

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

June 28, 2019

The Honorable Andrew M. Saul
Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21207

Dear Commissioner Saul:

We write to express our strong opposition to the Social Security Administration's (SSA's) decision to resume mailing "no-match" letters. We are concerned that these letters will have a negative effect on employees and employers with discrepancies flagged by SSA, with very little improvement in the accuracy of SSA's wage records.

As you know, the term "no-match" letters refers to Educational Correspondence (EDCOR) and Employer Correction Request letters sent to employers who have an employee name and Social Security number combination for wage reporting purposes on IRS Forms W-2¹ that does not match SSA's records. The "no match" may occur for any number of reasons, including typographical errors, misspelling complex names, name changes due to marriage or divorce, or with respect to undocumented workers.

While we support the stated goal of the letters – to correct workers' wage records, which are used in establishing eventual eligibility for Social Security benefits – SSA's own past experience demonstrates clearly that EDCOR letters are an ineffective method of accomplishing that goal. A 2008 study from SSA's Office of the Inspector General (OIG)² found that "SSA's EDCOR letters were not effective in communicating wage-reporting problems to employers and reducing the size of the Earnings Suspense File." In fact, the letters had only about a two percent (2%) success rate in correcting earnings reports. In addition, in 2006 testimony before the Committee on Ways and Means, SSA's Deputy Commissioner stated that "SSA determined that sending letters to all employers with W-2s that could not be posted was disruptive and not a cost-effective use of resources."³ We agree.

Importantly, we are deeply concerned that these letters may result in U.S. citizens and work-authorized immigrants being fired. Although the letters explicitly state that workers should not be terminated based on these letters, many employers are confused about their responsibilities

¹ Internal Revenue Service (IRS) Forms W-2 (Wage and Tax Statement).

² OIG Report No. A-03-07-17105, <https://oig.ssa.gov/effectiveness-educational-correspondence-employers>.

³ The Honorable James B. Lockhart, responses to Questions for the Record for the February 16, 2006, hearing on Social Security Number High-Risk Issues.

and potential liabilities. Especially in the current immigration enforcement climate, employers may mistakenly believe that the no-match letter indicates that workers lack immigration status and will fire these workers – even those who can legally work in the United States. Many workers and employers also are deeply concerned about the potential for SSA’s data relating to no-match letters to be shared with other agencies and used to target immigration enforcement activities, despite the statutory protections under Section 6103 of the Internal Revenue Code, which prohibits such sharing of no-match data.

Instead, we believe SSA should focus its efforts on the far more effective “back-end” methods to correct workers’ wage records and resolve initial no-match situations. If SSA wants to supplement these methods with mailing no-match letters, they should be sent directly to workers, as such letters not only would avoid jeopardizing the employment of U.S. citizens and others lawfully authorized to work, but also were found to be more effective at correcting wage records than the employer letters.⁴ Finally, if SSA is truly concerned about correcting wage records, it should resume mailing annual *Social Security Statements* to all taxpayers every year, as required by law.⁵ Receiving a regular mailed *Statement* allows workers to review and correct their earnings records with SSA on a timely basis.

We strongly urge SSA to immediately cease mailing EDCOR letters, and instead use its funds for more effective frontline service delivery activities, such as reducing wait times for benefits, mailing *Statements* to all workers, and improving the responsiveness of SSA’s 800-number service and its field offices.

In addition, please provide written responses to the following questions by July 12, 2019:

1. Rationale for Policy Change:

- a. Why did SSA reverse its prior position and resume mailing employer no-match letters, when past experience clearly demonstrated that the letters are ineffective and an inefficient use of resources?
- b. The OIG report cited above found that SSA’s Decentralized Correspondence (DECOR) letters, which are sent directly to workers, were more effective than the employer EDCOR letters in correcting earnings records, which supports SSA’s mission. Why isn’t SSA sending DECOR letters to workers instead of EDCOR letters to employers?
- c. In the past, SSA discontinued sending no-match letters due to budget concerns. SSA’s budget problems are well-documented and ongoing, and have led to excessive wait times for appeals hearings, on the toll-free telephone assistance lines, in SSA field offices, and in SSA’s processing centers. Given these problems, why did SSA choose to resume sending the letters?

⁴ OIG Report No. A-03-07-17105.

⁵ Social Security Act, Section 1143.

- d. Why did SSA decide to send vastly more letters in 2019 – to any employer with at least one no-match – than it had in most prior years, when it sent letters only to employers above a certain threshold number or percentage of no-matches?

2. Number of letters:

- a. How many no-match letters are being sent in 2019, and how many have already been sent?
- b. On what date did SSA begin mailing the 2019 letters? What is the timing of their distribution (*e.g.*, in batches, or on a rolling basis)?
- c. Please provide a table showing the distribution by state of: (i) the total number of letters to be sent in 2019; and (ii) the number of letters already sent.
- d. Please provide the number of letters that will be sent in 2019 to: (i) employers employing 20 or fewer total wage earners; and (ii) employers employing 5 or fewer total wage earners.
- e. Please provide the number of letters that will be sent in 2019 to: (i) employers with 10 or more no-matches; (ii) employers with 100 or more no-matches; employers whose no-matches make up at least 0.5 percent of their total W-2 employees; and (iv) employers whose no-matches make up at least 10 percent of their total W-2 employees.

3. Cost:

- a. What is the total estimated cost to SSA of the 2019 no-match letters and related mailings, including EDCOR Announcement letters, Employer Correction Request letters, and Third Party Provider Notification letters? Please include all direct costs plus the costs of increased inquiries or visits to field offices, the National 800 Number, the Business Services office or phone number, and the Business Services Online (BSO) portal.
- b. As described above, EDCOR letters were determined to be “not effective” in correcting earnings reports, and “not a cost-effective use of resources.” What evidence does SSA now have to demonstrate that resuming these letters is an effective use of the agency’s limited resources?

4. Past Experience:

- a. What was the last year in which SSA sent EDCOR letters to employers? How many letters were sent that year, and what criteria were used to determine which employers would receive them? What was the total estimated cost of this activity (including direct and indirect costs) in that year?
- b. How many individuals were identified through the EDCOR process as not matching in that year, and for how many of these individuals did employers provided updated records to SSA?

5. Why do the letters give employers only 60 days to correct the no-matches? In contrast, the Department of Justice and the Department on Homeland Security generally consider 120 days to be a reasonable amount of time to obtain employment documentation, while also acknowledging that it may take even longer to obtain some documents.⁶
6. What if any training or instructions did SSA's front-line staff receive with regard to no-match letters or assisting workers or employers who are attempting to correct a discrepancy? Please provide a copy of any such materials.
7. Data Sharing:
 - a. SSA's June 3, 2019, letter to several Members of Congress acknowledged that no-match letter data is protected under Section 6103 of the Internal Revenue Code, which establishes strict protections for tax information. Moreover, both court rulings and SSA's own operating procedures explicitly recognize that SSA may not share with DHS or other agencies information relating to no-match letters (such as the identities of the employers receiving the letters), because it derives from tax information.⁷ Does this remain SSA's current policy and practice? Do you anticipate any changes for the future?
 - b. Is information relating to the BSO portal also protected from disclosure to other agencies under Section 6103? Is there any policy or practice under which SSA shares BSO information (such as employer registration information) with DHS or other agencies?
 - c. Do the answers to 7(a) or 7(b) change if DHS demonstrates that a particular employer is already under investigation by DHS or its sub-agencies, and if so, under what statutory authority does SSA disclose tax information? In that situation, does DHS have the authority to obtain confirmation from SSA as to whether the employer has received a no-match letter? If so, how many times has SSA provided such information in the past year?
 - d. How does SSA interpret 8 U.S.C. 1360(b), including any potential conflict with the provisions of Section 6103? Does SSA share any information or data with other agencies under this provision? If so, please list all instances of such information sharing in the past year.
 - e. Since January 2017, please list any instances in which DHS has formally or informally requested information from SSA regarding wage earner information that is: (a) contained in the Earnings Suspense File; (b) related to an employer's use of E-Verify; or (c) related to an immigration or criminal investigation or audit of an employer.

⁶ For example, see pages 4-5 of the joint DOJ/DHS document at <https://www.justice.gov/crt/file/798276/download>.

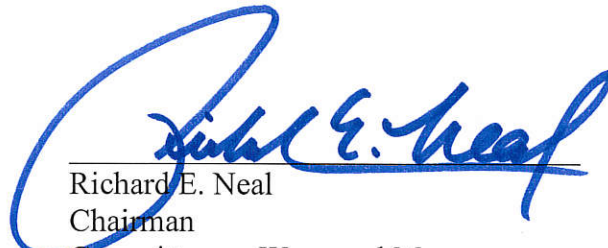
⁷ *Judicial Watch Inc. v. Social Sec Admin*, 799 F.Supp.2d 91 (D.D.C. 2011), *aff'd* 701 F.3d 379 (D.C. Cir. 2012); and SSA's POMS, GN 03320.001 and GN 03313.095.

Letter to Commissioner Saul
June 28, 2019
Page Five

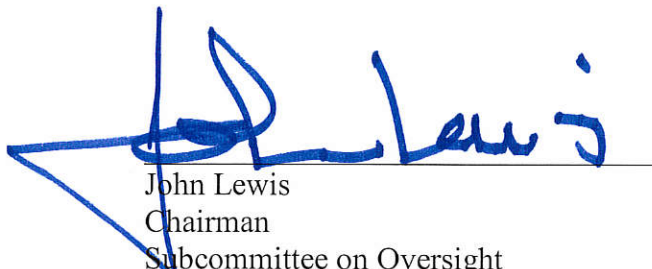
- f. What is the current status of sending the Nonwork Alien (NWALIEN) file to DHS, and the related data exchange agreement? Has it or will it be sent in 2019, and if so, when? What restrictions, statutory or otherwise, govern how DHS can use this information?
- g. Other than the NWALIEN exchange with DHS and the authorized sharing of Form W-2 information with IRS, can you confirm that SSA does not, and has not in the past, share any data relating to EDCOR letters, no-matches, or the Earnings Suspense File with other agencies, such as DHS or IRS? Under what authority is that information prohibited from being shared? If data is shared, what restrictions are in place regarding how those agencies may or may not use the SSA data for other purposes, including immigration enforcement, and what is the statutory basis for those restrictions?

Please feel free to contact us if you have any questions, or a member of your staff may contact Kathryn Olson, Staff Director for the Social Security Subcommittee, at (202) 225-9263. We appreciate your prompt attention to this urgent matter.

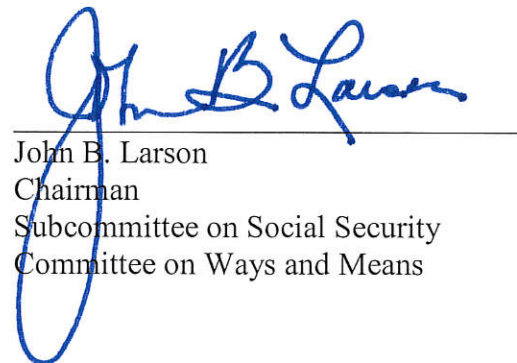
Sincerely,



Richard E. Neal
Chairman
Committee on Ways and Means



John Lewis
Chairman
Subcommittee on Oversight
Committee on Ways and Means



John B. Larson
Chairman
Subcommittee on Social Security
Committee on Ways and Means