

**The U.S Senate**  
**Committee on Finance**



**Records Preservation & Access Committee**

Federation of Genealogical Societies, National Genealogical Society,  
International Association of Jewish Genealogical Societies

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**Feedback**

**Tax Administration Reform Discussion Draft**

Submitted by

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Chairman Baucus, Ranking Member Hatch, and distinguished Members of the Committee:

I serve as the legal advisor to the Federation of Genealogical Societies and as a member of the Records Preservation and Access Committee (RPAC) more fully described below. This statement has been reviewed and approved by the organizations sponsoring RPAC.

Thank you for the privilege of responding to your invitation to provide input on Reforms to Administration of Tax Laws issued November 20, 2013 found at:

<http://www.finance.senate.gov/newsroom/chairman/release/?id=a4f8205c-d286-4a41-a61d-753d1abd23d3> Of particular interest to the genealogical community are those provisions that would attempt to address tax fraud by identity theft by limiting access to the Social Security Administration's Death Master File (DMF) also known as the Social Security Death Index (SSDI).

## Part I

Although we had not originally anticipated that these provisions were to become a part of the Bipartisan Budget Act we are well aware that the Department of Commerce has announced the launch of their task to develop the Certification program limiting access to the DMF in the future. On the day after it appeared at <http://www.ntis.gov/products/ssa-dmf.aspx> we contacted the official designated in the announcement to advise him that we are anxious to support the effort to implement the provisions of the Bipartisan Budget Act requiring the Department of Commerce to develop a Certification Program governing access to the Death Master File and that **we view the genealogical community to be vitally interested stakeholders in this process**. We were pleased to see that the announcement provided that the DMF should remain available to its current users while the Certification program is being developed consistent with the intent of the Congress as declared during a colloquy on the Senate Floor during the debate recorded at page S8891 of the Congressional Record found at:

<http://www.gpo.gov/fdsys/pkg/CREC-2013-12-17/pdf/CREC-2013-12-17.pdf>

We assert that genealogy is not just a hobby. A number of genealogists offer their services to the public and make a living from their efforts. The largest group is the Association for Professional Genealogists which has approximately 2,000 members in the United States. We are requesting that those APG members who are heir researchers and forensic genealogists who perform the services listed in items a-f below be accepted for certification. In addition there are two organizations in which experienced genealogists are certified after providing an extensive portfolio which is judged by a peer review board: the Board for Certification of Genealogists (BCG) and the International Commission for the Accreditation of Professional Genealogists (ICAPGen). Recertification is required every five years so those who hold the designation continue to perform at the highest levels. There is a select group of fifty of the most prestigious Fellows of the American Society of Genealogists (ASG).

If the overall program is reasonably implemented, we anticipate that no more than 3,000 of the most qualified out of the millions of genealogists would request certification.

Although many genealogical projects are more historical than urgent, we have identified some subject areas for which a three-year delay in access to the DMF would be problematic. Even

though the standard found in the statute is a very limiting one, we submit that the breadth of genealogical endeavors encompasses a number of categories that should be deemed worthy of certification.

On behalf of the genealogical community, my colleagues and I will be compiling examples of instances in which their work should be deemed to meet the requirements of Section 203(b) (2) (A) in which “. . . a person must certify that he or she has a legitimate fraud prevention interest or a legitimate business purpose pursuant to law, rule, regulation or fiduciary duty.” We expect to be working closely with the Commerce Department over the next few months in providing information it may require so the following functions and possibly others can be certified:

- a. Department of Defense repatriation of remains from previous wars. Since often the parents of the soldiers are deceased, the DMF is often one of the first records used to find the parents date of death. From the date and location of the parent’s death, the genealogist can often find an obituary which will identify living siblings.
- b. Identification of unclaimed persons. The process is similar to that followed for the repatriation of remains, but is performed by genealogists working at the county level with county coroners.
- c. Missing and unknown heir cases involving estates, trusts, real estate, oil & gas & mineral rights, quiet title actions, and similar activities. Work with attorneys in resolving these issues. Sometimes the work is performed simultaneously by genealogists in different states.
- d. Tracing and tracking heritable medical conditions. When a family has an inherited genetic disease, time is of the essence. The SSDI is essential to finding deceased relatives who may have had the genetic disease. Multi-stepped research requires identifying other than immediate relatives, using a variety of sources including the social security death index, death certificates, obituaries, and estate records to locate their living descendants. It is critical to locate and warn living cousins about the genetic disease as soon as possible, so they may take proper action to diagnose and treat the condition, possibly preventing a premature death.
- e. Repatriation of stolen art
- f. Identifying Native American blood quantum to determine eligibility for tribal benefits

Professional genealogists working in these specialized fields need immediate access to the Social Security Death Index (the commercial version of the Social Security Administration’s Death Master File (DMF)). To deny them access will not only deprive them of their livelihood but severely hinder these important projects which are possible only because of their specialized skills.

For this statement we have attached Exhibit A which describes examples of the work that a professional genealogist may perform. You will note that the work encompasses several of the categories but not all and is representative of the work performed by many of the genealogists who will be requesting certification.

## **Part II**

While certification of the above categories of genealogists is our short term priority, we feel it is important to review the events which have led up to the recent legislation which prohibits access by genealogists to the DMF/SSDI for three years.

### **First Public Warning**

In the spring of 2011 we were all outraged by reports that identity thieves were filing fraudulent tax refund claims using the social security numbers (SSNs) of recently deceased children and adults. The comprehensive hearing held by the Subcommittee on Fiscal Responsibility and Economic Growth of this Senate Finance Committee on May 25, 2011 suggested that thieves had discovered vulnerabilities in our system for processing the online filing of tax returns and that we were seeing the leading edge of a flood of fraudulent refund claims for which we were ill-prepared. <http://www.finance.senate.gov/hearings/hearing/?id=32a4f2cc-5056-a032-5258-8967bf140b37%2520>

It was clear that refund checks were being mailed with a minimum of scrutiny and before the IRS would have received informational returns (W2s, 1099s, etc.) that could verify the legitimacy of the refund claims.

### **Framing the issue**

The data necessary to initially determine the nature and magnitude of tax fraud by identity theft cases in 2011 would not become available until the fall of 2013 with the publication of the report of the Treasury Inspector General for Tax Administration to be discussed later found at: <http://www.treasury.gov/tigta/auditreports/2013reports/201340122fr.pdf>

In the absence of data, instead of focusing on the vulnerability of IRS systems, surprise was expressed that the SSNs of deceased individuals could be found online at all. Some suggested that identity thieves could have gotten the SSNs of recently deceased children by online access to the DMF/SSDI. If thieves were using the SSDI, the IRS clearly was not. Nonetheless, instead of directly addressing the vulnerabilities at the IRS, the discussion draft (and now the Bipartisan Budget Act) would in the future limit access to the data in the DMF.

The role of the DMF/SSDI may not be well understood by the general public but is highly valued by its users. Originally created as a fraud prevention resource, it lists the SSNs of deceased persons and essentially “burned” the SSNs of those appearing thereon. It has been made widely available since the early 1980s and has been found to be a rich resource for a wide variety of legitimate users including medical researchers and genealogists. The best available overview of its uses may be found at: <https://www.ssdmf.com/Library/InfoManage/Guide.asp?FolderID=98&SessionID={B93E8F16-3E75-4A05-BA1E-D68FEBD34B73}&SP=2>

## Changes on Genealogical Websites

As the tax filing season opened in early 2011, the SSDI was freely accessible by the general public from a number of web sites, to include most of the major sites serving the genealogical community without requiring a subscription or login. Several Senators, including members of this committee, voiced their concerns in a December 1, 2011 letter addressed to the CEO of Ancestry.com Inc. and asked that they and other genealogical sites remove SSNs from their posting of the SSDI. <http://www.brown.senate.gov/newsroom/press/release/after-call-from-sen-brown-ancestrycom-removes-social-security-numbers-from-website-to-prevent-fraud>

Ancestry.com and other genealogical web sites immediately took measures designed to prevent the abuse of their resources by thieves. In addition to **putting this data behind their subscription pay wall**, Ancestry chose to **conceal the SSN of the deceased for a period of time**, even for their subscribers. Other genealogical sites took similar measures. [http://www.abc2news.com/dpp/news/local\\_news/investigations/website-stops-displaying-social-security-numbers-for-recently-dead](http://www.abc2news.com/dpp/news/local_news/investigations/website-stops-displaying-social-security-numbers-for-recently-dead)

## Efforts by the Internal Revenue Service

The information provided by the witnesses at the April 16, 2013 Senate Finance Committee hearing entitled “Tax Fraud and Tax ID Theft: Moving Forward with Solutions” gave multiple reasons to be encouraged by the actions being taken to combat refund fraud and help victims of identity theft. Their written statements are available at:

<http://www.finance.senate.gov/hearings/hearing/?id=62739085-5056-a032-5281-4500bf4d4fb3>

The testimony of Steven T. Miller, Acting Commissioner of the Internal Revenue Service described a number of significant steps they have taken including (1) much improved screening filters “to spot false returns before we process them and issue refunds”, (2) expanded criminal investigations, and (3) prosecution of the perpetrators.

Appropriate prosecution and sentencing of those perpetrating tax fraud related to identity theft has the potential of not only thwarting their predations but should serve as a deterrent to others tempted to follow their example. This begins to look like progress.

## Thieves Have Moved On

As genealogical sites have protected SSNs of recently deceased people and the IRS has improved their filters used before refunds are paid, the possibility that thieves are exploiting information from the SSDI has dramatically diminished. It is likely that the SSDI was never the primary source of SSNs exploited by thieves. To the extent that it may ever have been used, the thieves have moved on. The list of those recently sentenced as reported on page 9 of Acting Commissioner Miller’s Statement in last April’s hearing indicates that the SSNs were (1) stolen from a community college’s financial aid office, (2) stolen or tricks used to secure taxpayer’s personal information, (3) involved residents of Puerto Rico, (4) stolen from a medical center records office, or (5) by breaking into a tax preparation office. Although an additional case involving the misuse of an online database was cited, that misconduct turned out to be by a “trusted user” of a commercially available non-genealogical database. It is significant that all three recent cases of tax fraud identity theft

mentioned during the April 16 hearing involved living victims, not any who's SSNs might ever have been available on the SSDI.

### **National Taxpayer Advocate – “The Larger Question”**

The written statement of National Taxpayer Advocate Nina E. Olson from the April 16, 2013 hearing suggests a number of steps that would improve the IRS's ability to combat fraud and provide better service to taxpayers. Page 16 of her statement includes the following major recommendation:

#### **IV. To Reduce Taxpayer Burden and Cut Down on Tax Fraud, the IRS Should Be Empowered to Process Information Reporting Documents Like Forms W-2 Before Processing Tax Returns and Issuing Refunds.**

She further observed that: “. . . [a]pproximately 97 percent of taxpayers receive at least one information return. Traditionally, the IRS has not matched this data with the items reported on the taxpayers' tax returns until long after the filing season. In 2010, the IRS closed 4.3 million cases in which it identified a discrepancy between the taxpayer's return and third-party information, leading to \$7.2 billion in additional assessments.”

In her testimony before this Senate Finance Committee hearing, she posed “the larger question” in suggesting that we need to begin considering whether the IRS should wait to begin paying refunds until after the close of the filing season. Found at 1:51:20 of the committee video at: <http://www.finance.senate.gov/hearings/hearing/?id=62739085-5056-a032-5281-4500bf4d4fb3>

### **National Taxpayer Advocate -- 2013 Annual Report to Congress**

Ms. Olson has further developed this theme in her recently released 2013 Annual Report to the Congress found at <http://www.taxpayeradvocate.irs.gov/userfiles/file/2013FullReport/Volume-1.pdf> or more specifically in Volume Two of her report (attached to the cover email) in the “Evaluate the Necessity of Delaying the Filing Season” discussion starting on page 92 of the attachment. She there lays out an incremental approach that eventually would allow the IRS access to the data necessary to validate a tax return before issuing a refund check.

She names Identity Theft as one of the Most Serious Problems Encountered by Taxpayers and urges the IRS to recognize it as a traumatic crime with some of its victims exhibiting symptoms resembling those of Post-Traumatic Stress Disorder (PTSD). The sidebar on page 75, Volume 1 reports “Since 2004, the National Taxpayer Advocate has identified this issue as one of the “Most Serious Problems” faced by taxpayers in nearly every annual report submitted to Congress.”

### **What Do We Know Now That We Did Not Know in 2011?**

The data necessary to initially determine the nature and magnitude of tax fraud by identity theft cases in 2011 would not become available until the fall of 2013 with the publication of the report of the Treasury Inspector General for Tax Administration dated September 20, 2013 found at: <http://www.treasury.gov/tigta/auditreports/2013reports/201340122fr.pdf>

The chart below is drawn from Tax Year 2011 tax returns, those filed in early 2012. Please note that the only SSNs that would appear in the DMF/SSDI would be the “Deceased” Category. The IRS was utilizing a limited screening filter that appears not to have used the DMF to flag for special attention returns citing the SSNs of deceased individuals.

The following chart is particularly informative:



**Figure 4: Characteristics of the Individuals Whose  
SSNs Were Used on Undetected Tax Returns**

Characteristic	Tax Returns	Refunds Issued
Children (under age 14)	1,451	\$ 2,036,064
Citizens of U.S. Possessions	22,090	\$ 113,799,479
Deceased	19,102	\$ 70,180,690
Elderly (age 70 and over)	28,700	\$ 136,320,008
Income Level Does Not Require Tax Return Filing <sup>7</sup>	753,004	\$ 2,632,240,181
Prisoner <sup>8</sup>	37,249	\$ 133,087,550
Students (ages 16 to 22)	225,402	\$ 524,742,260
<b>Total</b>	<b>1,086,998</b>	<b>\$ 3,612,406,232</b>

*Source: TIGTA analysis of Tax Year 2011 tax returns.*

In December 2011, genealogical web sites began masking the SSNs of recently deceased persons and the IRS reportedly significantly improved their software filters. Even with deceased SSNs “exposed” during 2011, the 19,102 suspicious returns listed above represented less than 2% of the 1,086,998 potentially fraudulent returns filed in 2011.

Limitations on access to the DMF will have no impact on cases representing the misuse of the SSNs of living individuals (all the other categories in the chart above and representing the other 98% of the cases.)

Comparable 2012 data should give some measure of the effectiveness of the IRS improved filters. The IRS should be directed to report to the Congress data that would provide a basis for measuring the extent of improvement in their screening filters and other measures to they are taking to deter fraudulent tax refunds involving identity theft. Hopefully even this relatively small incidence of fraudulent use of deceased SSNs will be further reduced.

Both the Federal Trade Commission and the Taxpayer Advocate Service are reporting a significant increase (doubling?) in complaints of fraudulent tax returns involving identity theft. We should be concerned that final 2012 data will show a dramatic increase in cases impacting the living.

### **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 sponsoring members. The Association of Professional Genealogists (APG), the Board for Certification of Genealogists (BCG), the American Society of Genealogists (ASG), and the International Commission for the Accreditation of Professional Genealogists (ICAPGen) 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.

### **Conclusion**

- A. Breaking news** -- For most of us our first exposure to the issue of identity theft as a facilitator of fraudulent tax refunds occurred during 2011 as headlines were being made over stories of thieves misusing the identities of recently deceased children. Of course we were all outraged by these despicable acts.
  
- B. The Paradigm** – The parents of these children likely first became aware of the existence of the Death Master File displaying the SSNs of their children online in the days following the rejection of their tax returns because a thief had previously filed claiming their child as a dependent on a fraudulent refund return. The message quickly became (1) that the DMF/SSDI was a substantial source of SSNs used in filing fraudulent tax returns, (2) that the SSNs deceased individuals needed to be protected in the same ways we safeguard those of the living, and (3) that a simple fix was available if we would just limit access to the DMF/SSDI. The unstated assumption was that nothing would be lost by closing this resource. Vestiges of this argument were recently heard on the Senate floor during the debate on the Bipartisan Budget Act.

**C. The Much Needed Paradigm Shift** – New information contained in the Treasury Inspector General for Tax Administration report released last fall documents that even in 2011 the misuse of the SSNs of the deceased was only a minor contributor to tax refund fraud. The reported improvement in IRS filters and the responsible steps taken by genealogical sites hosting the SSDI may have already accomplished the identity theft prevention objective addressed by this legislation. Analysis of data from Tax Year 2012 should reveal a further reduction in the number of fraudulent refunds being paid that slipped through the IRS filters involving the SSNs of deceased individuals.

We should be concerned that the SSNs of living persons will continue to be vulnerable so long as the IRS is mandated to expedite the payment of refund claims before they have even received information returns necessary to determine their validity. Preliminary indications are that such cases in 2012 may have almost doubled over that experienced in 2011. **This vulnerability urgently demands Congressional attention.** Very little in the Bipartisan Budget Act will limit the fraudulent use of living SSNs.

Hopefully, this attention being focused on the DMF will improve the public understanding of the legitimate and beneficial uses of this resource. Our experience has led us to believe that **when used**, the DMF can prevent identity theft (or other forms of fraud). Problems arise when it is not used. By limiting its availability, the policy reflected in this statute does represent a major change in direction.

**D. Implementation of the Bipartisan Budget Act** – With the signing of this act, the debate over the conflicting paradigms is no longer a mere academic exercise. The Freedom of Information Act exemption took effect on the date of the enactment of the Act.

The Department of Commerce is charged under the provisions of the Bipartisan Budget Act with limiting disclosure of information from the Social Security Death Master File for three years and with developing a program to certify persons eligible to access that information during the closure period. It will be a significant challenge to do this in the 90 day time frame provided in the statute and get it right. My experience suggests that a robust notice and comment process cannot be completed on that schedule. During my limited contacts with the designated officials at Commerce they have manifested a sincere desire to get to know their customers better and that citizens with differing perspectives to bring to the table can expect an attentive audience. I further anticipate an attempt to minimize any unintended consequences of this legislation.

I urge the committees exercising oversight over this process to invite Commerce to propose any technical amendments which might better accomplish the fraud reduction objectives of this legislation. The genealogical community may have some approaches to suggest regarding the certification program and the appropriate safeguards to be applied to this information.

I also urge that the IRS be asked to report on their progress in closing the vulnerabilities in their online refund systems. Both technology and the creativity of identity thieves are rapidly evolving. Permanent legislation may be a poor fit for this situation.

## Summary

We offer four main points:

- (1) We are anxious to support the effort to implement the provisions of the Bipartisan Budget Act requiring the Department of Commerce to develop a Certification Program governing access to the Death Master File. Genealogists who fit the (a-f) categories listed on pages 2-3 should be accommodated for quick certification. **The genealogical community is a vitally interested stakeholder in this process.**
- (2) As existing policy regarding public access to the Death Master File is reviewed, we urge that input from professional 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. We can best be reached at [access@fgs.org](mailto:access@fgs.org).
- (3) Our strongest message is that steps already taken by the IRS and genealogical entities to protect SSNs listed in the SSDI may have already intercepted this particular form of identity theft without waiting for any additional legislation.
- (4) The SSNs of living people will remain vulnerable as long as the IRS mandate is to rush payments of tax refunds before information returns can be compared with the submitted return to assure its validity.