



IMMIGRATION PRACTICE

# ALERT

## SOCIAL SECURITY ADMINISTRATION RESUMES ISSUING SOCIAL SECURITY NO-MATCH LETTERS

By Alka Bahal

Effective April 6, 2011, pursuant to a directive from its Commissioner, the Social Security Administration (SSA) resumed sending “no-match” letters to inform employers that a worker’s reported name or Social Security Number (SSN) does not match SSA’s records. These “no-match letters” are titled “Request for Employer Information” and referred to as decentralized correspondence (DECOR) notices. Their stated purpose is to obtain corrected information to help SSA identify the worker to whom the earnings belong so SSA can post the earnings to the correctly identified worker’s earnings record. The directive instructs SSA to resume sending employer DECOR<sup>1</sup> letters for tax year 2010, to not send the letters SSA held for tax years 2007 through 2009 and to discontinue sending “Code V” educational correspondence (EDCOR)<sup>2</sup> letters.

SSA had not discontinued sending an employee version of the DECOR letter to employees at their home address if the name and/or Social Security number listed on the employer’s submitted W-2s did not match the information in the SSA database. This practice continues unchanged.

The new version DECOR letters are different from previous SSA employer no-match letters, which listed multiple employee Social Security numbers and asked employers to provide updated information. The new letter lists only one employee per letter and omits the Immigration and Customs Enforcement (ICE) insert that

cautioned the employer that failure to act upon receipt of the SSA no-match letter could be construed as constructive knowledge of knowingly continuing to employ unauthorized workers, based on the totality of the circumstances.

The new employer DECOR letter cites the Privacy Act and cautions that failure to complete the letter prevents SSA from crediting the employee with the correct wages. It further adds, “We may give this information to the Internal Revenue Service for tax administration purposes or to the Department of Justice for investigating and prosecuting violations of the Social Security Act.”

Just like earlier employer no-match letters, the new letter advises there may be many reasons for the no-match letter, including typographical errors, name changes and incomplete information. It also states, “The letter does not imply that you or your employee intentionally provided incorrect information about the employee’s name or SSN. It is not a basis, in and of itself, for you to take any adverse action against the employee, such as laying off, suspending, firing, or discriminating against the individual.”<sup>3</sup>

In its guidance on how to handle inquiries relating to SSA no-match letters, SSA instructs employers to check their records to determine if their information matches the records submitted to SSA and to ask the employee to

check his or her records to ensure he or she has accurately reported his or her name and Social Security number to the employer. If the employer and the employee are unable to resolve the issue, the employer should instruct the employee to contact a local SSA office and provide the employee with a reasonable amount of time to resolve the discrepancy.

The field guidance advises that if an employer states it is unable to resolve the mismatch because the employee is unable to provide a Social Security card or no longer works for the employer, the employer should document efforts made to obtain the corrected information and retain the documentation for four years. While this advice may be adequate for employees no longer employed, it remains unclear whether the mere documentation of the employee's inability to correct his or her record will satisfy ICE I-9 auditors who now routinely request copies of all SSA no-match letters and related correspondence in their audits.

In the current environment of aggressive ICE enforcement against employers, a laissez faire approach to receipt of this notice is not advisable. Employers should remain mindful, however, that key governmental

entities, including ICE, SSA and the U.S. Office of Special Counsel (OSC), seem to be in agreement that the mere receipt of a no-match letter is not evidence the employee is using fraudulent documents and is not authorized to work. They are also in agreement that an employer should not take adverse action against the employee merely based on the letter.

Fox Rothschild can work with employers to develop strategies to effectively balance their obligations to follow up upon receipt of a DECOR Mismatch Notice while treating their employees in a manner that does not run afoul of the anti-discrimination laws.

For more information regarding the information in this alert, or if you require assistance with your company's immigration or employment issues, including IRCA compliance, I-9s, audits, visa processing or comprehensive immigration strategy, please contact Alka Bahal, Co-Chair of the Corporate Immigration Practice Group, at 973.994.7800 or [immigration@foxrothschild.com](mailto:immigration@foxrothschild.com) or any member of our [Immigration Practice](#) or [Labor and Employment Department](#).

<sup>1</sup> SSA began sending DECOR notices in 1979.

<sup>2</sup> SSA sent "Code V" educational correspondence (EDCOR) to employers for tax years 1993 through 2005 if their wage reports included more than a certain number of employee names and SSNs it could not match to its records. The exact criteria for sending these notices varied over the years. SSA stopped sending Code V EDCOR as of tax year 2006 in response to litigation surrounding a proposed Department of Homeland Security (DHS) regulation that would have required employers to follow a prescribed course of action upon learning of an employee name or SSN discrepancy, or "no match." DHS later rescinded the proposed regulation, and the Commissioner decided in 2011 to discontinue this correspondence process.

<sup>3</sup> A sample of the new letter can be found on the SSA's web site at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0900901050>.



Fox Rothschild LLP  
ATTORNEYS AT LAW

Attorney Advertisement

© 2011 Fox Rothschild LLP. All rights reserved. All content of this publication is the property and copyright of Fox Rothschild LLP and may not be reproduced in any format without prior express permission. Contact [marketing@foxrothschild.com](mailto:marketing@foxrothschild.com) for more information or to seek permission to reproduce content. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.