

Electronic Privacy Information Center

Before the Social Security Administration

**In the Matter of the Social Security Administration's Proposed Rule Change
Regarding A New Routine Use for Social Security Administration (SSA) System
Records Entitled, Master Files of the Social Security Number (SSN) Holders and
SSN Applications, 60-0058.**

September 3, 2004

Mr. Randolph Gaines,
Executive Director
Office of Public Disclosure,
Office of the General Counsel
Social Security Administration, Room 3-A-6
Operations Building
6401 Security Boulevard
Baltimore, Maryland 21235-6401

The proposed rule change would create a new routine use for the SSN for state voter registration purposes, pursuant to section 2059(r)(8) of the Social Security Act, as amended by the Help America Vote Act (HAVA), Public Law (Pub. L.) 107-252.

The Electronic Privacy Information Center requests that you delay implementation of this routine use until after the SSA has obtained agreements from state election administrators that they will not require voters to have a social security credential when they seek to vote in federal elections. Expanding the use of the SSN for voter verification would constitute an improper use of the document.

There is a risk that states will require the SSN at polling locations on Election Day. This proposed change in the use of the SSN may lead to violations of the Social Security Administration's own policy of instructing recipients of Social Security Numbers to never carry their Social Security card on their person. The Social Security Administration's own Electronic Leaflet titled "Your Social Security Number and Card," found at web site <http://www.ssa.gov/pubs/10002.html> states, "We recommend that you keep your Social Security card in a safe place. It is an important document. **DO NOT** carry it with you."

Actions that states may take under the new routine use may also violate the Federal Court decision reached in *Greidinger v. Davis* (1993). The U.S. Court of Appeals for the Fourth Circuit held unconstitutional Virginia's practice of publishing SSNs obtained for voter registration purposes. An amicus brief prepared by EPIC staff, which can be found at the following web location http://www.epic.org/privacy/ssn/greidinger_brief.html cautions against the use of the SSN for voter registration purposes.

The SSN was created in 1936 as a nine-digit account number assigned by the Secretary of Health and Human Services for the purpose of administering the Social Security laws. SSNs were first intended for use exclusively by the federal government as a means of tracking earnings to determine the amount of Social Security taxes to credit to each worker's account. Over time, however, SSNs were permitted to be used for purposes unrelated to the administration of the Social Security system. For example, in 1961 Congress authorized the Internal Revenue Service to use SSNs as taxpayer identification numbers.

In response to growing concerns over the accumulation of massive amounts of personal information, Congress passed the Privacy Act of 1974. Among other things, this Act makes it unlawful for a governmental agency to deny a right, benefit, or privilege merely because the individual refuses to disclose his SSN.

Section 7 of the Privacy Act further provides that any agency requesting an individual to disclose his SSN must "inform that individual whether that disclosure is mandatory or voluntary, by what statutory authority such number is solicited, and what uses will be made of it." At the time of its enactment, Congress recognized the dangers of widespread use of SSNs as universal identifiers. In its report supporting the adoption of this provision, the Senate Committee stated that the widespread use of SSNs as universal identifiers in the public and private sectors is "one of the most serious manifestations of privacy concerns in the Nation." Short of prohibiting the use of the SSN outright, the provision in the Privacy Act attempts to limit the use of the number to only those purposes where there is clear legal authority to collect the SSN. It was hoped that citizens, fully informed where the disclosure was not required by law and facing no loss of opportunity in failing to provide the SSN, would be unlikely to provide an SSN and institutions would not pursue the SSN as a form of identification.

The specific use of the SSN in the course of voter registration raises precisely the concerns identified in the Privacy Act. The structure of the SSN makes it important to keep the last four digits of the number secret for the security and privacy of users. Because the SSN is not entirely randomly-generated providing the last four digits of the number along with other vital information that is often part of voter registration applications, such as the place of birth, name, address, date of birth and in some cases the maiden name of the applicant's mother a voter registration application information can be a tool to enable identity theft. Although the procedures for issuing SSNs have changed over the years, knowing a person's place of birth is a key to

discovering the first three digits of the SSN. The next two (group numbers) indicate the order in which the SSN was issued in each area,. The last four (serial numbers) are randomly generated, but would be provided should this use of the SSN be allowed.

The proposed new routine use creates a verification process that involves the American Association of Motor Vehicle Administrators (AAMVA), a private organization, which is not bound by the Privacy Act law or the conditions of fair information practices as dictated by law. It is important that any use of the SSN that involves non-government agencies should require that the private entity gaining access to SSA records or information provided by the agency be subject to Privacy Act restrictions.

Because of the real threat that election workers will demand access to Social Security documents there is a concern that this may present opportunities for identity theft, voter identity fraud, and voter intimidation. Also, the possession of a Social Security card should not be construed as a valid means of proving the identity of the cardholder. This is not a valid use of the SSN and should not be encouraged by the adoption of this new routine use.

We urge you to delay implementation of the proposed use of the SSN until privacy safeguards are established.

Should you require additional information on the position supported by this document you are encouraged to visit EPIC's web site on Social Security Numbers at < <http://www.epic.org/privacy/ssn/> >.

Thank you for your time and attention to this communication.

Sincerely,

Lillie Coney
Senior Policy Analyst
Electronic Privacy Information Center