

The U.S Senate
Committee on Finance
Subcommittee on Fiscal Responsibility & Economic Growth



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Statement for the Record

**Hearing on Tax Fraud by Identity Theft:
Status, Progress, and Potential Solutions**

Submitted by

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Chairman Nelson, Ranking Member Crapo, and distinguished Members of the Subcommittee:

Thank you for the invitation to submit this Statement for the Record on behalf of the genealogical community through its Records Preservation and Access Committee to supplement the record of the hearing held by the Subcommittee on the 20th of March 2012.

I serve as the legal advisor to the Federation of Genealogical Societies and as a member of the Records Preservation and Access Committee more fully described below.

Be assured that the genealogical community shares the objective of protecting Americans against fraud and of addressing deficiencies in the current operation of the Social Security Administration's Death Master File. This hearing marks a valuable opportunity to express our views to Congress on this important subject and we commend the committee for adding it to their agenda.

Egregious Identity Theft Cases Can Be Stopped Using Existing Resources

We have all been outraged by reports of identity thieves filing fraudulent tax refund claims using the SSNs of recently deceased infants & adults. Our strongest message is that the means to stop this particular form of identity theft exists now, without waiting for any additional legislation.

The Internal Revenue Service could curtail such claims almost immediately if tax refund claims were screened against the SSA's Death Master File & matching cases identified for special processing. If thieves are using the publicly available Social Security Death Index (the commercial version of the Death Master File) as their source for the Social Security numbers of recently deceased infants, were the IRS to use the same source, this particular vulnerability could be closed immediately with minimal adverse impact on legitimate users. This filter, together with other viable and easily implemented safeguards, could actually expedite the processing of such claims.

The testimony of Mr. Steven T. Miller, Deputy Commissioner for Services and Enforcement, IRS, suggests that they are, in fact, developing filters and procedures to intercept fraudulent refund claims. Their immediate challenge seems to be that the number of questionable returns identified this filing season is much larger than anyone might have anticipated and greatly exceeds the available resources needed to resolve them in a timely fashion.

This resources challenge was reinforced by the testimony of Ms. Nina E. Olson, The National Taxpayer Advocate, as she highlighted the fact that only one in seven calls to the identity protection specialized unit (most, likely from legitimate taxpayers) were answered, and then only after a wait on hold exceeding an hour. In her 2011 Annual Report to the Congress, Ms. Olson has also endorsed the use of IRS- issued Identity Protection PINs and allowing taxpayers to turn OFF the ability to file tax returns electronically using specified SSNs. These techniques have the potential to help greatly reduce the vulnerability of legitimate taxpayers to the predations of identity thieves. See pp. 61-62.

The resounding message we heard from the Operation Rainmaker press conference convened by the Tampa Chief of Police last Fall, was that the online tax refund system is unacceptably vulnerable, has been corrupted, and that there are identity thieves fully aware and anxious to exploit the weaknesses in that system. <http://www.tampabay.com/news/publicsafety/crime/49-accused-of-tax-fraud-and-identity-theft/1189406>

There is no need to wait for legislation to stop this travesty and protect families of deceased infants and adults. What is required is for the IRS to use the SSA's Master Death File for the fraud prevention purposes for which it was originally created. The US Treasury should not function as an ATM for identity thieves.

Most Effective Response--Target the Criminal

There have been scattered news reports announcing arrests in identity theft and identity fraud cases but not nearly enough to send a message to potential perpetrators that it is a serious crime and that we intend to catch those who engage in it. Deterrence requires that the community of identity thieves be made significantly aware of numerous actual prosecutions with significant sentences.

Effective prosecution of identity theft cases has been achieved most frequently as the result of extensive collaboration between local, state, and federal law enforcement agencies. The "Cash Back" Task Force first involved the Tampa Police Department and the county sheriff's office, and then was expanded to include the U.S. Secret Service and U.S. Postal Inspection Service. A police officer who had been one of the victims expressed frustration at the extent to which IRS had been prohibited from cooperating with the task force investigation.

This and other successful investigations have revealed the existence of significant barriers to communications between the IRS and law enforcement agencies. The Congress could appropriately examine whether existing privacy guidance has gone so far in shielding "taxpayer" information from non-tax collector governmental officials that it, in fact, undermines the integrity of the system.

Most of these offenders have been charged under existing laws for theft, money laundering, racketeering and related offenses. We would defer to federal prosecutors as to the utility of defining a new tax fraud offense more specifically targeting these facts but that approach should get sympathetic consideration. Claiming the unrelated deceased child of another as a dependent for tax refund claims might be considered an "aggravating" factor increasing the punishment under the federal sentencing guidelines.

Historical role of DMF/SSDI

The Social Security Death Index (SSDI) has been freely available on the internet for well over a decade with relatively few instances surfacing of it being abused. The effect of a person's name and social security number appearing on the SSDI was to officially declare that the person was dead and that SSN was effectively "burned." Few opportunities existed that afforded thieves the opportunity to exploit the identity of a deceased person.

In recent years, identity thieves have, however, discovered vulnerabilities in the on-line IRS filing system that allowed them to file fraudulent tax returns with relative anonymity claiming refunds and credits flowing from the stolen identities of recently deceased infants and adults.

The 2010 IRS filing season demonstrated that thieves were well aware of these vulnerabilities and determined to exploit them.

The testimony presented at this hearing that revealed the extent that the filters were identifying questionable returns during the early months of the 2011 filing season confirm that it is possible to thwart this particular scam. It is reasonable to expect that as this revenue stream is closed off, and a relatively few particularly egregious cases are aggressively prosecuted; identity thieves will soon shift their attention to other schemes.

This may already be occurring. We noted with alarm the testimony of Detective Sal Augeri of the Tampa Police Department, suggesting that once the most freely available version of the SSDI found at the RootsWeb.com site was moved behind the Ancestry.com pay wall, the thieves in the Tampa area are turning to institutional sources such as schools, assisted-living facilities, medical offices and other such entities in order to compromise SSN's of both the living and the dead.

Living or Dead—Privacy Concerns Differ

The public is constantly admonished to safeguard their social security numbers, and appropriately so. With a name, birth date, and SSN, it is possible for a thief to assume the identity of a potential target for a variety of nefarious reasons. Thus, thieves have applied for credit, opened new accounts, diverted existing accounts, offered the false identity when arrested, and an array of other schemes limited only by their imagination. Those seeking unauthorized employment, potential terrorists, money launderers, etc. frequently acquire or generate the SSNs of others to achieve their purposes.

The calculus dramatically changes when the targeted identity is authoritatively reported to be dead, as when their death is reported on the DMF/SSDI. The world is on notice that that SSN should no longer be active. Since the SSDI became publically available it has proven to be one of our most effective fraud prevention devices and to serve a variety of legitimate purposes.

Genealogists/Researchers Are NOT Identity Thieves

It is difficult for anyone who claims the slightest thread of decency to imagine the mindset of a thief who would desecrate the memory of a deceased infant in this despicable way.

It is impossible for me to imagine that any person sincerely pursuing information on their own ancestors, or assisting others to do so, would ever consider participating in such a scheme. I would be amazed if those arrested in the Tampa investigation could name their four grandparents, or any of their great-grandparents.

Public Access to the Death Master File

In a hearing addressing this same topic, held on February 2, 2012 before a subcommittee of the House Ways and Means Committee, Congressman Marchant posed a question raised by a constituent (and “millions like her”) when he asked how we could be careful in what we do so that the people who are harmed are protected but those vitally interested in their ancestry can still access accurate information.

An extract of this exchange can be viewed at: <http://youtu.be/HuSVZvMmN5A> . The full hearing is available at:

http://waysandmeans.granicus.com/MediaPlayer.php?view_id=2&clip_id=133

While we strongly dispute his assertion that the information researchers get from the SSDI can be readily found in other sources, we followed with great interest Social Security Commissioner Astrue’s progress report on the Office of Management and Budget’s efforts to arrive at a coordinated administration position concerning appropriate public access to the Death Master File. His observation was that the issues are more complex than they might at first appear and that an attempt to rush a decision would almost surely get it wrong. We support a thorough review of these issues and would urge decision makers not to leap to solutions before the problems have been carefully defined and options developed.

What has clearly been missing from the process so far has been input from actual genealogists. It is impossible to “balance” competing interests if representatives of one side cannot “add weight” to their side of the balance scale. If given an appropriate opportunity to make the case, we are confident that public access to the DMF for legitimate genealogical purposes can be justified.

The Records Preservation and Access Committee is prepared to assist in providing that input by coordinating the appearance of highly qualified, well-recognized representatives prepared to provide information to assist decision-makers in the Executive and Legislative branches in making well-informed decisions.

Interests of the Genealogical Community

The interests of the genealogical community are not hard to understand. Access to records or the lack thereof, is the pivotal issue for genealogists. Without documentation, our family histories are more legend than history. Recent genetic advances have given additional significance to well-documented medical family histories. You can expect to hear expressions of concern from across the genealogical community whenever they may have reason to believe their access to these records is being threatened.

About the Records Preservation and Access Committee

The genealogical community works together through The Records Preservation and Access Committee (RPAC), a joint committee which today includes The National Genealogical Society (NGS), the Federation of Genealogical Societies (FGS) and the International Association of Jewish Genealogical Societies (IAJGS) as voting members. The Association of Professional

Genealogists (APG), the Board for Certification of Genealogists (BCG), the American Society of Genealogists (ASG), and industry representatives also serve as participating members. RPAC meets monthly, and more often if needed, to advise the genealogical and historical communities, as well as other interested parties, on ensuring proper access to vital records, and on supporting strong records preservation policies and practices.

Pending Legislative Initiatives

A number of Legislative proposals and options being considered within the Administration would go a step further and attempt to prevent the theft by taking additional preventative measures. These involve proposals that would delay publication of the SSNs of recently deceased persons for varying periods of time or total denying public access to the DMF/SSDI.

H.R.3475: <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3475ih/pdf/BILLS-112hr3475ih.pdf>

SB 1534 : <http://www.gpo.gov/fdsys/pkg/BILLS-112s1534is/pdf/BILLS-112s1534is.pdf>

HR 3482: <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3482ih/pdf/BILLS-112hr3482ih.pdf>

HR 3215: <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3215ih/pdf/BILLS-112hr3215ih.pdf>

We understand that an inter-agency task force operating under the auspices of the Office of Management and Budget is reviewing the issue of the circumstances under which the Death Master File should be made available to the public.

In our opinion, this approach aims at the wrong target. Even if the Social Security Death Index were totally taken down, it would have minimal impact on closing the vulnerabilities in the online tax refund system. It would, however, dramatically impact the ability of law-abiding citizens to use it for the myriad of legitimate purposes for which it was created.

We urge the broader use of this resource. Clearly financial institutions could reduce fraudulent loans to identity thieves claiming to be persons who are deceased and already reported on SSDI. State Pension Programs need a mechanism giving them notice that a pensioner has died in another jurisdiction in order to know that their entitlement to benefits has changed. Credit card companies should be careful in changing the mailing address on statements without satisfying themselves that the “cardholder” does not appear on SSDI and that the request is legitimate. Those administering medical trials need to monitor the mortality of the participants. We hear of new purposes for which this resource is used every day.

There are real costs associated with limiting access to public records. While these costs may be difficult to quantify, they clearly become more onerous the longer access to vital information is delayed or denied.

Any delay or redaction undermines the utility of the Death Master File in achieving the fraud prevention purposes for which it was created.

Furthermore, I submit that the filters currently being developed and employed have the potential of slamming the door on this particular form of fraud. Thieves will move on. By the time additional legislation could be put in place, the only users likely to be affected will be legitimate, law-abiding citizens. The unintended consequences of these measures will almost certainly exceed any possible benefit. We are in danger of re-fighting the last war.

We prefer continued appropriate access to the information that has been available from this resource. Given the choice of having it removed completely from internet access or having some limitations placed on its use (or the completeness/timeliness of the information therein) our choice is obvious.

RPAC Recommendations to the Congress and the Genealogical Community

After careful consideration of a variety of appropriate responses to this particularly despicable form of identity theft and the various legislative proposals it has prompted, we are prepared to recommend the following coordinated position. This week we plan to submit statements for the record of this hearing on behalf of RPAC, FGS, NGS and IAJGS. All RPAC leaders' statements for the record submitted to the Senate Subcommittee will state that:

While we advocate all genealogists should have immediate access to the SSDI, we would support the two year delay in access as proposed in S 1534- and if necessary the third year that National Taxpayer Advocate Nina Olson advocated during her oral testimony during the March 20th hearing. This support is with the caveat that certain genealogists are to be eligible for certification for immediate access. These genealogists include: forensic genealogists, heir researchers, and those researching individual genetically inherited diseases.

I understand that the FGS statement will address in more detail the need for immediate access by those genealogists working in specified areas. We stand ready to work with all concerned parties to address this challenging issue and can best be reached at access@fgs.org .

Summary

We offer two main points:

- (1) Our strongest message is that the means to stop this particular form of identity theft exists now, without waiting for any additional legislation.
- (2) As existing policy regarding public access to the Death Master File is reviewed, we urge that input from actual genealogists be sought. The members of the Records Preservation and Access Committee stand ready to assist in arranging for that input to both the Executive and Legislative branches.