

Congress of the United States
Washington, DC 20515

April 11, 2019

The Honorable Nancy Berryhill
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

Dear Acting Commissioner Berryhill,

In recent weeks, we have received reports that our constituents have received letters from the Social Security Administration (SSA), notifying employers that the information submitted in Wage and Tax Statements (W-2 forms) does not match the SSA's records. The Obama administration had previously suspended the practice of issuing these "No-Match" letters. In December, SSA posted on its website that it would begin sending these letters and notifying employers with at least one employee whose records do not match. We write today with several questions about this policy and to express our concern about its effects.

The SSA is entrusted with equitably and efficiently administering some of our nation's most important programs. These programs – including retirement, disability, and survivor benefits – touch every American. It is critical that the American people have confidence in the SSA's stewardship of these programs. However, the return of the "No-Match" letters politicizes these programs and commandeers the agency to pursue a mission that is not within its mandate: immigration enforcement. This policy will also harm our economy and destabilize many of our communities.

In the letters addressed to employers, the SSA explains that it has identified a discrepancy between the information submitted by the employer and SSA's social security records. There are several reasons why SSA may be unable to reconcile the data including clerical errors. The letter does not include the name and social security numbers of employees whose records do not match. Rather, it refers employers to the Employer Report Status within the Business Services Online (BSO). After registering, employers may use BSO to file a W-2C correction form. SSA expects employers to complete this process within sixty days of receipt of the letter without articulating any consequences for non-compliance.

Unfortunately, one of the key reasons why W-2 records may not match social security records is because an employee used a false name or social security number. This is most common when an employee is undocumented and not authorized to work in the United States. We currently have millions of undocumented workers in the United States who do critical jobs like building our homes, harvesting our food, and caring for our children and senior citizens. This reality is a failure of our immigration system and policies and is a high priority for us in Congress. It is not however, a problem in the administration of social security. In fact, according to the SSA actuary, undocumented immigrants paid \$12 billion into the Social

Security system, effectively subsidizing the program for American workers with benefits that will never be collected.

Effectively, the SSA's no-match letters enlist employers in immigration enforcement. These employers are placed in a difficult and often costly position. As the letter points out, employers may not take adverse action against an employee because of the letter. Rather, once the letter is received, employers are expected to identify the issue and correct it. In that process, if an employer learns an employee's information may be false, the employer may gain constructive knowledge that the employee is not authorized to work in the United States. This places employers in the position of either dismissing the employee or exposing themselves to legal liability.

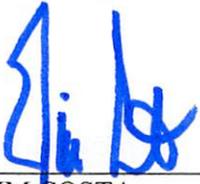
In many of the industries that will be most affected, agriculture for example, there are already major labor shortages. Without the current workers – both documented and undocumented – food will rot in the fields. These “no-match” letters can make the fragile current situation into a national crisis.

Accordingly, please answer the following questions about the no-match letters and the underlying policy by May 10, 2019:

- How did SSA decide to reinstate the practice of sending no-match letters? Did SSA consult with Department of Homeland Security, Department of Labor, Department of Justice, Department of the Treasury, or the White House in making this decision? If so, which agencies were consulted?
- Who is receiving these letters? Is SSA attempting to reconcile W-2s and social security records for *every* employee in the United States? If not, how does SSA determine which employers to review? How many letters were sent and how many letters does SSA anticipate sending?
- The no-match letter asks each employer to provide any corrections within 60 days of receipt of the letter. What are the consequences for non-compliance?
- In implementing this program, has SSA shared any information about employers and employees whose records do not match with other agencies?
- If it is discovered that an employee was undocumented and/or was not authorized to work in the United States, what actions would SSA take?
- In the letter sent to employers, SSA described reasons why the records may not be reconciled. What proportion of these records does SSA anticipate are incorrect because an employee used a false name or social security number? What proportion does SSA anticipate are incorrect because of a name change, clerical or typographical error, or incomplete information?

We are concerned that issuing these letters can add compliance costs for employers, harm our economy, and undermine the credibility of the Social Security Administration. If you have any questions, please contact Katharine Clark in Senator Feinstein's office at Katharine.Clark@judiciary-dem.senate.gov or (202) 224-7703, or Jared Feldman in Rep. Jim Costa's office at jared.feldman@mail.house.gov or (202) 225-3341.

Sincerely,



JIM COSTA
Member of Congress



DIANNE FEINSTEIN
United States Senator



TJ COX
Member of Congress



JIMMY PANETTA
Member of Congress



JOSH HARDER
Member of Congress