

August 18, 2000

The Honorable E. Clay Shaw, Jr.
Chairman, Social Security Subcommittee
Committee on Ways and Means
United States House of Representatives
Rayburn House Office Building, Room B316
Washington, DC 20515

Dear Chairman Shaw:

On behalf of the National Association of State Retirement Administrators (NASRA), I am writing regarding the Privacy and Identity Protection Act of 2000 (H.R. 4857), which was recently passed by your Subcommittee. NASRA members share your concern regarding "identity theft" and other fraudulent activity surrounding the misuse of Social Security Numbers (SSNs). State retirement systems currently use SSNs in numerous facets of our operations, many of which are required by State and Federal laws and which are aimed at preventing error, fraud and abuse. I appreciate your vetting the legislative proposal with us and providing an opportunity to submit comments regarding the potential impact this bill will have on State benefits programs.

By way of background, NASRA members are the directors of the 50 State employee retirement systems, as well as the directors of the public employee retirement systems of the District of Columbia, Puerto Rico, American Samoa, Guam and the Virgin Islands. As such, our members are responsible for the administration of retirement benefits, and in many cases health care and deferred compensation services, for millions of public employees, retirees, and their beneficiaries. Many of our systems not only cover the employees within State agencies, but also provide benefits to employees of local jurisdictions and districts as well.

NASRA members support the spirit and intent of H.R. 4857 and other efforts to enhance measures already taken by State agencies to protect the privacy of our participants. Nonetheless, we have concerns regarding the scope of the proposed legislation, as well as the administrative disruptions and financial liabilities that this measure may impose.

According to a brief survey we conducted, the SSN is often used by State retirement plans as the primary identifier of participants for internal tracking purposes, interagency and intergovernmental processing and payroll, transfers/rollovers and direct deposits, applications for benefits, federal/state/local tax collection, and to insure the valid compilation of

information and disbursement of benefits. It is our understanding that the bill is not intended to limit State or local agency (or private sector) use of the number, but instead to prevent the sale by all parties, and public display of SSNs by government agencies. However, the legislation's prohibition against placing the SSN on checks would directly affect many plans and the language remains unclear as to whether this would apply to payment stubs and third party disbursements. The bill's prohibition against making the number or any derivative "available" to the public is also imprecise and could be construed as covering a number of our internal uses of the number. The legislative language concerning the use of the SSN on personal identification cards remains unclear. Finally, the bill's affect on third party service providers under contract to the state, in each of these areas, is also very ambiguous, as is the legal responsibility incurred by the state for actions of the third party.

Prohibition of Use of SSNs on Checks Issued
for Payment by Governmental Agencies--Section 101(d)

H.R.4857 specifically states that the SSN "or any derivative of such number" may not be included "on any check issued for any payment by the Federal Government, any State or political subdivision thereof, or any agency or instrumentality thereof." Many retirement systems place the SSN on benefit checks, check stubs, refund checks, electronic fund transfers, and other payments. In addition, many third party administrators of health care, deferred compensation and other benefits programs print the SSN on disbursements, checks and stubs as well. In many cases, this is done for both tracking purposes and to prevent mistakes or abuse.

It is our understanding that the intent of the bill is to limit the prohibition to checks only, although this is not clearly delineated in the legislative language. It is also unclear whether third party service provider disbursements would be included in this definition. Removing the number from government and third party payments may be very costly and may require other identifiers be employed for tracking and verification purposes. In addition, the reference to a "derivative" of the number may also be problematic for systems that have gone to great lengths to scramble numbers on documents, use bar codes, or limit the SSN to a prefix and/or last four digits of the number.

Prohibition Against Display of SSN on Material
Made Available to the Public—Section 101(f)

The current proposal would also prohibit the public display of SSNs by government agencies. However, the legislative language is unclear as to what would actually fall under the characterization of "display," which is defined in the bill as "the intentional placing of such number or derivative in a viewable manner on an Internet site that is available to the public or in material made available or sold to the general public."

Most retirement systems currently use SSNs as record identifiers for both active and retired members, but do not allow any member's SSN to be given to the public, nor do they allow the sale of records that would include the number. Even information that is given out to a public entity under the Freedom of Information Act does not include SSNs. Systems do often display the number in some form on direct communications to participants in the plans, including, but not limited to:

- Benefit/Account Statements
- Warrants/Checks
- Collection Letters
- Payroll Deposit Slips
- Independent Auditor Forms
- Forms 1099 and W-2
- Net Pay Change Letters
- Waiver Of Benefits Documents
- Income Tax Withholding Forms
- Direct Deposit Requests
- Delinquent Payment Forms
- Forgery Affidavits
- Agreements For Purchase Of Service Credits
- Statements From Health Care And Deferred Compensation Programs

Although this correspondence would be in sealed envelopes addressed to the member, it is unclear whether it would be under the purview of the bill's definition of "made available." In addition, we are uncertain whether communications by third party service providers, such as health care or deferred compensation providers acting as agents to the State, would be covered under the bill. It is our understanding that the bill's prohibition would not apply to records shared between other governmental units and financial institutions, and to third party administrators with whom we contract, however, this currently is not clearly stated in the text of the bill.

Prohibition Against Display of SSN on Any Card or Tag
Provided for Purposes of Identification—Section 101(g)

H.R. 4857 also prohibits the display by governmental agencies of the SSN or any derivative of the SSN "on any card or tag that is commonly provided to employees for purposes of identification and that is to be maintained by the employees. For purposes of this clause, the term 'display' in connection with a social security account number, or a derivative thereof, means the intentional placing of such number or derivative in a viewable manner."

In discussions with your staff, it remains unclear as to whether "viewable manner" refers only to identification cards that must constantly be displayed by the employees (often for security purposes, such as a card worn around one's neck), or whether this would apply to any card issued by the State to its employees. Many States indicated that the SSN was

placed on benefits cards, particularly health insurance cards. These cards are usually only displayed by the employee to qualified personnel (such as a doctors' office) for record keeping purposes.

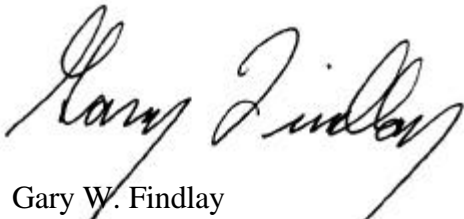
Third Party Service Providers and Liability

While the bill's implication on the private sector primarily revolves around the sale of the number only, it remains unclear as to whether the State and local government prohibitions would apply to third party service providers acting as agents to the state or local government. In addition, it is our understanding that a State or local official or employee responsible for the unauthorized use of the SSN would be personally liable and subject to civil penalties. However, there is no discussion as to whether State or local officials responsible for contracting with a third party company would be held liable for the company's misuse of the number.

Retirement systems are merely one facet of the public sector that may be affected by H.R. 4857. Legislation prohibiting or severely limiting the use of SSNs could have a detrimental impact on the administration of retirement systems, as well as countless other processes employed throughout Federal, State and local government, and we encourage you and your staff to continue soliciting input from affected parties. We understand the current proposal would require the General Accounting Office (GAO) to study the current usage of SSNs by Federal, State and local governments. Given the broad implications of this legislation, and the very limited time that remains as the 106th Congress draws to a close, it may be in the best interest of all concerned if the GAO would conduct this study prior to further action being taken on this measure in order to determine how the current usage of numbers by governmental entities may result in fraud and abuse.

Again, we thank you for seeking our input on this important measure. Please feel free to contact me (573-632-6100) or NASRA's Director of Federal Relations, Jeannine Markoe Raymond (202-624-1417), if you have any questions or would like additional information.

Sincerely,



Gary W. Findlay
Legislative Chairman and President-Elect, NASRA
Executive Director, Missouri State Employees Retirement System