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## MEMORANDUM

Date: July 3, 2008

To: Minnesota State Colleges & Universities Presidents; Chief Human Resources Directors; Registrars; Business Officers; Institutional Research Offices

From: Gail M. Olson, General Counsel  
Kris Legler Kaplan, Deputy General Counsel

KLK/SL

Subject: **Social Security Number Use Law, Minn. Stat. § 325E.59  
Effective July 1, 2008**

### Introduction

This memorandum is to advise system personnel of a new law effective July 1, 2008, limiting certain practices regarding the use of Social Security Numbers (SSNs). This law reflects increased legislative concern about identity theft and is consistent with national trends to improve the security of SSNs by limiting their use.<sup>1</sup> You may recall that the legislature first passed Minn. Stat. § 325E.59 in 2005, but delayed the original effective date of July 1, 2007, to permit certain amendments, which were enacted this session. While the law is primarily aimed at private businesses, public institutions of higher education (including our colleges, universities and the Office of the Chancellor) are also specifically included.

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<sup>1</sup> For example, proposed amendments to FERPA currently under consideration include prohibiting educational agencies and institutions from using a student's SSN (or student ID number) to identify the student when releasing or confirming directory information. The proposed amendments are found at: <http://www.ed.gov/legislation/FedRegister/proprule/2008-1/032408a.html>.

Additionally, the legislature amended Minn. Stat. § 13.355 to prohibit all government entities from:

- Mailing or delivering or causing to be mailed or delivered an item that displays a SSN on the outside of the item or in a manner where the SSN is visible without opening the item; or
- Requiring or requesting a person to mail or deliver or cause to be mailed or delivered an item that displays a SSN on the outside of the item or in a manner where the SSN is visible without opening the item.

2008 Session Laws Ch. 315, Sect. 7, eff. August 1, 2008.

## **I. Applicable Provisions of Minn. Stat. § 325E.59<sup>2</sup>**

### **A. Restrictions:**

Subject to the exceptions below, effective July 1, 2008, Minnesota State Colleges and Universities may not:

- 1. Publicly post\* or publicly display\* in any manner an individual's Social Security Number (SSN); (\* means to intentionally communicate or otherwise make available to the general public)**
- 2. Print an individual's SSN on any card required for the individual to access products or services provided by the college or university;**
- 3. Require an individual to transmit his/her SSN over the Internet unless the connection is secure or the SSN is encrypted;**
- 4. Require an individual to use his/her SSN to access an Internet Web site unless the Internet Web site can be accessed only with the additional use of another password, unique personal identification number or other authentication device;**
- 5. Print a number that the college or university knows\*\* to be the individual's SSN on any materials that are mailed to him/her unless state or federal law requires the SSN to be on the document to be mailed.**

\*\* If a college or university receives a number from a third party, in connection with a transaction involving or relating to an individual, the college or university is under no duty to inquire or otherwise determine whether the number is or includes the individual's SSN and may print that number on materials mailed to the individual *unless* the college or university has actual knowledge that the number is or includes the individual's SSN.

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<sup>2</sup> The complete text of the 2007 version of the law may be found at: <https://www.revisor.leg.state.mn.us/statutes/?id=325E.59>; and the 2008 amendments: <https://www.revisor.leg.state.mn.us/laws/?id=333&doctype=Chapter&year=2008&type=0>.

6. **Assign or use a number as the primary account identifier that is identical to or incorporates an individual's complete SSN** except in conjunction with an employee or member retirement or benefit plan or human resource or payroll administration; or

7. **Sell\* SSN's obtained from individuals in the course of business.**

\* "Sell" does not include the release of an SSN if the release is incidental to a larger transaction and is necessary to identify the individual in order to accomplish a legitimate business purpose; marketing is not a legitimate business purpose for these purposes.

**B. Exceptions to Restrictions (described above):**

**1. Mailed Applications and Other Forms.**

SSNs may be included in applications and forms sent by mail, including documents sent as part of an application or enrollment process, or to establish, amend, or terminate an account, contract, or policy, or to confirm the accuracy of the SSN. SSNs may NOT, however, be included on the outside of any mailing.

**2. Coordination with Other Laws.**

Minn. Stat. § 325E.59 does not prevent:

- a. the collection, use, or release of a SSN as *required* by state or federal law; or
- b. the collection, use or release of a SSN for a purpose specifically authorized or specifically allowed by a state or federal law that includes restrictions on the use and release of information on individuals that would apply to SSNs; or
- c. the use of a SSN for *internal* verification or administrative purposes.

The provisions described above mean that colleges and universities may continue to use SSNs so long as compliant with applicable existing state or federal privacy laws such as the Minnesota Government Data Practices Act (MGDPA); FERPA; and the Federal Privacy Act.<sup>3</sup> So, for example, under this new law a college or university is permitted to continue to release education records that contain SSNs to the U.S. Department of Education for audit or evaluation purposes so long as consistent with 34 CFR 99.31 (a) (3). This law does not, however, confer legal authority to disclose SSNs except as authorized by other state or federal law.

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<sup>3</sup> A useful document stating the procedures applicable when collecting SSNs is attached hereto and may be found at: <http://www.ipad.state.mn.us/docs/ssnentity.pdf>

**3. Public Records.** This new law does not apply to documents that are recorded or required to be open to the public under the Minnesota Government Data Practices Act, Minn. Stat. Ch 13, or by other law.

### **C. Compliance with Minn. Stat. § 325E.59**

We believe that in most instances few, if any, modifications in campus procedures will be required under this law; SSNs in the hands of system colleges and universities are already subject to privacy and security protections under several applicable laws, including the Minnesota Government Data Practices Act (MGDPA); the Family Educational Rights and Privacy Act (FERPA)<sup>4</sup>; and federal Privacy Act.

Nevertheless, to ensure compliance with this new statute, campuses should examine their various activities that may include the collection, use or release of SSNs, such as:

- forms or Web sites where SSNs may be requested from individuals;
- posting practices;
- mailing practices;
- authentication practices (for example, using SSNs on sign-in sheets or to verify the identity of a student when contacted by a prospective employer);
- printed documents; or
- assignment of account identifiers.

College or university administrators who have questions or would like assistance in implementing this new law are invited to contact the Office of General Counsel.

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Att.

c: Assistant Attorneys General, Education Division

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<sup>4</sup> Campus administrators are likely aware that amendments to FERPA have recently been proposed that include specific limitations on SSN use: that SSNs may not be designated as directory information, and SSNs may not be used to confirm directory information without the student's written consent. A review of current SSN practices for compliance with state law will also ensure compliance with these FERPA amendments that are anticipated to become effective later this year. See all proposed amendments at: <http://a257.g.akamaitech.net/7/257/2422/01jan20081800/edocket.access.gpo.gov/2008/E8-5790.htm>



## A Government Entity's Collection of Social Security Numbers

Before collecting an individual's Social Security number (SSN) from him/her, Minnesota government entity staff need to make sure of the following: (1) that the entity has authority to collect the SSN; and, if so, (2) that the entity gives the individual the required federal and state notices at the time of collection.

### Restrictions on the Collection

Both federal and state laws impose restrictions on the collection of SSNs. Federal law states that government entities cannot deny an individual any right, privilege, or benefit if the individual refuses to provide his/her SSN unless the collection is required by federal law. (Federal Privacy Act of 1974, 5 U.S.C. 552a note – Disclosure of Social Security Number.)

In addition, Minnesota law states, "Collection and storage of all data on individuals...shall be limited to that necessary for the administration and management of programs authorized by the legislature or local governing body or mandated by the federal government." (Minnesota Statutes, section 13.05, subdivision 3.)

If a government entity does not have federal authority to *require* an individual to provide his/her SSN, but wants to collect the SSN, the entity must consider the language in section 13.05, subdivision 3. In other words, if a government entity asks an individual to voluntarily supply his/her SSN, the collection should be limited to situations that are necessary for the administration and management of a specific authorized or mandated program.

### Notice Requirements at the Time of Collection

Federal law requires a government entity to notify an individual of three things when the entity collects the individual's SSN:

- Whether disclosure is mandatory or voluntary;
- The statutory or other authority to collect the number; and
- How the government entity will use the number.

(Federal Privacy Act of 1974, 5 U.S.C. 552a note – Disclosure of Social Security Number.)

In addition, because SSNs are private data pursuant to Minnesota Statutes, section 13.355, a government entity is required by state law to provide a Tennessee warning notice at the time of collection. The four required components are listed below:

- The purpose and intended use of the data;
- Whether the individual can refuse or is legally required to provide the data being requested from him or her;
- The known consequences of supplying or refusing to supply the data; and
- The entities or persons outside the collecting entity with statutorily authorized access to the data.

(Minnesota Statutes, section 13.04, subdivision 2.)