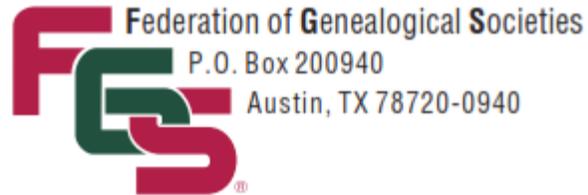


**The U.S. Senate**  
**Committee on Finance**



*Linking the Genealogical Community*

**Statement for the Record**  
**The President's Fiscal Year 2017 Budget**

**Wednesday, February 10, 2016**

**02:00 PM**

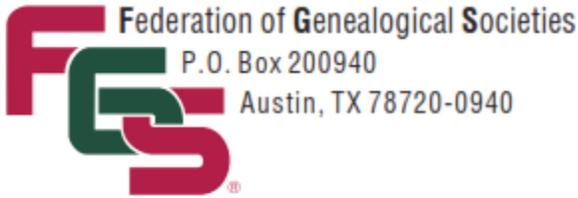
Submitted February 23, 2016

by

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*Linking the Genealogical Community*

## **Executive Summary**

We add our commendations to those offered in the opening statement by Chairman Hatch by noting that the IRS has dramatically improved its ability to intercept tax fraud by identity theft (especially those using the SSNs of deceased individuals.) We ask Senators to revisit the wisdom of limiting access to and the content of the Social Security Administration's Death Master File. While commending the work of the Department of Commerce in crafting regulations implementing Section 203 of the Bipartisan Budget Act of 2013, as written, we suggest areas where changes in legislative language might enhance the ability to (1) achieve the stated goal of reducing the opportunities for identity theft, and (2) minimize the unintended adverse consequences of limiting access and content available to legitimate users. Further question whether these provisions belong in permanent legislation and suggest ways of assessing their effectiveness and the impact of more targeted measures. Preliminary results of an ongoing case study are presented.

This statement for the record is filed on behalf of the Federation of Genealogical Societies (FGS) in response to the invitation that accompanies the Full Committee Hearing at: <http://www.finance.senate.gov/hearings/the-presidents-fiscal-year-2017-budget> . We greatly appreciate the opportunity to do so and to seize an opportunity to commend the Internal Revenue Service (IRS) for noteworthy progress in their effort to address tax fraud by identity theft.

I serve as the legal advisor to the Federation of Genealogical Societies and as a member of the Records Preservation and Access Committee (RPAC), a joint committee of FGS, the National Genealogical Society (NGS), and the International Association of Jewish Genealogical Societies (IAJGS). This statement has been reviewed and endorsed by the President of the Federation of Genealogical Societies.

## **Genealogists share Privacy Concerns**

Family Historians and their families are as vulnerable to the predations of identity thieves as any other citizen. Our names appear on the lists of those compromised by reported major data breaches at Target, Home Depot, and Anthem among others. Some of our colleagues have been issued PINS by the IRS to be used in filing their 2015 returns because fraudulent tax returns

using their information have been filed by identity thieves in the past. Those who believe that genealogists are reckless with Personally Identifiable Information might be pleasantly surprised at some of the measures taken by websites and individual researchers.

Be assured that the genealogical community is prepared to be supportive of measures which actually protect us from identity theft. We fervently wish that we could believe that the measures mandated by Section 203 of the Bipartisan Budget Act of 2013 limiting access to and the content of the Social Security Administration's Death Master File would have that effect. Our analysis has suggested otherwise.

The circumstances leading up to this legislation do, however, provide an unique opportunity gather the data needed to evaluate and develop responses with the actual potential to effectively combat the scourge of tax fraud by identity theft.

## **Initiatives to restrict access to records – Targeting the Data**

In recent years we have seen more than a thousand legislative initiatives impacting access to records at the Federal, state and local levels, the vast majority of which would have had the effect of limiting that access for genealogical and other purposes. The rationale used to justify these measures suggests an almost reflexive belief that the best or only way to prevent the fraudulent use of such data by identity thieves is to close the records. This logic carries with it the unstated assumption that no harm or loss accompanies such closures [about which we will have much more to say.]

Section 203 of the Bipartisan Budget Act of 2013 represents the most dramatic modern example of this approach at the federal level. Although it presented as an access issue, the provisions that reduce the display of historically available data elements and diminishing the content of the Death Master File trigger equally significant preservation concerns.

Since 2011, representatives of the genealogical community have monitored approximately a dozen Congressional hearings in which the scourge of tax fraud by identity theft has been raised. In most of those hearings, although not asked to actually testify, we have provided Statements for the Record suggesting that better alternatives might be available. <http://www.fgs.org/rpac/> In these hearings, we were frequently informed of the acknowledged harm resulting from the theft in the context of explaining why consideration was being given to dismantling, closing, or otherwise limiting access to the Death Master File. Rarely, if ever, during a hearing was concern expressed (or even awareness of the possibility) that costs might be paid or harm might be done by closing the record.

In the process of fulfilling their mandate to develop the Certification program required by this statute, the Department of Commerce National Technical Information Service (NTIS) has

provided a forum for those adversely impacted by the limitations of access to the DMF to begin to document the fact that records closures come at a price.

Ninety contributors have offered their comments on a proposed final rule at <http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=DOC-2014-0001> .

The most recent FGS contributions to this process are found at <http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0093> .

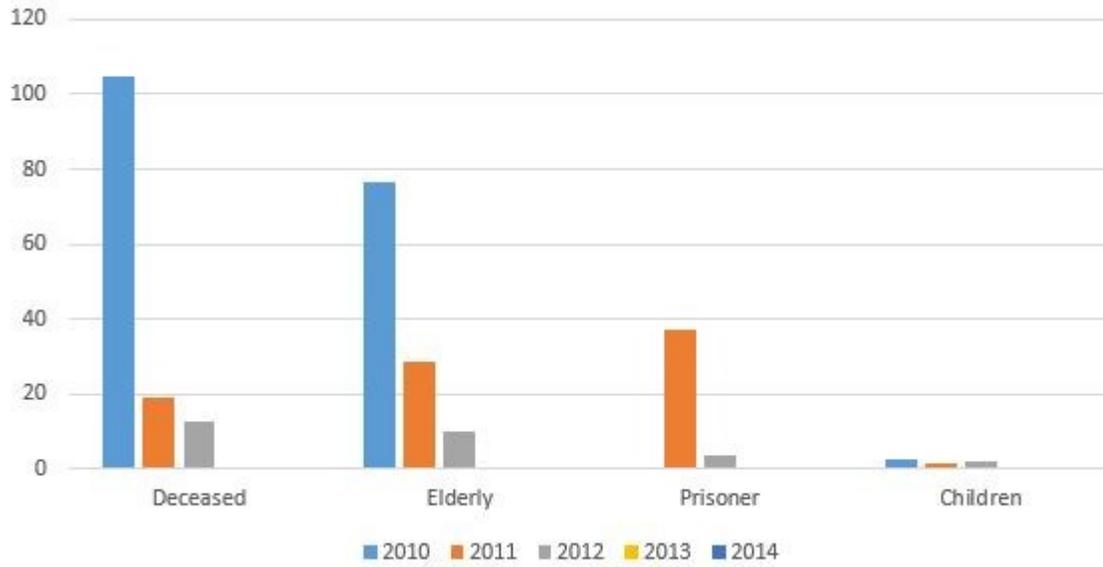
## The IRS Experience

Although scattered incidents of fraudulent tax returns involving identity theft were reported over a decade ago, their frequency and magnitude prior to 2010 could be said to fall within the noise level on the IRS radar. The emphasis within the IRS and on Capitol Hill was to expedite refund payments to the point that checks were being issued within days of electronic filing early in the filing season and well before the IRS would have received information returns that would be used months later to verify the accuracy of the data on the return justifying a significant refund. Instead of taking steps designed to prevent improper payments, the IRS practice as 2011 began was to pay claimed refunds as quickly as possible and then chase the filer in a labor intensive effort to recover the fraudulent or otherwise improper payment. <http://www.gao.gov/products/GAO-15-482T>

As stories began to make headlines during 2011 of thieves filing fraudulent tax refund claims abusing the SSNs of recently deceased children, the public was made to realize that the harm being perpetrated was no longer just a manageable drain on the Treasury. The disruption and pain inflicted upon the grieving parents (the legitimate taxpayers) for them felt like losing their child all over again. The IRS was prompted to revisit the wisdom of continuing the “pay and chase” approach to correcting improper payments to possible identity thieves. Prevention of fraudulent payments became a new focus of their enforcement efforts.

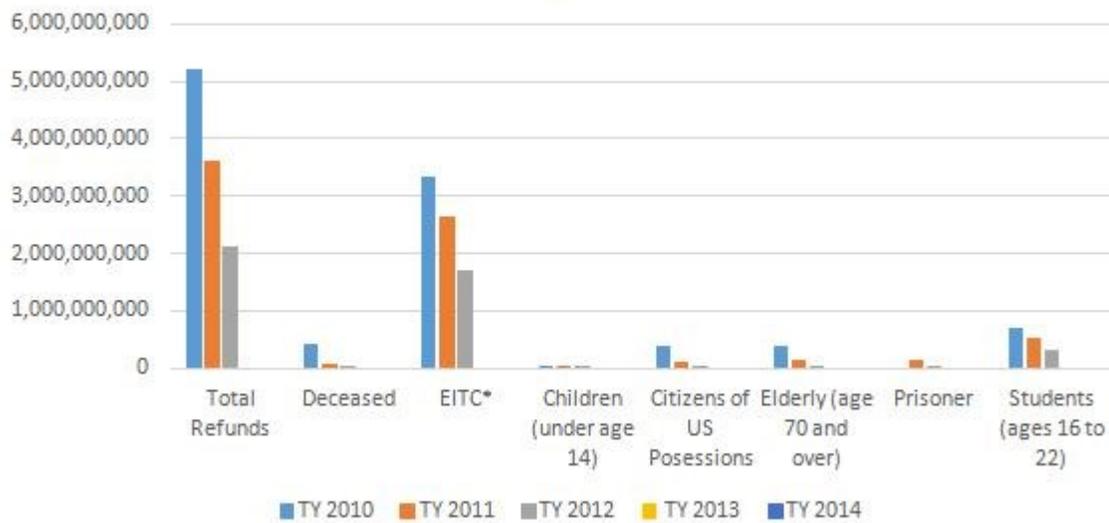
The comparison between the TY 2010 and TY2011 experience as reflected in publically available data confirms the assertion that the IRS enforcement policies changed in December of 2011 to institute practices intended to prevent improper payments by diverting suspicious returns for further scrutiny before they were processed for payment. The first year impact of this change in policy was dramatic, especially where the SSN of a deceased individual had been abused.

### Potentially Fraudulent Returns



The dollar impact of this effort is equally informative:

### Potentially Fraudulent Refunds Issued in Dollars



IRS testimony in the Senate Finance Committee hearing held April 16, 2013 announcing the development of filters designed to intercept potentially fraudulent refund returns prompted my previous supportive RPAC Statement for the Record found at page 138 of the hearing record. <http://www.finance.senate.gov/download/2013/04/16/tax-fraud-and-tax-id-theft-moving-forward-with-solutions> .

Further, I was already on record more than a month in advance of the current hearing with a series of blog posts documenting the basis for the conclusion that the IRS filters were really working:

<http://www.fgs.org/rpac/2015/12/22/irs-does-use-the-death-master-file-now-since-2012/>  
<http://www.fgs.org/rpac/2016/01/08/death-master-file-impact-of-irs-filters-ty2010-ty2011-ty2012/>  
<http://www.fgs.org/rpac/2016/01/13/death-master-file-analysis-irs-filters-really-work/>

The legislative implications of these findings will be addressed shortly.

## **The Department of Commerce Notice and Comment Process**

NTIS has shown us what a robust notice and comment process really looks like. Prior to the RFI and hearing no one really knew how long-time legitimate users of the SSDI made use of the information therein or, for that matter, how thieves were filing fraudulent tax refund claims by identity theft. Providing insight into that initial issue may represent the most lasting contribution to our understanding, potentially informing future program decisions. Representatives of the genealogical community have actively participated with many others in (1) responding to the initial Request for Information, (2) a Public Hearing on 4 March 2014, (3) Response to an Interim Final Rule, and now (4) providing the Response to Proposed Final Rule.

## **Previous FGS Comments on Interim and Final Rule**

Our previous Response to Interim Final Rule submitted April 25, 2014 (and incorporated herein by reference) documents several points we there emphasized:

1. In 2011 the DMF was widely available on the internet; The IRS was employing very limited filters to intercept suspicious tax returns before checks were issued. As needed data has become available, it becomes clear that tax refund fraud by identity theft was much more a reflection of the incredible vulnerabilities of the IRS on-line filing system than an inevitable result of the “burned” social security numbers of recently deceased children being made publically available in the DMF.
2. In fact, if thieves had attempted to use numbers taken from the Death Master File in most commercial transactions, they would have been rejected. In their rush to expedite refund payments in 2011, the IRS was not using the DMF to flag suspicious cases or to help

validate legitimate returns. When used, the DMF (listing what should be inactive SSNs) is an effective fraud prevention tool.

3. More targeted measures than simply closing the DMF were available.
4. In December 2011, all major genealogical sites making the DMF/SSDI available to the public began masking the SSNs of recently deceased persons for a minimum of three years. At about the same, the IRS began to strengthen the use of filters designed to flag potential fraudulent refund returns before payment was made.

## What Have We Learned?

Timely information on death is of critical importance across a broad spectrum of endeavors that exceed those of genealogists, the financial interests represented at the 2014 public hearing, or even those of the 114 entities participating on-line.

When representatives from the financial sector voiced concerns about the 2011 removal of data provided by the States from the DMF, and feared a further degradation of that resource, they spoke for all traditional subscribers. Pension Benefits Information: <http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0092> . Members of the research community had previously voiced similar concerns: <http://www.nytimes.com/2012/10/09/us/social-security-death-record-limits-hinder-researchers.html>

We were all particularly alarmed by the possibility that administration decision-makers believed that alternatives to the DMF were available and that historical users of the DMF could readily find what they needed from other sources. Those in attendance at the 4 March 2014 public hearing suggested otherwise, a posture also adopted by the Council of Professional Associations on Federal Statistics in their comment at <http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0061> .

For most financial purposes, verifying that an individual already known to them has died enables the enterprise to begin “closing the file” on the deceased individual. For researchers (especially for genealogical projects) finding an individual referenced in the DMF is more likely to be the beginning of the project with a need for them to continue the search for other relatives through the DMF. Locality information in the DMF suggests where one might look for additional documentation.

The challenges remaining between the already implemented Interim Final Rules and the pending final rule may best be found in the comments of the Consumer Data Industry Association at <http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0088> and the Berwyn Group at <http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0070> .

## What Have We Lost?

Limitations on access and the reduced utility of the Limited Use DMF have already impeded the work of those genealogists:

- Assisting the Department of Defense in locating heirs for the repatriation of remains from previous wars,
- Assisting county coroners in the identification of unclaimed persons,
- Working with attorneys in locating missing and unknown heirs involving estates, trusts, real estate quiet title actions, oil and gas and mineral rights, and other similar legal transactions,
- Tracing and tracking heritable medical conditions where finding distant cousins can facilitate early treatment and possibly prevent a premature death
- Repatriating stolen art and artifacts, and
- Identifying American Indians, Native Alaskans, and Native Hawaiians to determine eligibility for tribal benefits and blood quantum when required.

The academic research community and those engaged in medical-related research can likely provide even more dramatic examples. American Economics Association:

<http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0078> .

Kaiser Permanente: <http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0046>.

Anesthesia Quality Institute: <http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0065> .

## What Legislation Might Help?

Section 203 provides a very restrictive definition of those to be authorized access to the Limited Use DMF and other measures adversely impacting what most would consider legitimate users of the information. We are prepared to work with the Congress and all interested parties should changes in the statutory mandate be indicated. Possible areas for consideration might include:

1. Other legitimate researchers authorized for timely access, to include academics in recognized long term studies, federal program evaluations, genealogical studies for which a three year delay would be problematic.
2. Explore ways in which third-party providers might be able to share non-sensitive information and their state-of-the-art search engines by masking the information needed by thieves (perhaps only the SSN.)
3. Explore whether security measures used for active SSNs are the best way to protect from abuse those of the deceased.
4. Develop alternatives to this limitation on access and reduction of content of the DMF.
5. Should the Section 203 program be considered for sunset?

## The Path Forward – A Rigorous Case Study Indicated

The way in which the challenge of tax fraud by identity theft has evolved in recent years presents a unique opportunity to evaluate the effectiveness of several approaches to combating it.

1. Initial baseline period – TY 2010 and before

During the period immediately preceding December 2011, the DMF was widely available on the internet and the IRS was doing minimal filtering that might have flagged fraudulent refund claims. Apparently the IRS was not filtering against the SSA's Death Master File in 2010 before issuing potentially fraudulent refund checks. The data necessary to initially determine the nature and magnitude of tax fraud by identity theft cases first coming to public attention 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 drawn from the TY 2011 data, issued September 20, 2013 and found at: <http://www.treasury.gov/tigta/auditreports/2013reports/201340122fr.pdf>

2. Period 2 – December 2011 to April 2014

In December 2011, genealogical web sites began masking the SSNs of recently deceased persons and the IRS reportedly significantly improved their software filters. The IRS effort has included continuing refinement of the filters to flag returns demonstrating characteristics of those found to have been fraudulent. Thieves change; we learn.

3. Period 3 – April 2014 to present

In April of 2014, the limitations on access and content of the DMF mandated by the Bipartisan Budget Act of 2013 are implemented.

Having a comparable chart for TY 2012, TY 2013, TY2014, (and possibly a look back to 2010) could give visibility over where our challenges still lie, what measures are working, and which measures may be of only marginal utility. I appreciate that it may take a year or more for a suspicious return to be fully resolved so we may be asking for TIGTA to undertake an ongoing project.

A rigorous analysis could confirm that the measures taken by the IRS, together with those measures taken by genealogical entities, have largely intercepted this particular form of identity theft in advance of this legislation. It might also suggest better approaches to intercepting the far more prevalent misuse of the SSNs of the living.

## Conclusions

1. Closing death records comes at a cost.

The IRS track record demonstrates that using the DMF and other filters provides an effective counter to tax fraud by identity theft. Closing these records have the potential of doing more harm than good in the fight against identity theft.

2. NTIS has implemented the statutory mandate, as written.

Operating within the constraints of their current statutory mandate, there is little more that NTIS can do to create a more functional Certification program. We are prepared to work with appropriate Congressional committees to suggest more effective statutory changes.

But, many clearly legitimate historical users of the DMF are currently denied access.

Additionally, that content is no longer as comprehensive as it once was prior to the 2011 decision to withhold state-provided content. Financial services representatives voiced particular concern that the on-going withholding of state data will further degrade the value of the DMF resource and make their fraud prevention efforts less effective. Pension Benefits Information <http://www.regulations.gov/#!documentDetail;D=DOC-2014-0001-0092>

We are, in effect, seeing the incremental dismantling of the historically valuable DMF. Most users would likely agree that the then publically available pre-2011 DMF (even with all its flaws) came the closest of any available death record to meeting the needs of the user community when measured against comprehensiveness, timeliness, and costs.

3. This statute may not be the final answer.

Limiting access to the DMF is not the “silver bullet” solution to the scourge of tax fraud by identity theft. It could do more harm than good.

Our strongest message is that steps already taken by the IRS and genealogical entities to protect SSNs listed in the DMF had largely intercepted this particular form of identity theft in advance of this legislation. Its primary impact may be to burden legitimate users both operationally and financially. Our suggestion for a case study provides a way to assess the effectiveness of various measures taken.

4. The statutorily mandated Limited Use Death Master File is inadequate.

Those of our genealogical colleagues who have been certified and begun to work with the LUDMF resulting from this effort report that the search engine and the data elements displayed for this product no longer meet our needs. Genealogists were not the only DMF users concerned that the DMF is being incrementally degraded. The new limited access DMF needs a much improved search engine.

5. The path forward:

The Genealogical community is anxious to work with all interested parties in an effort to develop a truly comprehensive nation-wide death index. The concerns of State Vital Records officials that led to the ongoing removal of state data from the DMF in 2011 must be addressed.

We recognize a need to work with the Congress and other interested parties to improve existing measures and suggest additional approaches to combat the scourge of identity theft.

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.