



U.S. Department of Justice

Civil Rights Division

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Office of Special Counsel for Immigration-Related  
Unfair Employment Practices - NYA  
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**AUG 29 2011**

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**By email (luried@gtlaw.com)**

Dawn M. Lurie, Esq.  
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1750 Tysons Blvd., Suite 1200  
McLean, VA 22102

Dear Ms. Lurie:

This letter is sent in response to your July 13, 2011, inquiry to the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). In your letter, you seek guidance on behalf of a client as to whether the Social Security Administration's Social Security Number Verification Service (SSNVS) may be used to verify employment eligibility and how using the system for this purpose may implicate the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. § 1324b.

As you know, OSC enforces the anti-discrimination provision of the INA. The anti-discrimination provision prohibits four types of unlawful conduct: (1) citizenship status discrimination; (2) national origin discrimination; (3) discrimination during the Form I-9 process ("document abuse"); and (4) retaliation for filing a charge or asserting rights under the anti-discrimination provision.

This office cannot give you an advisory opinion on any set of facts involving a particular individual or company. However, we can provide some general guidelines regarding compliance with the anti-discrimination provision of the INA. Please note that the particular facts of any given situation will determine the way in which the law applies.

As you indicate in your letter, SSNVS is a service offered to employers by SSA to ensure accurate wage reporting, and not for the purposes of employment eligibility verification. See SSNVS Handbook, available at [http://www.ssa.gov/employer/ssnvs\\_handbk.htm](http://www.ssa.gov/employer/ssnvs_handbk.htm) (stating that SSNVS should be used only for the purpose for which it is intended – "SSA will verify SSNs and names solely to ensure that the records of current or former employees are correct for the purpose of completing Internal Revenue Service (IRS) Form W-2 (Wage and Tax Statement)"). See also ICE Mutual Agreement between Government and Employers (IMAGE) Best Practices, available at <http://www.ice.gov/image/best-practice.htm> ("Use the Social Security Number Verification Service (SSNVS) for wage reporting purposes."). Furthermore, SSNVS materials caution against using information received through SSNVS outside of the wage-reporting context:

- A[n SSNVS] mismatch does not imply that the employer or the employee intentionally provided incorrect information.
- A[n SSNVS] mismatch does not make any statement about an employee's immigration status and is not a basis, in and of itself, for taking any adverse action against an employee. Doing so could subject you to anti-discrimination or labor law sanctions.

SSNVS Pamphlet, available at <http://www.socialsecurity.gov/employer/ssnvspamphlet.htm>. See also SSNVS Handbook ("A mismatch is not a basis, in and of itself, for you to take any adverse action against an employee, such as laying off, suspending, firing or discriminating. . . . The information you receive from SSNVS does not make any statement regarding a worker's immigration status.").

Consistent with this guidance from the SSA, OSC's "Name and Social Security Number (SSN) 'No-Matches' Information for Employers," available at <http://www.justice.gov/crt/about/osc/pdf/publications/SSA/Employers.pdf>, cautions employers that receive information that the name and Social Security number submitted for an employee do not match not to make certain assumptions. Specifically, employers should not "[a]ssume the no-match conveys information regarding the employee's immigration status or actual work authority" or "[u]se the receipt of a no-match notice alone as a basis to terminate, suspend or take other adverse action against the employee."

Further, an employer that, acting on its own initiative, selectively runs employee information through SSNVS for employment eligibility verification purposes on the basis of employees' citizenship or immigration status or national origin may be violating the INA's anti-discrimination provision. Similarly, an employer that, acting on its own initiative, uses SSNVS results to selectively take adverse action against certain employees based on their immigration status or national origin (real or perceived) may also be violating the INA's anti-discrimination provision.

We hope this information is helpful.

Sincerely,

Seema Nanda  
Acting Deputy Special Counsel

By:



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C. Sebastian Aloat  
Acting Special Litigation Counsel