

New twist in no-match letters: Employees' privacy

Earlier this year, the Social Security Administration began sending so-called [no-match letters](#) to employers that e-filed at least one 2018 W-2 on which an employee's name and Social Security number did not match. The letters request that you access the SSA's Business Services Online portal and use its [Social Security Number Verification Service](#) to correct the errors.

The IRS considers information in no-match letters—employers' identity and employees' names and SSNs—to be confidential tax information protected by [IRC § 6103](#). It can't, therefore, turn this information over to any other federal agency. The SSA has traditionally abided by the taxpayer confidentiality rules in § 6103.

The open question now is whether the SSA would break that rule and inform U.S. Immigration and Customs Enforcement of name/SSN mismatches.

Ways and Means wants to know

The House Ways and Means committee has written to the commissioner of Social Security wanting an answer to that exact question and a little bit more. The letter asks the commissioner to respond to the following questions:

- Whether the SSA will continue to be bound by the taxpayer confidentiality rules in § 6103 or whether it anticipates any changes in the future
- Whether § 6103 also protects information related to the SSA's BSO online portal from disclosure to other federal agencies
- Whether the SSA has a policy or practice under which it shares BSO information (e.g., employer registration information) with other federal agencies and whether the response would change if ICE demonstrates that a particular employer is already under investigation
- Whether the SSA has authority to confirm to ICE that an employer has received a no-match letter and if so, how many times it's provided this information to ICE during the past year
- Since January 2017, whether ICE has formally or informally requested information from the SSA regarding wage earner information that's contained in its earnings suspense file, information related to an employer's use of E-Verify or information related to an immigration or criminal investigation or audit of an employer.

Here's what you need to know

No-match letters aren't as sinister as they may appear to be. Employee name/SSN mismatches can occur for myriad reasons, but the most common reason is that female employees got married or divorced and never changed their names with the SSA. For mismatches not involving marital status, eliminate the possibility that you made a mistake when entering employees' data into your payroll system by asking to see their Social Security cards again. If you were right, tell them to visit an SSA office to clear up the discrepancy. And be sure to follow up with these employees.

Now for the don'ts:

- ✗ Don't assume a no-match letter conveys information regarding an employee's immigration status or actual work authorization.
- ✗ Don't use a no-match letter as a basis to terminate, suspend or take other adverse action against an employee.
- ✗ Don't use a no-match letter to request an employee complete a new I-9 form.
- ✗ Don't follow different procedures for different classes of employees based on their national origin or citizenship status.
- ✗ Don't require an employee to produce specific I-9 documents to address a no-match letter.
- ✗ Don't require an employee to provide a written report of SSA verification.