

April 15, 2013

Administration Proposes To Limit Access to Death Master File

Over the past two years, states have undertaken various initiatives—including audits, exams, regulations, and legislation—intended to require insurers to compare their life insurance policy records with the record of deaths included in the Social Security Administration Death Master File (DMF) to identify possible unpaid death benefits. The Obama Administration is now proposing to limit immediate access to the DMF to those users who legitimately need the information for fraud prevention purposes and to delay the release of the DMF for three years to all other users. This proposal is contained in the Treasury Department's "Green Book" issued earlier this month to explain the revenue proposals that accompany the Administration's proposed budget. (Click [here](#) for a copy of the Green Book.)

The Treasury Department offers the following explanation for the proposal:

Refund-fraud related identity theft has grown exponentially in recent years. Fraudulent tax returns using a decedent's identifying information are difficult to detect before improper refunds are paid, because the Internal Revenue Service may not discover that identity theft has occurred until a surviving family member files an income tax return claiming the decedent as a dependent or files the decedent's final income tax return.

Accordingly, the Administration is proposing to make DMF information available immediately only to those "who legitimately need the information for fraud prevention purposes," while delaying access to others for three years. The Treasury Department does not explain in any detail who would be viewed as having a "legitimate need" for immediate access, or by what process individuals may obtain approval for such access, so it is unclear how the proposal would impact insurers' use of the DMF with respect to life insurance policies. However, the Treasury Department refers to "pension plan administrators who use DMF data to terminate payments" as an example of a legitimate use:

Some DMF users need immediate access to the DMF for fraud prevention purposes, such as pension administrators who use DMF data to terminate payments. Others use the information for purposes that are not time-sensitive, such as genealogy research. A third group, however, uses the DMF for illegitimate purposes, including identity thieves who use the DMF to steal the names and SSNs of recent decedents, which information identity thieves then use to file fraudulent tax returns.

Although there have been a number of bills introduced in Congress to restrict DMF access in order to prevent identity theft, it is significant that the Administration is now proposing such limits. The Administration's proposal is similar in some respects to H.R. 295, introduced on January 15, 2013, which calls on the Department of Commerce to establish a program to limit access to DMF information regarding deaths in the prior two years to those persons who have "a legitimate fraud prevention interest in accessing the information." (Click [here](#) for the pending bills to restrict DMF access.)

© 2013 Sutherland Asbill & Brennan LLP. All Rights Reserved.

This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland and the recipient.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Authors

Marlys A. Bergstrom	404.853.8177	marlys.bergstrom@sutherland.com
Ellen M. Dunn	212.389.5071	ellen.dunn@sutherland.com
Phillip E. Stano	202.383.0261	phillip.stano@sutherland.com
Steuart H. Thomsen	202.383.0166	steuart.thomsen@sutherland.com
Mary Jane Wilson-Bilik	202.383.0660	mj.wilson-bilik@sutherland.com
David W. Arrojo	202.383.0866	david.arrojo@sutherland.com
Wilson G. Barmeyer	202.383.0824	wilson.barmeyer@sutherland.com

Related Attorneys

Thomas W. Curvin	404.853.8314	tom.curvin@sutherland.com
Stephen E. Roth	202.383.0158	steve.roth@sutherland.com
Cynthia R. Shoss	212.389.5012	cynthia.shoss@sutherland.com
Eric S. Tresh	404.853.8579	eric.tresh@sutherland.com