

April 19, 2013

## Senate Finance Committee Hears Testimony on Proposal to Limit Access to Death Master File

On April 16, 2013, the Senate Finance Committee held a hearing on “Tax Fraud and Tax ID Theft: Moving Forward With Solutions,” including testimony on proposals to restrict access to the Social Security Administration’s Death Master File (DMF) as a means of protecting sensitive taxpayer identifying information.

As we previously reported, the Obama Administration’s budget package includes a proposal to limit DMF access. Click [here](#) for our previous Legal Alert. Sen. Bill Nelson (D-FL) introduced legislation to implement the Administration’s proposal. Senate Bill 676 (or the “Identity Theft and Tax Fraud Prevention Act of 2013”) would curtail public access to DMF data for a period of time after an individual’s death, by prohibiting the Secretary of Commerce from “disclosing DMF information to any non-governmental person or entity with respect to any individual who has died at any time during the calendar year in which the request for disclosure is made or the succeeding 2 calendar years.” Exempted from this prohibition are individuals who, pursuant to a certification program created by the new law, are authorized by the Secretary of Commerce to immediately receive DMF information. Responsibility for the release of DMF information would vest with the Commerce Secretary upon the issuance of a memorandum of understanding following the law’s enactment. Click [here](#) for a copy of the bill.

Although Senate Bill 676 provides only limited information about the proposed certification program, it does make clear that among those who would be eligible to be certified are entities requiring DMF access to “facilitate timely and proper administration by such person of an insurance policy or benefit program,” as described below:

- (2) CERTIFICATION.—A person shall not be certified nor remain certified under the program established under paragraph (1) unless—
- (A) the Secretary of Commerce determines that access to the information described in subsection (b) is appropriate because—
    - (i) such person has a legitimate interest in preventing fraud or unauthorized financial transactions,
    - (ii) such access will facilitate compliance by such person with an applicable law, regulation, court order, or fiduciary duty,
    - (iii) such access will facilitate timely and proper administration by such person of an insurance policy or benefit program, or
    - (iv) such person is subject to disclosure requirements under section 502 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802), section 620 of the Fair Credit Reporting Act (15 U.S.C. 1681r), or any other Federal statute that the Secretary determines, following notice and comment rulemaking, provides sufficient protection against improper disclosure of information described in subsection (b), and
  - (B) the Secretary of Commerce verifies that such person has facilities and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information.

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At the April 16 hearing, Nina Olson, testifying on behalf of National Taxpayer Advocate, recommended that Congress restrict access to the DMF, which “provides a means of access to taxpayer identifying information that can further tax fraud.”

Meanwhile, Marianna LaCanfora, Acting Deputy Commissioner for Retirement and Disability Policy for the Social Security Administration, commented on the DMF’s role in administering Social Security programs and provided context to the pending legislation that would restrict access to the DMF. Ms. LaCanfora noted that the intended purpose of the DMF is to gather information from a number of sources “to timely stop paying beneficiaries who have died.” While acknowledging media reports of criminals using DMF information to perpetrate tax fraud, Ms. LaCanfora underscored that any policy solution must nonetheless “strike a balance that allows legitimate uses of the data, while also preventing misuse.” She explained that the pending legislative proposal would delay the release of a deceased individual’s information in the DMF for three years after death, except to those private entities certified as having a “legitimate need for the information.”

Sen. Nelson, who was present at the hearing, commented that any legislative restrictions on DMF access would not affect “legitimate interests.” Specifically, he stated that any delay in the publication of DMF data under the proposed law would not prohibit the Commissioner of the Social Security Administration or the Commerce Secretary from making the same information immediately available to “legitimate interests like life insurance companies.”

The Obama Administration’s proposal comes at a time when states are both investigating life insurance industry practices regarding the use of the DMF and seeking to impose requirements to use the DMF in connection with death benefits.



*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.*

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