

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:06:JBlack
PUBWE-146474-11

date: December 2, 2011

to: Steve A. Mindel
Recruiting Agent
(IRS Recruitment Office)

from: Charles B. Christopher
Chief, Branch 7
(Procedure & Administration)

subject: Form 14145, IRS Applicant Contact Information

Issues

1. May the IRS collect the last four digits of a potential applicant's Social Security Number (SSN) on Form 14145?
2. May the IRS request personal information for Form 14145 from the potential applicant via email?
3. May the IRS refuse to enter the potential applicant in the database (PeopleTrak) if the potential applicant refuses to provide the last four digits of their SSN?

Conclusion

1. The IRS may not collect the last four digits of a potential applicant's SSN because it is not being used as an account number, as required by Exec. Order 9397. [REDACTED]
2. The IRS should not request personal information from individuals via email; doing so is in violation of its stated policy.
3. The IRS may not refuse to enter an applicant in PeopleTrak if the potential applicant refuses to provide the last four digits of their SSN because the IRS cannot request that information.

In reviewing Form 14145, we also identified the following issues:

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4. Form 14145 does not contain a legally sufficient Privacy Act Notice. We have provided a suggested Privacy Act Notice, but need additional information to complete it. This will require coordinating with GLS to determine the proper authority for the collection of all the information requested in Form 14145. [REDACTED]
5. [REDACTED]
6. Form 14145 is subject to the Paperwork Reduction Act. We have included a suggested Paperwork Reduction Act Notice with our suggested Privacy Act Notice. However, you will need to contact Wage and Investment, Tax Forms and Publications, in order to obtain the estimated average time calculation for the form and an OMB control number.

Facts

Form 14145, IRS Applicant Contact Information, is used by the IRS Recruitment Office to collect contact information from individuals who may be interested in working for the IRS now, or at any time in the future (potential applicants). Form 14145 requests the following information: name (first and last), the last four digits of the individual's SSN, whether the individual is a US citizen, address, phone number, email address, special classifications (veteran, CPA, Sch A authority/disability¹, bilingual), and education information (colleges attended, degrees awarded, GPA, major, and year of graduation). There is also a place at the bottom of the form for the IRS recruiter to select what positions the potential applicant is eligible for.

It is our understanding that the IRS Recruitment Office enters the information from a completed Form 14145 in its database, PeopleTrak. Once the information has been entered in PeopleTrak, the physical cards are destroyed. Currently, all information in PeopleTrak is maintained indefinitely and not deleted pursuant to any records retention policy. An individual's record in PeopleTrak is only retrieved by reference to the individual's name; the last four digits of the individual's SSN are used only to verify the individual's identity. An individual's record cannot be retrieved by the last four digits of the individual's SSN. The information in PeopleTrak is not shared between agencies and is only accessible by IRS recruiters.

It is our understanding that the primary purpose of PeopleTrak is to keep in contact with the potential applicants regarding employment opportunities with the IRS and Chief Counsel. The contact is done via email and by phone. A potential applicant is contacted about a job at the same time the announcement is posted for the public on

¹ We are unaware what "Sch A authority/disability" refers to. We defer to GLS to determine what this is and whether it is appropriate to ask for this information on Form 14145.

the USAjobs website. The potential applicant is only contacted about jobs which correspond to the job categories selected by the IRS recruiter on Form 14145.

Legal Analysis

The IRS May Not Collect the Last Four Digits of an Individual's SSN on Form 14145

The Privacy Act requires federal agencies to collect and maintain only such information about individuals as is relevant and necessary to accomplish a purpose of the agency required by statute or by Presidential Executive Order. 5 U.S.C. § 552a(e)(1). Executive Order 9397 (E.O. 9397) governs the collection and use of SSNs by federal agencies. E.O. 9397 provides that a federal department or agency may utilize SSNs as account numbers for accounts pertaining to individuals. Exec. Order No. 9397, 8 Fed. Reg. 16,095 (Nov. 30, 1943), *as amended by* 73 Fed. Reg. 70,239 (Nov. 18, 2008). For Privacy Act purposes, the last four digits of an individual's SSN are treated in the same fashion as an individual's full SSN.

In this case, the last four digits of the individual's SSN are not used as an account number. It is our understanding that the last four digits of the SSN are only used for identity verification. Since the last four digits of the SSN are not being used as an account number, E.O. 9397 does not authorize its collection. See id. Without authority to collect the last four digits of the SSN, the IRS may not request the information. See 5 U.S.C. § 552a(e)(1). [REDACTED]

The IRS May Not Request Personal Information From Potential Applicants Via Email

It is the IRS's policy not to request personal information from individuals via email. See The IRS Does Not Initiate Contact With Taxpayers By Email to Request Personal or Financial Info, <http://www.irs.gov/privacy/article/0,,id=179820,00.html> (relating to contact with taxpayers but analogous to potential applicants); see also The Official Internal Revenue Service Website is IRS.gov, <http://www.irs.gov/newsroom/article/0,,id=202119,00.html> (stating that the IRS will not use email to obtain personal information from someone). Therefore, the IRS Recruitment Office should not request any personal information from the potential applicants via email.

The IRS May Not Refuse to Enter a Potential Applicant in PeopleTrak for Refusing to Provide the Last Four Digits of the Individual's SSN

Since the IRS is not permitted to collect the last four digits of the SSN for the stated purpose, it may not refuse to enter a potential applicant in PeopleTrak for refusing to provide the last four digits of the individual's SSN.

Even if the IRS could collect the last four digits of the SSN, uncodified section 7(a)(1) of the Privacy Act states that it is "unlawful for any federal, state, or local government

agency to deny any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number." Privacy Act of 1974, Pub. L. No. 93-579, § 7, 88 Stat. 1896. An exception exists for disclosures required by federal statute and for government systems of records in existence before January 1, 1975. Id. Federal employment is a benefit covered by this portion of the Privacy Act. However, since we have concluded above that the IRS may not collect the last four digits of a potential applicant's SSN for the purpose described to us, we need not discuss whether either exception is met in this case.

Form 14145 Does Not Have a Legally Sufficient Privacy Act Notice

The Privacy Act requires federal agencies that request information from individuals to notify the individuals of: (1) the authority (statute or Presidential Executive Order) to request the information, (2) whether providing the information is mandatory or voluntary, (3) how the information will be used (principal purpose and routine uses), and (4) the effects, if any, of not providing all or a part of the information. 5 U.S.C. § 552a(e)(3). In this case, the Privacy Act notice on the bottom of Form 14145 does not contain most of the required information.

Authority for Requesting the Information

In the Form 14145 Privacy Act notice, the stated authority for collecting the information is E.O. 9397. As stated above, E.O. 9397 only applies to the collection of SSNs to be used as account numbers and does not authorize the collection of SSNs for identity verification purposes. Additionally, E.O. 9397 does not authorize the collection of the other information requested in Form 14145 such as name, address, citizenship, and education. In order to have a legally sufficient Privacy Act notice, it must contain the authority for collecting all of the information.

We believe the authority to collect the information requested on Form 14145 may be contained in 5 U.S.C. §§ 301 and I.R.C. §§ 7801 and 7803. It is also possible that a provision of federal employment law, of which we are unaware, is more specifically applicable to this situation. Issues of federal employment law, including application procedures, are under the jurisdiction of the Office of the Associate Chief Counsel (General Legal Services). Therefore, we have copied that office on this memorandum so that they may review the authority for the collection of the information.

Voluntary or Mandatory

The Privacy Act Notice must also state whether providing the information is voluntary or mandatory. We understand that providing information on Form 14145 is voluntary.

Principal and Routine Uses

You have asserted that the information collected on Form 14145 is only used to contact potential applicants about jobs and is not shared with or disclosed to other agencies.

We note, however, that the information would be disclosed to the Department of Justice for use in litigation to which this information is or may be relevant.

Effects of Not Providing the Information

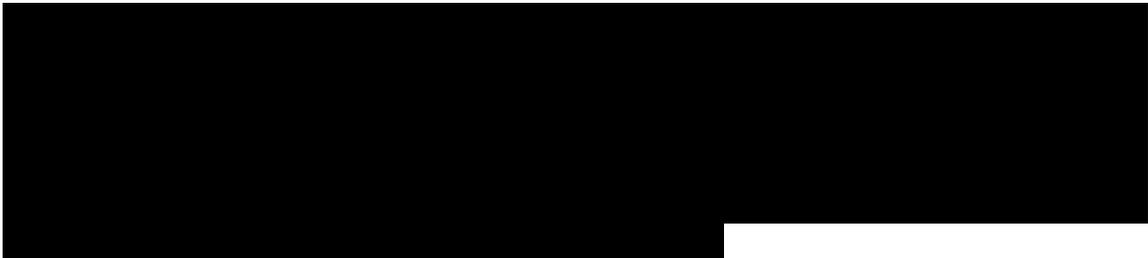
Since providing information on Form 14145 is voluntary, there are limited effects if an individual chooses not to provide the information. It is our understanding that the only effect of failing to provide information is that the IRS may be delayed or prevented from contacting a potential applicant about a job. Providing false information, however, could subject an individual to penalties.

Paperwork Reduction Act Notice

Procedure and Administration Branch 2 (contact: Matt Lucey) advises that Form 14145 requires a Paperwork Reduction Act Notice and an OMB control number. Please contact Allan Hopkins or Joseph Durbala in Wage and Investment, Tax Forms and Publications, to obtain the time calculations and the OMB control number. You probably will need to complete Form 83-I, but we recommend contacting Allan or Joseph first.

Suggested Privacy Act and Paperwork Reduction Act Notice

Based on the above information, we suggest the following Privacy Act and Paperwork Reduction Act Notice for Form 14145:



If you have any questions or need further assistance, please contact Jenni M. Black at (202) 622-3777 or Sarah Tate at (202) 622-6968.

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Cc: Office of Associate Chief Counsel (General Legal Services)