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Issuance of No-Match Letters Resumes

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by Kim Kiel Thompson

The Social Security Administration (SSA) has resumed sending out No-Match letters to employers. This ends a long break that started when the Department of Homeland Security's now-rescinded 2007 No-Match regulation was blocked by a court.

SSA's new letter says that the recipient is not required to respond and that the letter alone should not be the basis for taking any adverse action against the employee listed. If the employer responds to the letter, the SSA may share the information with the Internal Revenue Service or the Department of Justice (DOJ). If you receive a SSA No-Match letter, the SSA instructs you to:

- Check your records to see if there is a discrepancy in the records submitted to SSA;
- Ask the employee to check to determine whether the information was accurate;
- Instruct the employee to contact the SSA to resolve any discrepancy;
- Provide the employee a reasonable amount of time to resolve the discrepancy; and
- Document your efforts to resolve the matter.

The SSA, Immigration and Customs Enforcement (ICE), and the DOJ's Office of Special Counsel provide no additional guidance for an employer's obligations upon receipt of a No-Match letter. These agencies all appear to take the position that a No-Match letter is not evidence that the employee is unauthorized to work. They do not offer any clarification of what would be considered "a reasonable amount of time" to resolve the discrepancy, or what to do if the employee is unable to resolve the discrepancy.

ICE Notices of Inspection for I-9 audits generally request copies of any correspondence received from SSA, including No-Match letters. It is unclear whether merely documenting an employee's inability to resolve a discrepancy without taking further action will satisfy ICE in the event of an I-9 audit. The rescinded No-Match regulation

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outlined “safe harbor” procedures to demonstrate that an employer had acted reasonably to a No-Match letter, including allowing the employee 90 days within which to resolve the discrepancy and completing a new I-9 form with updated documents. We recommend that you develop policies and procedures to address issues raised in SSA No-Match letters and implement them in a non-discriminatory way.