

# Social Security System Is Voluntary

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There are a wide variety of myths surrounding the Social Security system in the United States. The following list is some of the most common myths:

- The Social Security system is a government sponsored retirement insurance program.
- All native born America must apply for a Social Security Number (SSN).
- All people born in Americans must present a SSN when they get a new job.
- Everyone must present a SSN to open a bank account, apply for a credit card, etc.

We will spend the remainder of this essay demonstrating that none of the statements in the above listed are true.

## Social Security Is Welfare

Most people believe that the Social Security system is an insurance program created by the federal government to insure that everyone will have some income when they retire. But in actual fact, Social Security is a welfare system.

In the **Social Security Act, 74th Congress, Session I, Ch. 531, August 14, 1935, page 636, Section. 702, *Duties of Social Security Board***, the term "Social Insurance" is used. "Social Insurance" is defined in Black's Law Dictionary as follows:

"A comprehensive welfare plan established by law, generally compulsory in nature, and based on a program which spreads the cost of benefits among the entire population rather than on individual recipients. The federal government began to use social insurance programs in 1935 with the passage of the Social Security Act. The basic federal and state approaches to social insurance presently in use are: Old Age, Survivors, and Disability Insurance (i.e. social security); Medicare and Medicaid; unemployment insurance; and worker's compensation." [Black's Law Dictionary, 5th Edition.]

## SSN Not Mandatory

New parents are routinely told by hospital staff that they must fill out an application for a Birth Certificate and an application for a SSN before they leave the hospital with their newborn. Hospitals make every effort to get these applications because the hospital receives up to \$4,000 when they deliver a birth certificate and SSN to the STATE for a newborn.

Penny Peyton, former Claims Representative for the Social Security Administration (SSA), writes: "Social Security is voluntary in that there is no law which requires an individual to obtain a Social Security number" She also states: "Anyone who does not have a Social Security Number does not earn taxable income."

Charles H. Mullen, SSA Associate Commissioner states: "The Social Security Act does not require a person to have a Social Security number (SSN) to live and work in the United States, nor does it require an SSN simply for the purpose of having one."

The U.S. Supreme Court has ruled that Congress has limited authority to legislate compulsory subjugation to social programs within the several fifty states.

The catalogue of means and actions which might be imposed upon an employer in any business, tending to the satisfaction and comfort of his employees, seems endless. Provision for free medical attendance, nursing, clothing, food, housing, and education of children, and a hundred other matters might with equal propriety be proposed as tending to relieve the employee of mental strain and worry. Can it fairly be said that the power of Congress to regulate interstate commerce extends to the prescription of any or all of these things? Is it not apparent that they are really, and essentially related solely to the social welfare of the worker, and therefore remote from any regulation of commerce as such? We think the answer is plain. These matters obviously lie outside the orbit of congressional power. [Railroad Retirement Board v. Alton Railroad Co., 295 U.S. 330, 55 S. Ct. 758 (1935)]

According to 42 USC § 418, entitled "Voluntary agreements for coverage of State and local employees", there is no jurisdiction to involve the state or local employees except by contract/agreement.

The Social Security Act only requires aliens to be assigned numbers at the time of their lawful admission to the UNITED STATES.

42 USC § 405(c)(2)(B)

(i) "In carrying out the Commissioner's duties under subparagraph (A) and subparagraph (F), the Commissioner of Social Security shall take affirmative measures to **assure that social security account numbers will**, to the maximum extent practicable, **be assigned to all members of appropriate groups** or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):"

(I) "**to aliens at the time of their lawful admission to the United States** either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment"  
[Emphasis added.]

People who were born in the United State are citizens. The statutes clearly do not require these individuals to get a SSN. However, we can apply for a number.

42 USC § 405(c)(2)(B)(i)(II)

“to **any individual who is an applicant for** or recipient of **benefits** under any program financed in whole or in part from Federal funds **including any child on whose behalf such benefits are claimed by another person**” [Emphasis added.]

An “applicant” is:

“one who requests something” [Black’s Law Dictionary, 7<sup>th</sup> Edition]

“Apply” is defined as:

“To make a formal request or petition, usually in writing, to a court, officer, board, or company, **for the granting of some favor**, or of some rule or order, which is within his or their power or discretion.” [Black’s Law Dictionary, 7<sup>th</sup> Edition, emphasis added]

From these definitions, it is clear that to apply for something is a voluntary act. No government official can find anything in the statute that makes the application for SSN a mandatory act. It is apparent that if a SSN were mandatory, the law would provide for the assignment of numbers to everyone. Since the statutory scheme fails to impose such a requirement on private citizens of the Fifty States and/or of the United States, the next question to be asked is whether perhaps the Social Security regulations themselves might impose requirement; but here the regulations can be no broader than the Act itself, and the duty to apply for and obtain a Social Security card or number boils down to the following found at 20 CFR § 422.103:

“(b) Applying for a number. (1) Form SS-5. An individual needing a social security number may apply for one by filing a signed Form SS-5, 'Application for a Social Security Card,' at any social security office and submitting the required evidence....

“(2) Birth registration document. The Social Security Administration (SSA) may enter into an agreement with officials of a State ... to establish, as part of the official birth registration process, a procedure to assist SSA in assigning social security numbers to newborn children. Where an agreement is in effect, a parent, as part of the official birth registration process, need not complete a Form 55-5 and **may request** that SSA assign a social security number to the newborn child.

“(c) How numbers are assigned. (1) Request on Form SS-5. if the **applicant** has completed a Form SS-5, the social security office ... that receives the completed Form 55-5 will require the **applicant** to furnish documentary evidence ... After review of the documentary evidence, the completed Form SS-5 is forwarded ... to SSA’s central office ... If the electronic screening or other investigation does not disclose a previously assigned number, SSA’s central office assigns a number and issues a social security number card....

“(2) Request on birth registration document. Where a parent has **requested** a social security number for a newborn child as part of an official birth registration process described in paragraph (b)(2):of this section, the State vital statistics office will electronically transmit the request to SSA’s central office. ... Using this information, SSA will assign a number to the child and send the social security number card to the child at the mother's address.” (Emphasis added).

The supposed requirement to apply for and obtain a Social Security number, therefore, boils down to this: **you can get it if you want it and request it. There is no legal compulsion for an American citizen to apply.**

When anyone applies for a SSN, they are entering into a contract with the government. Under the definition for “contract,” Black’s Law Dictionary lists the essential elements:

“Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.” [Black’s Law Dictionary, 7<sup>th</sup> Edition]

It is clear that the Social Security contract has some of the required elements (consideration, agreement, mutual obligation). However, the “competent parties” element is missing for most people who enter the contract. The last section of the statute that is quoted above is the provision that “allows” parents to apply to an SSN for their children. People are not viewed as being of a valid age to contract until they are eighteen years old. When parents apply for their children they are acting as their “agents”. So the parents can meet the “competent parties” requirement while children cannot.

When one person (a parent), as agent, does an act on behalf of another person (a child), but without complete authority, the person for whom such act is done may afterwards adopt the act as if it is done in his behalf, thereby giving the act the same legal effect as if it had been originally fully authorized. This subsequent retroactive consent, the effect of which relates back to the time of the original act and places the Principal in the same position as if he had originally authorized the act, is called *ratification*. When a person finds that an act has been done in his name or on his behalf, that person must either ratify it, or in the alternative, disaffirm it. Silence also constitutes approval of the act. A child cannot ratify the actions of their parents. However, as an adult, they can either accept or reject the actions of their parents. The first time someone submits their SSN when apply for a job or opening a bank account or similar action after they turn 18, they have ratified the actions of their parents in applying for the SSN.

Amends title II (Old Age, Survivors and Disability Insurance) of the Act to **require States to collect the social security numbers of both parents when their child is born** for use by State agencies administering Child Support Enforcement programs unless the State finds good cause for not requiring such numbers. [Family Support Act of 1988 (Pub. L. 100-485), emphasis added]

The Family Support Act of 1988 (Pub. L. 100-485) requires states to require parents to give their SSN in order to get a birth certificate issued for a newborn. The law allows the requirement to be waived for “good cause”, but there is no indication of what may qualify. Many people have been successful in using the cause “for religious reasons.” This statute was implement in 42 USC § 405 as seen below.

“In the **administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State** (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, **the social security account number** (or numbers, if the parent has more than one such number) **issued to the parent unless the State** (in accordance with regulations prescribed by the Commissioner of Social Security) **finds good cause for not requiring the furnishing of such number**...Such numbers shall not be recorded on the birth certificate. A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect in the State...” [42 USC § 405(c)(2)(C)(ii), emphasis added]

The IRS requires taxpayers to report SSNs for dependents over one year of age, but the requirement can be avoided if you're prepared to document the existence of the child by other means if challenged. The law on this can be found at 26 USC § 6109. The penalty for not giving a dependant's number is only \$5. Several people have reported that they haven't provided SSNs for their dependents for several years, and haven't been challenged

by the IRS. Of course, after reading the article on Income Tax being voluntary, you probably will not be filing any more federal tax returns.

## SSN Not Required to Work

Most people believe that they have to present their employer with a SSN when they start a new job. They believe that their “employment” means their employer must withhold Social Security deductions from their “wages” because of their status as an “employee.” Let’s look at some definitions from the Social Security Act to see if this is born out.

The term “employment” is defined”

42 USC § 405(a)

“The term ‘employment’ means ... any service, of whatever nature, performed after 1950

(A) by an employee for the person employing him, irrespective of the citizenship or residence of either,

(i) within the United States, or

(ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States...” [emphasis added]

To fully understand what is mean by some of the imbedded terms, you have to look them up as well. Let’s see how they define “United States.”

“The term ‘United States’ when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.” [42 USC § 405(i)]

This definition would lead you to believe that it includes the 50 States. But wait, there is a definition of “State” as well.

“The term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.” [42 USC § 405(h)]

So, it would appear that if your “employment” is in one of the 50 States, you don’t have to have a SSN to work. The reason is that the federal government only has jurisdiction over Washington, D.C. and it’s territories. As we have seen, that is exactly how they define their jurisdiction. Further research may reveal that if you work for the federal, state or local government you might need an SSN to work.

But let’s also look at how Social Security defines “employee” in the Code of Federal Registry (CFR).

“You must be an employee for your work to be covered as employment for social security purposes.” [20 CFR § 404.1005]

The Social Security Act defines “employment”:

“any service **covered** by social security performed by an employee...” [Emphasis added. 20 CFR § 404.1003]

The Social Security Act defines “wages”:

“The term ‘wages’ means remuneration paid to **you** as an **employee** for **employment** unless specifically **excluded**.” [Emphasis added. 20 CFR § 404.1041]

Notice the implication that the wages can be excluded. Another section of the code defines “you” and “your”:

**“You or your means any person whose earnings from employment or self-employment are included or excluded under social security.”** [Emphasis added. 20 CFR § 404.1002]

It is evident, from this series of definitions, that only those “under social security” are covered by the system and subject to its regulations. We see from the point above that one becomes covered by the system when one applies. Therefore the system is voluntary.

When someone starts a new job, their employer wants them to fill out a W4 (determines the number of deductions for Federal Income Tax purposes) and an I-9 (to prove that you have a right to work in this country). Both of these forms have a place for the SSN.

A critical question which we must address is whether any governmental agency can require you to use an SSN which is voluntary in the first place. This appears to have been addressed by Section 7 of the Privacy Act of 1974, 88 Stat. 1896, which reads as follows:

**“Sec. 7(a)(1). 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.”** (Emphasis added).

**“(2) the provisions of paragraph (1) of this subsection shall not apply with respect to -**

**“(A) any disclosure which is required by Federal Statute, or**

**(B) the disclosure of a social security number to any Federal, State or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.**

**“(b) Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.”**

So, no government agency can require the SSN. But the same rules apply to private businesses.

In a letter, dated July 16, 1986, Dorcas R. Hardy, Commissioner of Social Security, responded to an individuals query regarding the requirement of having a SSN. Here is part of his reply (emphasis added throughout):

**“Section 205 (c)(2)(A) of the Social Security Act requires the Social Security Administration to establish and maintain records of wages and self-employment income for each individual whose work is covered under the program. Workers who do not wish to use their Social Security numbers for religious or other reasons should get in touch with the Internal Revenue Service office in their area to explain their position and receive advice on how to proceed.”**

**“We do not have the authority to require an employer to provide or deny employment or services to anyone who refuses to disclose his or her number.”**

In addition to this, there is a court case which makes it clear that you **do not** have to provide your employer an SSN when you start a new job.

**“...the Internal Revenue Code and the Regulations promulgated pursuant to the code do not contain an absolute requirement that an employer provide an employee social security**

number..." [EEOC v. Information Systems Consulting, CA3-92-0169-T, IN THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION]

The I-9 form was created as a result of the Immigration Reform Control Act, as implemented in 8 USC § 1324b(a)(3). This act does not apply to UNITED STATES citizens. The statute recognizes UNITED STATES citizens as “protected individuals”, and as such a UNITED STATES citizen can not be required to provide any of the specific documents under 8 USC § 1324a, in order to be allowed to work in the U.S.

## Do Not Give Your SSN

Giving your SSN to everyone who asks for it is a bad idea. When you give out your SSN, you are providing access to information about yourself. You are providing access to information that you do not have the ability or the legal right to correct or rebut. You provide access to data that is irrelevant to most transactions but that will occasionally trigger prejudice. Worst of all, since you provided the key, (and did so “voluntarily”) all the information discovered under your number will be presumed to be true and relevant.

A major problem with the use of SSNs as identifiers is that it makes it hard to control access to personal information. Even assuming you want someone to be able to find out some things about you, there is no reason to believe that you want to make all records concerning yourself available. When multiple record systems are all keyed by the same identifier, and all are intended to be easily accessible to some users, it becomes difficult to allow someone access to some of the information about a person while restricting them to specific topics.

Unfortunately, far too many organizations assume that anyone who presents your SSN must be you. When more than one person uses the same number, it clouds up the records. If someone intended to hide their activities, it is likely that it will look bad on whichever record it shows up on. When it happens accidentally, it can be unexpected, embarrassing, or worse. It is very difficult to prove you were not the one using your number when a damaging record was made.

There are situations where you may have to give your SSN and there are other situations where you may not have to. Below we will explore using your SSN in various situations and what the statues say (if anything).

### Government

The Privacy Act of 1974 (Pub. L. 93-5795, implemented in USC § 552a) required authorization for government agencies to use SSNs in their databases and required disclosures when government agencies request the number.

The Tax Reform Act of 1976 gave authority to state or local tax, welfare, driver’s license, or motor vehicle registration authorities to use the number in order to establish identities. The law is implement in 42 USC § 405 as seen below.

**“It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any**

individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.” [42 USC § 405(c)(2)(C)(i), emphasis added]

The Privacy Act of 1974 (Pub. L. 93-579, 5 USC § 552a) requires that any federal, state, or local government agency that requests your SSN must tell you four things:

Whether disclosure of your SSN is required or optional,

What statute or other authority they have for asking for your number,

How your SSN will be used if you give it to them, and

The consequences of failure to provide an SSN.

In addition, the act says that only Federal law can make use of the SSN mandatory. So anytime you are dealing with a government institution and you are asked for your SSN, look for the Privacy Act Statement. If there is not one, complain and do not give your number. If the statement is present, read it. If it says giving your SSN is voluntary, you'll have to decide for yourself whether to fill in the number.

Universities that accept federal funds are subject to the Family Educational Rights and Privacy Act of 1974 (the “Buckley Amendment”), which prohibits them from giving out personal information on students without permission. There is an exception for directory information, which is limited to names, addresses, and phone numbers, and another exception for release of information to the parents of minors. There is no exception for SSN, so covered Universities are not allowed to reveal students’ numbers without their permission. In addition, state universities are bound by the requirements of the Privacy Act, which requires them to provide the disclosures mentioned above. If they make uses of the SSN, which are not covered by the disclosure, they are in violation of the statute.

## Lenders and Borrowers

Banks, credit unions, credit card issuers and various others are required by the IRS to report the SSN of account holders to whom they pay interest or when they charge interest and report it to the IRS. If you don't tell them your number you will may be refused an account or be charged a penalty such as withholding of taxes on your interest. You might try opening a non-interest bearing account. In such cases, you may be able to challenge the validity of their request for the SSN.

If the bank insists upon a number, you can create another entity [e.g. a Pure Contract Trust] and then apply for a “banking purposes only” EIN. The bank will use this number to report interest payments to the IRS. So it would still be a good idea to make the account non-interest bearing so that they will have nothing to report to the IRS.

Most banks send your name, address, and SSN to one of the major credit bureaus when you open an account. These credit bureaus keep a database of the people’s credit history. Credit bureaus are covered by the Fair Credit Reporting Act, and the bank is required to let you know if it refuses to open your account and a report from the credit bureau was a factor. You can also send a letter to credit bureau directly and request a copy of your report.

Many banks, brokerages, and other financial institutions have started implementing automated systems to let you check your balance. All too often, they are using a SSN as the identifier that lets you get access to your personal account information. If your bank uses the SSN for this purpose, you may want to write them a letter pointing out how common it is for the people with whom you have financial business to know your SSN. Ask them to change your identifier.

When buying (and possibly refinancing) a house, most banks will now ask for your SSN on the Deed of Trust. This is because the Federal National Mortgage Association recently started requiring it. The fine print in their regulation admits that some consumers will not want to give their number, and allows banks to leave it out when pressed. It first recommends getting it on the loan note, but then admits that it is already on various other forms that are a required part of the package, so they already know it. The deed is a public document, so there are good reasons to refuse to put the SSN there, even though all parties to the agreement already have access to your number.

## Private Organizations

The guidelines for dealing with non-governmental institutions are much more tenuous. Most of the time private organizations that request your SSN can get by quite well without your number. If you can find the right person to negotiate with, they will usually admit it is not required. The problem is finding that right person. The person behind the counter is often told no more than “get the customers to fill out the form completely.”

Most of the time, you can convince them to use some other number. Usually the simplest way to refuse to give your SSN is simply to leave the appropriate space blank. One of the times when this is not a strong enough statement of your desire to conceal your number is when dealing with institutions which have direct contact with your employer. Most employers have no policy against revealing your SSN. They apparently believe that it must be an unintentional slip when an employee does not provide an SSN to everyone who asks.

Public utilities (gas, electric, phone, etc.) are considered to be private organizations under the laws regulating SSNs. Most of the time they ask for an SSN, and are not prohibited from asking for it. They will usually relent if you refuse to give the number. Ask to speak to a supervisor, insist that they document a corporate policy requiring it, ask about alternatives, ask why they need it and suggest alternatives.

No laws require medical service providers to use your SSN as an identification number (except for Medicare, Medicaid, etc.) They often use it because it is convenient or because your employer uses it to identify employees to its groups health plan. In the latter case, you have to get your employer to change their policies. Often, the people who work in personnel assume that the employer or insurance company requires use of the SSN. Blood banks also ask for the number but are willing to do without if pressed on the issue.

Most insurance companies share access to old claims through the Medical Information Bureau. If your insurance company uses your SSN, other insurance companies will have a much easier time finding out about your medical history. You can get a copy of the file

MIB keeps on you by writing to Medical Information Bureau, P.O. Box 105, Essex Station, Boston, MA 02112. Their phone number is (617) 426-3660.

If an insurance agent asks for your SSN in order to “check your credit”, point out that the contract is invalid if your check bounces or your payment is late. They do not need to know what your credit is like, just whether you have paid them.

## Conclusion

Based on the materials presented here, the following conclusions can be reached:

- Individuals who are American citizens do not have to have a SSN.
- American citizens do not have to get an SSN for your children who are born in America.
- American citizens do not have to present your SSN when you start a new job. The employer cannot discriminate against you if you fail to provide an SSN.
- If the employer does not have an SSN on you, then they cannot deduct Social Security taxes (F.I.C.A.) from your paycheck.