors in their accounts. SSA has advised employers that up to seven days or more are required for the agency to correct account errors once it learns of them. Nevertheless, some employers abuse the SSA no-match program to harass and fire vulnerable workers.

- *In the late summer of 2003, an African-American man in Virginia was fired from his job because his employer received a notice from SSA regarding a discrepancy. The worker, who is a U.S. citizen, went to the local SSA to correct his information. Apparently, SSA had issued this worker a duplicate SSN, which belonged to a deceased person. Although he was able to correct his information with SSA, the employer refused to continue to employ him thinking the worker was engaging in identity theft or similar wrongdoing. He was fired and out of work for several months, and had to file an arbitration case to obtain his job back.*

SSA letters are used by some employers against labor organizing campaigns to stymie efforts to obtain better wages and improve working conditions.

- *In the Spring of 2002, a group of immigrant workers in New York went on strike to protest against poor working conditions. After receiving an SSA no-match letter that the employer had initially ignored, the employer decided to use the no-match letter as a basis to reverify the immigration status of the workers involved who had filed the unfair labor practice charges.*

SSA sends the no-match lists to employers but workers on the list do not always receive notice.

SSA sends employers a list of Social Security numbers for individuals in their employ whose Social Security accounts are believed to be incorrect. Unfortunately, for various reasons,

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workers on the list do not always receive notice directly from SSA. Further, in cases where no-match letters result in terminations, the individual, her lawyer, or her union representatives are often not permitted to see the list sent to the employer. Employers often do not release the lists of names "for privacy reasons," preventing employees from verifying the accuracy of the stated reason for termination. The result is that workers often do not have complete information about what is expected of them and their rights and responsibilities.

- *In February 2003, an employer on Oregon approached a group of workers who had complained about violations of their minimum wage and overtime rights alleging that it had just received an SSA no-match letter. The employer was requiring the workers to reverify their immigration status, and would not provide a copy of the letter to the workers. Interestingly, this was before SSA began sending no-match letters to employers in March 2003.*

The no-match letter program provides an incentive for some employers to discriminate.

A disproportionate number of names on no-match lists are "foreign sounding" names of newcomers to the U.S., and many SSA letters are sent to employers with large numbers of newcomers in their workforces. Employers who believe they will face business disruption due to the letters have an incentive to prefer employees they think are less likely to receive the letters. Those most affected will be at the low-wage skill level because they are least able to enforce their employment rights.

- *In July 2002, a worker in North Carolina was injured on the job. While she was on leave, the employer notified her that it had received an SSA no-match letter for her. She corrected the discrepancy, which was based on a typographical error in the W-2 that the employer had filed with SSA. Weeks later, while still on leave, the employer asked the worker to reverify that she continued to be eligible to work in the U.S. because her work authorization had expired. She had employment authorization based on the Temporary Status Program (TPS), and had already applied for the renewal but INS sent her a work permit with someone else's picture. Although she was also able to straighten this problem out, when her doctor told her she could go back to work, the employer denied her a job because she had "too many immigration problems."*

WHAT CAN INDIVIDUALS WHO FEEL THEY HAVE BEEN DISCRIMINATED AGAINST DO?

Individuals, who feel they have been discriminated against based on their citizenship status, national origin, or the employer's refusal to accept their documents, can call the Office of the Special Counsel for Immigration-Related Unfair Employment Practices (OSC). The OSC is a government agency that is part of the Civil Rights Division of the U.S. Department of Justice. It enforces the anti-discrimination provisions of the Immigration Reform and Control Act of 1986. Workers may call the OSC's toll-free hotline at (800) 255-7688 or (800) 237-2515 (TDD for hearing impaired). There is also an automated employer hotline at (800) 255-8155 or (800) 362-2735(TDD). The OSC can also be reached via their website at www.usdoj.gov/crt/osc. The OSC provides assistance and written outreach materials in multiple languages.

The OSC is not part of the Department of Homeland Security (DHS) (formerly known as the Immigration and Naturalization Service).