

T0: NCISS Members
FROM: Bruce Hulme, NCISS Legislative Director
DATE: December 13, 2007
SUBJECT: Federal Trade Commission's Workshop on the SSN and ID Theft

On December 10 and 11, Larry Sabbath, Nicole Bocra, Jimmie Mesis, and I attended the Federal Trade Commission's workshop in D.C. regarding uses of Social Security numbers in the private sector. These had previously been posted on the FTC website with written comments from 338 stakeholders as of December 5.

In addition, there had been a recently released 43-page Staff Summary of Comments and Information received regarding the private sector's use of Social Security numbers. Refer to #218, Project No. P05414.

Also attending the workshop were NCISS member Bill Lawrence, president of the Private Investigators Association of Virginia, and private investigator Patrick M. Clawson of Michigan and Virginia.

During this day and a half workshop, 27 presenters were heard on six panels, each with a separate moderator and four panelists.

After welcoming remarks by FTC's Lydia Parnes, Director, Bureau of Consumer Protection, the framing of issues regarding the private security sector's uses of the SSN were provided by Joel Winston, Associate Director, Division of Privacy and Identity Protection.

Subject matter of the four panels presentations on the first day were: How SSNs are used to commit ID theft; SSN display and use as an internal identifier; SSN uses to link data externally; SSN use for authentication and fraud prevention.

The second day's two panels covered: Alternatives to SSN restriction; Recommendations to be made to the President as to any specific steps to be taken after developing a comprehensive record on private sector uses of SSNs.

The FTC had also prepared a Summary of Current SSN Federal Bills as they relate to private sector use of SSNs. They limited their comments to these following three bills:

S.238, the Social Security Number Misuse Prevention Act by Senator Diane Feinstein (D-CA)

H.R. 30046, the Social Security Number Privacy and Identity Theft Preservation Act of 2007 by Rep. Michael McNulty (D-NY)

H.R. 948, the Social Security Number Protection Act of 2007 by Rep. Edward Markey (D-MA)

The above bills, if enacted into law, would restrict the collection, display, purchase, sale, and/or use of SSNs.

Circulated at the workshop was a four-page fact sheet: The Work of the President's Identity Theft Task Force in the form of a September 19, 2006, press release.

Also available to participants from the Identity Theft Task Force was the April 2007, 107-page Combating Identity Theft: A Strategic Plan.

The FTC staff Summary Report and Comments referred on two occasions to the eight-page NCISS comments of September 4. That report also included comments from Francie Koehler, NCISS first vice-president, and the CALI and NALI legislative chair, on behalf of the California Association of Licensed Private Investigators. That document provided many case examples of how private investigators have utilized the Social Security number during the course of their investigations.

Unfortunately, the initial workshop panel commented on the recent indictment of ten private investigators that are alleged to have illegally obtained confidential medical, financial, and other personal information from the Social Security Administration and the Internal Revenue Service without consent. (Refer to the NCISS press release on our website.) These ten investigators have been indicted by the Seattle Grand Jury for pretexting as a result of an operation called "Dialing for Dollars."

Charges against these private investigators from Washington, California, Texas, and New York, include: conspiracy, wire fraud, fraudulent elicitation of Social Security Administration information, solicitation of Federal Tax information, and aggravated identity theft.

Reference was also made to the Amy Boyer case by one of the three privacy advocates that were on the panels. In general, this workshop concentrated on determining not only the uses of the SSN in the private sector; the panelists were concerned primarily with the SSN as an identifier.

Speaking on his own behalf and not for any association, was Robert Townsend, a California private investigator, who had been invited by the FTC to speak regarding the private investigator's use of the SSN.

It was indeed unfortunate that no panelist had been selected by the FTC from NCISS to speak for the private investigation profession. For what it's worth, in my opinion and others present at this workshop, it was regrettable that Robert Townsend devoted a considerable portion of his allotted time on the panel to put forth an ill-conceived scheme. His proposal would dictate that an investigator obtain an affidavit regarding proposed litigation against a subject, require an appearance before a judicial officer, and pay a fee. He would also have to provide an ex-parte argument with sufficient facts to determine if a lawsuit is required that will result in compensation to an aggrieved party before allowed the very access that we presently have without having to jump over legal hoops to obtain same.

In essence, Townsend termed his proposal a "restricted search warrant" and he advocated the presence of a "judicial set of eyes" looking at what the investigator is doing and confirming that the investigator's actions are sanctioned by a judicial officer.

Thankfully, not one member of any of the panels pursued Townsend's ridiculous proposal. Such would have completely undermined the legislative and regulatory positions of NCISS and the fifty professional organizations on whose behalf we speak regarding federal privacy issues and the need for our profession to have continued access to SSNs and credit headers.

Notwithstanding the damaging remarks offered by Townsend to workshop participants, NCISS representatives in the audience were able to provide examples where the SSN was a key indicator in solving cases that achieved favorable results in the interest of justice. And, our Washington representative, Larry Sabbath, succinctly presented our position into the record

upon which recommendations will be made by the FTC to the President's Identity Theft Task Force in the coming months.

The majority of participants in the workshop emphasized that the Social Security number is not a secret anymore. They felt that the best way to combat identity theft would be to strengthen the authentication process used by firms that grant credit. They criticized financial institutions that rely solely on the SSN (whole or truncated) to open or access an account. Rather, they suggest using responses to questions about matters known only to the individual to provide authentication. Restricting the use of SSNs would be of far less value for preventing identity fraud. Privacy advocates, however, did maintain that because some firms still rely on the SSN, its sale should be limited.

High FTC officials have agreed to meet with NCISS in early January to further discuss why private investigators need access to the SSN.