



U.S. MERIT SYSTEMS PROTECTION BOARD

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TO: Bentley M. Roberts, Jr., Clerk of the Board
Timothy Korb, Attorney-Advisor, Office of the Clerk of the Board

SUBJECT: Requiring Social Security Numbers in Board appeals

You asked for our advice on whether the Board could require that individuals filing MSPB appeals provide their Social Security Numbers.¹ Based on our legal review and discussion with Eva Kleederman, a Policy Analyst with the Information Policy and Technology Branch of the Office of Management and Budget, we believe that the Board cannot require that individuals provide their Social Security Numbers.

Section 7(a) of the Privacy Act of 1974 provides, in relevant part, as follows:

It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

The Privacy Act further provides that the restriction set forth above does not apply to disclosures required by Federal statute or where the disclosure is required by a government agency that maintained a system of records before 1975 and the "disclosure was required under statute or regulation adopted prior to [1975] to verify the identity of an individual." Neither exception applies here. No Federal statute requires an individual to disclose his Social Security Number to the Board. Further, we do not believe that the Board is covered by the second exception to Section 7(a) regarding disclosures required by law or regulation prior to 1975. Thus, the Board could not deny an individual the right of appeal because of a failure to provide a Social Security Number.

We understand the need for an efficient means to determine whether multiple appeals bearing the same or very similar names are in fact being filed by the same person. Provided that individuals are not required to provide their Social Security Numbers to have the Board process their appeals, the Board could request that individuals provide the information. The key is that the Board could not refuse to process an appeal because of the failure to provide a Social Security Number.

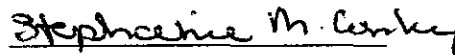
¹ At the outset, we note that not all appellants before the Board have Social Security Numbers. Residents of the Philippines and other foreign countries do not have such numbers.

As an alternative to requesting that individuals provide their Social Security Numbers, we believe that it would be nearly as effective for the Board to require that individuals provide the last four digits of their Social Security Numbers. There are 9,999 possibilities for the last four digits of a Social Security Number, and it is extremely unlikely that two individuals with the same or very similar names would also have the identical last four digits. An advantage to this approach is that the Board could make the submission of the information mandatory for the filing of an appeal.² The Privacy Act Statement that applies to the current appeal form would also apply to the requirement for the last four digits of an individual's Social Security Number. That statement provides that, because filing an appeal is a voluntary action, while an individual is not required to provide personal information, the failure to supply "all of the information essential to reach a decision ... could result in the rejection of [the] appeal."³

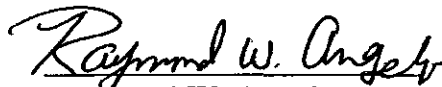
In our discussion with Ms. Kleederman, she informed us that it is OMB's position that the last four digits of an individual's Social Security Number do not constitute a Social Security Number. Thus, unlike the case with full Social Security Numbers, if an individual failed to provide the last four digits of his or her Social Security Number, the Privacy Act would not preclude the Board from rejecting the filing.⁴



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² We considered suggesting that the Board request an individual's full Social Security Number but require the submission of at least the last four digits. While this approach would be lawful, we believe that it would be more efficient to have consistent information in all appeals.

³ While it may seem disingenuous to call the submission of information voluntary where the failure to submit it could result in the rejection of the appeal, under the Privacy Act such a submission is voluntary because it is not required by law. In contrast, for example, the submission of a Social Security Number to the IRS for tax purposes is not voluntary.

⁴ Whether the Federal Circuit would approve of such an action is beyond the scope of this memorandum.