

The Protection and Use of Information Obtained Under the Social Security Act

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THE GREAT VOLUME of records required for the administration of the social security program constitutes a source of information of a kind never before available. This information could be of use to many governmental and nongovernmental agencies, and the Social Security Board and State and local unemployment compensation and public assistance agencies have received many and varied requests for access to the material. The policy which has been developed with respect to use of the data is based on two principles: the confidential character of information relating to individuals and the desirability of facilitating the exchange of needed information among agencies administering similar programs.

The 1935 Social Security Act contained no provision for the protection of social security records. With the assignment of employee account numbers and the return of wage information by employers covered by old-age insurance, numerous questions were raised by workers, employers, and representatives of the public as to the use to be made of this information. Workers were concerned to know whether certain personal facts, such as their age or previous employment, would be revealed to employers; employers were concerned lest information with regard to their business operations be used for purposes unrelated to the social security program; other persons feared infringement of civil liberties. The Social Security Board recognized the abuses which could arise from indiscriminate use of social security records. It was convinced that the success of the social insurance program depended upon frank disclosure to the Board of facts identifying each worker. Consequently, it took immediate steps to protect the information in its possession and to assure the public of the confidential treatment afforded these personal records.

In June 1937, existing practices with respect to records in the Board's possession were summarized

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and incorporated in Social Security Board Regulation No. 1. This regulation forbade the disclosure of personal information from the Board's records except to a claimant or prospective claimant for benefits under title II, or to his duly authorized representative, as to matters directly concerning the claimant; and except to officers and employees of the United States Treasury Department or of State unemployment compensation agencies, for administrative purposes only. In March 1939, the regulation was amended to permit disclosure of information to employees of the Railroad Retirement Board for administrative purposes only; that Board reciprocated with a similar ruling regarding use of its records by employees of the Social Security Board.

The 1939 amendments to the Social Security Act gave explicit sanction to the policies followed by the Board. A general prohibition against release of information from tax returns filed with the Commissioner of Internal Revenue under title VIII or the Federal Insurance Contributions Act, or from files, records, reports, or other papers "except as the Board may by regulation prescribe" and penalties for violation of the provision were written into section 1106 of the act. Further experience has led to modifications in detail in Regulation No. 1. For instance, the surviving relative or representatives of the estate of a deceased worker have been included among the individuals who under certain circumstances may be permitted to receive certain information with respect to such worker; and Federal and State agencies administering assistance and relief programs have been included among the agencies entitled to receive information for administrative purposes. There has, however, been no departure from the basic principle of the inviolability of personal information. The administrative arrangements which have been developed for exchange of necessary information with related agencies are described in some detail below.

The State unemployment compensation agencies have been faced with many of the same problems

with respect to release of information as have confronted the Social Security Board. Neither the 1935 Social Security Act nor the 1939 amendments contain any reference to the protection of personal information obtained by the State unemployment compensation agencies. The draft bills which the Social Security Board drew up for the guidance of State legislatures included a clause guaranteeing the confidential nature of information obtained from any employing unit or individual in the administration of the act, and the majority of State laws contain such a provision. The Bureau of Unemployment Compensation¹ of the Board also recommended to the States that "determinations as to the benefit rights of any individual" should be held confidential. Where the State law or procedures require that employers be notified that benefits are being paid to their former employees, the Bureau has recommended that the determination notice sent to the employer should omit all wage information.

The 1935 Social Security Act made it a condition for certification of administrative grants to State unemployment compensation agencies that the State law permit the disclosure to any agency of the United States administering "public works or assistance through public employment" of the name, address, employment status, and benefit rights of each recipient of unemployment compensation. The 1939 amendments added a requirement that the State agencies make their records available to the Railroad Retirement Board and "afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law."

Although the magnitude of recordkeeping involved in the administration of old-age and survivors insurance and unemployment compensation has served to focus public attention on the dangers of misuse of personal information contained in these records, similar questions arise with respect to the records of public assistance and relief agencies. The development of policy and practices safeguarding records of welfare agencies has been influenced on the one hand by older concepts and habits of thought derived from the 19th century poor-law system, on the other by the practice of private social work agencies in recent decades of treating information made avail-

able by clients as strictly confidential. At an earlier period, it was customary in some States and required by law in others that lists of recipients of public aid be published periodically in order to discourage applications for relief. In spite of changing public attitudes toward relief recipients, such practices have continued in some States. The Social Security Board has from the beginning expressed its disapproval of such practices for the public assistance programs as being contrary to the social policy underlying the act. The Board has stressed the importance of preventing the commercial and political exploitation as well as the humiliation of the persons receiving public assistance.

Under the original act, State public assistance plans could not be approved unless they provided such methods of administration as were found by the Board to be necessary for efficient operation. Under this clause, the Board consistently suggested that State plans include safeguards for the protection of public assistance records. The 1939 amendments gave legislative sanction and force to the principles advocated by the Board. A specific requirement was added that after July 1, 1941, a State public assistance plan, to be approved, must "provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of" public assistance.

In interpreting this provision, the Board has made it clear that the basic policy regarding the confidential nature of records does not interfere with the registration of cases with central social service indexes, if such indexes meet certain prescribed standards, or with the furnishing of information, under appropriate safeguards, to other public welfare and to private social agencies. Furthermore, the standards suggested by the Board for fair hearings procedures in public assistance administration provide that "the material which is presented at the hearing, constituting the basis of decision, must be open to the examination of the appellant and his representatives." The Board has cautioned States having lien provisions in their public assistance laws against allowing their mortgage or lien-recording system to be used by the general public as a readily available source of information on public assistance recipients. More recently, the Board has advised that public

¹ Now Bureau of Employment Security

assistance agencies should assure themselves that material released to selective service boards will be considered confidential.

The prohibitions against disclosure of information derived from the social security records do not, of course, apply to statistical compilations of data, in which the identity of the individual is concealed. This fact was explicitly stated in the original draft of Social Security Board Regulation No. 1 and in all revisions. Regularly, the Board prepares and publishes important statistical materials which it considers essential for analysis and evaluation of the social security program. It also makes statistical data available to other agencies when this procedure does not interfere with its own operations. The act requires the submission by unemployment compensation and public assistance agencies of such reports as the Board may require, and the Board has aided these agencies in the development of statistical and research materials.

Administrative Use of Information

The existing administrative arrangements for exchange of necessary information among agencies responsible for social security and related social welfare programs have developed gradually. Specific policies have been devised to meet situations arising at different stages of the growth of the program, and at every point the decisions reached have been influenced by the significance attached to the confidential character of the records.

For each of the social security programs, there are two major types of information with regard to individuals which may be of use to other public welfare agencies: first, information in the basic records as to age and other personal characteristics and as to employment and earnings experience; second, information as to the beneficiary status and the benefit rights of given individuals.

Old-age and survivors insurance records.—The first records accumulated by the Social Security Board in the administration of old-age and survivors insurance were the workers' applications for account numbers, known as Form SS-5. Even before the actual account numbers were issued, the Board advised State unemployment compensation agencies to use these identifying numbers in establishing their wage records. Thus employers could use the worker's individual account number whether reporting his wages for old-age and sur-

vivors insurance or for unemployment insurance. To enable the State unemployment compensation agencies to identify workers for whom wage reports had been received before account numbers had been issued, the Board decided to make available to these agencies carbon copies of Form OA-702, a transcript of Form SS-5. Early in 1937, arrangements were made for release of these duplicates on condition that written request be made by the Governor of the State, designating the proper official or agency to receive the information, and that the State official or agency sign a written agreement to use the information only in administering the State unemployment compensation law and not to divulge it to any other individual or agency, public or private. All but one State took advantage of this plan initially. Since that time, two States have discontinued use of duplicate files.

Under administrative arrangements which have since been developed, State agencies are notified of any change in an individual's name or account number. When, in the process of claims taking or wage-record operations, the State unemployment compensation agency or its local offices learn that an individual is using more than one name or account number, the Bureau of Old-Age and Survivors Insurance is notified of this fact on draft forms developed by the Bureau of Employment Security and the Bureau of Old-Age and Survivors Insurance. The unemployment compensation agency may advise the worker to surrender all but one account-number card and may forward the others to the Bureau of Old-Age and Survivors Insurance for him, or it may refer him to a local field office of the Social Security Board for further advice and instructions. In special circumstances the Bureau of Old-Age and Survivors Insurance will verify out-of-State account numbers for the State unemployment compensation agencies.

When account numbers were first issued, a block of numbers was reserved for railroad employees. Since, however, many workers with railroad employment also work in jobs covered by the Social Security Act, a substantial group of workers have accounts under both systems. The Social Security Board and the Railroad Retirement Board have consequently found it desirable to exchange certain information on account-number applications, as well as on wages, of these workers.

In order to determine the benefit rights of work-

ers under the old-age and survivors insurance program, the Social Security Board maintains records of wages received in covered employment for each individual who has such employment. The worker himself may at any time have information with regard to the amount of wages credited to his account and the periods to which the payments relate. To encourage workers to request such information, in order that any errors in the wage record may be corrected, special post-card forms which the worker may use in requesting a wage statement are available at all field offices of the Board.

In addition to the wage-record information exchanged with the Railroad Retirement Board, other wage-record data needed in connection with tax evasion or prosecutions under the Social Security Act are released to Treasury officials through the office of the Commissioner of Internal Revenue and to the Department of Justice by that office or by the Social Security Board.

Insofar as workers' benefit rights under other social insurance programs are affected by their receipt of old-age or survivors benefits, the administrators of such other programs should know the beneficiary status of persons who might receive duplicate benefits. Since old-age and survivors benefits constitute a part of a family's total income, relief and welfare agencies need information on the benefits paid to persons applying to them for assistance. After some experimentation, definite arrangements were made by the Social Security Board for release of limited types of information on claimants or beneficiaries under the old-age and survivors insurance program.

The majority (30) of the State unemployment compensation laws provide that a worker who is receiving Federal old-age insurance payments in any week is disqualified from receiving unemployment benefits in that week unless the old-age benefit is less than the unemployment benefit to which he is entitled, in which case he receives the difference between the two amounts. Four States completely disqualify a worker who is receiving old-age and survivors insurance benefits in any week. It therefore becomes pertinent for the unemployment compensation agencies in these States to inquire as to a worker's receipt of old-age benefits. This information the agency obtains in most cases from the worker himself on his claim for unemployment benefits. At the request of

the State unemployment compensation agencies, however, the Social Security Board agreed to release certain information to them. The procedures adopted in March 1940 were somewhat more restrictive than those which have been in effect since October 1940. Under the modified procedures, State agencies may obtain information from the Bureau of Old-Age and Survivors Insurance on the following conditions:

As a general rule, the information which will be furnished will be restricted to such information as may be requested concerning individuals applying for, or receiving, monthly payments under the old-age and survivors insurance program, such as type of benefits, date of award or disallowance, date of payment(s), amount of initial and/or regular monthly payments, date of birth, etc. . . .

The information will be supplied to the requesting agency only when the following requirements are observed:

- a. The requesting agency must be unable to secure satisfactory information from the claimant.
- b. The requesting agency must secure the permission of the individual involved before the Bureau of Old-Age and Survivors Insurance will furnish the information.
- c. The requesting agency must furnish a statement, signed by an official of the agency, that the information will be considered confidential and will be used only for administrative purposes.

Conversely, when the Bureau of Old-Age and Survivors Insurance has information that a beneficiary receiving title II payments is also receiving unemployment benefits, it notifies the State agency of this fact, except in those States where unemployment compensation payments are made without regard to payments under title II.

Public assistance and relief agencies are concerned with payments under the old-age and survivors insurance program insofar as these represent part of the resources of individuals or families in need of relief. It was recognized at the time the Social Security Act was passed that it might be necessary in individual cases to supplement old-age insurance benefits by old-age assistance or by other forms of relief. The Board has made clear its adherence to the principle that the receipt of old-age and survivors insurance benefits should not operate to the recipient's financial disadvantage and has given positive affirmation, with respect to public assistance, to the policy of supplementing old-age and survivors insurance benefits where the individual's total income is inadequate.

Arrangements for release to State public assist-

ance and relief agencies of information with regard to the receipt of payments under title II were made early in 1939, before monthly benefits were payable. At first, information was given only to State agencies, and on condition that the information would be limited specifically to a copy of the letter announcing the award of, or disallowance of the application for, lump-sum payments and that the written permission of the individual concerned had been obtained; that efforts should first have been made to get the information directly from the claimant; and that the information would be released only to the executive officer of the agency and only if the agency had incorporated in its approved public assistance plans regulations safeguarding the information from disclosure and restricting its use for the purpose for which it was requested. Requests were to be submitted to the Bureau of Old-Age Insurance in Washington. In March 1940, the procedure was modified to permit local public assistance agencies in any State to request information directly from the local field offices of the Bureau of Old-Age and Survivors Insurance servicing the area, if the State agency decided to adopt this alternative plan.

At the same time, arrangements were made to furnish similar information to State public and private welfare agencies other than the public assistance agencies administering the assistance titles of the Social Security Act. In such instances, the local or State public assistance agency acts as the channel through which information is requested and received by other welfare agencies. As in the agreement with unemployment compensation agencies, the Bureau of Old-Age and Survivors Insurance undertakes to notify the appropriate welfare agency when it is aware that an individual is receiving assistance as well as old-age or survivors benefits.

Information with respect to beneficiary status is also given to the Work Projects Administration on request. In spite of the policy of the WPA not to employ persons over 65, some aged persons have been placed on WPA rolls. When old-age benefits were first payable, the WPA refused to hire or retain persons receiving such benefits, on the ground that it was preferable to employ persons with no other source of income. After a few months' experience, the WPA revised its policy to provide that in classifying certified per-

sons according to relative need, old-age insurance benefits should be considered in the same manner as any other income, thus permitting supplementation of these benefits by WPA employment in specific cases. The Social Security Board has consistently answered questions from the WPA as to the beneficiary status of particular individuals.

After the passage of the 1939 amendments, questions arose with respect to the effect of benefit payments under old-age and survivors insurance on the right of veterans and their survivors to payments by the Veterans Administration. Since the amounts of the veteran's payments are in some instances related to the total income of the recipient, the Veterans Administration needs to know what amounts certain claimants are receiving under the Social Security Act. Arrangements were therefore made to exchange with the Veterans Administration information with respect to claims filed with that agency and with the Social Security Board and evidence available in both agencies with respect to those claims.

Differences in interpretation as to whether certain employers are covered by the Social Security Act or by the Railroad Retirement Act have given rise to problems with respect to the benefit rights of employees of these employers. The Social Security Board has adopted a policy of paying benefits in cases in which it determines that the employment in question is covered by the Social Security Act, with the understanding that, if later the individual is found to be covered by the Railroad Retirement Act, appropriate adjustments will be made.³ The Railroad Retirement Board is advised of the payment of claims in all such cases.

Unemployment compensation records.—With the beginning of benefit payments in a majority of the States in 1938, the State unemployment compensation agencies were immediately faced with the problem of furnishing information on beneficiary status to assistance and relief agencies. As was pointed out above, the act made it a condition for certification of administrative grants to State unemployment compensation agencies that the State law include provision for:

Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name,

³ The Board has recently adopted a rule that in no case will it pay benefits in connection with a wage record upon which benefits are being paid under the Railroad Retirement Act.

address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law.

The stated policy of the WPA was to refuse employment on its work programs to persons eligible for unemployment compensation benefits. Workers currently employed on projects were required to file claims and were separated when benefit payments began. Workers applying for WPA employment were not accepted so long as they had any unemployment benefit rights. This policy has since been modified to permit, under certain conditions, the employment of workers with extremely low weekly benefit amounts. The approval of special arrangements of this character is handled on a State-by-State basis, and actual practice varies. The procedures used to implement the original and the modified policy have been relatively simple in most States. In general, the WPA has relied on copies of employment security forms in the possession of the worker to furnish evidence of his benefit status, with the possibility of referring to the records of the unemployment compensation agencies as a check in individual cases.

In January 1938, the Social Security Board submitted to the unemployment compensation and public relief agencies, through the Bureau of Unemployment Compensation and Public Assistance, its opinion that benefit data could be released under the State unemployment compensation laws if proper precautions were taken to ensure that such information was in answer to specific requests of a public agency and with a guarantee that it would be treated as confidential and used only in administering the particular relief or assistance program. Revised instructions were sent to State unemployment compensation agencies in 1939. Although the Board advised the use of proper clearance procedures, it did not advocate any particular method; it did, however, stress the importance of having the relief agency rely primarily on material in the possession of the applicant for relief and explore this source thoroughly before it turned to the unemployment compensation agency for information.

When unemployment benefit payments began in a majority of the States in 1938, relief agencies in some States requested information on all unemployment benefit payments. The unexpected

volume of benefit claims due to the business recession made such clearance difficult and burdensome, and the unemployment compensation agencies were somewhat reluctant to establish any formal clearance arrangements. As the unemployment compensation program became established, it became evident that very simple procedures would suffice. In most States, at the present time, the relief agencies depend primarily on the applicant's statement concerning his beneficiary status and the evidence contained in identification cards or routine documents indicating benefit status automatically supplied to the worker by the unemployment compensation agency, with only occasional reference to the employment office for confirmation of statements. In a few States, the unemployment compensation agency transmits to the relief agency information concerning all unemployment benefit claimants and recipients, usually by supplying the relief agency with carbon copies of initial determination slips, benefit checks, or lists of checks written. In other States, information is supplied in response to specific written or verbal requests from local relief agencies for unemployment compensation data relating to relief applicants who, it is thought, may be eligible for benefits.

In a few States, the suggestion has been made that employment service placements and unemployment compensation payments be registered in confidential exchanges which would centralize information on persons in receipt of any type of public welfare service. The Board has taken the position that such registration is unnecessary "since in routine procedure every individual who registers for work and files a claim for unemployment compensation receives documents which contain all the information required by the welfare agencies," and has recommended that State employment security agencies do not register such placements or compensation payments in confidential exchanges.

In general, the relief agencies themselves have come to feel that they do not need to check their records against the total volume of weekly unemployment benefit payments. This experience of the relief agencies in obtaining information with respect to unemployment compensation benefits influenced the procedures for release of information with regard to recipients of old-age and survivors insurance benefits, adopted by the

Board in 1940 and described earlier in this article.

Public assistance records.—Since several different relief agencies may be concerned with the welfare of a single family or individual, the private and public assistance agencies found it necessary at an early date to develop methods for exchange of information. One of the common methods is registration of cases with central social service indexes.

The standards for protection of records developed in the exchange of information among social welfare agencies over a period of years furnish basic criteria for determining the circumstances under which confidential information may be disclosed. The Social Security Board has embodied these criteria in the standards which it has formulated for the operation of confidential social service exchanges:

The organization, methods of operation, and practices of the confidential exchange must all be designed and managed to protect the principles of the confidential nature of the relationship between an applicant for social services and the agency to which he applies. To this end the confidential exchange has a special obligation to maintain a high standard of ethical and efficient performance of its staff, to include in membership only agencies respecting this principle, to maintain in its files only such information as is necessary to perform the clearance function, and to disclose that information only to participating agencies that are committed to use the information for social services to those applying or referred for such services.

The Board has taken the position that, if these standards are followed, exchange of information

between individual relief agencies or registration of cases with central indexes does not violate the basic principle of the confidential character of records.

Conclusion

The social security program has necessitated the recording for millions of individuals of a great variety of information with regard to employment and earnings experience, age and family relationships, and, in some cases, income and expenditures. This information is necessary if insurance benefits are to be paid to eligible workers on the basis of their past earnings and if assistance is to be granted in accordance with Federal and State legislation. The Social Security Board has taken the position that the intent of the act precludes use of information about individuals for other than administrative purposes. This position received legislative sanction in the 1939 amendments. Its application to the public assistance as well as to the insurance programs signalizes a growing recognition not only of the obligation of the community to its members but also of the importance of fulfilling that obligation in a manner conducive to the maintenance of individual dignity and individual rights. At the same time, the Board and the State and local agencies administering social welfare programs have cooperated in the development of arrangements and procedures for the economical exchange of information necessary to the efficient administration of any of the programs.