

**Permitted Uses of Federal Tax Information
Questions and Answers
September 21, 2012**

Source: Internal Revenue Service

Disclosure of Federal Tax Information

Q1: What triggers the disclosure of Federal tax information (FTI) from the Data Services Hub to Exchanges or state agencies that administer Medicaid, CHIP, or basic health plans?

A1: IRS will disclose certain available items of FTI to the Data Services Hub after an individual submits an application for financial assistance in obtaining health coverage to an Exchange or state agencies that administer Medicaid, CHIP, or basic health plans. The items that will be disclosed through the Data Services Hub are described under Internal Revenue Code section 6103(l)(21)(A) and the regulations issued under that section.

Q2: Can Exchanges or state agencies that administer Medicaid, CHIP, or basic health plans disclose FTI received through the Data Services Hub to contractors?

A2: Agencies may disclose FTI received through the Data Services Hub to contractors engaged to provide services to these respective entities only if the contractors require access to FTI to perform under the contract. Contractors engaged to perform services not directly supporting eligibility determinations for health insurance affordability programs, such as off-site storage facilities, shred companies, and contractors performing guard services, maintenance and janitorial services, may not have access to FTI. As a condition for receiving FTI through the Data Services Hub, contractors must adhere to IRS safeguard requirements under IRC section 6103(p)(4), as implemented by IRS Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies* (available on CALT and www.irs.gov). States are encouraged to use applicable sample safeguarding contract language included in Appendix 7 of IRS Publication 1075 when soliciting contractor support.

NOTE: Only FTI received through the Data Services Hub may be shared with contractors. FTI currently received by State Medicaid agencies from IRS or SSA through existing matching programs under the authority of section 6103(l)(7) for certain federal benefit programs may not be disclosed to contractors for any purpose.

Q3: Is there a requirement to notify IRS before disclosing FTI to contractors of Exchanges or state agencies that administer Medicaid, CHIP, or basic health plans?

A3: Yes. Any agency intending to disclose FTI to contractors (including consolidated data centers and information technology support) must notify IRS before executing any agreement at least 45 days before the disclosure of FTI. In addition, if a contractor

employs the services of a subcontractor, IRS approval is required before the disclosure of FTI to the subcontractor. The notification requirement in Publication 1075 will be met as part of the initial approval for each entity authorized to receive FTI through the Data Services Hub for the contractors specified in the Safeguard Procedures Report (SPR) approved by IRS. (See Q&A 9 for information on the SPR).

Q4: Can Exchanges or state agencies that administer Medicaid, CHIP, or basic health plans disclose FTI received through the Data Services Hub to navigators, agents or brokers?

A4: Yes. Exchanges or state agencies that administer Medicaid, CHIP, or basic health plans may disclose FTI received through the Data Services Hub to navigators, agents or brokers as part of the eligibility process if certain conditions are met. Those conditions are set forth in sections 155.210 and 155.220 of HHS's final rule on Affordable Health Insurance Exchanges.

Use of Federal Tax Information

Q5: Can FTI or the knowledge of FTI used for a health insurance affordability determination be used for a separate inquiry into a non-health insurance affordability determination?

A5: No. Under *no* circumstance can FTI disclosed through the Data Services Hub to an Exchange or state agencies that administer Medicaid, CHIP, or basic health plans be used to support the eligibility or re-eligibility process for any non-health insurance affordability programs such as SNAP or TANF. FTI disclosed through the Data Services Hub may be used only for the purpose of, and to the extent necessary in, establishing eligibility for participation in the Exchange, verifying the appropriate amount of any advance payments of the premium tax credit or cost-sharing reductions, and determining eligibility for participating in a state Medicaid program, CHIP, or basic health program.

Q6: Can FTI be processed or changed in a way that transforms the information so that it loses its status as FTI?

A6: FTI received from IRS never loses its character as IRS source data. If a state agency independently verifies the data elements provided by IRS using other sources like an applicant's attestation of projected annual income, reconstructed MAGI and/or other electronic state income data sources, not including SSA (because wage data received from SSA is FTI by definition), then the verified value is no longer FTI because it has a source other than IRS. However, FTI stored in the agency's system must be labeled as IRS source data and safeguarded until destroyed. Only the new value, separately entered, is not considered FTI.

Q7: Is a family's percentage of federal poverty level considered FTI?

A7: No. The federal poverty level percentage is based on HHS published guidelines using household income and family size that come from a variety of inputs, not solely FTI.

Q8: Is the maximum amount of advance premium tax credit computed for an individual by an Exchange considered FTI?

A8: No. The maximum amount of advance premium tax credit is derived from various inputs, some of which may be FTI and some not. Once the maximum amount of advance premium tax credit is computed, it is not possible to identify FTI that may have been used

Publication 1075 Safeguard Requirements

Q9: How does an Exchange or state agencies that administer Medicaid, CHIP, or basic health plans demonstrate compliance with IRS Publication 1075 requirements?

A9: Initial compliance is evaluated through the submission of a Safeguard Procedures Report (SPR) to IRS. The SPR covers the management, operational and technical controls for information systems and how FTI will be protected from unauthorized disclosure or use. IRS must independently approve a state's SPR for each state entity receiving FTI from the Data Services Hub and notify CMS of such approval before any FTI will be released through the Data Services Hub by CMS to a state entity for authorized use in the eligibility and enrollment process. Upon submittal of a SPR, IRS will generally conduct an onsite review to validate the accuracy of the report and assess the measures employed by each entity receiving FTI through the Data Services Hub to protect the data; these include access restrictions and use of FTI, physical security, interviews with employees, information technology systems scans and documentation of findings. Once the SPR is approved by IRS, Exchanges and state agencies that administer Medicaid, CHIP or basic health plans will be authorized to receive FTI through the Data Services Hub. Ongoing compliance is monitored through the annual submission of a Safeguard Activity Report (SAR) and periodic visits in accordance with Publication 1075.

Q10: How should states incorporate Publication 1075 requirements when pursuing an integrated eligibility system strategy?

A10: States may build shared eligibility systems to include FTI disclosed through the Data Services Hub, but when users (caseworkers) access the system these data elements should be restricted from view by properly established user permissions. This is generally executed using role-based user permissions, which can be employed to limit individual user access to the data elements the user needs. For example, this can be done by restricting access to application screens that contain FTI to only users who are authorized to view FTI. Generally, FTI should be physically and logically separated, segregated from other non-tax data and user access restricted to screens and data

elements based on application access permissions. In addition, all data elements must be labeled or identified as IRS sourced data when displayed to any user (even when the user is authorized to use FTI), e.g., “IRS MAGI” must be displayed as opposed to just “MAGI”. Data elements that are not sourced from IRS do not need to be identified as FTI and may be used for other programs or purposes. See note in Q&A 2 for contractor restrictions.

Q11: Do the Publication 1075 requirements apply if a state does not store FTI in the eligibility determination process?

A11: Yes. All IRS Publication 1075 requirements must be met with the exception of controls specific to storage of FTI. Each entity that receives, processes, stores, and/or maintains FTI must meet the safeguarding requirements of Publication 1075. Safeguards apply to all access and use of FTI, regardless of storage format. Even if FTI is not stored in a state’s system, receipt of FTI through the Data Services Hub for use in eligibility determinations that involve FTI flowing through agency systems and accessed by agency employees and contractors will require appropriate safeguard measures, such as restricting access to authorized persons, annual confidentiality statements and awareness training, authentication and identity proofing even if there is no FTI stored at the state level.

Q12: Does a Safeguard Procedures Report (SPR) need to be completed and approved by IRS to initiate testing with the Data Services Hub?

A12: No. Testing with the Data Services Hub will use simulated data, not actual FTI (i.e., live data). A SPR does not need to be approved by IRS to initiate testing with the Data Services Hub. However, a SPR must be approved to the satisfaction of IRS prior to the initial receipt of actual FTI through the Data Services Hub.

Q13: Do state agency personnel already trained in IRS safeguards need to be re-trained?

A13: State agency personnel with access to FTI must receive awareness and security training specific to FTI every 12 months and sign a confidentiality statement acknowledging their safeguarding responsibilities and the penalties for unauthorized disclosure and access to FTI. State agency employees with a signed confidentiality statement less than 12 months old are not required to undergo additional training and certification before receiving FTI from the Data Services Hub. State agencies must ensure that all newly assigned personnel and contractors receive awareness training and sign a confidentiality statement prior to initial access to FTI.

Q14: Is there a disciplinary process for unauthorized use, access, and disclosure of FTI?

A14: The Internal Revenue Code includes a number of sanctions designed to protect the privacy of taxpayers. Section 7213 prescribes criminal penalties for federal and state employees and others who make willful unauthorized disclosures of FTI, which is a felony offense. Additionally, section 7213A makes the unauthorized inspection of FTI a

misdemeanor punishable by fines, imprisonment, or both. Finally, section 7431 prescribes civil damages for unauthorized inspection or disclosure and, upon a criminal indictment for a violation of either section 7213 or 7213A, requires notification to the taxpayer that an unauthorized inspection or disclosure has occurred. A state employee or contractor may be personally sued by a taxpayer alleging the unauthorized disclosure of FTI. In addition, section 1411(h) and section 155.260 of HHS's final rule on Affordable Health Insurance Exchanges impose a civil penalty for unauthorized disclosure of information on the application.

Use of Federal Tax Information in the Exchange Redetermination Process

Q15: Section 155.335 of HHS's final rule on Affordable Health Insurance Exchanges provide that in order to conduct annual redeterminations an Exchange must obtain an authorization from an enrollee to request his or her tax data and that without such authorization, the Exchange will be unable to conduct an eligibility redetermination for insurance affordability programs. How will the authorization be obtained from the enrollee, and how long is the authorization valid?

A15: CMS envisions a process whereby at the time of initial enrollment, an individual may authorize the release of his or her tax data for use by an Exchange in automatic redeterminations for eligibility for a period of up to five years. The process may assume that the authorization will be provided as the default condition. However, an Exchange must allow the individual to decline a five-year authorization or to authorize an Exchange to obtain tax return data for annual redeterminations for a period of less than five years. Further, Exchanges must allow an individual to discontinue, change, or renew the authorization at any time.