

Use of Social Security Numbers as I.D. Numbers by State Universities

Following its creation in 1936 as a means of tracking the earnings records of workers to determine their eligibility for retirement benefits under the Social Security Act of 1935 (SSA), the Social Security number (SSN) has become widely accepted as the universal personal identifier in this country. It is used by the federal government for personal income tax purposes as well as for the Supplemental Security Income, Medicaid, Food Stamp, Child Support Enforcement, federal student loans and grants, and other federal programs. States and private businesses similarly make use of the SSN as a primary, distinctive record identifier for various administrative purposes. The SSN serves also as the crucial link between various data bases, making possible rapid identification, aggregation, and correlation of personal data from varied sources. All this has occurred despite the admonition printed on the face of the card itself stating that it is “not to be used for identification purposes.”

The increasing use of the Internet by governmental agencies and private business to maintain on-line customer records, medical records, and other databases incorporating SSNs as the unique identifier of the subjects of those records has heightened concerns regarding personal privacy. It may also have facilitated “identity theft” by making large numbers of SSNs available to those who can, legitimately or illegitimately, gain access. In response to this concern, Congress has in recent years enacted laws proclaiming SSNs contained in records generated pursuant to the Internal Revenue Code, the Social Security Act, and the Work Opportunity Act to be confidential. The SSA itself has been amended to provide that SSNs and related records obtained or maintained by authorized persons pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential and that no authorized person shall disclose any such social security account number or related record (42 U.S.C. §405(c)(2)(C)(vii)). Since 1984, the SSA has made it a felony for anyone to disclose, use, or compel the disclosure of the SSN of any person in violation of the laws of the United States (41 U.S.C. §408(a)(8)).

Despite Congress’s flurry of activity in this area in more recent years, the primary federal legislation that relates to a state university’s requesting and using SSNs for administrative purposes has long been in place. First, there is the Privacy Act of 1974 (PA), as amended. This Act is directed primarily at ensuring privacy of personal information maintained by federal agencies. However, an amendment found at Section 7(a) of Public Law 93-579, provides that it is unlawful for a State government agency to deny any person a right, benefit, or privilege provided by law based on the individual’s refusal to disclose his/her SSN, unless such disclosure was required to verify the individual’s identity under a statute or regulation in effect prior to January 1, 1975. Further, under Section 7(b) a State agency requesting that an individual disclose his SSN must inform the individual whether the disclosure is voluntary or mandatory, by what statutory or other authority the SSN is solicited, what uses will be made of the SSN, and the consequences of refusal to provide it. These requirements are general in nature and apply across the board to both applicants for, and those who have attained, the status of students, staff, and faculty at a state university.

The second federal statute that regulates the disclosure of the SSN in a university setting is the Family Educational Rights and Privacy Act of 1974 (FERPA). Under FERPA, an

educational institution generally must obtain the prior consent of the student in order to release to other individuals or entities any educational record relating to the student or any personally identifiable information (which includes SSNs) pertaining to the student that is contained in an educational record. There are some exempted disclosures. The prohibition does not apply to disclosures to university personnel internally who have a legitimate educational interest in the information, to officials of institutions where the student is seeking to enroll, to parties to whom the student is applying for financial aid, to the parent of a dependent student, to attorneys and court officials in compliance with a judicial order or lawfully issued subpoena, or to health care providers in the event of a health or safety emergency. Violations of this statute can result in civil actions against the university and its officials as well as revocation of the university's federal funding, including the authority to award federal student loans and other financial aid.

The combined impact of the PA, FERPA, and amendments to the SSA can be summarized as follows:

1. These statutes do not prohibit the use of SSNs as identification numbers for students, faculty, or staff. However, the PA makes it unlawful to deny any legal "right, benefit or privilege" based on an individual's refusal to disclose the SSN unless the disclosure is required by federal statute or was required by a system of records maintained by the university in existence and operating prior to January 1, 1975. Those who are not so required and do not wish to provide the SSN must be assigned some other identification number.
2. In requesting that students, faculty, staff, or applicants therefor provide their SSNs, the PA requires the university to inform the individual whether the disclosure is voluntary or required, by what statutory or other authority the SSN is solicited, and how the SSN will be used.
3. Any use of the SSN to identify students makes the SSN part of the student's education record. This means that the SSN must be treated as confidential information that generally may not be disclosed without the prior written consent of the student. In this regard, the Department of Education has taken the position that the employment records of students working for the university in jobs available only to students are considered education records. Violations of this confidentiality requirement can result in civil liability, criminal prosecution, and a loss of federal funding by the university.
4. Improper disclosure of the SSNs of those who are not students will not put the university's federal funding at risk; however, there is the possibility of civil liability and criminal prosecution.

Clearly, the use of SSNs by universities carries with it a substantial risk. In addition to civil liability, they could suffer loss of federal funding and, in a worst case, their employees and/or officials might suffer criminal prosecution. At the same time, there are compelling practical reasons for use of the SSN, beyond its required use in such matters as tracking federal student loans and submission of federal income tax withholding and FICA payments, because it

is a unique identifier. In order to carry out their obligations under FERPA and the PA, universities should consider certain actions:

1. Training/education programs to insure that staff and faculty are aware of the obligations of confidentiality flowing from FERPA and the PA. Forms might be used summarizing those obligations and requiring the signature of the individual signifying his/her promise to meet those obligations. This promise could be renewed at regular intervals.
2. Appropriate PA notices to accompany the solicitation of SSNs.
3. Marking of all documents containing SSNs with appropriate warnings regarding confidentiality obligations and shredding of all such documents before their disposal. All such documents should be kept in locked file cabinets when not in use.
4. Insuring that appropriate security measures are taken to protect computer files containing SSNs and to limit access to those files to those with an official need to access them. Computers that can be used to access such files should, where practical, contain an opening screen for each session on which appropriate warnings regarding the confidentiality of the files appear.
5. Reminding faculty that University policy prohibits the use of SSNs for posting of grades (see paragraph 8.25, Posting of Grades, UAH Faculty Handbook) and reminding staff and faculty not to post or circulate publicly any other documents containing SSNs.

It is apparent that the SSN has become the *de facto* distinctive identifier for individuals. It is widely used by both private companies and governmental agencies. The practical demands for its use are all but overwhelming. At the same time, as discussed above, there are strict federal statutory requirements for confidentiality and limitations on the use of the SSN in a university setting. Universities must educate and remind their faculty and staff members on a continuing basis of these requirements and limitations to insure that familiarity does not breed contempt.