

Eye on Washington Regulatory Update



SSA to Notify Employers of Name/SSN Errors on 2019 Forms W-2; IRS Information Reporting Penalties May Apply

The Social Security Administration (SSA) recently announced that they will mail letters to employers that filed one or more 2019 Forms W-2 containing employee names and Social Security Numbers (SSNs) that did not match SSA's records, beginning in December 2020.

The letter will advise the employer regarding the number of employee names and SSNs on 2019 Forms W-2 that did not match SSA's records, and how to access the Forms W-2 that don't match. SSA explains that "There are a number of reasons why reported names and SSNs may not agree with our records, such as typographical errors, unreported name changes and inaccurate or incomplete employer records." They note that:

"This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or SSN. This letter does not address your employee's work authorization or immigration status.

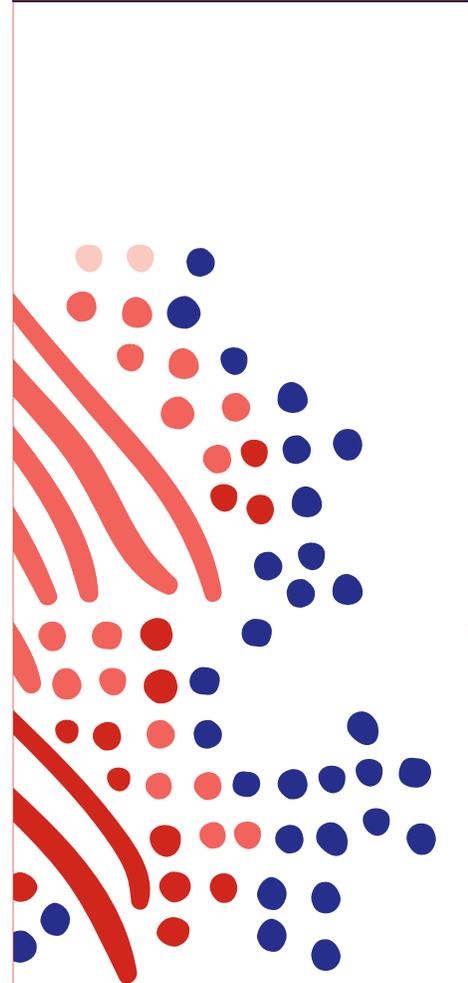
Do not take adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because this letter identifies a mismatch between his or her SSN or name as reported to us. Those actions could violate state or federal law and subject you to legal consequences."

It is important that employers review such letters and take appropriate action to verify and correct the information reported. SSA relies on accurate Forms W-2 from employers to determine eligibility for Social Security benefits. The Internal Revenue Service (IRS) relies on employer W-2 data to administer the tax laws.

Action Needed

The letters will include a new attachment with instructions on how to register for and use Business Services Online (BSO) to view SSN mismatches, as well as how to file Forms W-2C. These instructions can be found at the link found below. There is a one-time registration at www.socialsecurity.gov/bsowelcome.htm. If necessary, employers should correct any names and/or SSNs via IRS Form W-2C.

Further, given that the letters will be received in December 2020 for information reported on 2019 Forms W-2, employers should make an effort to review their applicable source records and make any corrections to current payroll records, so that Forms W-2 for 2020 reflect correct information, minimizing the need to file forms W-2C for 2020.



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IRS Accuracy Penalties May Apply

Employers file Forms W-2 with the SSA annually, which in turn shares the data with the IRS. IRS information reporting penalties¹ may apply under Internal Revenue Code (IRC) Sections 6721 and/or 6722 for failure to file and furnish correct Information Returns by the required due date. Penalties may apply if an employer:

- Fails to file timely
- Fails to include all information required to be shown on Form W-2
- Includes incorrect information on Form W-2 (including employee names and/or SSNs that don't match government databases)
- Files on paper when required to file electronically

Penalties under IRC Section 6721 can be up to \$270 per Form W-2, up to an annual maximum of \$3,339,000² for 2019. For businesses with annual gross receipts of less than \$5 million, the maximum is \$1,113,000. Penalty amounts are indexed and may change annually.

A separate penalty under IRC Section 6722 (failure to furnish correct Information Returns) may also apply to the same error. Both penalties may apply; e.g., if an employer furnished an incorrect form to an employee and also failed to file a correct Form W-2 by the applicable deadline and filing method. If both penalties are assessed, the penalty could be as much as \$540 per Form W-2, up to more than \$6.6 million annually.

Accuracy Penalties May Also Apply to Affordable Care Act Forms 1095-C

Additionally, under the Affordable Care Act, Applicable Large Employers (generally those that employed at least 50 full-time equivalent employees during the preceding calendar year), must file and furnish Forms 1095-C to employees to report whether they offer their full-time employees and any dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan. Forms 1095-C are also subject to accuracy penalties under IRC Sections 6721 and 6722.

Resources

For more information and a sample letter, see <https://www.ssa.gov/employer/notices.html>.

You may also call SSA at 800-772-6270; or send an e-mail to the SSA at employerinfo@ssa.gov or get general information at www.socialsecurity.gov/employer.

SSA provides a free Social Security Number Verification Service (SSNVS) at <https://www.ssa.gov/employer/ssnv.htm>, which allows employers to verify employees' names and SSNs in advance of filing Forms W-2. Using SSNVS can significantly reduce errors.

¹ Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs, (IRS Publication No. 1586)
² <https://www.irs.gov/pub/irs-drop/rp-19-44.pdf>

ADP Compliance Resources

ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting employment-related human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP Eye on Washington Web page located at www.adp.com/regulatorynews.

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