

# I-9 update: Social Security Administration no-match letters are back

Starting in 1993, the Social Security Administration began sending Request for Employer Information Letters—colloquially known as “no-match letters”—when it found I-9 compliance issues, such as information on an employee’s tax documents that did not match his or her Social Security records.

The letters helped uncover and resolve clerical errors, but also helped the government identify employees and employers that were using fraudulent information to hide illegal activity.

No-match letters have been challenged in courts and, depending on an administration’s stomach for battle, they have risen and fallen in favor. The Obama administration stopped sending them in 2012.

Last year, the Trump administration resumed sending no-match letters, with the ambitious goal of mailing 225,000 notices every two weeks.

**THE LAW** The Immigration and Nationality Act of 1952 and the Immigration Reform and Control Act of 1986 govern U.S. immigration policy.

For each new employee hired, U.S. employers must complete a Form I-9, Employment Eligibility Verification. The I-9 establishes the employee’s identity and his or her legal work status. Employers may only hire people who are eligible to work legally in this country.

The IRCA also bars employers from discriminating against employees based on their immigration status.

New employees must fill out Section 1 of the I-9 on their first day of work. Employers must complete Section 2 for each employee within three days after the person starts work.

Employers must keep an employee’s I-9 on file for three years after his or her hiring date or for one year after the date of the person’s termination, whichever comes later. Failing to complete I-9 forms can lead to significant penalties.

**WHAT’S NEW** The Trump administration is using no-match letters to help enforce the president’s Buy American, Hire American Executive Order. The program will continue in the spring of 2019, when the SSA will be comparing 2018 W-2 tax form data to its records and informing employers when there is a discrepancy.

## No-match letters and E-Verify

SSA no-match letters will be sent out for any discrepancy found on W-2 forms, whether or not the employer uses the government’s online E-Verify employment eligibility verification system.

Instead of a no-match letter, employers using E-Verify may receive a similar Tentative Nonconformation notice when entering information into that system. A Tentative Nonconformation notice indicates a discrepancy between I-9 information and the SSA’s information. (A similar notice from the U.S. Department of Homeland

Security indicates that the employee's photo does not match DHS records.)

**HOW TO COMPLY** A no-match letter provides specific guidance on what employers should do. It reads:

*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.*

Once the employer is on notice, the compliance clock starts ticking. The employer must correct its records if they are in error within 60 days. If the name on an employee's Social Security card is incorrect, it is his or her responsibility to correct it by contacting the SSA. Employees should be resolved within 60 days.

## **Complying with ICE & IER**

A no-match letter does not indicate that anyone necessarily did anything wrong. It merely flags a discrepancy that must be resolved. However, depending on the employee, a no-match letter may indicate a problem with the employee's immigration status or eligibility to work in the U.S.

U.S. Immigration and Customs Enforcement enforces the IRCA and other immigration laws. ICE ensures that workers are providing legitimate documentation and are allowed to legally work.

If a no-match letter leads you to believe an employee presented fraudulent documentation, contact your attorney immediately before taking any action. The Immigrant and Employee Rights Section of the Department of Justice prosecutes employers that unlawfully act against employees because of the employee's immigration status.

Understand that there are no safe harbors for no-match letters and/or I-9 documentation issues. Employers must follow through until the documentation matches. Failing to do so may result in litigation and fines. Because each case is unique, consult your attorney about any discrepancy that cannot easily be resolved.