

MINUTES OF THE SOCIAL SECURITY ADMINISTRATION AND CIS
AILA LIAISON MEETING ON SSA-RELATED ISSUES
May 8, 2006 10:00am

The more than 9,000 members of the American Immigration Lawyers Association (AILA) hold SSA, its mission and its professionalism in the highest regard. We thank SSA for its continuing recognition that international cultural and economic exchange is vital to the well-being of the United States and that efficient SSA policies concerning enumeration of aliens is vital to that end. We also thank US CIS for its interest in enhancing methods for verifying work authorization, which is essential in the enumeration process. We wish to thank all of you for your willingness to meet with AILA. We hope not only to gain useful information that we can pass on to our members but perhaps in the asking to provide you with the benefit of our unique perspective.

The SSA Enumeration Process

1. The Current Process. Please describe SSA's current process for issuing Social Security Numbers (SSNs) to noncitizens, including acceptable documents, verification methods, timeframes, documents generated in the process, and procedures.

- Is SSA still recommending allowing 10 days from physical admission before applying for an SSN?
- Explain the process followed when an applicant applies prematurely and SSA can't get electronic verification of status through SAVE (Systematic Alien Verification for Entitlements). Does SSA keep querying SAVE? At what point does it send the I-845 request for secondary verification to CIS?

Answer. When non-citizens apply for new SSNs, SSA must examine the physical immigration documents and then verify the immigration status through SAVE. (See SSA's Program Operations Manual Systems (POMS) at <https://s044a90.ssa.gov/apps10/poms.nsf/aboutpoms>, and particularly POMS 00203.720 for procedures). The immigration status data that provides verification through SAVE is entered in different time periods and in different ways depending on how and where the applicant obtained the work authorized immigration status. If an applicant is eligible because of an EAD, the data should be available in SAVE within 24 hours of card production. Those nonimmigrants who can work incident to status (e.g., H and L) have their status entered into a database by CBP (an upcoming meeting with CBP and ICE should provide more details on this process). Some ports enter data directly into a SAVE system while others still send paper I-94 cards to the processing center in Kentucky for manual data input. In any case, SSA/CIS still recommend that applicants wait at least ten days from becoming employment eligible (entering US, approval of COS, or issuance of EAD, etc.) before applying for the SSN. With SSA's transition to web-based SAVE verification in September/October 2006, some of the discrepancies in verification timing should change.

If SSA cannot get primary electronic verification through SAVE at the time of application, the local SSA staff will query SAVE again ten days later. If SSA still cannot get SAVE verification, it will complete a paper G-845 form requesting secondary

verification and mail it by U.S. post to the local CIS office. SSA's move to web-based SAVE queries will allow it to electronically transmit the G-845 secondary verification request to CIS. Currently there is a very wide array of response times from CIS, with some SSA offices reporting they occasionally never receive a response to the G-845 from CIS.

Asylee and refugee status are verified at DOS through EOIR and RAPS, respectively. In secondary verification, SSA verifies J, F, and M status by faxing the SEVIS facility in Los Angeles. SSA is currently talking to SEVIS about getting more direct access to SEVIS to avoid the fax system. See RM 00203.460, Evidence for an SSN Card for a Refugee, Parolee, Asylee at <https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0100203460!opendocument>. See RM 00203.488, Verifying the Immigration Status of Foreign Students (F-1 and M-1) and Exchange Visitors (J-1) <https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0100203488!opendocument>

2. Intelligence Reform and Terrorism Prevention Act of 2004 (the "Act").

Please update the status of SSA's implementation of §7213 of the Act and explain SSA's minimum standards to verify documents submitted to establish eligibility for an original social security card. How does SSA verify birth records? What division of SSA takes the lead in working with DHS on fraud enforcement actions? What is the status of the Interagency Task Force established by the Act and what part of SSA is involved? Section 7214 prohibits the display of SSNs on driver's licenses. Has SSA seen any change in the use of the SSN by states and private entities as a record tracking number?

Answer. SSA has been working on § 7213 actively in the past year with other government agencies. SSA currently uses software that allows employees to verify the existence of a domestic document. If the authenticity of the document is in question, SSA verifies its existence with the issuing agency by fax, telephone, or mail and involves state and local governments. This is true for birth records as well. To date, birth records used for Enumeration at Birth applications are not verified. The timing for verification varies widely because of the many agencies involved. Foreign birth records are not verified with foreign issuing authorities; the SAVE process is the only verification system SSA uses for non-citizens.

REAL ID has increased the importance of document verification and name format consistency across all government agencies. SSA has been active in trying to come up with a solution to this vexing problem. The biggest issue to overcome is the different legal standards applicable to name formats. In some states it is based on common law; in others, there are almost no standards. A first step towards a legal name standard was taken in December 2005, but SSA is unable to share this standard yet. This affects foreign nationals to the extent that more consistent and precise name standards will probably cause more problems for those who shorten, initialize, or change their name after arriving in the U.S., especially where the name on a CIS document differs from the name on other evidence. The best advice from SSA is that foreign nationals should be VERY consistent about the exact name used on CIS documents, with local governments, on driver's licenses, etc., since they will soon all be tied together. Through REAL ID and the Act referenced above, the US Government is renewing an

effort to standardize births and other events with the Electronic Verification of Vital Events system (EVVE).

SSA does have a detailed procedure for the referral of suspected fraudulent documents to its Office of Inspector General but does not refer to other agencies. The details are available in the Program Operations Manual System on www.ssa.gov as POMS RM 00202.237.

Regarding section 7214, currently only about six states still use SSNs on driver's licenses.

3. Avoiding Delays in SSN Issuance – Training Issues. Thank you for establishing a system whereby AILA's SSA Liaison Committee can coordinate with SSA Regional representatives in the case of delayed SSN issuance. Most member inquiries are resolved quickly once a regional SSA supervisor steps in and contacts a status verifier. However, we would like to find a way to avoid these delays in the first place. Some of the delays arise from "front desk" errors in SSA field offices, e.g., rejection for lack of an EAD (Employment Authorization Document) where none is required, e.g., for L, E, R, H, O and P nonimmigrants; rejection for lack of full middle name where only middle initial is shown on USCIS document; rejection for lack of I-797 where none required, e.g. E, R, blanket L. What training does SSA provide its field offices on these issues? Can SSA provide additional or enhanced training specifically on the types of documents that should be accepted from applicants in particular nonimmigrant categories? Would SSA consider involving AILA members in the review of training materials?

Answer. SSA acknowledges that these issues exist but with over 1 million SSNs issued to foreign nationals each year there are bound to be breakdowns with some applications. SSA does spend significant time and effort on training issues. SSA believes problems AILA identified came from local offices that do not see a high level of non-citizen applicants. They believe high volume offices are doing a good, consistent job.

SSA is very open to considering specific problems AILA members face and issuing directed training circulars to regions on these issues. AILA is preparing a list of these common issues.

CIS Status Verification System

4. SAVE system. We are grateful for USCIS's efforts to address verification-related delays in alien enumeration. For a start, please explain the current SAVE system that SSA uses to verify immigration status:

- What are the data components and what does each include?
- What is the procedure for entering CIS approval of a change or extension of status in the SAVE database? EADs issued by a District Office? By a central processing office? Admissions at a POE? Adjustments?

- How is each data component entered? What data components are entered in “real time” and what components are not? Who enters each data component? Who maintains each data component?
- Who is in charge of maintaining the SAVE system and where does that entity/person fit in the DHS structure?
- Explain any consideration given to incorporating US VISIT data in the SAVE database that is queried by SSA.

Answer. The SAVE Program and its database (the Verification Information System or VIS), are under USCIS. The SAVE database receives nightly downloads of all new and updated immigrant records from the Central Index System, a CIS-owned system. The Central Index System contains records from the USCIS Computer Links Application Information Management System (CLAIMS), which contains I-797 Approval Notice information. In addition, VIS contains records from the USIS Image Storage and Retrieval System (ISRS) data, which contains records of employment authorization documents (EAD cards) and Alien Registration cards. VIS also receives nightly downloads of CBP non-immigrant records from the Interagency Border Inspection System (IBIS), formerly the Treasury Enforcement Communications System (TECS). However, currently the only information from IBIS/TECS available to SAVE is data from handwritten I-94's that are input by contractors at London, Kentucky. SAVE personnel are looking at having a direct upload of CLAIMS data instead of accessing the data through the Central Index System. In addition, they are looking at getting a direct upload of Student and Exchange Visitor Information System (SEVIS) data. SAVE personnel are also working with CBP personnel to obtain additional access to IBIS/TECS data showing secondary inspection of non-immigrants and their classification and date of admission. SAVE personnel have been exploring access to the US-VISIT Arrival and Departure Information System (ADIS). However, IBIS/TECS updates ADIS, so access to that information might be duplicative.

5. Correcting SAVE Errors in CBP/ICE/CIS Data. When SSA informs an alien that DHS has not verified status and the verification delay relates to an error in DHS records, AILA members would like to take steps to correct DHS records.

- Please explain current efforts and discussions with CBP and ICE to provide for amendment and correction of records that SSA uses for SAVE queries? Which records can CIS, CBP or ICE correct? Can this be done at the local district offices? How? Can CIS coordinate such correction through its SAVE offices? Which records can CIS correct?
- Until CBP or ICE agrees to establish a mechanism to accept AILA member requests for a correction, can CIS accept and coordinate a request for correction?

Answer. Because both the SAVE program and the Central Index System are under USCIS, many SAVE field personnel have the authority to update records and correct errors in the Central Index System. However, no one within USCIS has authority to update CBP's IBIS/TECS records. Where there is an error on an I-94 card

that causes a verification delay, the individual can go to a local CBP Deferred Inspection Office to ask to have the correction made to the I-94 card, as well as to the CBP data. CBP believes that many verification delay problems will be solved when SAVE personnel have access to additional levels of IBIS/TECS non-immigrant entry data. SAVE personnel and CIS will continue to contact CBP regarding mechanisms or focal points to coordinate correction of other CBP data errors.

6. Nonverification of New Status Classifications. The only SSN delays that seem to not be resolved promptly through the liaison mechanism are those relating to new status classifications (example, "H-1B1" for Singaporeans) which DHS apparently cannot verify in some situations, and A-numbers where the alien has a CIS-issued receipt assigning an A# but DHS records show the A-number has been issued to another individual. Can CIS provide a place where AILA attorneys can go with their clients to get these issues resolved?

Answer. Continue to use the AILA-SSA liaison system for these issues. Hopefully, improvements in the SAVE databases and procedures will give affected applicants a way to correct database errors either with CIS, CBP or ICE.

7. Resolving Delays in SSN Issuance. Under the AILA SSA inquiry system, noncitizen clients are instructed to wait at least 10 days after initial admission to the US to apply for a number, and AILA members are told to wait an additional 60 days before submitting the liaison inquiry (allowing a supervisor 30 days to resolve it). Many applications have been pending for months before an inquiry is actually submitted. Fortunately, once an SSA Regional Supervisor intervenes, numbers are issued very quickly. Based on actual liaison cases we are providing, can SSA and/or CIS explain what happens at this point to resolve the case quickly and whether there is any way to achieve these results without invoking the liaison process? [Note: We are grateful that, since our meeting, SSA has followed up and advised that most of these cases resulted in the assignment of SSNs once the AILA liaison contacted the appropriate SSA regional supervisor. We would be grateful for CIS's explanation of the breakdown in the normal process, how the SSA regional supervisor obtained verification, and what can be done to avoid future breakdowns in the normal process].

Answer. The AILA/SSA Liaison system has been working well to resolve problems of long-pending applications but why the problems arise and how to avoid them are still open questions. When AILA Liaisons make inquiries to Regional SSA officials the problems are usually resolved through specially appointed CIS liaisons.

AILA has provided several specific examples of long-pending problems and never resolved problems (a rare occurrence) such as where there was an error in the initial entry of immigration status data. CIS representatives will review these examples, make specific inquiries, and return with an explanation of breakdowns and suggestions for future fixes.

8. SSA-DHS Coordination Efforts. At AILA's spring conference in 2004, there was discussion of a high-level SSA-DHS task force to, among other things, address problems with delayed enumeration. What is the status of the committee, and what issues and solutions has it considered?

Answer. This task force was disbanded. In April 2006, an interagency task force met with Kim Baldwin from SSA and all three DHS agencies to work on electronic verification of vital events. The REAL ID Act will have a significant effect on what driver's licenses will look like. Establishing driver's license standards has been a difficult issue. Making connections between driver's license standards and the legal name standard for SSNs is one of the matters under discussion.

9. Status Verification Requests to DHS. What is the status of SSA's plan to institute electronic transmission of the G-845s to DHS?

Answer: See answer to question 1 above.

10. Status Verification for Fs, Ms, Js. Please explain the current system for status verification of students and exchange visitors in SEVIS. Is SSA still faxing those G-845s to a DHS status verification center in L.A.? Are there any steps that F, M, and J sponsors can take to ensure their sponsored participants are timely verified by DHS for SSN issuance?

Answer. The current system requires F, J, M's to report to their school or sponsor within 30 days or the individual goes into an invalid status. The sooner they report, the sooner they get updated into SEVIS. Normally the upload is within 48 hours. If it is necessary to invoke secondary verification process, these applicants will be in the system. There are updates concerning this procedure for Fs and Ms in the POMS. (See POMS RM00203.600 List of Documents Establishing Lawful Alien Status for an SSN Card, "How soon can an F-1 or M-1 international student, who also will be working while studying in the United States, get a Social Security number?" <https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0100203600!opendocument>, and ITIN: Procedural change for students on F-1, J-1 or M-1 visas.) The G-845, Verification Request Form, which is designed to verify the status of an alien for a government agency that does not participate in SAVE, is currently faxed to the SEVIS facility in Los Angeles (see Answer #1), but will soon be electronically transmitted. Certain SSA employees have the authority to call SEVIS to request verification.

Other Verification Issues

11. EAE (Enumeration at Entry) for Nonimmigrants. Since certain nonimmigrants are *required* to work to maintain their nonimmigrant status, it is critical that these individuals have the ability to lawfully work and live in the U.S. Given the increased focus on SSN fraud and use of SSNs by foreign nationals not authorized to work, it seems critical to allow prompt and accurate means for issuance of SSNs to nonimmigrants that not only are authorized to work but are required to do so as a condition of maintaining their status. Under the EAE program for immigrants, the State Department and DHS authenticate documents. By implementing EAE for Nonimmigrants, DHS and SSA would be better positioned to utilize resources to investigate SSN fraud. AILA finds that virtually all nonimmigrants require more than 45 days from entry to obtain an SSN and that many nonimmigrants find that it takes several months. Given that SSA and DOS implemented EAE for Immigrants by amending the DS-230 and making other system changes, it seems that the same could be done on

the DS-156 for the nonimmigrant classifications that require employment or authorize employment incident to status: (a) employment required to maintain status - E-1 principals, E-2 principals, H-1B, H-2B, H-3, L-1A, L-1B, N-8, O-1, O-2, P-1, P-2, P-3, Q-1, R-1; (b) employment authorized incident to status - E-1 dependents, E-2 dependents, K-1, L-2 dependents. The GAO reported in its March 2006 testimony before the House Subcommittee on Social Security, Committee on Ways and Means, that SSA and State officials agreed to explore expansion of EAE to E, H and L nonimmigrants (See GAO Report GAO-06-253T).

- What is the status of these efforts? What can AILA do to assist SSA to work with DHS and/or the Department of State to establish EAE for nonimmigrants? Which constituent parts of SSA, DHS and DOS need to sign off on EAE for nonimmigrants? (Which branch in SSA? Is it a CBP decision for DHS? Is it a CA (Consular Affairs) decision at State?) What office at State is responsible for coordinating EAE for immigrants?
- We understand that SSA has been reluctant to adopt EAE for nonimmigrants until it reduces the rate of SSNs issued under the Immigrant EAE program to persons who already have been granted numbers. How does the EAE program result in duplicative numbers? What steps does SSA take in regular enumeration to avoid duplicative numbers that are not used in the EAE program?

Answer. EAE for individuals who are authorized to work incident to status often raises issues requiring special attention to get information into the system correctly. Part of the problem is that an SSN can be issued on a form G-45 at a consular post or at an SSA office in the United States. An IG study in March 2005 reported that multiple SSNs were issued to the same person in almost 11% of all cases. The SSA has been thinking about this issue for some time, trying to tighten up the process to avoid issuance of multiple SSN. To reduce the rate of duplicate SSNs in the EAE program, it is imperative that noncitizens always use exactly same name when dealing with SSA, CIS and DOS. The name used should always agree with the passport, which should be the same name used on immigration documents.

SSA does not want to adopt EAE for nonimmigrants until it reduces the rate of SSNs issued under the immigrant EAE program to under 2%, the duplication rate in the general population.

12. Eliminating need for EAD for noncitizens authorized to work incident to status under 8 CFR §274a.12(a). In addition to asylees, which have been the subject of various instructional memos and guidance from CIS to SSA, there are other foreign nationals authorized to be employed *incident* to the status they hold in the U.S. Can SSA work with CIS to get updated guidance to SSA field offices confirming that all L-2 dependents, E-2 dependents, E-1 dependents, and K-1 fiancées are authorized to work with *out* presentation of an EAD card, as stated in CIS regulations, and thus should likewise be able to have SSN issued upon presentation of their status? USCIS representatives agreed to look into this at our SSA liaison meetings in 2004 and in 2005 but said this was not a priority. Given the practical difficulties faced by noncitizens in

these categories, e.g., getting driver's licenses, etc., we hope CIS will share our view that this is a high priority.

Answer: CIS agrees that spouses of Es and Ls are authorized to work incident to status and need not present EADs to demonstrate work authorization or to obtain an SSN and has so advised SSA. Since receiving CIS's guidance, SSA has been reluctant to assign SSNs to E and L spouses who lack EADs because of difficulties in differentiating a spouse, who is work-authorized incident to status, from a child, who is not. (The I-94 does not identify whether the derivative is a spouse or a child). SSA will accept a marriage certificate, with appropriate translation, as proof that an applicant has been admitted as an E or L spouse. SSA will change its POMS guidance accordingly and will no longer require an E or L spouse to present an EAD to apply for an SSN. CIS and SSA also agree that K-1 fiancées do not require an EAD to evidence work authorization or to apply for an SSN, and POMS will be revised accordingly. Current guidance (to be revised) is at POMS RM00203.600, <https://s044a90.ssa.gov/apps10/poms.nsf/lx/0100203600!opendocument>.

13. Children of Asylees. Our members report that children in the United States as following to join asylees have been refused SSNs because they do not have EADs even though they are by law eligible for enumeration. Can SSA ensure that field offices are properly trained on this issue?

Answer. SSA is constantly trying to keep its field offices properly trained. The POMS are available on line and clearly spell out what is necessary for a child of an asylee to obtain a SSA. AILA members should use the POMS to assist in educating field offices that are not familiar with the instructions in the POMS. The POMS "RM" (Records Maintenance) table of contents is at <https://s044a90.ssa.gov/apps10/poms.nsf/chapterlist!openview&restricttcategory=01>. See especially RM 002 provisions. Provisions on asylees are at POMS RM00203.600.

14. Religious Workers. AILA members report a number of clients with approved R-1 (religious worker) status for whom SSA states that the Service has not updated approvals or that there are biographic mismatches. Many of these people have been waiting upwards of 6 months for an SSN. One member set up Infopass appointments, called the Service Centers, written letters and spoken with reps at the SSA to no avail. CIS states that everything has been taken care of. SSA states that, despite I-797 approval notices, the computer system does not allow issuance of SSNs until the Service updates. Can SSA and CIS look into this?

Answer. Religious workers, T/Ns and E1, 2, 3s can establish their status in two ways: I-129's or border crossing. For this reason, these classifications tend to have more problems. The agencies are working together to eliminate problems in this area. Changing clerical errors in the system is difficult at this time. An applicant's use of exactly the same name each time will help but more must be done to bring these errors to the attention to the responsible agency. Many problems are caused by handwriting. It would be better if the I-94 was typed. The present forms were not built with verification in mind. Now they are being retrofitted with this in mind. For general documentation requirements by nonimmigrant class, see POMS RM00203.600, <https://s044a90.ssa.gov/apps10/poms.nsf/lx/0100203600!opendocument>

Information-Sharing by SSA and SSA's Role in the Secure Border Initiative

15. Sharing No-Match Data. With whom is SSA legally authorized to share its no-match data and with whom does it share such data? What is the status of any change in data-sharing with DHS? Please discuss current and future plans and discussions with DHS and IRS as regards sharing information related to aliens.

- Is SSA considering changing its NWA (non work alien) data so that A-numbers and/or admission numbers (I-94 numbers) are provided?
- Is DHS, or SSA, putting out a government contract to make the SSA NWA system compatible with ICE's systems?
- To what extent is ESF (earnings suspense fund) data permitted to be shared with other government agencies under current law? Which agencies?
- To what extent are worker names and SSNs presently identified by IRS to SSA and/or DHS as individuals filing tax returns based on ITINs?

Answer. SSA sends no-match data to IRS with all W-2 data, but has no authority to share this data with other agencies. To our knowledge, IRS does not share no-match information from SSA with any other agency. The Commissioner of SSA shares with DHS reports of work activity on non-work accounts, but the usefulness of this data for immigration enforcement is questionable. It takes SSA two years to pull information together before reporting, data lacks numerical identifiers such as A-numbers and/or admission numbers (I-94), the information is formatted by SSN, and many individuals who used non-work accounts are work-authorized (even if they haven't returned to remove the non-work restriction). ICE had an interest in this information. After successfully tracking down only a portion of individuals with work reported under non-work SSNs, ICE found that about one-third actually had work authorization.

16. SSN No-Match Letters. Please provide copies of SSA's policy guidance on no-match letters and our related questions below:

- Please summarize SSA's current policy concerning the issuance of no-match letters? When are these issued? How many did it issue in TY05 and TY06?
- What is the employer obligation in response to a no-match letter from SSA?
- How does an IRS no-match letter differ from an SSA no-match, and when are IRS letters issued? What is the employer obligation in response to a no-match letter from IRS?

- Does SSA have current authority to identify no-match accounts to IRS? DHS?
- How many employers are reporting no-match data? How many employee records show no-match data? How much is in the earnings suspense fund, and how much has been properly allocated as a result of the no-match program?

Answer. SSA has not changed its policy on issuing no-match letters since our last meeting in March 2005. SSA first sends Decentralized Correspondence (DECOR) letters to employer, employees, and self-employed individuals who file W-2/self-employment reports with a name/SSN combination that does not match SSA records. After two weeks, SSA sends Educational Correspondence (EDCOR) letters to employers if more than 10 W-2s in wage report do not match SSA's records and the no-matches exceed 0.5 of the W-2 items in the report. Employers who file 11 to 2,200 Forms W-2 will receive a letter if 11 or more of the wage items in the report are no-matches. SSA also notifies employers who file more than 2,200 Forms W-2 if the no-matches exceed 0.5 percent of the total number of Form W-2 items in the file. SSA provides the reported employee's name, SSN, reported earnings, and tax year with a request that the employer provide the correct employee name and SSN.

The SSA no-match letter specifically states that employers should not use the letter to take any adverse action against employees and that doing so could violate state and federal law and subject the employer to legal consequences.

Employers receiving no-match letters should first check their records to see if there is already a copy of the Social Security card against which to check for error. The employers should then ask the employee to check his/her SSN card to make sure that both the employee's name and SSN were accurately reported by the employer. Employers should also ask the employee to show his/her Social Security card. If the employer and the employee are unable to resolve the issue, the employer should ask the employee to contact the local SSA office. The employer should not send any background documentation to SSA. If a Form W-2c is prepared, the employer should send only the Form W-2c (Corrected Wage and Tax Statement). If the correct information cannot be obtained and a Form W-2c cannot be prepared, the employer should retain the documentation and should not send copies to SSA. Employers should document efforts made to obtain the corrected information in their records in the event IRS contacts the employer. This documentation should be retained, consistent with all payroll records, for four years. (See RM 01105.027, 12/09/2004, "Handling Inquires Related to SSA Letter on No-Match Names and Social Security Numbers (SSNs)", <https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0101105027!opendocument>).

17. Payroll Guidance to Employers when SSA Delayed in Issuing SSN.

Please provide employers the current guidance to make FICA deductions when an employment-authorized foreign national is working awaiting initial issuance of SSN, and any IRS-origin information or IRS links to guidance on income tax deductions. Please provide copies of any policy memos or guidance from either SSA or IRS, on employers fulfilling their withholding agent responsibilities while waiting for the employee's SSN. What should an employer do with respect to an employee who has not obtained an SSN

by the time an employer return must be filed? Does either IRS or SSA penalize an employer who pays wages to an employee without making income tax or FICA deductions? How should both income tax and FICA deductions be made while an employee is waiting for SSN?

Answer. An SSN is not legally required for individuals to start employment, but employers must have an SSN for each of their employees when annual income tax reporting is required. However, employers can still comply with reporting requirements if an SSN has not been issued at the time of reporting. If an application for an SSN has been made but it has not yet been received when the W-2 is issued, employers that paper file should write “applied for” in box d and employers that use magnetic tape should put all zeros in box 4. SSA has no policy on the use of placeholders, though IRS should be contacted regarding its policy on the issue.

18. Secure Border Initiative. Please explain SSA’s role in the interior enforcement strategy of ICE’s Secure Border Initiative. ICE reports that millions of US workers have supplied to their employers SSNs that do not match their names in SSA’s records or have registered “000-00-0000” as an SSN, which allegedly indicates a lack of work authorization and will be used to target immigration violators. (See News Release, *Department of Homeland Security unveils comprehensive immigration enforcement strategy for the nation’s interior*, April 20, 2006). However, as SSA points out in its no-match letter to employers, a mismatch can be explained by several reasons, is not per se evidence that a worker is unauthorized, and should not serve as the sole basis for termination of employment. Additionally, for new employees who have applied for an SSN but have not received the card before the W-2 is filed, SSA instructs employers to “Enter all zeros in the SSN block if filing electronically or on magnetic media” and “Applied for” in box (d) on paper forms W-2 and, when an SSN is received, to file Form W-2c with SSA showing the SSN assigned. (See Employer’s Guide To Filing Timely And Accurate W-2 Wage Reports, Social Security Administration Office of Income Security Programs, SSA Pub. No. 16-004, ICN 361752, April 2004). ICE has informally assured us that it will judiciously exercise its discretion in prosecuting employers who report all zeros or mismatched SSN data. However, we are concerned that ICE’s strategy will make employers, to the detriment of themselves and the economy, reluctant to commence employment pending SSN issuance, which can take many months. Further, corporations with many H and L workers, will repeatedly file W-2s showing all zeros for employees awaiting SSN issuance, which may be construed improperly as a pattern of hiring unauthorized workers, resulting in highly disruptive and costly proceedings.

- Can SSA educate ICE about the possible explanations for mismatched data or the reporting of zeros and the reasons for SSA’s employer guidance not to terminate employment based on mismatch data alone?
- ICE is proposing that employers who receive no match letters be deemed to have constructive knowledge of unauthorized employment. If adopted, how should employers reconcile this with SSA’s guidance not to presume that a mismatch indicates unauthorized employment?

Answer. There can be many legitimate reasons for mismatches in the names and SSNs in SSA's database. Therefore, no-match letters have limited utility for immigration enforcement. SSA allows employers to use "000-00-000" instead of an SSN for individual employees who are waiting for an SSN. SSA has informed ICE of its opposition to the proposed ICE regulation that employers who receive a no match letter be deemed to have constructive knowledge of unauthorized employment. No-match letters are educational notices only and they are not meant to be used for enforcement.

19. Conflicting Legal Obligations in Resolving Notification of Mismatch

Data. Currently, when an employer receives an SSA no-match letter, it faces conflicting guidance from SSA (to resolve discrepancies), ICE (to avoid the "knowing" hire of unauthorized workers) the Office of Special Counsel for Immigration Related Unfair Employment Practices of the Department of Justice (OSC) (to avoid citizenship discrimination), the IRS (to pay withholding taxes, possibly face a fine, but to accept an employee's "corrected" W-2, even with the same mismatched data). These tensions create an untenable situation for employers who want to comply with the law. Would SSA be willing to coordinate with ICE, IRS and OSC to provide consistent advice to employers on this issue?

Answer. No. The problem arises because each of these agencies has different missions. SSA consistently advises employers and other government agencies that no-match letters are educational notices that should not be used as evidence of unauthorized employment. SSA understands that employers in practice sometimes use these notices to terminate employment, but SSA provides clear advice to employers that they should not use them for this purpose and it is not able to control what employers do after providing these clear instructions. SSA has given ICE its objections to the proposed regulation, but it cannot control what ICE or other administrative agencies do. SSA does not know what, if any, position the Administration has taken. The only recourse for others is to deal with DHS directly or go to Congress in order to resolve any confusion that employers who receive no-match letters may have regarding the conflicting positions of different agencies.

20. False SSNs. How should an individual report past use of a false SSN? What does SSA do once a non-citizen has filed such a report? Does SSA share this information with any other agency? Please provide any written policy guidance.

Answer. SSA has procedures to correct mistakes in the use of social security numbers, whether those mistakes are because the individual used another person's card, an invalid number, or a mistakenly transposed number. These types of corrections are not uncommon. SSA wants to make sure that the right earnings go to the right person's account. With a valid SSN, the individual making the correction must provide evidence of work under the "incorrect" number, such as W-2s and old pay stubs bearing the applicant's name. SSA does not share this information with other agencies. The IRS is not concerned with these corrections if the individual making the corrections has paid taxes. SSA's procedures for correcting discrepancies are part of the POMS under Records Maintenance. See <https://s044a90.ssa.gov/apps10/poms.nsf/lx/0102201001!opendocument>

21. Account Transfers. When an individual files a Form 7008 to request the transfer of social security earnings from one SSN to another SSN, when if ever would SSA refer such requests for investigation?

Answer. While instructions provide that SSA may investigate, fraud is difficult to prove and usually the person is using the card to get a job rather than to earn money through fraud. To run its program, SSA needs to sort out earnings. SSA would refer requests to transfer Social Security earnings if it had information that someone is selling a large volume of numbers, but it would not refer individuals using the card for employment.

22. Public Advisory Regarding Ineligibility of Certain Classes for SSN. The fact that foreign students who do not work cannot get social security cards continues to be a problem. As you know, SSNs are requested in connection with applications for bank accounts, driver's licenses and even cell phones. We realize that SSA cannot enumerate for these purposes. However, can SSA at least issue a public advisory stating that foreign students and others are not issued social security cards and, therefore, SSNs should not be requested by banks, departments of motor vehicles and other vendors. (We believe that SSA or DHS issued an advisory with regard to asylees and refugees stating that they were not required to have work authorization cards, which helped significantly in their ability to obtain services and conduct routine affairs).

Answer. Specific instructions on SSN eligibility are available on the SSA website at www.ssa.gov. SSA also makes ongoing efforts with various industries to provide education about who can get SSNs and who cannot. However, SSA also acknowledges the problems that face many foreign nationals, including students and others ineligible for SSNs, because they cannot receive SSNs. SSA acknowledges the commonly held belief that those without SSNs may be "illegal aliens." SSNs were never meant to serve the wide purposes for which they are used. However, because many people report difficulty finding clear guidance on the SSA site, the agency will place conspicuously on its website a clear, concise explanation of which classes of nonimmigrants are eligible and ineligible for SSNs and a reminder that lack of an SSN does not mean they a noncitizen is unlawfully in the country. This will promote SSAs efforts to educate the public and give noncitizens something to print and present to an inquiring bank, vendor, school or the many other institutions that require SSNs.

23. Name Discrepancies in Documents. We understand that an SSN Card has a 21-character limit and that the name on the SSN Card must match the applicant's identity documents presented when applying for the SSN Card. Please advise how a SSN Card applicant should handle the following situation: The applicant's name on her Permanent Resident Card does not exactly match the name on the individual's birth certificate or passport -- for example, the Permanent Resident Card is issued to Laura M. Jones, and the birth certificate reads Laura Marie Jones or the Permanent Resident Card does not contain enough characters for the full name - for example, "Maria del Rosario Lopez de Gomez" could read "Maria del Rosario Lopez de Gome" or "Maria d Lopez de Gomez." Must the applicant apply for a corrected Permanent Resident Card before the SSN Card will be issued or can SSA identify the name discrepancy and issue the SSN Card in the name the individual actually uses? In other words, how can an

individual document his/her name when the employment authorization documents may not include the individual's full name due to space constraints? What if the CIS document only states a middle initial?

Answer. See answer to question 2 above. Foreign nationals should use every effort to use the same name at every interaction with US and state agencies. The best advice is also to use the name exactly as it appears on the passport from the very first entry. Use this name on the I-94 card, the SS-5 SSN application, and in all other federal and state transactions. (I-94 forms are available from DHS for those who wish to prefill them before arriving at port).

24. Name Changes. The SSN Card applicant is married but retains her maiden name. Can SSA refuse to issue a SSN card in her maiden name? Assume one identity document is in her maiden name and the only other available identity document presented is the Marriage Certificate.

Answer. See RM 00203.200 Evidence of Identity for an SSN Card, <https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0100203200#g>, which allows the acceptance of a marriage certificate to prove identity in the case of a name change due to marriage.

Eligibility for Benefits

25. Restrictions on Eligibility. Please explain the restrictions imposed by the Social Security Protection Act of 2004 (SSPA) on the payment of Social Security benefits to noncitizens. Is work authorization required? Lawful presence? What if a person was issued an SSN in the past when he/she was not work authorized and paid into the SSA system but remains unauthorized to work? What if he/she is lawfully present? What, if anything, can persons in this group do to be eligible for benefits? What if they return to a country with which the US has a totalization agreement?

Answer. Section 211 of the SSPA requires certain alien workers to meet additional requirements to be fully or currently insured and to establish entitlement to benefits based on the alien's earnings. This law applies to Title II benefits and Medicare based on End-Stage Renal Disease (ESRD). Under Section 211, an alien worker whose SSN was originally assigned on or after January 1, 2004, must meet **one** of the following additional requirements to be fully or currently insured and in order to establish entitlement to benefits based on his/her work:

1. The alien worker must have been issued an SSN for work purposes at any time on or after January 1, 2004, **OR**

2. The alien worker must have been admitted to the U.S. at any time as a nonimmigrant visitor for business (B-1) or as an alien crewman (D-1 or D-2). If an alien worker whose SSN was originally assigned 01/01/04 or later does not meet either of these additional requirements, then the worker is not fully or currently insured. This is true even if the alien worker appears to have the required number of quarters to receive social security benefits. Alien workers who were assigned an SSN before

01/01/04 are exempt from this restriction. Thus, for example, an alien worker granted an SSN in 1970 but who was never work authorized can qualify for social security benefits. See POMS, [RS 00301.102 Additional Requirements for Alien Workers- Social Security Protection Act of 2004](https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0300301102!opendocument),
<https://s044a90.ssa.gov/apps10/poms.nsf/lnx/0300301102!opendocument>.

If a person is subject to the limitations of the SSPA and returns to his or her home country, which has a totalization agreement with the U.S., the person would still be limited by SSPA. Totalization agreements cannot override or alter any of the requirements in the SSPA.

Respectfully submitted,

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