

A United States District Court has held: "In certain situations, where there is a close nexus between the state and an action by a regulated entity [arguably the Regional Workforce Boards, the action of the latter may be fairly treated as that of the state itself." (*Yeager v. Hackensack Water Company*, 615 F. Supp. 1087; 1091 (D.N.J.1985)). In the case, the private entity which was requesting social security numbers was found to have a sufficient nexus with the state such that the action of requesting social security numbers was treated as an action of the state; therefore, the provisions of the federal privacy act had to be followed. The failure of the private entity to abide by the disclosure provisions constituted a violation the federal privacy act. Conceivably the same analysis could be applied to Regional Workforce Boards requesting social security numbers without following the disclosure requirements of the federal privacy act. Accordingly, a summary of the applicable law is provided:

Federal Privacy Act

Under the Privacy Act of 1974, the following disclosures **must be made** on any form utilized (whether hard copy or electronic) by the federal government, state government, or local government agency when the form requests a social security number:

- 1) Whether disclosure is mandatory or voluntary;
 - 2) The statutory authority for requesting the social security number;
- and:**
- 3) The uses that will be made of the social security number.

The following are sample formats for Privacy Act Statements:

1. Where disclosure of social security number by applicant is **mandatory**:

<p><u>PRIVACY ACT STATEMENT</u></p> <p>Pursuant to (insert federal authority for disclosure) disclosure of your social security number is mandatory. Social security numbers will be used by the (Board) (_____) for (insert all usages and statutory authority (federal and/or state) for the usage).</p>

2. Where disclosure of social security number by applicant is **voluntary**:

<p><u>PRIVACY ACT STATEMENT</u></p> <p>Disclosure of your social security number is voluntary. It is requested however pursuant to (statutory authority, federal and/or state). Social security numbers will be used by the (Board) (_____) for (insert all usages and statutory authority for the usage).</p>

NOTE 1: *Unless federal law requires disclosure of the social security number, the state or local agency cannot deny the benefit for failure to provide the social security number.* (Therefore, federal authority must exist that requires the social security number in order to make disclosure mandatory).

NOTE 2: If there is only state or local authority (as opposed to federal authority) for requesting the social security number, the benefit cannot be denied and the disclosure is voluntary.

NOTE 3: It is advisable for documents that represent guidance to staff members about completion of forms requesting social security numbers refer to the appropriate Privacy Act requirements.

State Law

Additionally, RWBs have been required to follow the requirements of Section 119.01 *et seq.*, F.S. (2005). Chapter 119, F.S. includes Section 119.071(5)2. which provides that when authorized by law to collect a social a security number, the agency shall “upon that person’s request, at the time of or prior to collection of the social security number by that agency, provide that person with a statement of the purpose or purposes for which the social security number is being collected and used.” The social security number cannot be used for any other purpose than that stated.