

SSA NO-MATCH LETTERS

FREQUENTLY ASKED QUESTIONS (FAQs) Employers' Guide



NAKASEC
미주한국인봉사교육단체협의회
NATIONAL KOREAN AMERICAN
SERVICE & EDUCATION CONSORTIUM

청년학교
YKASEC



간인교육문화마당집
Korea American Resource & Culture Center



KOREAN RESOURCE CENTER

National Korean American Service & Education Consortium

www.nakasec.org

900 Crenshaw Boulevard, Los Angeles, CA 90019

323.937.3703

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1. What is a SSA no-match letter?

No-match letters are notices that employers receive from the Social Security Administration (SSA) stating that SSA is unable to match the name and Social Security number (SSN) provided for specific workers to its records. The purpose of sending no-match letters to employers is to help them improve the accuracy of their wage reporting. SSA stated that a “no match” can occur for a number of reasons: (i) transcription or typographical errors; (ii) incomplete name or SSN; (iii) name changes; (iv) cases where the name or SSN reported is false; or (v) the SSN has been assigned to someone else. For example, Korean Americans can receive the letter because of the spacing of their name (i.e. Ok hee v. Okhee).

2. How does this letter differ from previous no-match letters?

On August 16, 2007, the Department Homeland Security (DHS) published the final rule on "safe-harbor" procedures for employers who receive a no-match letter. Under this final rule, DHS can use the no-match letter as an immigration enforcement tool by allowing the Immigration and Customs Enforcement (ICE) agency to use receipt of the no-match letter as evidence that the employer has "*constructive knowledge*" that an employee is unauthorized to work. If employers are found to have “constructive knowledge,” they might face civil and criminal penalties unless they follow certain regulations, known as “safe harbor” procedures. These letters sent out to employers will be used as such evidence.¹ Also DHS/ICE letters will accompany these SSA no-match letters and provide additional guidance regarding what an employer should do upon receipt of SSA no-match letters to achieve safe harbor.

3. What is the DHS/ICE letter referred to as "Notice of Suspect Documents"?

Most no-match letters will be sent from SSA. Letters can also be sent from DHS/ICE. The “Notice of Suspect Documents” informs the employer that according to the records checked by DHS/ICE, workers identified in the notice appear, at the present time, not authorized to work in the United States. The notice informs employers that documents submitted by the worker were found to relate to other individuals, that there was no record of the alien registration numbers being issued, or that the employment authorized document has expired. Accordingly, the documentation previously provided to the employer for these workers does not satisfy the I-9, or employment eligibility verification form requirements of the Immigration and Nationality Act (INA).

4. Does this new regulation apply to a previously received no-match letter?

No, ICE will not use no-match letters that are sent before the effective date of the no-match letter regulation to charge employers with constructive knowledge. The effective date will be

¹ On August 31, 2007, a federal judge in Northern California issued a temporary restraining order against DHS and SSA prohibiting DHS from implementing the rule and SSA from sending the no-match letters with the DHS insert to employers. This means that the **DHS rule will not go into effect on September 14th** and **SSA will not send out the no-match letters** with the DHS insert until the Court issues a decision following a court scheduled hearing on October 1, 2007.

determined and announced if DHS prevails in a lawsuit filed against it. The hearing is scheduled on October 1, 2007.

5. *Does DHS or ICE have access to the list of employees & employers who have received no-match letter from the Social Security Administration (SSA)?*

No, SSA will not give DHS the names of employees & employers that have received no-match letters. The regulation does not change the current legal restrictions that bar SSA from sharing this information with DHS/ICE, absent legal or legislative processes.

6. *What is the anticipated impact of no-match letters on the Korean American and other communities?*

The SSA database was not created for the purpose of immigration enforcement and contains numerous errors that will inevitably lead to mass confusion on part of the employers. The no-match letter regulation will contribute to widespread cases of racial profiling, discrimination, and unjust termination of authorized workers. Employers need to be aware that such unjust termination will violate some federal labor laws. It is also expected that the no-match letters regulation will drive undocumented workers further underground, promote an unregulated cash economy and fuel the market for counterfeit identity documents.

7. *I received a SSA no-match letter. Can I assume workers listed on the no-match letter are undocumented and fire the workers?*

Employers should not assume that a worker is undocumented solely because of the no-match letter. There are many reasons for a no-match, including transcription errors and name changes due to marriage that are not reported to SSA. An employer that terminates an employee without attempting to resolve the no-match and providing the employee with a reasonable opportunity to do so, or that treats employees differently based upon national origin, perceived citizenship status or other prohibited characteristics, may be found to have engaged in unlawful discrimination or other violations of law. The employer should also not change any terms or conditions of employment for the worker, such as changing shifts, pay, or benefits.

8. *What should I do when I receive a Social Security Administration (SSA) No-match letter?*

To avoid possible criminal and/or civil penalty, employers are recommended to follow certain steps, known as “safe harbor” procedures.

Within 30 days upon receipt of the notification:

- The employer promptly checks their records to ensure that the mismatch is not a result of a typographical or clerical error.
- If there is an error, the employer should correct the information with the relevant agency (SSA or DHS). If the letter is from SSA, the employer may update an I-9 Form relating to the employee. However, the employer should not perform an I-9 Form re-verification.

- o In addition, the rule advises that employers document a record of the manner, date, and time of such verification.
- If the employer determines that the SSA or DHS no-match is not a result of an error in the employer's records, the employer should promptly request that the employee confirm that the name and SSN in the employer's records are correct.
 - o If the employer confirms that the employer's record information is correct, the employer must promptly advise the employee of the date of receipt of the no-match letter and advise the employee to resolve the discrepancy with the relevant agency (SSA or DHS).
- The employer should also verify that the error has been corrected by using the Social Security Number Verification Service (SSNVS) administered by SSA and retain a record of the date and time of verification. SSNVS can be accessed through <http://www.socialsecurity.gov/employer/ssnv.htm> or by telephone at 1-800-772-6270.

Within 90 days of receipt of the notification:

- Within 90 days of receipt of the notification, the employer should re-verify the individual's work authorization. If the employer cannot cure the discrepancy within 90 days, s/he has **3 additional days** to complete the new I-9 Form. When the employer completes a new I-9 Form for the employee, s/he **cannot** use a document containing the SSN or alien number that is the subject of the no-match letter to establish work authorization, identity or both. Additionally, all documents used to prove identity and/or employment authorization must contain a photograph.
- The new I-9 Form should be retained with the original I-9 Form.

9. I know that one of my workers is undocumented. If I receive the letter and follow the steps ("safe-harbor" procedures), am I going to be protected?

No, if an employer has actual knowledge that the worker is undocumented, the employer will not be protected by following safe-harbor procedures. "Actual knowledge" is information that the employer has become aware of first hand as to her or his employee's immigration status or authenticity of identity and work authorization. Examples of actual knowledge are:

- An employee tells the employer that s/he is not present in the United States legally.
- An employee tells the employer s/he does not have work authorization documents.
- An employee asks the employer where s/he can obtain work documents.
- An employer is aware that the employee's work authorization documents have expired and that the employee has not obtained renewal documents.

10. I was unable to resolve the no-match discrepancy with the Social Security Administration (SSA) within 90 days. As set forth in the new rule, I prepared a new I-9 Form in order to re-verify employment eligibility between 90 and 93 days. What date should I use for the "began employment" date on the new I-9 Form?

An employer should record the "began employment" date that was as set forth in the original I-9 Form. However, when completing certification portions of an I-9 Form, the employer and her or his employee should record the actual date the new document is signed.

11. I was unable to resolve the discrepancy or complete a new I-9 Form within 93 days after receiving a no-match letter. Must I terminate the employee?

No, the final rule does not require the employer to take any particular action, nor does the final rule require an employer to follow the safe-harbor procedures. However, if in the totality of the circumstances, other independent evidence proves that an employer had constructive knowledge that her or his employee was unauthorized to work, the employer may face liability.

12. Must I notify ICE after completing the safe harbor procedures?

An employer need not notify ICE or SSA that they have completed the safe harbor procedures. The employer should retain, along with the relevant employees' I-9 Forms and supporting documentation, records that document resolution of the no-match and completion of a new or updated I-9 Form as outlined. DHS/ICE may use these records to determine whether an employer meets the "Safe-Harbor" requirements of the regulation.

13. What if I did not know the letter arrived? Am I still considered as receiving the letter?

Yes, receipt of the letter simply means its arrival at the employer's business location and does not take into account to whom specifically the letter was directed following its receipt.

14. What are the penalties if I ignore the no-match letter and ICE concluded that I employed undocumented workers?

An employer may be subject to a civil monetary penalty ranging from \$275 to \$2,200 per undocumented worker for the first violation. Higher penalties can be imposed for subsequent violations. Further, criminal charges may be brought against any person or entity who engages in a pattern or practice of knowingly hiring or continuing to employ undocumented workers. The employer may also face related criminal charges such as harboring undocumented workers and money laundering. Additionally, companies that are determined by DHS/ICE (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with this final rule could face fines of \$100 to \$1,100 per undocumented worker and incident. It is expected that there will be a 25% increase in civil penalties in the near future.

15. Are there other fines and penalties associated with unlawful employment?

Yes, it is unlawful for a person or other entity knowingly to hire an undocumented worker. There are both criminal and civil sanctions. Currently, the penalties are:

- The criminal penalty: for any person or entity which engages in a pattern or practice of violations will be fined not more than \$3,000 for each undocumented worker, imprisoned for not more than six months for the entire pattern or practice, or both.
- The civil penalty: for knowingly hiring an undocumented worker: Employers who don't comply could face fines of \$270 to \$11,000 per undocumented worker and incident, depending on the number of prior offenses.

16. Do I have to resolve no-match letters regarding individuals who are no longer working for me?

An employer is not required to resolve a SSA no-match letter if her or his worker is no longer employed. The employer, however, remains obligated to keep an I-9 Form for the required retention period (must keep the I-9 on file for three years after the date of hire or for one year past the date of termination, whichever is later). The employer may also send a notice to the former employee at her or his last known address to advise her or him of the no-match letter.

17. Does receipt of a no-match letter mean that ICE will come to my work place?

The no-match letter alone will not trigger immigration worksite enforcement actions. However, if DHS is conducting an I-9 audit and finds employer's receipt of the no-match letter, it could use the fact the employer received no-match letters to try to prove the employer had "actual" or "constructive knowledge" that they were hiring undocumented workers and will impose criminal and civil penalties.

18. Can DHS/ICE subpoena my company's no-match letter as part of an I-9 audit?

Yes. During the I-9 audit, DHS/ICE may subpoena evidence that is material and relevant to the enforcement of the nation's immigration laws, such as an employer's I-9 Form, payroll and other related employment records, including no-match letters. After reviewing subpoenaed documents, DHS/ICE might send the "Notice of Suspect Documents" to the employer.

19. I have less than 10 employees. Does the no-match regulation apply to me?

No. SSA no-match letters will only be sent to an employer with more than 10 employees with mismatched information or whose mismatched employees represent ½ of 1% (1 out of 200) of the W-2 Forms filed with SSA.

20. What should I do upon learning from third parties that an employee is unauthorized to work or has provided fraudulent identification?

Allegations of unauthorized employment by third parties need to be reasonably investigated by the employer. The receipt of a no-match letter is an example of information that could indicate a problem exists. An employer should exercise care and be reasonable in her or his approach. An employer should also create a process that treats all allegations in a similar manner without regard to ethnicity or citizenship.

21. How can I avoid discrimination when responding to a no-match letter?

An employer should treat everyone identified in the no-match letters alike. An employer's response to no-match letters should be consistent for each employee identified in the letters. An employer should not treat any workers differently because of her or his national origin, English-language ability, "foreign" appearance, or perceived citizenship status. The Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"), Civil Rights Division,

U.S. Department of Justice can assist employers and workers with any questions about responding to SSA no-match letters in a non-discriminatory fashion. OSC's employer hotline is 1-800-255-8155 and its worker hotline is 1-800-255-7688, or visit <http://www.usdoj.gov/crt/osc/>.

22. How can I verify the authenticity of the documents presented by an employee?

Most advocates advise that an employer should accept documents at face value.

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• This guide is produced by the National Korean American Service & Education
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• **Sources:**

- 8 CFR Part 274a, *Safe-Harbor Procedures for Employers Who Receive a No-Match Letter*, available at <http://www.ice.gov/doclib/finalsafe.pdf>.
- American Immigration Lawyers Association (AILA), *AILA Summary of the ICE No-Match Letter*; and AILA’s teleconference, *"Late-Breaking Audio Seminar: Social Security No-Match Regulation."*
- National Immigration Law Center (NILC), *DHS To Finalize Regulations On SSA No-Match Letters*.
- Immigration and Customs Enforcement, *www.ice.gov*.
- Greenberg Traurig’s Business Immigration and Compliance Group, *Department of Homeland Security Issues FINAL Regulations on Social Security Number No-Match Letters*

• If you have further questions, please contact NAKASEC or one of our three affiliates:

- NAKASEC: 323.937.3703, ext. 209
- Korean American Resource & Cultural Center, Chicago: 773. 506. 9158
- Korean Resource Center, Los Angeles: 323. 937. 3718
- YKASEC – Empowering the Korean American Community, Flushing: 718.460.5600

• www.nakasec.org
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