

Eye On Washington

# Regulatory Update



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## Social Security Administration to Notify Employers of Name/SSN Errors

Starting in August 2018, the Social Security Administration (SSA) will begin mailing “Educational Correspondence” to employers that submit Forms W-2 containing employee names and Social Security numbers (SSNs) that do not match SSA’s records. An initial letter in 2018 will provide general background information and offer resources to help employers ensure accurate information in Forms W-2. It will also inform the employer they may receive similar letters beginning in 2019 if there are errors in names and SSNs in 2018 and future Forms W-2. These letters will ask the employer to review any errors and take action to correct their records. There are many reasons why names and SSNs on Forms W-2 may not match SSA records; for example, data input errors and unreported name changes due to marriage or divorce.

### IRS Accuracy Penalties May Apply to Forms W-2

Employers file Forms W-2 to the SSA annually. Because Form W-2 is an IRS tax form, IRS information reporting penalties<sup>1</sup> may apply under Internal Revenue Code (IRC) Sections 6721 and/or 6722 for failure to file and furnish, respectively, 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 name and/or SSN that don’t match government databases)
- Filing on paper when required to file electronically

Penalties under IRC Section 6721 (failure to *file* correct Information Returns) can be up to \$260 per Form W-2 in 2018 (\$270 for 2019), up to an annual maximum of \$3,282,500.<sup>2</sup> For businesses with annual gross receipts of less than \$5 million, the maximum is \$1,094,000. 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 exposure for employers could be as much as \$540 per Form W-2, up to more than \$6.5 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 employees, including 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 their 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.

### IRS Enforcement of Accuracy Penalties May Be Evolving

In recent years, the IRS has rarely assessed accuracy penalties for incorrect names and SSNs on Forms W-2. Similarly, no accuracy penalties have been assessed to date with respect to Forms 1095-C; however, the IRS electronic filing system for Forms 1095-C does notify employers of errors in names and SSNs (including any reported dependents with errors). In contrast, IRS accuracy penalties are enforced with respect to other IRS information returns, such as Forms 1099.

<sup>1</sup> Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs, (IRS Publication No. 1586).

<sup>2</sup> IRS Revenue Procedure 2017-58.

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## SSA's 2018 Letter

In a recent teleconference, SSA officials said that the SSA would send letters to employers that had at least one name/SSN error on 2017 Forms W-2. These letters will begin in August 2018, with batches of roughly 200,000 letters every two weeks. The letters are general in nature, asking employers to help ensure the accuracy of W-2 reporting by registering for SSA's Business Services Online (BSO) system to access a variety of services, such as:

- Social Security Number Verification Service (SSNVS)
- View W-2 submission processing status and any errors
- AccuWage Software to test wage files for proper formatting

The letter includes general tips to help ensure accuracy, such as asking employees to check their last Form W-2 against their Social Security card to identify any differences, and reminding employees to report any name changes due to marriage, divorce, etc.

## 2019 and Future SSA Letters

The 2018 letter explains that the SSA will begin mailing informational notices to employers who submit Forms

W-2 that contain name and SSN combinations that do not match SSA's records, beginning in February 2019 (i.e., based on 2018 Forms W-2).

For a sample employer letter, see <https://www.ssa.gov/employer/notices/EDCOR.pdf>.

## New SSA "Landing Page" for Educational Correspondence

The SSA has established a helpful [web page](#) to assist employers:

- How to register for BSO and how to activate a BSO account
- How to use the Social Security Number Verification Service
- How to find errors in BSO
- A sample letter to give to employees
- How to fix errors using Form W-2c
- Frequently Asked Questions

For further information, including samples of letters, see <https://www.ssa.gov/employer/notices.html>

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## 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](http://www.adp.com/regulatorynews).

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