

# ARISE CHICAGO NO MATCH TOOLKIT

*Protecting workers' jobs  
in the current immigration crisis*



PREPARED BY  
ARISE CHICAGO

JULY 2019

[WWW.ARISECHICAGO.ORG](http://WWW.ARISECHICAGO.ORG)



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## About Arise Chicago

**Arise Chicago** builds partnerships between workers and faith communities to fight workplace injustice through education and organizing and advocating for public policy changes.

Founded in 1991 by religious leaders to end poverty, Arise Chicago is a nationally leading local worker power organization that develops innovative ways to organize workers directly at workplaces and to win family-supporting policies. Arise Chicago opened its Worker Center in 2002 to support primarily non-union immigrant workers working in the lowest paid and least regulated industries. Arise trains, organizes, and develops the leadership of low-wage workers to make concrete improvements in their workplaces. Since 2002, Arise has supported workers to recover more than \$8.3 million in owed wages and compensation, and passed several policies including Chicago and Cook County Anti-Wage Theft ordinances, creating the Chicago Office of Labor Standards; with our partners, won Chicago and Cook County Paid Sick Days; and with our coalition, passed the Illinois Domestic Workers Bill of Rights.

*Arise Chicago No Match Toolkit 2019:*

*Arise Chicago is not a law office and does not offer legal representation. This Toolkit does not serve as legal advice.*

*All original material was prepared by Arise Chicago.*

*Arise Chicago wishes to thank National Immigration Law Center and Chris Williams for their guidance in preparing this toolkit.*



## Background Information on “No Match” Letters

### What Are No-Match letters?

No-Match letters are an educational communication from the Social Security Administration to employers stating that a worker’s personal information (like her name or Social Security number) does not match the agency’s records.

The letters invite employers to check information and make any corrections using the Social Security database to make sure contributions sent by employers are deposited in the corresponding account for the worker to enjoy benefits such as retirement, Medicare, pension, disability and, if it is the case, survivor benefits.

Many things can generate a no-match and the letters cite some examples. They may happen due to typographical errors (for example, your employer could accidentally put the wrong Social Security Number with the wrong name) unreported name changes (like in the case of marriage or divorce) or information that is missing data and, of course, names in languages other than English.

A no-match letter, on its own, does not tell an employer anything about a worker’s immigration status. The No-Match letter clearly specifies that receiving them does not imply that the worker intentionally gave wrong information. The letter states that it is “not related to work permits or immigration status”.

Also, no-match letters state that employers should not “use this letter to take any adverse action against an employee, such as laying off, suspending, firing or discriminating against that individual, just because his or her SSN or name does not match our records. Any of those actions could, in fact, violate State or Federal law and subject you to legal consequences”.



## What does an employer have to do if they receive a No-Match letter?

The letters asks the employer to “review” the information and notify the Social Security Administration if there are any needed changes within 60 days, so the SSA has better information.

In a recent letter from the Acting Commissioner of the Social Security Administration to Congressman Jim Costa, she adds that the SSA will “not take any action, nor are there any SSA-related consequences, for employers’ non-compliance with our letters”. It adds that “SSA takes no specific action other than to send the EDCOR (No Match) letter to the employer”, and that “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...”

In simple words, the Social Security Administration does not fine or punish employers who do not reply to a no-match letter.



# The New York Times

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## *Letters From Washington: Your Employees Could Be Undocumented*

By **Miriam Jordan**

May 16, 2019

LOS ANGELES — The Trump administration is notifying tens of thousands of employers that the names of some of their employees do not match their Social Security numbers, a move that is forcing businesses across the country to brace for the loss of thousands of workers who lack legal status.

The Social Security Administration has mailed “no-match letters” to more than 570,000 employers since March, sending shock waves through the hospitality, construction and agriculture industries, which rely heavily on undocumented workers. The letters have left many employers conflicted, uncertain whether to take action that could result in losing workers or to risk fines down the road.

The notices do not necessarily require employers to take action, but direct them to take steps to reconcile mismatches, which would require contacting the workers. Undocumented workers who are notified of the letters by their employers often choose to quickly resign, fearing scrutiny from federal immigration authorities. But employers who do nothing could also face enforcement actions.

“There is a high level of anxiety over these no-match letters,” said Angelo Amador, regulatory counsel at the National Restaurant Association, which represents about one million food-service establishments. He said the association has been barraged with emails and phone calls from concerned companies.

An estimated 7.8 million undocumented immigrants were in the labor force in 2016, according to the Pew Research Center. Most pay Social Security taxes for which they receive no credit because they are using a made-up Social Security number. For years, the Social Security Administration notified employers when the number on an employee’s W-2 form did not match a name on file.

The government officially suspended the use of no-match letters in 2012, although the practice had actually been discontinued years earlier, after the government faced litigation. The resumption appears to be a response to the “Buy American, Hire American” executive order signed by President Trump to protect American workers and reduce illegal immigration.

While there are many possible reasons for discrepancies between names and Social Security numbers, including typographical errors, clerical mistakes and name changes, the lack of lawful immigration status is a common one.

Most employers had not seen no-match letters in more than a decade, prompting some to say they wondered whether their return was politically motivated.

“The timing is interesting, given the priority placed by this administration on immigration,” said Mr. Amador. “We are waiting to see whether this turns into immigration enforcement.”

Mark Hinkle, the Social Security Administration's acting press secretary, did not respond to a question about whether the administration was sharing its data with the Immigration and Customs Enforcement agency.

"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," he said in an emailed statement. "If we cannot match the name and SSN reported on a W-2 to our records, we cannot credit earnings to a worker's record."

The administration of President George W. Bush tried, and failed, to introduce a "no-match" program in 2007 that would have held companies liable for employing unauthorized workers by imposing stiff penalties on them. The program was initiated after Congress failed to pass a bill to legalize the nation's estimated 11 million undocumented immigrants.

But the American Civil Liberties Union, United States Chamber of Commerce, unions and trade groups won a lawsuit later that year that claimed the policy could lead to discrimination against or termination of native-born American workers and legal immigrant workers. The suit also claimed that the regulation would pose a heavy burden on employers.

The latest letters appear to avoid the legal pitfalls identified in the earlier litigation because, unlike those drafted under the Bush program, the current letters do not threaten employers with enforcement action or penalties.

Immigration lawyers have been inundated with inquiries in recent months. Kathleen Campbell Walker, who practices in El Paso, said that one of her clients, a small restaurant chain, could lose a third of its work force. Another, which boasts 50,000 workers in multiple states, had also been alerted of discrepancies by the government.

Jeff Joseph, an immigration lawyer in Denver, said that half of the dairy farms he represents have received no-match letters in the last two months.

The \$1.3 trillion construction industry, which relies on large numbers of undocumented immigrants, is among the hardest hit.

"At a time of low unemployment, we need to be out there finding workers and lobbying for sensible immigration reform instead of reacting to no-match letters," said Stan Marek, chief executive of Marek Brothers, a large construction company with operations in Texas and Georgia that has received dozens of no-match letters.

Employers in agriculture, a sector where undocumented immigrants dominate the work force, reported a substantial number of no-match letters as well.

In California's agricultural-rich San Joaquin Valley, 49 growers and other businesses that collectively employ 39,978 workers have been alerted by the government that 24,132 employees had irregularities.

While employers must give workers a chance to rectify any discrepancy, "as soon as you tell the workers, they are going to disappear," said Manuel Cunha Jr., president of the Nisei Farmers League in Fresno, whose members have received no-match letters.

Among them is a fourth-generation farmer who grows peaches, nectarines and almonds on 800 acres. Two weeks ago, he was notified that about half of his 400 workers have issues and given 60 days to address the problems.

“This could shut us down,” said the grower, who employs several workers who have been with the business for more than two decades. He declined to be named out of concern that it would harm him and his workers. “It’s very concerning for us,” he said. “We just want to run our farm. Now they are putting us in this position to regulate documents.”

Only some states require employers to use the E-Verify government electronic verification system that checks new hires’ documents. In most states, when undocumented immigrants are hired, their employers may not know they lack legal status. They put the workers on the payroll and withhold necessary taxes, as is done for all workers.

“The irony is, if the employers and workers hadn’t been paying taxes, the businesses wouldn’t have been sent the no-match letter,” said Mr. Cunha of the farmer’s group.

He and others predicted that the new measure would very likely push many workers underground and into the cash economy.

The Social Security Administration announced in July that it planned to resume sending no-match letters in 2019, and in March began mailing them to employers who had submitted at least one W-2 form with a name and Social Security number combination that did not match its records. The notices direct employers to take steps to correct information online within 60 days.

Because most employers received their letters in April or in recent weeks, many are still debating what course of action to take ahead of their deadline.

The mere receipt of a no-match letter does not lead to penalties. But Immigration and Customs Enforcement routinely asks firms subjected to I-9 audits whether they have received no-match letters, which can be used to prove that they had “constructive knowledge” of employing undocumented immigrants and raise the potential for criminal charges and hefty fines.

As part of the Trump administration’s crackdown on illegal immigration, ICE has dramatically increased worksite enforcement. In fiscal 2018, which ended Sept. 30, the agency initiated 5,981 I-9 audits, compared to 1,360 the previous year.

The Social Security Administration’s current no-match letter instructs employers to register online to view the names of workers with discrepancies, which creates a record.

It states, “IMPORTANT: This letter does not imply that you or your employee intentionally gave the government wrong information about the employer’s name or SSN. This letter does not address your employee’s work authorization or immigration status.”

But it remains unclear whether the Social Security Administration will share information about discrepancies with the immigration-enforcement agency.

“These employers are low-hanging fruit for ICE,” said Mr. Joseph, the attorney in Denver.

“Employers are left holding the bag unless and until there is clear guidance from the government about what we should do,” said Michael Neifach, an attorney in Reston, Va., who was an ICE general counsel during the Bush administration.

Earlier this month, 46 Democratic members of Congress signed a letter to the acting commissioner of the Social Security Administration, Nancy A. Berryhill, demanding suspension of the notifications.

“These no-match letters are simply one more scare tactic meant to target immigrant communities,” said Representative Jesus “Chuy” García, the Illinois Democrat who organized the letter.

Another letter, signed by 146 labor and immigrant-advocacy organizations, argued that no-match letters are ineffective, imperil American citizens and could overwhelm the Social Security Administration.

Many employers have complained that the resumption of no-match letters is a piecemeal approach that fails to address the difficulty many employers face in finding legal workers. “The only remedy to this mess is comprehensive immigration reform,” said Mr. Cunha of the farmers’ league.

“People are desperate for workers; workers are desperate for legal status,” said Mr. Marek, the developer. “What we need is a solution.”

A version of this article appears in print on May 16, 2019, on Page A19 of the New York edition with the headline: ‘No Match’ Notices Roil Industries That Rely on Undocumented Workers

<https://www.nytimes.com/2019/05/16/us/immigrants-undocumented-no-match.html>

## No Match Letter from Social Security Administration to Employers

### Social Security Administration Retirement, Survivors and Disability Insurance Employer Correction Request

(Insert SSA Address)

(Insert SSA Address)

Date:

EIN:

Tax Year:

Receipt Year:

WFID:

Version #:

W3 Sequence#:

Processed W2 Count:

EMPLOYER'S NAME

STREET ADDRESS

CITY, STATE ZIP

#### Why You Are Getting This Letter

You reported **X#** employee names and Social Security numbers (SSN) on the Wage and Tax Statements (Forms W-2) for tax year xxxx that do not match our records. We need corrected information from you so that we can reconcile employer wage reports and credit your employees' earnings to their Social Security records. It is important because these records can determine if someone is entitled to Social Security retirement, disability, and survivors benefits, and how much he or she can receive. If the information you report to us is incorrect, your employee may not get benefits he or she is due.

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.

**IMPORTANT:** This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or SSN. This letter does not address your employee's work authorization or immigration status.

You should not use this letter to take any adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because his or her SSN or name does not match our records. Any of those actions could, in fact, violate State or Federal law and subject you to legal consequences.

See Next Page

Visit our website at [www.socialsecurity.gov](http://www.socialsecurity.gov)

**What You Should Do**

To view the names and SSN that could not be matched to our records, please use the Employer Report Status within Business Services Online (BSO). To begin using BSO, you must complete a one-time registration process. To register, go to [www.socialsecurity.gov/bsowelcome.htm](http://www.socialsecurity.gov/bsowelcome.htm). You may also file your Form W-2C corrections using W-2C online.

Additionally, we provide a free Social Security Number Verification Service (SSNVS) through BSO that allows you to verify employees' names and SSNs in our records in advance of filing your annual Forms W-2 submissions. Using SSNVS can significantly reduce errors through BSO.

Please review the name and SSN information you submitted on the Form W-2 and provide us necessary corrections on the Form W-2C within 60 days of receipt of this letter so we can maintain an accurate earnings record for each employee and make sure your employees get the benefits they are due.

**If You Have Any Questions**

If you have any questions, please call us toll-free at 1-800-772-6270 (TTY 1-800-325-0778) between 7 a.m. and 7 p.m., Eastern time, Monday through Friday. We can answer most questions over the phone. If you call, please have this letter with you. It will help us answer your questions. Also, general program information is available from our website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer).

*Social Security Administration*

Visit our website at [www.socialsecurity.gov](http://www.socialsecurity.gov)

# Social Security Administration

## Retirement, Survivors and Disability Insurance

### Educational Correspondence (EDCOR) Announcement

(Insert Date)

EMPLOYER'S NAME  
STREET ADDRESS  
CITY, STATE, ZIP

We ask that you help us ensure the accuracy of wage reporting for your employees by registering for Business Services Online (BSO). We have been recording these earnings for over 80 years to reconcile employer wage reports and ensure individuals receive the benefits they have earned.

#### **Services Available to Ensure Accurate Wage Reporting**

To ensure the accuracy of Social Security number (SSN) and name combinations submitted as part of the wage reporting process, we offer various free online services to employers through our BSO. We highly recommend registering and using these services before, during, and after submitting wage reports.

BSO is available at [www.ssa.gov/bso](http://www.ssa.gov/bso) where you can find several of the following services, as well as informational how-to videos for creating a BSO account.

- **Social Security Number Verification Service (SSNVS) Application:** Employers can verify that their employees' names and SSNs match Social Security Administration's (SSA) records. **NOTE:** This application should only be used for wage reporting purposes, not for screening job applicants.
- **W-2 and W-2C Online:** Employers can create, save, print, and submit up to 50 Forms W-2 or 25 Forms W-2C per submission to SSA. While entering each W-2 or W-2C, the service validates the employee's name and SSN against SSA's records and lets the employer know if the information supplied does not match in SSA's records.
- **Submission Status and Employer Report Status Application:** Employers and third-party submitters can view the processing status, errors (**including name and SSN mismatches**), and error notices for their wage reports.
- **AccuWage:** Wage file data submitters can test their wage files to ensure compliance with electronic wage filing specifications (EFW2/EFW2c) before submitting them to SSA for processing. AccuWage checks wage files to ensure employee records contain a required first name, last name, and a numeric SSN that does not begin with "9" or "666."

### **Filing Tips to Ensure Accuracy**

Before you file your next annual wage report, please make sure your employment records and the Forms W-2 have your employees' correct names and SSNs. Use the tips below to ensure accuracy.

- We encourage you to use BSO, especially the SSNVS application to verify SSNs and names prior to completing Forms W-2. Visit our website at [www.socialsecurity.gov/employer/notices.htm](http://www.socialsecurity.gov/employer/notices.htm) or call toll-free at 1-800-772-6270 (TTY 1-800-325-0778) for further details.
- Ask your employees to check their latest Form W-2 against their Social Security cards and to inform you of any name or SSN differences between the two. If the Form W-2 is incorrect, correct your records and prepare a Form W-2C. If the name or SSN on the card is incorrect, advise the employee to visit the nearest Social Security office to update his or her SSN record and obtain a replacement SSN card.
- Remind employees near the end of each year to report to Social Security any name changes due to marriage, divorce, or other reasons.
- Ask each new employee to check his or her Social Security card and tell you the name and SSN exactly as shown on the card. (While the employee must furnish their SSN to you, they are not required to show you their Social Security card.)
- Direct those who do not have SSNs or cards to [www.socialsecurity.gov](http://www.socialsecurity.gov) to obtain further information.
- If you file wage data files, be sure that all of your employees' names are correctly entered in the appropriate fields of the "Employee Wage Record."
- For more information, see SSA Publication 42-007: Specifications for Filing Forms W-2 Electronically (EFW2).
- If you file on paper, be sure to enter your employees' names on the Forms W-2 as follows: first name, middle initial, and last name exactly as shown on their Social Security cards.

For SSA forms or publications, call SSA's Employer 800 Number at 1-800-772-6270 (TTY 1-800-325-0778) or visit SSA's website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer) under the "Publications and Forms" tab.

### **Letters to Be Mailed After the 2018 Filing Period**

SSA will begin mailing informational notifications to businesses and employers who submit wage and tax statements (Form W-2) that contain name and SSN combinations that do not match our records. There are a number of reasons why reported names and

SSNs may not agree with our records, such as typographical errors, unreported name changes, inaccurate or incomplete employer records.

If we cannot match the name and SSN reported on a Form W-2 to our records, we cannot credit earnings to a worker's record. When earnings are missing, the worker may not qualify for Social Security benefits he or she is due or the benefit amount may be incorrect.

**If You Have Any Questions**

If you have any questions about this letter, please call us toll-free at 1-800-772-6270 (TTY 1-800-325-0778) between 7 a.m. and 7 p.m., Eastern Time, Monday through Friday. We can answer most questions over the phone. If you call, please have this letter with you. It will help us answer your questions. Also, general program information is available on our website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer).

Social Security is committed to protecting personal information and earnings records for millions of Americans. With your help, we can ensure the correct, maximum amount of benefits for your employees and their families.

*Social Security Administration*

## **Sample Letter Employers Can Give to Employees**

We verified the following information with Social Security on this date:

\_\_\_\_\_.

Name \_\_\_\_\_

Social Security Number \_\_\_\_\_

According to Social Security, the information above does not match Social Security's records. You should:

- Check to see if the information above matches the name and Social Security Number on your social security card. If it does not match, please provide me with the exact information as it is shown on your Social Security card.
- If the information above matches your card, please check with any local Social Security office to resolve the issue. Once resolved, please inform me of any changes. Go to [www.ssa.gov](http://www.ssa.gov) or call 1-800-772-1213 to find the office nearest you.

**NOTE:** This notice does not imply that you intentionally provided incorrect information about your name or Social Security Number, nor does this adversely affect your employment.

**Congress of the United States**  
**Washington, DC 20515**

May 2, 2019

Nancy Berryhill  
Acting Commissioner  
Social Security Administration  
6401 Security Boulevard  
Baltimore, MD 21235-6401

RE: Employer Correction Request Notices

Dear Acting Commissioner Berryhill:

We are writing to strongly oppose the directive to impose Employer Correction Request Notices also referred to as “No-Match Letters.” This action will cause numerous problems by diverting resources away from frontline workers whose primary mission is administering benefits. Additionally, this rule can result in increased discrimination and abuses against U.S. workers, particularly women.

The Social Security Administration’s (SSA) current policy already uses “front-end validation routines” to identify and address possible errors in worker names and Social Security Numbers, such as typographical errors, transpositions, and misspellings. We do not oppose the routine practice of removing records from the Earnings Suspense File (ESF). In fact, these first validation processes resolve approximately 60 percent of the reports initially categorized as mismatches.<sup>1</sup> On the other hand, the cost of producing and mailing No-Match Letters and handling follow-up calls to employers was approximately \$1.3 million and resulted in only 35,000 items being removed from the ESF with a case file of 39 million inaccurate records.

The \$1.3 million “No-Match Letter” production cost can be used for better means to serve America’s growing Social Security beneficiary population -- growing at a rate of nearly 1 million yearly. These investments could include: (1) sending earning statements to American wage earners, as the law requires, but is not being done; (2) more fully staffing existing field offices and re-opening those that have been closed in underserved areas; (3) hiring additional SSA customer service staff to operate the 1-800 number, so the American people are not confronted with long waits and busy signals; (4) clear disability back logs; (5) increasing SSA’s core operating budget; (6) increasing field office hours; (7) improve technological advancements to aid in clearing backlogs, and (8) hiring additional administrative law judges (ALJ).

It is imperative to recognize that many legal workers -- including U.S. citizens -- will receive No-Match Letters because of clerical errors, unreported name changes, and other discrepancies in their records. The consequences include: (1) causing the firing of employment-authorized workers and U.S. citizens; (2) imposing additional costs and fees on employers; (3) increased discriminations and abuses on the basis of citizenship, nationality, or by pursuing unfair

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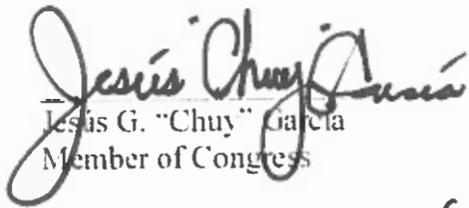
<sup>1</sup> Hincapié, Marielena, Tyler Moran, and Michele Waslin. “The Social Security Administration No Match Program: Inefficient, Ineffective, and Costly.” *Immigration Policy in Focus* 6, no. 2 (May 2008). Accessed March 15, 2019. <https://www.americanimmigrationcouncil.org/sites/default/files/research/InFocusSSANo-Match05-08.pdf>

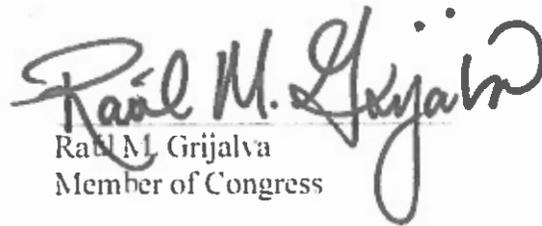
documentary practices in violation of the Immigration and Nationality Act (INA); and ultimately, (4) overwhelming SSA by diverting resources away from its mission of processing benefits in a timely way.

For the reasons above, we urge you to immediately suspend the employer No-Match letter program. Experience has proven that the program does not effectively serve its purpose and causes harmful impacts on the Social Security Administration, American workers and small businesses - serious consequences which outweigh any benefits derived from them.

Thank you for the opportunity to comment on the upcoming directive.

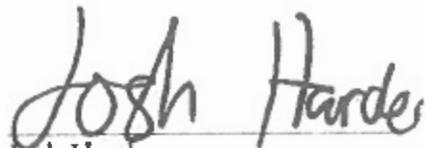
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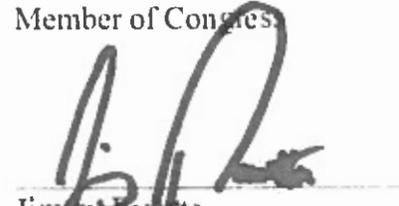
  
Jesús G. "Chuy" García  
Member of Congress

  
Raúl M. Grijalva  
Member of Congress

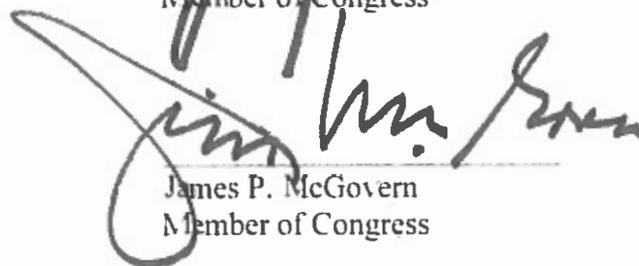
  
Barbara Lee  
Member of Congress

  
Debbie Mucarsel-Powell  
Member of Congress

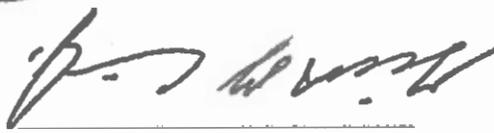
  
Josh Harder  
Member of Congress

  
Jimmy Panetta  
Member of Congress

  
Val Demings  
Member of Congress

  
James P. McGovern  
Member of Congress

  
Jamie Raskin  
Member of Congress

  
Gilbert R. Cisneros  
Member of Congress

*Nanette Diaz Barragan*

Nanette Diaz Barragan  
Member of Congress

*J. Luis Correa*

J. Luis Correa  
Member of Congress

*Dwight Evans*

Dwight Evans  
Member of Congress

*Ruben Gallego*

Ruben Gallego  
Member of Congress

*Deb Haaland*

Deb Haaland  
Member of Congress

*Mark Pocan*

Mark Pocan  
Member of Congress

*Darren Soto*

Darren Soto  
Member of Congress

*Pramila Jayapal*

Pramila Jayapal  
Member of Congress

*Ilhan Omar*

Ilhan Omar  
Member of Congress

*Jimmy Gomez*

Jimmy Gomez  
Member of Congress

*Susan Wild*

Susan Wild  
Member of Congress

*Grace F. Napolitano*

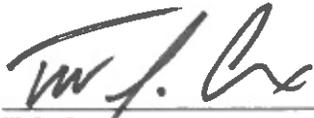
Grace F. Napolitano  
Member of Congress

*Lori Trahan*

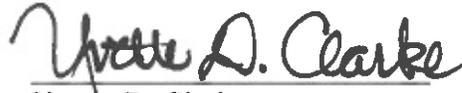
Lori Trahan  
Member of Congress

*Adriano Espaillat*

Adriano Espaillat  
Member of Congress



T.J. Cox  
Member of Congress



Yvette D. Clarke  
Member of Congress



Sheila Jackson Lee  
Member of Congress



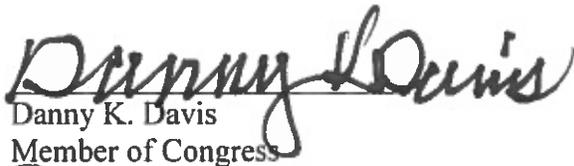
Jim Costa  
Member of Congress



Lucille Roybal-Allard  
Member of Congress



Eleanor Holmes Norton  
Member of Congress



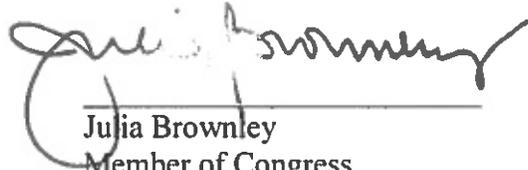
Danny K. Davis  
Member of Congress



Joaquin Castro  
Member of Congress



Juan Vargas  
Member of Congress



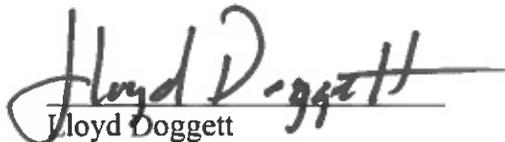
Julia Brownley  
Member of Congress



Albio Sires  
Member of Congress



Nydia M. Velázquez  
Member of Congress



Lloyd Doggett  
Member of Congress



Linda T. Sánchez  
Member of Congress



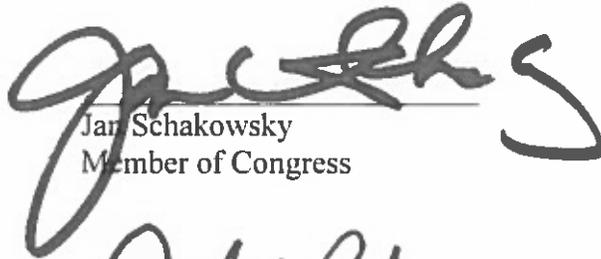
Scott Peters  
Member of Congress



Al Green  
Member of Congress



Alcee L. Hastings  
Member of Congress



Jan Schakowsky  
Member of Congress



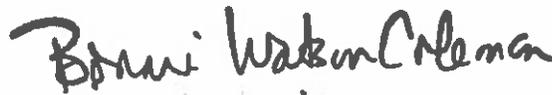
Gregorio Kilili Camacho Sablan  
Member of Congress



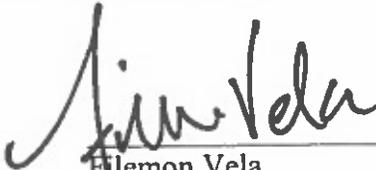
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# SOCIAL SECURITY

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 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.

## Excerpt from MOU between the US Department of Labor and Homeland Security

Immigration and Labor Enforcement in the Workplace:  
The Revised DOL-DHS Memorandum of Understanding (2011)

On March 31, 2011, the U.S. Department of Labor (DOL) and Department of Homeland Security (DHS) entered into a revised Memorandum of Understanding (MOU) to ensure that the two agencies' worksite-based enforcement activities do not conflict. This 2011 MOU updates a 1998 MOU between DOL and the then-Immigration and Naturalization Service.

The purpose of the MOU is to establish a national policy goal that "immigration enforcement will not interfere with employment and labor rights enforcement in the workplace". The MOU limits the worksite enforcement power of DHS's Immigration and Customs Enforcement agency (ICE) when a DOL investigation is pending, and requires DOL to communicate with ICE concerning DOL's worksite investigations, and it outlines the agencies' commitment to protecting workers against retaliation and intimidation by employers and other parties who use threats of immigration enforcement.

The MOU is designed to protect against immigration interference during ongoing labor disputes at a workplace, including:

- the right to be paid the correct wages and overtime pay;
- the right to work under safe conditions;
- the right to workers' compensation, family and medical leave, and employee benefits;
- the right to be free from unlawful discrimination by federal contractors; and
- the right to protection from retaliation for seeking enforcement of any of these rights.

ICE should not conduct worksite enforcement activities, including DHS Form I-9 audits, during a DOL investigation, subject to some exceptions (if enforcement activity is warranted for purposes of national security or protection of infrastructure, or if it concerns a federal crime other than an unauthorized employment violation. This provision does not mean routine cases where a worker may have used a false Social Security Number or a borrowed Employment Authorization Document to get a job), and agrees to permit DOL to interview any person detained because of ICE worksite enforcement activities.

ICE agrees to "be alert to and thwart attempts by other parties to manipulate its worksite enforcement activities for illicit or improper purposes", and will evaluate if tips or leads concerning worksite enforcement are meant to "manipulate a pending labor dispute", meaning retaliations carried out by an employer's surrogate (such as local police or insurers).

The MOU is triggered by information from DOL about a labor dispute or a current investigation. DOL agrees to inform ICE of attempts made by employers and others to retaliate against workers for exercising their workplace rights or to manipulate in other ways pending labor disputes. Advocates should clarify with the DOL whether particular worker complaints or investigations are in the database that could trigger the conflict notice at ICE.

Workers who are victims of abuses under the MOU may be granted parole or deferred action as witnesses for a DOL investigation or related proceeding, and both will consider to seek visas for DOL witnesses, for example, to certify worker victims of crime for U and T visas.

To ensure the MOU is triggered, worker advocates should file complaints with DOL about unpaid wages or other violations of their labor rights, and make sure that the complaint is accepted and logged in the database. In cases where threats of retaliation have been made, or if it appears that an ICE enforcement action is imminent, the worker or advocate should immediately inform DOL of the threat.

- With information from the National Employment Law Project, and the National Immigration Law Center, NELP



## Excerpt of NLRB ruling on E-verify

Use of E-Verify in Union workplaces: The Ruprecht Co and UNITE-HERE Local 1

The E-Verify system, a voluntary web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States, is only mandatory for federal contractors and the federal government. Alabama, Arizona, Mississippi, and Tennessee made it mandatory for all companies by state law. Companies with over 10,000 workers and companies monitored by the Department of Homeland Security use it regularly.

On August 27, 2018, the National Labor Relations Board ruled in favor of UNITE-HERE Local 1, regarding the use of the E-Verification system with workers of a bargaining unit.

The Ruprecht Co., a meat processor, was ordered by a National Labor Relations Board judge to provide the union with private immigration documents and to cease E-Verification participation upon the union's request. Administrative Law Judge Joel Biblowitz ruled the Illinois-based company should negotiate with the union over its use of E-Verify.

The NLRB's decision started with an I-9 Audit by Immigration and Customs Enforcement. After the Audit, Ruprecht enrolled in E-Verify to prevent losing workers in future Audits. The company did it without consulting the Union. After the Union challenged Ruprecht use of E-Verify, the NLRB ruled that since federal regulations give unions the right to an opportunity to bargain when terms and conditions of employment are set to be changed, and since enrollment in E-Verify is voluntary, and that the use of the program can fundamentally change the hiring process, the Union had the right to bargain such use. The union had also requested documents from ICE identifying employees subject to the I-9 Form, and Ruprecht provided them with the employees' names redacted. The union requested the unaltered documents, and the NLRB ruled that the letters were relevant to the union's role as a protector and representative of affected employees.

Ultimately, the judge ruled that Ruprecht should provide the union with letters from ICE and rescind its participation in E-Verify.





# ARISE CHICAGO NO MATCH TOOLKIT

JULY 2019  
WWW.ARISECHICAGO.ORG

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