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OF THE
UNITED STATES OF AMERICA

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March 18, 2014

VIA ELECTRONIC FILING

Mr. John Hounsell
National Technical Information Service
U.S. Department of Commerce
5301 Shawnee Road
Alexandria, VA 22312

Re: *Certification Program for Access to the Death Master File, Docket. No. 140205103-4103-01*

Dear Mr. Hounsell:

The U.S. Chamber of Commerce (“Chamber”)¹ is pleased to submit these comments to the National Technical Information Service (“NTIS”) in response to its Request for Information on the Certification Program for Access to the Death Master File.² The Chamber strongly urges the NTIS to ensure that all users of the Death Master File (“DMF”) with a legitimate business or fraud prevention purpose have access to the DMF under the certification program required by the Bipartisan Budget Act of 2013 (“Act”)³ and that those users have uninterrupted access to the DMF while the program is being developed and implemented.

I. Background on the DMF

The DMF is a list of deceased individuals maintained by the Social Security Administration (SSA).⁴ SSA makes the DMF available to the public through an agreement with NTIS.⁵ The DMF is an important tool used for many legitimate purposes.⁶ However, stemming from concerns regarding the use of the DMF in the commission of identity theft and fraud, Section 203 of the Act directs the Secretary of Commerce to restrict access to the information

¹ The U.S. Chamber of Commerce is the world’s largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America’s free enterprise system.

² *Request for Information and Advance Notice of Public Meeting Regarding Certification Program for Access to the Death Master File*, 79 Fed. Reg. 11735 (Mar. 3, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-03-03/pdf/2014-04584.pdf>. (“RFT”).

³ Bipartisan Budget Act of 2013, Pub. L. No. 113-67, § 203.

⁴ 79 Fed. Reg. 11735, 11736.

⁵ *Id.*

⁶ *Id.*

contained on the DMF for a three-year period beginning on the date of the individual's death, except to persons who are certified under a program to be established by the Secretary of Commerce.⁷ To be certified, a person must have a fraud prevention interest or other legitimate need for access to the DMF.⁸

I. The Chamber Supports Adoption of an Interim Final Rule to Ensure Uninterrupted Access to the DMF During the Development and Implementation of the Final Rule

Under the Act, Section 203 goes into effect ninety (90) days after the date of enactment (with exception of the "FOIA" provision that goes into effect immediately).⁹ The Act was signed by the President and enacted into law on December 26, 2013. Therefore, March 26, 2014—a mere eight days after comments are due on the RFI—is the overall effective date for Section 203. NTIS will use comments gathered through the RFI to inform its "approach to the development of a certification program, which will be promulgated by NTIS by Notice and Comment Rulemaking."¹⁰ Clearly, eight days is not sufficient to consider the comments submitted in response to the RFI, promulgate a proposed rule, receive and consider comments on the proposed rule, and adopt a final rule.

Thus, issuing an interim final rule would ensure that users with a legitimate business or fraud prevention purpose maintain uninterrupted access to the DMF. There is no viable alternative that these organizations can use if access to the DMF is halted. In its RFI, NTIS acknowledges just some of the crucial functions enabled today by access to the DMF:

[The DMF] is used by pension funds, insurance organizations, Federal, State and Local government entities and others responsible for verifying deceased person(s) in support of fulfillment of benefits to their beneficiaries. By methodically running financial, credit, payment and other applications against the Death Master File, the financial community, insurance companies, security firms and State and Local governments are better able to identify and prevent identity fraud, and identify customers who are deceased. Other current users include clinicians and medical researchers tracking former patients and study subjects, law enforcement and genealogists.¹¹

Therefore, failure to ensure uninterrupted access to the DMF will put consumers at risk, cause economic harm, increase fraud, and impede compliance with state and federal laws. Contrary to the purpose of Section 203, closing off access to the DMF would be a boon to criminals because a powerful tool in the fight against fraud and identity theft would be taken off

⁷ *Id.* at 11735, 11736.

⁸ *Id.* at 11735.

⁹ § 203(f) of the Bipartisan Budget Act of 2013.

¹⁰ 79 Fed. Reg. 11735.

¹¹ *Id.* at 11736.

the table. Therefore, the Chamber strongly urges NTIS to issue an interim rule that would ensure uninterrupted access to the DMF.

II. The Certification Program Should Embrace the Many Important Uses of the DMF and Ensure Uninterrupted Access for DMF Users with a Legitimate Business or Fraud Prevention Purpose

The Chamber is supportive of the consumer protection goals embodied in Section 203. However, consistent with the Act, the Chamber strongly urges NTIS to craft a certification program that embraces the many important uses of the DMF. Chamber members clearly fall within the criteria established by Section 203(b)(2)(A) for eligibility in the certification program because they access the DMF for “(i) a legitimate fraud prevention interest, or (ii) a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty.”¹² A few of these legitimate uses are highlighted below.

The DMF is a critical tool in the fight against fraud and identity theft. The DMF contains approximately 85 million records of deaths that are reported to the SSA, and 1.3 million records are added each year.¹³ Perpetrators of fraud race to exploit the identities of the newly deceased before companies and government agencies have a chance to update their records. Impeding DMF access by users with a legitimate business or fraud prevention purpose only helps criminals and certainly does not further the pro-consumer goals of Section 203. For example, the DMF is used to combat insurance fraud, which is estimated at \$80 billion per year.¹⁴ The identities of nearly 2.5 million deceased Americans are used fraudulently to apply for credit products and services each year, according to Analytics’ ID:A Labs.¹⁵ A recent IRS Inspector General’s report regarding Tax Year 2011 found that \$4 billion in fraudulent tax refunds were issued in 2012 to people using stolen identities, including \$70 million linked to stolen social security numbers of the deceased.¹⁶

Developers of identity authentication, verification, and screening tools, and other redistributors of the DMF assist businesses in detecting and preventing fraud against consumers. Companies incorporate DMF data into products and services used by other corporations, the legal industry, law enforcement and government agencies for anti-fraud efforts, investigations, research and similar purposes. Pension funds, banks, credit unions, credit card issuers and other

¹² § 203(b)(2)(A) of the Bipartisan Budget Act of 2013.

¹³ Statement for the Record of Honorable Patrick P. O’Carroll, Jr. Inspector General, Social Security Administration, *Hearing on Social Security’s Death Records*. House Ways and Means Subcommittee on Social Security, Feb. 2, 2012, at 2, available at

<http://oig.ssa.gov/sites/default/files/testimony/Death%20Master%20File%20Written%20Statement%20FINAL.pdf>.

¹⁴ *The impact of insurance fraud*, Coalition Against Insurance Fraud, (last accessed Mar. 17, 2014), available at <http://www.insurancefraud.org/the-impact-of-insurance-fraud.htm>.

¹⁵ *Identities of Nearly 2.5 Million Deceased Americans Misused Each Year*, ID Analytics, Apr. 23, 2012, available at <http://www.idanalytics.com/news-and-events/news-releases/2012/4-23-2012.php>.

¹⁶ *Detection Has Improved; However, Identity Theft Continues to Result in Billions of Dollars in Potentially Fraudulent Tax Refunds*, Treasury Inspector General for Tax Administration, Sept. 20, 2013, at 13, available at <http://www.treasury.gov/tigta/auditreports/2013reports/201340122fr.pdf>.

financial services entities use the DMF to protect and benefit consumers. The DMF helps to identify deceased individuals for exclusion from payment of future benefits from programs such as Medicare, Medicaid, welfare, and unemployment.

Life insurance companies are required by state laws to use the DMF to identify deceased insured individuals, pay policy proceeds, and distribute unclaimed funds. For example, nine states have enacted laws requiring life insurers to consult the DMF as a cross-reference at specified intervals.¹⁷ Additionally, the DMF helps to battle insurance fraud by enabling insurers to verify identities of those applying for insurance or benefits. The DMF helps life insurers determine that a death has occurred and to contact beneficiaries. To prevent fraud, life insurers attempt to verify the death of an insured individual and in the process comply with obligations under state Unfair Claim Settlement Practices Acts to pay claims in a timely manner. Therefore, inability to access the DMF would jeopardize the ability of life insurers to comply with state regulations, contact beneficiaries—especially those that did not know of the existence of the policy and/or that they were listed as a beneficiary—and combat identity theft and fraud.

Retirement plans use the DMF to make payments to the correct recipients in the correct amounts and for determining when a plan beneficiary becomes eligible for payments. For example, the DMF prevents plan benefits paid in the form of life or joint life annuities from going to the deceased instead of the beneficiary after the death of the participant. Plans also use DMF information for paying other forms of benefits to “determin[e] when a plan beneficiary becomes eligible for benefits.”¹⁸ Additionally, retirement plans must comply with the fiduciary requirements of the Employee Retirement Income Security Act of 1974, as amended (ERISA), that include a duty to pay benefits to the current party, including beneficiaries, under the plan.

The DMF is used to remove deceased individuals from the normal collection process. Often debt collection, foreclosure, and repossession are suspended upon the death of the debtor. When collection of that type is pursued, companies follow various rules and procedures, including the Federal Trade Commission’s “Policy Regarding Communications in Connection With the Collection of Decedents’ Debts.”¹⁹ Inability to access the DMF would result in more collection notices to next of kin, potentially adding to their grief and stress.

The DMF is used to exclude deceased individuals from receiving financial offers, fundraising solicitations, and other marketing activities. Consequently, the DMF helps limit communications to deceased individuals and their relatives.

¹⁷ Letter from the National Association of Insurance Commissioner to Secretary Pritzker, Jan. 15, 2014, *available at* http://www.naic.org/documents/government_relations_140115_death_master_file_letter_to_dept_congress.pdf.

¹⁸ Multi-Association Letter Regarding Access to the DMF and Retirement Plans, Jan. 28, 2014, *available at* <http://www.ici.org/pdf/27874.pdf>.

¹⁹ *Statement of Policy Regarding Communications in Connection With the Collection of Decedents’ Debts*, 76 Fed. Reg. 44915 (July 27, 2011), *available at* http://www.ftc.gov/sites/default/files/documents/federal_register_notices/statement-policy-regarding-communications-connection-collection-decedents-debts-policy-statement/110720fdcpa.pdf.

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Additionally, the Chamber supports redistribution of the DMF by certified entities to third parties to accomplish legitimate business purposes. The majority of all U.S. businesses that have need for access to the DMF, including financial institutions (e.g., credit unions and community banks), depend on third-party channels for such access. Ensuring that the concept of redistribution is clearly stated in both the interim and final rules, and adopting safe harbors of practice for redistributors who assume liabilities for such redistribution are essential to a successful access program. In today's connected economy, numerous parties work together and need to share information with each other in order to protect consumers from fraud and identity theft, comply with federal and state laws and regulations, meet the demands of their consumers, and carry out legitimate business activities requiring access to the DMF.

III. Conclusion

For the above-stated reasons, we strongly urge the NTIS to ensure all users with a legitimate business or fraud prevention purpose have access to the DMF under the new certification program and that access to the DMF for these users will be uninterrupted during the transition period. Thank you for the opportunity to comment in this matter.

Sincerely,



William L. Kovacs