

FREQUENTLY ASKED QUESTIONS ABOUT NAME/SOCIAL SECURITY NUMBER “NO-MATCHES”

What is an SSA No-Match Letter? It is a written notice issued by the Social Security Administration (SSA) to an employer, usually in response to an employee wage report, advising that the name or Social Security number (SSN) reported by the employer for one or more employees does not “match” a name or SSN combination reflected in SSA’s records. The letter cautions employers against taking any adverse employment action against a referenced employee based solely on receipt of the letter, and explicitly states that the letter makes no statement about the referenced employee’s immigration status. Rather, the letter simply reports an apparent error in either the employer’s records or SSA’s records, and seeks the employer’s and, if necessary, the employee’s assistance in conforming those records. For more information on the SSA’s No-Match letter program, see <http://www.socialsecurity.gov/employer/noMatchNotices.htm>.

If an employee's name and SSN don't match SSA's records, doesn't that mean the employee is not authorized to work? No. There are many possible reasons for a no-match letter, many of which have nothing to do with an individual’s immigration status or work authorization. Because of this, an employer should not assume that an employee referenced in a no-match letter is not work authorized, and should not take adverse action against the referenced employee based on that assumption. Such action could subject the employer to liability under the anti-discrimination provision of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1324b.

What is the anti-discrimination provision of the INA? The anti-discrimination provision of the INA prohibits discrimination on the basis of national origin, citizenship status or immigration status, document abuse during the employment eligibility verification process and retaliation.

How does SSA determine when a no-match letter should be issued? After SSA processes wage reports submitted by employers, the agency tries to resolve name/SSN discrepancies by sending no-match letters to employees, employers and self-employed individuals to inform them when a reported name or SSN does not match SSA’s records.

Are there sources of information other than SSA no-match letters suggesting possible name/SSN no-matches? Yes. Other organizations issue notices or provide alerts similar to SSA no-match letters. They include:

- commercial businesses that conduct employee background checks;
- third-party identity theft inquiries; and
- health providers providing services to an employee under an employer-provided health plan.

Information from these sources can be received by employers and employees by mail, email, other electronic format or by telephone. Such reports or alerts, however, should be treated cautiously, and should not be used as conclusive evidence of employment authorization, as these third party reporting entities have no legal authority to determine an individual’s work authority and may not have access to current information contained in SSA’s databases. However, as in the case of responding to no-match letters originating directly from SSA, an employer should at a minimum follow the same policies, procedures and timelines as it does for SSA no-match letters.

What might cause a no-match? There are many reasons for a no-match notice, including but not limited to: (1) an unreported name change due to marriage, divorce or naturalization; (2) input errors by SSA staff; (3) reporting errors by an employer or employee; (4) identity theft; (5) errors in reporting proper culturally based hyphenated or multiple surnames; and (6) fraud.

What action should an employer take upon receipt of an SSA no-match letter or other notice of a no-match? To confirm that a reporting or input error is not the cause of a no-match, an employer, with the assistance of the referenced employee, should confirm that the name and SSN reported accurately reflects the referenced employee’s name and SSN. If no error is discovered, the employer should then advise the referenced employee to contact the local SSA office to address the reported no-match. An employer should not use the no-match letter or other no-

match notice by itself as the reason for taking any adverse employment action against the referenced employee. In addition, employers should not use the receipt of a no-match letter or other no-match notice (or the fact that an employee raises any objection to the employer's no-match response procedures) as a basis to either retaliate against the employee or otherwise subject the employee to heightened scrutiny. Doing so may violate the anti-discrimination provision of the INA, or other state or Federal equal employment opportunity or labor laws. While not required to do so, an employer may schedule (and document) periodic meetings or other communications with the employee during the resolution period to keep abreast of the employee's efforts to resolve the no-match, and to determine whether the employee needs more time to resolve the no-match than initially contemplated.

Do no-match letters or other no-match notices create “constructive knowledge” that an employee is not authorized to work? The mere receipt of a no-match letter or other no-match notice does not, standing alone, constitute “constructive knowledge” on the part of an employer that the referenced employee is not work authorized. Only the Department of Homeland Security (DHS) is legally authorized to conclusively determine an individual's authorization to work. It is recommended that an employer give a referenced employee a reasonable period of time to address and correct information contained in a no-match letter or other no-match notice.

What is a “reasonable period of time”? There are no Federal statutes or regulations in effect that define a “reasonable period of time” in connection with the resolution of a no-match notice. As a practical matter, a “reasonable period of time” depends on the totality of the circumstances. Of note, in the E-Verify context SSA has the ability to put a tentative nonconfirmation into continuance for up to 120 days. This recognizes that it can sometimes take that long to resolve a discrepancy in SSA's database.

What is the relationship between E-Verify Notices of Tentative Nonconfirmation (TNC) and SSA No-Match Letters? Both rely upon SSA databases. However, DHS's E-Verify program is specifically designed to verify an employee's work authorization and provides workers with an opportunity to correct the SSA databases before making that determination. For more information on the E-Verify program, see http://www.dhs.gov/files/programs/gc_1185221678150.shtm. In contrast reports simply indicating that an employee's name and SSN do not match SSA's records do not make any statement about an employee's work authorization.

How can employers minimize the receipt of SSA No-match Letters? Employers can use the Social Security Number Verification Service (SSNVS). SSA offers this free online service that allows registered users (employers and authorized third-party submitters) to verify the names and SSNs of employees against SSA records. Telephone Number Employer Verification (TNEV) is very similar to SSNVS, but it is an automated telephone service that allows registered users to verify names and SSNs over the telephone without speaking to an agent. Verifying SSNs through SSNVS and TNEV allows SSA to properly credit the correct earnings to the correct individual's earnings record. These services can only be used for wage reporting purposes. An employer's use of SSNVS or TNEV for any other reason (*e.g.*, to verify work authorization) is improper and may violate the anti-discrimination provision of the INA. For more information, go to www.socialsecurity.gov/employer, or contact OSC at the telephone numbers indicated below.

For more information on the anti-discrimination provision of the Immigration and Nationality Act, call OSC through its employer telephone hotline at **(800) 255-8155** or visit OSC's Website:

<http://www.justice.gov/crt/osc>