#### Section B. Federal Tax Information (FTI) Match: Safeguarding

#### Overview

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| In This Section | This section contains the following topic:   |  |  | | --- | --- | | Topic | Topic Name | | 1 | General Safeguarding Procedures | | 2 | Storing and Handling of FTI | | 3 | Disclosure of FTI | | 4 | Limitation on Fiduciary Contact | | 5 | Internal Inspections Report | |

#### 1. General Safeguarding Procedures

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| Introduction | This topic contains information on security and restrictions on release of tax data, including   * required safeguards * security briefings * penalties for tax information disclosure * taxpayer civil suit * need to know * minimum protection standards * transporting FTI * releasing FTI by Fax * e-mailing FTI * releasing information over the telephone, and * tailgating |

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| a. Required Safeguards | As a condition of receiving Federal Tax Information (FTI), VA must establish and maintain, to the satisfaction of the Internal Revenue Service (IRS), certain safeguards that are designed to prevent unauthorized uses of the information and to protect the confidentiality of the information.  ***Reference***: Safeguarding procedures are located within *IRS Publication 1075*. |

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| **b. Security Briefings** | The Veterans Service Center Manager (VSCM) and Pension Management Center Manager (PMCM) shall ensure that all employees who handle FTI are briefed annually on   * IRS safeguard requirements, and * the provisions of IRC Sections 7213(a) and 7431 concerning criminal and civil penalties for unauthorized disclosure of tax data.   A security briefing must be held for each new employee as soon as he/she reports for duty.  ***Employee List***  A list of the employees attending the briefing must be maintained for two years. After subsequent briefings, the list from two years prior will be destroyed under [*RCS VB-1, 13-100.300*](http://www.benefits.va.gov/WARMS/docs/admin20/rcs/part1/VB-1Part-I.doc). |

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| **c. Penalties for Tax Information Disclosure** | [26 U.S.C. 7213(a)(1)](http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007213----000-.html) provides that any Federal employee who willfully and unlawfully discloses tax return information may be   * fined, not in excess of $5,000 * imprisoned, not in excess of five years, or * both.   It also provides that the employee shall be discharged from employment upon conviction for an unlawful disclosure.  ***Note***: The above disclosure restrictions and penalties apply even after employment has ended. |

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| d. Taxpayer Civil Suit | [26 U.S.C. 7431(a)(1)](http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00007431----000-.html) permits a taxpayer to bring a civil suit for damages against the United States if any Federal employee knowingly or negligently discloses any tax return information in violation of IRC 6103. |

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| e. Need to know | When access to FTI is needed, it may be obtained, but only by employees with a *need to know*.  ***Definition of* Need To Know**  *Need to know* is defined as an individual who requires access to FTI to perform their official duties (e.g. a file is needed by an employee when the income recipient is in the office and is asking to see the information). Employees of the Board of Veterans’ Appeals (BVA) are considered to have a need to know if a claim containing FTI is appealed.  ***Reference***: For more information on transferring FTI on an appeal issue, see M21-1, Part X, Chapter 9, Section B, Topic 2, j and k.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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| f. Minimum Protection Standards | Minimum Protection Standards are designed, by IRS, to provide agencies with a basic framework of minimum security requirements. The objective of these standards is to prevent unauthorized access to FTI and thus requires two of the following four barriers:   * Secured Perimeter * Security Room * Badged Employee * Security Container   Explanations of these barriers are provided in IRS Publication 1075.  Note that while two barriers are required, during duty hours, employees need not lock FTI in a locked box if they step away from their desks for a short period of time without leaving the general vicinity. They should avoid leaving FTI out in the open, and should take practical measures to avoid inadvertent and unauthorized disclosures of FTI.  During non-duty hours, employees must ensure documents containing FTI are stored in a locked box or secondary locked location (security room or security container) to prevent disclosures to unauthorized personnel.  ***Important***: Keys to a locked box or locked location must not be stored in the same location as the locked container, such as desk drawer in the same room. |

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| g. Transporting FTI | Employees transporting FTI between a primary location to a secondary location (building to building) need to secure the FTI in a locked security container during transport.  ***Note:*** The transporting and receiving location must log the FTI in accordance with M21-1, Part X, Chapter 9, Section B, Topic 2.i. |

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| h. Prohibition of Releasing Information by Fax | Faxing FTI is strictly prohibited. |

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| i. E-mailing FTI | Do not include FTI within an email or as an attachment to any recipient.  Send policy questions pertaining to FTI in an encrypted email to [VAVBAWAS/CO/21P1 IRS/SSA](mailto:VAVBAWAS/CO/21P1%20IRS/SSA). Include only the claim number and specific question.  ***Note***: VACO employees may, on occasion, initiate e-mails containing FTI so long as the IRS guidelines in *IRS Publication 1075* are met. |

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| j. Releasing Information Over the Telephone | An adjudicator may only speak directly to the individual whose FTI data was received. Speaking with a relative, spouse, or a friend even if the individual who received the income grants permission, is not allowed.  Telephone development is allowed to   * discuss a claimant’s need to verify income, in addition to sending a formal letter that requests the same verification of income, * clarify amounts (gross vs. net), or * discuss what types of documents will satisfy VA’s request for verification of current income.   ***Example***: IRS reports dividend income of $2,000 per year; however, the claimant did not report dividend income. The adjudicator calls the claimant and the claimant explains that he did not think to include the dividends as he has the dividend payments set up to automatically roll over into his savings account and that the $2,000 is accurate. Since the claimant has confirmed the FTI, the adjudicator can use the call as verification.  ***Important:*** Adjudicators may not accept a statement taken over the phone as verification of a claimant’s income if the amount is less than FTI reported by IRS and SSA.  ***Reference***: For information regarding disclosures to Fiduciaries, see M21-1, Part X, Chapter 9, Section B, Topic 4 |

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| k. Tailgating | “Piggybacking” or “tailgating” to gain unauthorized access to areas containing FTI is prohibited. Only individuals with a *need to know* are allowed to access areas containing FTI.  ***Note***: Although individuals may have authorized access to areas containing FTI, access to FTI should be limited to a *need to know basis*. |

#### 2. Storing and Handling of FTI

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| Introduction | This topic contains information on storing and handling FTI including   * VSC FTI storage * PMC FTI storage * approved systems for FTI * contents of the VSC FTI folders or secured Virtual VA folder * award prints * destroying contents of the paper FTI file * destroying scanned FTI * requirements for destroying FTI * FTI tracking log, and * transferring paper FTI materials |

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| a. VSC FTI Storage | VSCs must establish an orange, lightweight folder for each case requiring further action. Tax return information (for example, the worksheet), must be filed in the FTI folder, previously referred to as Income Verification Match (IVM) folders. FTI folders must be kept separately in a locked file. The FTI folder must be returned to the locked files at the end of each day. There are no exceptions. Attach an overprint flash to the claims folder to alert employees that there is an FTI folder.  ***Charge Cards***:  Charge cards must be used to maintain a complete record of charge-outs and must also reflect the date files are returned to storage.  ***Reference***: For more information on the maintenance and release of locked files, see [M21-1, Part III, Subpart ii, 4.A.3](http://www.benefits.va.gov/WARMS/docs/admin21/m21_1/mr/part3/subptii/ch04/M21-1MRIII_ii_4_SecA.doc). |

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| b. PMC FTI Storage | PMCs must maintain FTI created for upfront verification FY 2014 in the secured Virtual VA folder. IVMs may be stored in orange folders or Virtual VA.  ***Note:*** For the electronic folders in Virtual VA, IVM folders will contain FTI related to IVMs and IRS/SSA Verification folders will contain the FTI related to upfront verification. |

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| c. Approved VBA Systems for FTI | VBA has obtained approval to process or store FTI in the following systems   * Virtual VA in the secured IRS/SSA or IVM folder, and * MAP-D |

***Important***: Do not store or upload FTI into VBMS as this system has not been approved for storage.

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| d. Contents of the VSC FTI folders or secured Virtual VA folder | Only letters or documents containing FTI should be stored in the orange light-weight folders (paper) or secured electronic folder in Virtual VA. This includes due process letters and awards letters containing FTI.   |  |  | | --- | --- | | **If…** | **Then store the information in the…** | | VA generates a letter containing FTI | orange light-weight folder or secured Virtual VA folder. | | * evidence is received by the PMC or VSC, along with a returned VA generated letter containing FTI or * a Veteran provides a copy of his tax return or an IRS Form (W2, 1099-R, etc.) | unsecured folder. | |

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| e. Award Prints | Keep FTI-related award prints in the claims file. Annotate the award print, *See FTI Folder,* to alert others that the documentation supporting the award action is in the FTI folder.  ***Exception***: If the award print has been annotated with FTI, the award print may no longer be stored in the claims file. It must be stored in the FTI locked file or in the Virtual VA secure folder. |

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| f. Destroying Contents of the paper FTI File | An FTI folder and its contents may be destroyed three years after a final decision, based on Federal tax return information, has been made by the VSC, PMC or appellate body. Any identifying information on the file will be shredded.  ***Exception***: The IVM *worksheet* from a case requiring benefit adjustment may be destroyed 30 days after the decision becomes final.  ***Reference***: For information on disposal of the IVM worksheet when verification and further development are unnecessary, see M21-1, Part X, Chapter 9, Section C, Topic 5. |

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| g. Destroying Scanned FTI | For any paper FTI materials imaged and stored in the secure Virtual VA folder, PMCs need only retain any paper FTI (which includes any extraneous copies, photo impressions, printouts, carbon paper, notes, stenographic notes, and work papers) materials for 90 days, after imaging quality control is complete. The following are the procedures for destroying paper FTI materials:   |  |  | | --- | --- | | Stage | Action | | 1 | Scan any FTI material into the FTI folder within the Virtual VA folder | | 2 | Store the scanned FTI materials within a locked container (by date scanned) and log the destruction date on the locked container | | 3 | After imaging quality control is complete, retain the scanned FTI materials for at least 90 days | | 4 | Update the status of the materials and the scheduled destruction date on the log of documents scanned into the Virtual VA folder |   ***Important***: After the materials have been destroyed, store the log for five years from the date of destruction of the last item on the log.  ***Exception***: The IVM *worksheet* from a case requiring benefit adjustment may be destroyed 30 days after the decision becomes final. |

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| h. Requirements for Destroying FTI | FTI must be destroyed by   * burning in an incinerator that produces enough heat to burn the entire bundle or * shredding into 5/16-inch wide or smaller strips with the paper inserted into the shredder so that the lines are perpendicular to the cutting edge.   ***Note:*** Microfilm and microfiche must be shredded to effect 1/35-inch by 3/8 inch strips. |

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| i. FTI Tracking Log (VSC and PMC) | Retain an FTI tracking log to document the creation, movement, and/or destruction and content of   * FTI paper materials * electronic FTI converted to paper materials, and * FTI paper materials converted to electronic FTI materials.   The designee of the PMC or VSC Manager must maintain the log.  If using the log to track disposal and if all Federal tax return materials for a particular year are destroyed, the log does not have to identify each individual record destroyed. It is adequate to document that all tax returns for a particular year were destroyed in accordance with established procedures.  If less than all tax materials for a particular year are destroyed, the disposal log must record the   * claim number * Veteran’s name * date the document was destroyed, and * manner of destruction   ***Note***: The PMC or VSC may place a paper flash on the FTI generated, in lieu of a log, so long as the required information is on the paper flash.  A sample log is shown below:    ***Destroying the Log***  The log may be destroyed five years after the destruction of the last item entered in the log. |

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| j. Transferring FTI Materials When Scanning is Possible | If the claims folder is transferred to another PMC or to another location, the FTI must be available to the receiving location (BVA, another RO, Office of Inspector General (OIG), Committee on Waivers, etc.).  Prior to sending the folder, all remaining FTI in orange light-weight folders should be scanned into the secure Virtual VA folder. Once completed, a flash should be placed in the claims folder noting that FTI is contained in the secured Virtual VA folder.  ***Important***: Log the scanned FTI in accordance with M21-1, Part X, Chapter 9, Section B, Topic 2.i. |

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| k. Transferring FTI When Scanning Can Not Be Done | If scanning cannot be done and the paper FTI must be transferred to another RO, take the following steps   |  |  | | --- | --- | | Step | Action | | 1 | Place the orange light-weight folder in two envelopes. | | 2 | Mark the envelopes with the following:   * *FTI Material (or File) Enclosed*, and * *to be opened by the VSCM* *or PMCM* (the VSCM may designate a person to perform this function). | | 3 | send an e-mail to the receiving agency advising that FTI material is being shipped and provide an expected arrival date | | 4 | follow up with the receiving agency to determine if the FTI folder was received. Alternatively, the receiving office can email the POC that shipped the FTI to confirm receipt. | |

***Important***: The transporting and receiving location log the FTI in accordance with M21-1, Part X, Chapter 9, Section B, Topic 2.i.

#### 3. Disclosure of FTI

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| Introduction | This topic contains information on FOIA requests, including   * releasing FTI * FOIA requests for tax information by someone other than a taxpayer * disclosure to POA * prohibition of releasing FTI to a Member of Congress * releasing non-FTI to a Member of Congress, and * Committee on Waivers decisions. |

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| a. Releasing FTI | FTI can be released only as permitted by IRC 6103. Generally, tax return information may be released to the taxpayer, usually the income payer or income recipient. |

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| b. FOIA Request for Tax Information by Someone Other than Taxpayer | If a Freedom of Information Act (FOIA) request for tax return information is received from someone other than the tax payer, the written reply to the FOIA request must tell the requester that IRC 6103 prohibits disclosure of tax return information in response to a FOIA request and cite FOIA exemption (b)(3).  The reply also must advise the requester of the right to appeal the withholding of this information to VA General Counsel. Questions concerning the release of tax return information to anyone other than the taxpayer should be referred to the Regional Counsel. |

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| c. Disclosure to POA | VA may disclose tax return information to an individual or a service organization designated by the individual that the tax information pertains to. For FTI purposes, the assignment of a service organization as power of attorney (POA) is restricted to five years from the date the *VA Form 21-22* is signed. If the beneficiary and his/her spouse are both income recipients for the same tax year match, each must execute a separate POA.  The individual representative of a Veteran’s service organization need not be a named individual. It is sufficient that *VA Form 21-22* contain the job title, for example, “any DAV service officer,” of the service organization representative.  ***Note***: If a specific person is named on *VA Form 21-22*, access should be limited to only that individual.  If IVM development action appears necessary and the date the *VA Form 21-22* was signed exceeds five years, or will likely be so before the FTI action is completed, then forward the claimant a new *VA Form 21-22* to complete. |

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| d. Prohibition of Releasing FTI to a Member of Congress | Do not release FTI to a Member of Congress. If a Congressional inquiry is received as a result of a proposal to reduce or terminate benefits or after benefits have been reduced or discontinued, inform the Representative or Senator that   * the beneficiary’s benefits have been reduced or discontinued, or VA is proposing to reduce or discontinue benefits because of a change in family income, and * IRC 6103 prohibits VA from releasing tax return information, but VA has provided the Veteran or beneficiary with complete information concerning the reduction or termination or the proposed reduction or discontinuance.   ***Note***: The exact amount of reduction may be furnished. |

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| e. Releasing Non-FTI | Information which is not FTI, including income information provided to VA by an income payer including copies of W-2s or IRS Form 1040s filed with the IRS, may be released to a Member of Congress only when the Member seeks the   * information at the request of the beneficiary or someone authorized to exercise the beneficiary’s access right under these statutes, or * records on behalf of a Congressional committee with VA oversight jurisdiction for committee business. |

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| f. Committee on Waivers decisions | Copies of Committee on Waivers decisions, including relevant tax return information, may be referred to the Debt Management Center (DMC). |

#### 4. Limitation on Fiduciary Contact

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| Introduction | This topic contains information on limitations on fiduciary contact, including   * IRS limits on the Department of Veterans Affairs (VA) * worksheets * a court-appointed guardian * when the payee is a Federal fiduciary, and * VA fiduciary underreported income. |

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| a. IRS Limits on VA | IRS regulations do not permit VA to contact a fiduciary for verification of FTI unless the fiduciary is a court-appointed guardian. If the corporate record shows the beneficiary is incompetent and not being paid directly, send verification letters to the beneficiary and or beneficiary’s spouse (the person the FTI was received on).  ***Important*:** Coordination will be required with fiduciary hubs to obtain the beneficiary’s mailing address as it may differ from the fiduciary address. |

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| b. Worksheets | Prior to FY 2015, worksheets for fiduciary cases were sent separately to the PMCs with a transmittal stating that the referrals were fiduciary cases. These cases must be reviewed to determine which have court-appointed guardians. |

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| c. Court-Appointed Guardian | If there is a court-appointed guardian, ask the guardian to verify the information on the worksheet. Allow 60 days for a response. |

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| d. When the Payee Is a Federal Fiduciary | If the payee is a Federal fiduciary who is appointed by VA only, ask the income recipient to verify the information on the worksheet. |

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| e. VA Fiduciary Underreported Income | If it is determined that a VA fiduciary underreported income, notify the fiduciary activity at the time of reduction or discontinuance. |

#### 5. Internal Inspections Report

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| Introduction | This topic contains information on Internal Inspections Report (IIR), including   * inspection of security procedures * information to include in the IIR * IIR retention * deficiencies, and * where and when to send the report. |

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| **a. Inspection of Security Procedures** | Every three years, a person designated by the Director must conduct an independent inspection of security procedures. This review must be conducted by someone who is not in the VSC or PMC and who has no authority or responsibility for maintenance of claims files.  ***Example***: A management analyst in the Director’s office.  The schedule is located on the Pension and Fiduciary Service homepage. |

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| **b. Information to Include in the IIR** | Include the following items in the written report:   * verification that Federal tax information has not been commingled with other information in such a way that its confidentiality could be inadvertently compromised * a statement to the effect that personnel with access to tax return information were briefed on the criminal and civil penalties for unauthorized disclosure of tax return information * an assessment of facility security features * an analysis of security procedures and instructions to employees * an audit of the charge cards showing charge-outs and charge-ins, and * a review of * the storage and handling of Federal tax information * how access to Federal tax information is granted to employees * after-hours security * the list of employees who attended the last two yearly briefings to ensure that all employees attended and that briefings are being conducted annually, and * the disposal log.  *Reference*: Templates for the IIR are located on the Pension and Fiduciary Service homepage. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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| c. IIR Retention | The inspection records will be filed in a separate file and for purposes of meeting IRC 6103(p)(4) requirements, will be retained for a period of five full years (even if reviewed by the IRS). At that time the inspection records may be destroyed.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

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| **d. Deficiencies** | If any unresolved deficiencies are noted during the reporting period, the RO management analyst (or designee) will   * annotate the current *IRS* *Internal Inspections Report* with the projected date of resolution of the deficiencies, and * in the next annual *IRS* *Internal Inspections Report*, document the action taken to resolve the deficiencies. |

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| e. Where to Send Reports and Direct Questions | Send reports and direct questions on the IIR the Director, Pension and Fiduciary Service by email at: [VAVBAWAS/CO/21P1 IRS/SSA](mailto:VAVBAWAS/CO/21P1%20IRS/SSA%20%3c21P1_IRS_SSA.VBAVACO@va.gov%3e). |