



AMERICAN BENEFITS  
COUNCIL

April 24, 2014

*Submitted via e-mail to [jhounsell@ntis.gov](mailto:jhounsell@ntis.gov)*

National Technical Information Service  
5301 Shawnee Road, Alexandria, VA 22312

**RE: Comment letter on Death Master File Interim Final Rule**

Dear Mr. Hounsell:

The American Benefits Council (Council) appreciates the opportunity to provide information and comments to the National Technical Information Service (NTIS) of the U.S. Department of Commerce on the Interim Final Rule (IFR) providing a Temporary Certification Program for Access to the Death Master File (DMF). The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

Many of the Council's members regularly access the DMF in order to administer retirement plan benefits and are very concerned about the possibility of either losing access to the DMF temporarily or having unworkable limitations on the use of the information obtained from the DMF.

The Council very much appreciates the great work NTIS has been doing on this issue. In a short amount of time, NTIS developed a very workable IFR that has been a positive step towards helping retirement plans continue to access the critical information that they need. Our comments today are intended to suggest refinements and clarifications to the IFR that would support legitimate use of the DMF without opening the door to the types of abuse that led to the legislation.

## **WHY ACCESS TO THE DMF IS IMPORTANT FOR RETIREMENT PLAN ADMINISTRATION**

Simple and inexpensive access to the DMF information is critical to the efficient functioning of all types of retirement plans, including pension plans and defined contribution plans (such as 401(k) plans). When plan benefits are paid in the form of life or joint life annuities, incorrect payments can be made to the deceased participant (sometimes through direct deposit) rather than to the beneficiary unless the plan has up-to-date information on the death of the participant from the DMF. Plans need DMF information for other purposes, such as determining when a plan beneficiary becomes eligible for benefits (and takes over investment direction in a participant-directed plan). Retirement plan fiduciaries are subject to the fiduciary requirements found in the Employee Retirement Income Security Act of 1974, as amended (ERISA), which can be found in Title 29 of the U.S. Code. These fiduciary duties would include a duty to pay benefits to the appropriate party under the terms of the plan, and that party would change upon the death of the participant. In addition to enabling correct benefits processing, accurate and complete plan participant information is also an important element of accurately determining required plan funding and plan liability measurement.

## **HOW THE DMF IS ACCESSED WITH RESPECT TO RETIREMENT PLANS**

Most employer plan sponsors do not access the DMF on behalf of the plan themselves, but rather they hire third party service providers (referred to in this letter as “DMF service providers”) to keep them informed of the status of plan participants. In that context, the DMF service provider, not the plan sponsor itself, would be seeking the certification in order to provide services to plan sponsors and possibly others. However, by filling out the certification form as currently written, it would appear that the DMF service provider may need to ensure that all of its retirement plan customers – who receive information about recent deaths from the DMF service provider that the DMF service provider obtains from the DMF – also (1) have systems to safeguard the information, (2) have experience in maintaining such safeguards, and (3) agree to satisfy the requirements of Internal Revenue Code Section 6103(p)(4) with respect to such information.

There are literally hundreds of thousands of retirement plans maintained by employers of all sizes. It is not possible for those hundreds of thousands of plans to instantaneously develop the required safeguards, nor would it be workable to limit the ability of service providers to access the DMF based on the presence or absence of such procedures within hundreds of thousands of plan sponsors. Moreover, as discussed below, there is no reason that they should need to do so. In addition, if hundreds of thousands of plans were to seek certification, the strain on the government would be quite substantial, and it would not be just a one-time strain, as new plans are constantly being formed.

But there is another set of issues. Some larger plans access the DMF and can be certified. Still other large plans may not access the DMF but may be able to meet the certification requirements. These plans may still have an issue, since many of them use other service providers (referred to in this letter as “non-DMF service providers”) to perform, for example, administrative, payment processing, actuarial, or accounting services. In order for these non-DMF service providers to perform their functions, the plans will need to provide them with information from the DMF. But many of these non-DMF service providers may be unprepared to meet the certification requirements, posing an additional set of unnecessary problems. Again as noted below, there is no reason that they should have to meet such requirements.

In addition, any certified entity may, based on the DMF information, request further evidence of death, such as a death certificate. The persons who receive this request may be, for example, family members or beneficiaries, and will generally not meet the certification requirements. Any effort to require such certifications from family members or beneficiaries would, of course, be inappropriate and unworkable.

#### **WHAT INFORMATION IS NEEDED FROM THE DMF**

In order to properly administer plans and ensure payments are made to the correct recipient, plan sponsors and their non-DMF service providers need to know that a participant has died as well as the date of death. There are critical tax rules applicable to retirement plans that require the plan to know the year in which the participant died. For example, a death on December 31 would trigger different requirements than a death on January 1.

The plans and certain non-DMF service providers will also have records of the participant’s social security number. Use of the social security number is needed to confirm that the deceased is actually the participant. In other words, the plan cannot rely on the fact that a person with the same name as one of its participants has died. In order to confirm that the deceased is actually a participant of the plan, the plan or non-DMF service provider will need to be able to request confirmation from the DMF service provider that the social security number of the deceased matches the social security number of the plan’s participant. This only requires the certified DMF service provider to confirm a social security number provided to the DMF service provider by the plan or non-DMF service provider. Thus, this type of usage offers no potential for the abuse that led to the legislation.

## CLARIFICATIONS REQUESTED

In the context of the legitimate practices described above, in order to ensure the continued access to the DMF and the proper administration of retirement plans, the Council respectfully asks for the following clarifications. Please note that the IFR does not prohibit any of the actions below. Moreover, because of the need to continue operating plans and paying benefits, many plans and service providers have already been forced to take actions in reliance on a good faith reading of the IFR. Accordingly, if any of these clarifications cannot be made, any more restrictive rule should only apply prospectively.

First, in connection with administering retirement plans, the certified entity should be permitted to disclose the fact that a participant has died without regard to whether the recipient of that information meets the certification requirements. The fact of death is public information that can be obtained without regard to the DMF. Moreover, unless a certified entity also provides a social security number to an uncertified entity, the fact of death cannot lead to the types of abuses that led to the legislation. In addition, disclosure of the fact of death is integral to effectuation of critical functions in the context of retirement plan administration. For all of these reasons, certified entities should be permitted to disclose the fact of death without regard to whether the recipient meets the certification requirements. And correspondingly, there should be no restriction on the use of such public information for other legitimate purposes, such as research, beyond the disclosure for plan administration.

The exact same points apply equally to the disclosure of the date of death: it is public information that cannot lead to abuse and that is critical to retirement plan administration. There is no reason to restrict disclosure or legitimate use of the date of death.

Finally, in connection with administering retirement plans, the certified entity should be able to confirm whether a social security number provided by a plan, non-DMF service provider, or other person contacted by the certified entity (such as a family member) is the social security number of the deceased without regard to whether the plan, non-DMF service provider, or other person can meet the certification requirements. This does not require the certified entity to provide any social security number information to someone who does not already have it, which, as noted, was the source of the abuse. Moreover, unless this is permitted, plans will not be able to know if their participant has died, without which basic plan administration would become significantly compromised.

## PERIODIC AND UNSCHEDULED AUDITS

Many of the entities accessing the DMF are already heavily regulated and audited in very broad ways for compliance with the law. We recognize that the requirement for periodic and unscheduled audits is based on the statute, but we ask that in designing the audit program, NTIS formally recognize the extent to which certified entities are already regulated and audited in determining whether further audits are needed, and in determining the extent and timing of such audits.

Again, we appreciate the opportunity to provide information and comments on the death master file IFR. If you have any questions or would like to discuss these comments further, please contact me at 202-289-6700.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson  
Senior Counsel, Retirement Policy