



Before the
Senate Finance Committee
Subcommittee on Social Security and Family Policy

Hearing on Protecting the Social Security Number:
An Issue of Privacy or Security?

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Testimony of

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I. Introduction

Good afternoon. My name is Norm Willox, and I am Chief Officer for Privacy, Industry, and Regulatory Affairs for LexisNexis, a division of Reed Elsevier Inc. On behalf of LexisNexis, I appreciate the opportunity to be here today to discuss the importance of preserving access to social security numbers (“SSNs”) by responsible businesses like LexisNexis, and to share with the Subcommittee our comments on S. 848.

LexisNexis leads the information industry with the largest online information service, providing critical information to legal, business, and government professionals. LexisNexis maintains a database four times the size of the Internet. The LexisNexis service contains more than 3.9 trillion characters and approximately 4 billion documents in more than 15,150 databases covering 34,190 sources. It adds 8.8 million documents each week.

Today, over two million professionals in 60 countries worldwide—lawyers, law enforcement officials, accountants, risk managers, financial analysts, journalists, and information specialists—subscribe to the LexisNexis services.

One of the distinguishing aspects of the LexisNexis service is our extensive collection of public records information. Indeed, we have the largest collection of public records in the world. Use of our public records information is an indispensable tool for gathering information and providing accurate answers to prevent and detect fraud, verify identities, locate individuals, perform due diligence searches, and provide risk management solutions and employment screening for businesses and governments worldwide. The overwhelming majority of the information sources on the LexisNexis service are public in nature, all of which are available to the general public through their public libraries, the local newsstand or bookstore, or from government offices.

LexisNexis would like to take this opportunity to thank Chairman Breaux and the other members of this Subcommittee, as well as Senators Feinstein, Hatch, and Gregg for their invaluable work on the important issue of SSN privacy. Our company is committed to the responsible acquisition and use of SSNs, and shares the Subcommittee’s concern about the potential misuse of data for identity theft and other harmful purposes. Indeed, in the fight against identity theft, where verifying an individual’s identity is crucial, information from commercial databases such as LexisNexis is absolutely essential.

The use of commercial databases is also an important tool in the global battle against terrorism. Information provided by LexisNexis was instrumental in locating suspects wanted in connection with the September 11th attacks. LexisNexis has supported the federal law enforcement community and other agencies for more than 30 years and is currently supporting the Department of Justice, Department of Defense, Treasury Department and other federal agencies in their ongoing efforts to combat terrorism. The use of SSNs is essential to these important efforts.

Due, in large part, to the efforts put forward by Senators Feinstein, Hatch and Gregg and the other members of the Senate Judiciary Committee, S. 848 has improved significantly. The

exemptions in the bill that would allow for continued business and government uses of SSNs are critical to crafting a workable approach to this complex issue.

However, LexisNexis is concerned that the bill's treatment of public records will prompt state and local governments to close off access to SSNs in public records, cutting off access to this important information at the source. We also have concerns with the scope of the Attorney General's rulemaking authority, the lack of preemption of state laws, and the civil cause of action provisions. Our comments on S. 848 are presented in Section IV below.

My remarks today will focus on the following three areas: First, I will describe how LexisNexis uses SSNs and the importance of ensuring continued access to and use of SSNs for business-to-business and business-to-government purposes. Second, I will provide the Subcommittee with examples of some of the important uses of SSNs by business and government customers. Finally, I will make some observations about the impact of S. 848 upon the continued use of SSNs by businesses, government agencies, and non-profit organizations that depend on this information to do their jobs.

II. LexisNexis' Use of SSNs

LexisNexis is committed to the responsible use of information and has been at the forefront of the privacy debate, leading industry efforts to balance consumer privacy interests with responsible uses of information for important and socially beneficial purposes. We recognize that key to the SSN issue is striking the appropriate balance between consumer privacy and ensuring that important uses of this information can continue.

LexisNexis uses the SSN for important indexing, matching, and verification purposes to ensure the accuracy of information used by professional and government agencies. The inability to use SSNs for indexing and verification would, ironically, result in more rather than less identity theft and undermine many of the positive uses of SSNs which I will describe below.

For our general customer base, LexisNexis has made a policy NOT to display full SSNs except if they appear in the context of a public record. Some databases are searchable by SSN where the user already has the SSN in their possession. However, the results of that search will not display the SSN.

By allowing our customers to use SSNs as a search term, and at the same time prohibiting the display of full social security numbers to our general customer base, our approach prevents people from discovering anyone's social security number from a commercial source, thereby protecting privacy. At the same time, it preserves the ability of people who already know someone's social security number, typically in a commercial, governmental, or law enforcement context, to use a commercial database for important public purposes, such as finding "deadbeat parents" for child support enforcement. As explained below, the result is a significant increase in the effectiveness of our customer's ability to verify identities and locate individuals, as seen through the significant statistical improvements in the effectiveness of our customers who use our services in connection with child support enforcement efforts and locating pension fund beneficiaries.

LexisNexis' policy does allow the full display of SSNs to a limited and selective set of customers that qualify through our stringent "SSN access" process. These customers consist of federal, state and local law enforcement officials, federal, state and local government agencies, specialized investigative units of companies where that department was created to investigate fraud and subrogation units of qualified insurance companies.

III. Important and Beneficial Uses of SSNs by LexisNexis' Business and Government Customers

Government agencies, businesses, researchers, and others rely on information contained in commercial databases to do their jobs. Commercial database companies like LexisNexis play a vital role in this effort by collecting information from numerous sources and creating comprehensive data collections that allow users to easily search and locate information. Without this critical public records information, the effectiveness of these government agencies, businesses, and researchers would be dramatically reduced.

The use of SSNs is essential for person identification and record matching purposes and is critical in ensuring the accuracy of the information in these databases. SSNs allow persons to be identified accurately and assure that records for different individuals do not get co-mingled providing a false result. There are more than 43,000 Robert Jones' in the U.S. today. How else can someone distinguish one from another? A unique identifying number like the SSN is important to ensure that information collected on individuals is pertinent and accurate.

The following examples describe some of the important ways in which commercial database services, such as LexisNexis, are used by our customers to help people, protect consumers, locate missing children, prevent fraud and assist law enforcement efforts:

- ***Preventing and investigating terrorist activities*** – The use of commercial databases like LexisNexis is an important tool in the global battle against terrorism. Information provided by LexisNexis was instrumental in locating suspects wanted in connection with the September 11th terrorist attacks. Since September 11th, the Department of Justice found that LexisNexis public records were mission critical in bolstering cases against terrorists. As a result, more than 10,000 agents, investigators, attorneys and analysts have full access to LexisNexis public records and other information. The SSNs contained in the LexisNexis database are a critical tool used by the FBI and other federal law enforcement agencies to locate suspects and witnesses and in investigating and building cases against suspected terrorists.
- ***Locating and recovering missing, abducted and exploited children*** – LexisNexis has partnered with the National Center for Missing and Exploited Children to help that organization locate missing and abducted children. Locating a missing child within the first 48 hours is critical. After that time, the chance of recovering the child drops dramatically. In many of these cases, it is the noncustodial parent who has taken the child. The use of SSNs is critical in locating the noncustodial parent and recovering the missing child.

- ***Identifying and preventing fraud*** – Banks and other financial institutions routinely rely on SSNs in public record information contained in LexisNexis’ databases to detect fraudulent credit card applications. With the use of LexisNexis, a major bank card issuer recently experienced a 77% reduction in dollar losses due to fraud. Insurance companies have experienced similar successes through the ability to use SSNs. The use of SSNs in public records and other sources is key to preventing fraud.
- ***Locating witnesses and helping make arrests*** – Lawyers are major users of these databases. Access to SSN information in these databases, even when it is not displayed, is critical to tracking down witnesses in connection with civil litigation. Law enforcement agencies also are major users of commercial databases. For example, in 1998, the FBI made over 53,000 inquiries to commercial online databases. This information led to the arrests of 393 fugitives and the location of nearly 2,000 suspects and more than 3,000 witnesses¹.
- ***Preventing and investigating financial crime*** – LexisNexis is the preferred provider of public records at the Financial Crimes Enforcement Network (FinCEN) under the U.S. Treasury Department. FinCEN supports federal, state and local law enforcement agencies in financial investigations and is heavily reliant on SSNs in these investigations. In addition, LexisNexis is working on a project with the American Bankers Association to develop best practices to be used by banks and other financial institutions to prevent money laundering and ensure compliance with the USA PATRIOT Act. The use of SSNs by financial institutions to verify and validate information on prospective customers will be critical to the success of that program.
- ***Enforcing child support obligations and government assistance programs*** – Public and private agencies rely on SSNs in public records and other information contained in commercial databases to locate parents who are delinquent in child support payments and to locate and attach assets in satisfying court-ordered judgments. The Association for Children for Enforcement of Support (ACES), a private child support recovery organization, has stated that SSNs are the most important tool for locating parents who have failed to pay child support. ACES has had tremendous success in locating nonpaying parents using LexisNexis. For example, ACES has found that the ability to use an ex-spouse’s social security number as a search term has nearly doubled the success rate in locating a delinquent parent as compared to relying upon prior address information. Additionally, government agencies use SSNs in the administration of assistance programs to prevent or detect the fraudulent collection of benefits.
- ***Helping locate pension fund beneficiaries*** – The task of locating former employees is becoming increasingly difficult. Americans move on average every five years, particularly when they change jobs. Their names may change as a result of marriage or they may list

¹ Statement of Louis J. Freeh, Director of the Federal Bureau of Investigation, before the U.S. Senate Committee on Appropriations Subcommittee for the Departments of Commerce, Justice, State and the Judiciary and Related Agencies, March 24, 1999.

slightly different names (*e.g.*, leaving out a middle initial) on employment documents. To ensure that pension fund beneficiaries receive the money owed them, plan administrators and sponsors are required by federal law to use a commercial locator service, such as LexisNexis, to search for missing pension beneficiaries. These services are by far the most cost-effective and efficient way to find these former workers. Pension Benefit Information, a leading service locating these workers, reports that searching with a retiree's SSN results in an 85-90% success rate in locating an individual, compared to a success rate of only 8% without use of this information. Loss of SSNs from public records and commercial locator services would dramatically increase the costs of locating former employees. Moreover, in many cases, employers would be unable to find former employees, resulting in a loss of pension benefits.

- ***Security screening*** – PeopleWise, a LexisNexis company, conducted background checks on more than 70,000 workers and volunteers for the 2002 Olympic Winter Games in Salt Lake City. The use of SSNs was critical in verifying and validating the information on each Olympic worker and volunteer and ensuring the safety and security of the athletes and spectators. SSNs are also used by organizations such as Big Brothers Big Sisters of America to perform background checks to ensure the safety and security of those connected to their programs.
- ***Locating heirs and beneficiaries of trusts and unclaimed funds*** – Commercial database services are used to locate heirs, beneficiaries of trusts, and beneficiaries of unclaimed funds. Access to SSN information, even when not displayed, offers a cost-effective means by which an estate's attorney or executors can locate heirs. Similarly, trustees use SSNs to locate beneficiaries and banks use SSNs to locate persons who have failed to close accounts and beneficiaries to unclaimed funds and safety deposit boxes, avoiding having unclaimed property and money escheat to the state.
- ***Assisting with debt collection activities*** – The use of SSNs is critical to our credit economy. Collection of debts is important to maintaining credit cost factors at levels that are affordable to a broad cross-section of the population. SSNs allow debtors to be identified and located quickly and accurately. Access to SSN information often provides the sole means by which creditors can track down debtors.

IV. Impact of S. 848 on the Continued Availability and Use of SSNs

We applaud Senators Feinstein, Hatch, and Gregg for recognizing legitimate business and government uses of SSNs and we will continue to work with them to help ensure that this bill accomplishes its important objective of preventing the misuse of SSNs. We do have several comments on the bill. We believe that S. 848 would make it difficult now and in the future to ensure the continued access to and use of SSNs for many of the important and positive uses outlined above. Specifically, we are concerned about the following four issues:

1. Public Records

The issue of SSNs in public records is a highly complex issue that will have far-reaching implications. Public records are an important source of information used by LexisNexis

in compiling data for our online service. We routinely use SSNs in public records to accurately match records from disparate data sources. In addition, our clients, including financial institutions, insurance companies, government agencies and others routinely rely on our public record databases containing SSNs for identity verification and validation purposes, to identify, prevent, and investigate identity theft and fraud and for other important purposes.

When we refer to public records, we mean government records that typically and historically have been made available to the public. Examples of public records include titles to real property, real property tax assessor records, bankruptcies, judgments, liens, state professional licenses (and their suspension and revocation), corporation filings, and birth and death records. This information traditionally has been available to anyone who presents themselves at the courthouse.

We believe the public record provisions in S. 848 are unworkable. The bill would effectively construct a two-tiered system for public records and would require state and local governments to maintain two sets of books (one copy of records for public disclosure in which SSNs are redacted, and another copy for other purposes in which the SSNs are included). This two-tiered system of record keeping would be highly burdensome and costly to state and local officials, and would result in confusion concerning who could access the non-redacted records. Faced with such problems, many state and local officials would simply eliminate all SSNs from records. The result would be that we would be cut off from critical public record information at the source. The important exemptions in the bill for legitimate and business and government uses are of little value if the SSNs are no longer available at the source.

As the General Accounting Office confirms in its May 2002 Report to Congressional Requesters on Social Security Numbers, redacting SSNs from public records would be a difficult and challenging process. The complexity of this issue is underscored by the fact that the GAO itself did not provide a recommend approach. The report states that record custodians do not believe that redaction of SSNs is a practical alternative. These custodians reported that redaction would be time-consuming, labor intensive, difficult, and in some cases, would require a change in law.

Public records are a unique class of information that have historically been made available for public inspection. Therefore, we are concerned with any limits on the dissemination of this information. The proposals to date that attempt to address the issue of SSNs in public records are unworkable and would result in significant restrictions on this information. Until a viable approach is developed, public records should be exempted from the bill.

2. Attorney General Rulemaking

The proposed rulemaking provision is overly broad and could result in excessively restricted access to SSNs. The bill should clarify the scope of the Attorney General's ("AG") rulemaking authority, and ensure that the AG's rule will implement the business-to-business and business-to-government exceptions. We are concerned that the broad

factors included in the bill could result in the promulgation of unduly restrictive rules for SSN access. In addition, we are concerned that the bill provides the AG with broad discretionary authority to selectively approve or reject individual companies, and determine which ones will qualify for access to SSNs under the exceptions outlined in S. 848.

We believe that the AG's discretionary authority should be limited, and the factors to be considered in promulgating the regulations limited to those specific factors necessary to ensure the continued uses of SSNs by legitimate businesses, rather than focusing on general assumptions of risk or harm.

3. Preemption

Preemption is critical given the current state of piecemeal legislative efforts in numerous states, including Florida, California, Illinois, Texas, Michigan, and Indiana, to restrict the use of SSNs by businesses. Given the uniquely federal nature of SSNs and their importance to businesses engaged in interstate commerce, the bill should preempt state laws. The lack of preemption of state laws would render the business-to-business and business-to-government exemptions somewhat hollow in that access to SSNs would be cut off at the source if the states decide not to recognize these business and government exemptions.

4. Civil Actions

Although we recognize that the Feinstein-Hatch substitute has limited the available damages, we question whether a private right of action is even necessary. The other provisions of the bill, which include hefty administrative penalties by the AG and criminal and civil penalties, provide more than adequate means of enforcement by the Justice Department. The use of the SSN is engrained in many sectors of our society. The requirements and exemptions of this section may be subject to differing interpretation. Government enforcement will permit some flexibility to address interpretations in the early years following enactment. By contrast, a private cause of action could result in a chaotic and burdensome transition.

V. Conclusion

LexisNexis is committed to the responsible acquisition and use of SSNs and other personally identifiable information and has been a leader in the industry. LexisNexis shares the Subcommittee's concern about the potential misuse of this information for identity theft and other harmful purposes. Nevertheless, as S.848 recognizes, legitimate uses of SSN information are absolutely essential in the fight against identity theft and fraud and other important uses. Congress should not take any steps that would jeopardize the usefulness of such services. We thank the Subcommittee for holding this hearing on these important issues and look forward to working with Congress to develop an appropriate solution.