

COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER to the
INTERNAL REVENUE SERVICE

Use of Truncated Taxpayer Identification Numbers on Forms W-2, Wage and Tax Statement,
Furnished to Employees

[Docket No. REG-105004-16]

December 18, 2017

By notice published on September 20, 2017 the Internal Revenue Service (“IRS”) requests public comments on *Use of Truncated Taxpayer Identification Numbers on Forms W-2, Wage and Tax Statement, Furnished to Employees*.¹ Pursuant to this notice, the Electronic Privacy Information Center (“EPIC”) submits comments to express support and recommend that the IRS modify its proposal to require employers to truncate Social Security Numbers (“SSN”).

EPIC is a non-partisan organization established in 1994 to focus public attention on emerging privacy and civil liberties issues. EPIC has participated in the leading cases² involving the privacy of the SSN and has frequently testified in Congress about the need to establish

¹ IRS, *Request for Comment on “Use of Truncated Taxpayer Identification Numbers on Forms W-2, Wage and Tax Statement, Furnished to Employees,”* 82 Fed. Reg. 43920 (Sept. 20, 2017), <https://www.federalregister.gov/documents/2017/09/20/2017-19910/use-of-truncated-taxpayer-identification-numbers-on-forms-w-2-wage-and-tax-statement-furnished-to>.

² See, e.g., *Greidinger v. Davis*, 988 F.2d 1344 (4th Cir. 1993) (“Since the passage of the Privacy Act, an individual’s concern over his SSN’s confidentiality and misuse has become significantly more compelling”); *Beacon Journal v. Akron*, 70 Ohio St. 3d 605 (Ohio 1994) (“the high potential for fraud and victimization caused by the unchecked release of city employee SSNs outweighs the minimal information about governmental processes gained through the release of the SSNs”).

privacy safeguards for the SSN to prevent the misuse of personal information.³ EPIC's work on *Ingerman v. IRS*⁴ is particularly relevant because at issue was the practice of openly displaying SSNs on mailings sent to taxpayers. EPIC also maintains an archive of information about the SSN online.⁵

It is important to emphasize the unique status of the SSN in the world of privacy. There is no other form of individual identification that plays a more significant role in record-linkage and no other form of personal identification that poses a greater risk to personal privacy. The use of the number for identification poses an ongoing risk of identity theft, financial fraud, and other forms of crime. The link between SSNs and identity theft is well-established. The SSN was created for a limited purpose—for the Social Security Administration to administer retirement benefits—but has become a de facto universal identifier. Although the SSA and IRS are the only entities with clear statutory authority to use the number, use of the SSN in the private sector has become widespread. The more the SSN is used, the more insecure it becomes. Out of 1,091 total breaches in 2016, 568 exposed SSNs (52.1% of all breaches that year).⁶

³ Marc Rotenberg, Exec. Dir., EPIC, *Testimony at a Hearing on Protecting Seniors from Identity Theft, Before the S. Special Comm. On Aging*, 114th Congress (Oct. 7, 2015); Marc Rotenberg, Exec. Dir., EPIC, *Testimony at a Hearing on Protecting the Privacy of the Social Security Number from Identity Theft, Before the H. Ways & Means Subcom. on Social Security*, 110th Cong. (June 21, 2007), https://epic.org/privacy/ssn/idtheft_test_062107.pdf; Marc Rotenberg, Exec. Dir., EPIC, *Testimony at a Joint Hearing on Social Security Numbers & Identity Theft, Before the H. Fin. Serv. Subcom. on Oversight & Investigations and the H. Ways & Means Subcom. on Social Security*, 104th Cong. (Nov. 8, 2001), http://www.epic.org/privacy/ssn/testimony_11_08_2001.html.

⁴ Brief of Amicus Curiae Computer Professionals for Social Responsibility in Support of Appellant, *Ingerman v. IRS*, 953 F.2d 1380 (3rd Cir. 1992), https://epic.org/privacy/ssn/ingerman_brief.html.

⁵ Social Security Numbers, EPIC, <https://epic.org/privacy/ssn/>.

⁶ Identity Theft Resource Center, ITRC Breach Statistics 2005-2016, <https://www.idtheftcenter.org/images/breach/Overview2005to2016Finalv2.pdf>.

The SSN is such a powerful piece of information that it can be used to open new accounts without any other identifying information. Many retailers and banks will extend offers of credit to individuals with a SSN attached to a good credit score, even if the names do not match.⁷ Those whose SSNs have been breached suffer a rate of new account fraud more than six times higher than all consumers.⁸ This is particularly important in light of the recent Equifax breach affecting 145.5 million Americans.⁹ From this breach alone, the SSNs of almost half of all Americans could be exposed to identity theft. Experts are anticipating that the Equifax breach will lead to more tax fraud and are advising people to file their tax returns early.¹⁰

Social Security Numbers and other personal data are “broadly available for sale in the cybercrime underground on a significant portion of the American populace.”¹¹ Services such as Carder’s Paradise sell credentials to e-commerce websites as well as entire identities priced based on the victim’s FICO score.¹² That site sells an identity with a perfect FICO score for \$150, demonstrating how inexpensive and easy it can be to commit identity theft. Identity thieves also target children’s SSNs to get access to identities without credit histories.¹³

⁷ Bob Sullivan, *Your Social Security Number Isn’t a Secret*, N.Y. Times (Sept. 13, 2017), https://www.nytimes.com/2017/09/13/opinion/your-social-security-number-isnt-a-secret.html?_r=0.

⁸ Identity Theft Resource Center, *New Account Fraud—A Growing Trend in Identity Theft* at 3 (November 2016), <https://www.idtheftcenter.org/images/page-docs/NewAccountFraud.pdf>.

⁹ *Frequently Asked Questions*, Equifax, equifaxsecurity2017.com.

¹⁰ Kelli B. Grant, *Your Next Worry After the Equifax Breach: Fake Tax Returns*, CNBC (Sept. 19, 2017), <https://www.cnbc.com/2017/09/18/your-next-worry-after-the-equifax-breach-fake-tax-returns.html>.

¹¹ Brian Krebs, *The Market for Stolen Account Credentials*, Krebs on Security (Dec. 18, 2017), <https://krebsonsecurity.com/2017/12/the-market-for-stolen-account-credentials/>.

¹² *Id.*

¹³ Isabel Dobrin, *To Protect Children from Identity Theft, Parents Must Be Proactive*, NPR (Oct. 18, 2017), <https://www.npr.org/2017/10/18/556237149/to-protect-children-from-identity-theft-parents-must-be-proactive>.

Considering these risks, it is prudent for the IRS to permit employers to truncate employees' SSNs on tax forms. However, it would be better if the proposed rule required employers to do so. Allowing the use of full SSNs will create unnecessary risk for those who do not truncate their SSNs. Rather than allow protection of the confidentiality of SSNs to turn on the whim of an employer, the IRS should require all employers to truncate SSNs on W-2 forms. W-2 forms are incredibly valuable to identity thieves because they contain information needed to get another person's tax returns.¹⁴ W-2 forms have been the target of several high-profile breaches, therefore they should only permit truncated SSNs to protect employees from future breaches.

EPIC agrees with IRS Commissioner John Koskinen's advice "to assume your name, Social Security number and address are already in the hands of criminals, and then act accordingly."¹⁵ The IRS should heed its own advice and require, rather than only permit, employers to collect only truncated forms of employees' SSNs.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President & Executive Director

/s/ Christine Bannan

Christine Bannan
EPIC Administrative Law & Policy Fellow

¹⁴ Brian Krebs, *Crooks Grab W-2s From Credit Bureau Equifax*, Krebs on Security (May 6, 2016), <https://krebsonsecurity.com/2016/05/crooks-grab-w-2s-from-credit-bureau-equifax/>.

¹⁵ Meredith Somers, *After Equifax Breach and Ahead of 2018 Filing Season, IRS Lays Out Plans to Defend Against Tax Frauds*, Federal News Radio (Oct. 17, 2017), <https://federalnewsradio.com/management/2017/10/after-equifax-breach-and-ahead-of-2018-filing-season-irs-lays-out-plans-to-defend-against-tax-frauds/>.