

SOCIAL SECURITY MISMATCH PROTOCOL

IF YOU RECEIVE A NO MATCH LETTER:

1. **Verify Your Records:** Compare the employee's SSN with your records. If your records do not match the W-4 form, then correct the W-4 form and report the correction to the SSA. Maintain copies of correspondence submitting corrected information to the SSA.
2. **Notify the Employee of the Discrepancy:** If checking your records shows you have been reporting the number as provided by the employee, then inform the employee that the SSA has notified you of the problem and that he or she must resolve it with the SSA. Tell the employee to report the correct information to you once it has been resolved with the SSA. **Do not give the employee a deadline to report the information unless you want to discharge employees who fail to provide corrected information.** If you decide to impose a deadline, it must allow a reasonable amount of time to resolve the problem, as the employee may need to obtain a new Social Security card.
3. **Confirm your Instructions in Writing:** Write a letter directing the employee to resolve the issue with the SSA and asking the employee to provide updated information, and include it with the employee's pay check. Retain a copy of the letter for your records. Maintain a list of the names of employees who received the written instructions. Remember, you must continue to pay payroll taxes for each employee, regardless of any mismatch.

If the employee returns with new information, correct your payroll records and send a letter to the SSA notifying the agency of the correction. **If the employee returns with information that could indicate a lack of work authorization (i.e., a new name and/or SSN), then you may need to follow up further to avoid having "constructive knowledge" of the lack of authorization.**

If the employee does not return with corrected information, **do not automatically fire the employee or re-verify their authorization to work in the United States.** However, this is a good opportunity to review your I-9 records and make sure they are in order. If you do not receive corrected information by the end of the tax year, send a letter to the employee stating as follows:

"On [date], we notified you that the Social Security Administration had advised us of a name/number mismatch in the agency's records of your account. We suggested that you go to the local SSA office to straighten out the problem. Please let us know if any of the information in our records needs to be changed."

Another letter with the same warning should be sent at the end of the next tax year if the employee does not provide corrected information. Once you have requested the update in two successive tax years, you do not need to ask again. As a matter of policy, having employees submit a new W-4 on an annual basis will serve as an annual solicitation for their correct SSN.

IF THE EMPLOYEE USED THE QUESTIONABLE SSN ON THE I-9, REVERIFY THE I-9 BUT DO NOT ACCEPT ANY DOCUMENT WITH THE QUESTIONABLE SSN UNLESS AND UNTIL THE MISMATCH IS RESOLVED.

4. **Write a letter to the SSA:** Write a letter to the SSA reporting the steps you took to resolve the SSN conflict for each affected employee, including those you no longer employ.
5. **Establish Company Policy and Apply it Consistently:** You must establish and implement a policy and procedure for responding to mismatch letters and to maintain records of your response to mismatch letters. **However, you must be careful to apply the policy consistently to all employees in order to avoid claims of discrimination.**
6. **Do not terminate:** Employers should never assume an employee with a reported mismatch is an undocumented alien, and should never fire an employee because of a mismatch letter. In the same token, employers cannot ignore information they receive when following up on mismatches.
 - **If an employee admits undocumented status:** Immigration law prohibits employers from continuing to employ workers that they know to be undocumented. **The employee must be terminated immediately.**
 - **If an employee shows up with an entirely different "new" name and/or Social Security Number:** If a person comes up with an entirely new identity, then the employer must demand an explanation. If the explanation is reasonable, then the employer can accept it and should **re-verify** the I-9.
 - **If an employee repeatedly fails to correct a mismatch:** This is a matter of employer policy. If the employer has a policy of terminating for failure to provide accurate information, then the employee should be terminated for failure to provide accurate information on hire. **But such a policy must be enforced consistently.** Otherwise, the employer can continue to employ the individual, but must be aware that it may not be able to terminate others who provide inaccurate personal data.