

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



May 16, 2007

ALL-COUNTY INFORMATION NOTICE NO I-26-07

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY SPECIAL INVESTIGATIVE UNIT CHIEFS
ALL COUNTY INCOME AND ELIGIBILITY
VERIFICATION SYSTEM COORDINATORS

SUBJECT: INTERNAL REVENUE SERVICE SAFEGUARD REQUIREMENTS

REFERENCE: INTERNAL REVENUE PUBLICATION 1075, TAX INFORMATION
SECURITY GUIDELINES FOR FEDERAL, STATE AND LOCAL
AGENCIES

The California Department of Social Services (CDSS) provides Federal Tax Information (FTI) to the counties through various computer matching systems, namely the Beneficiary Earnings Exchange Record (BEER) and the Internal Revenue Service (IRS) Asset Match. The counties use this information to verify that the correct eligibility determination and benefit amount was issued to recipients of California Work Opportunity and Responsibility to Kids (CalWORKS) and/or the Food Stamp Program (FS). In order to receive FTI, the CDSS and counties agreed to abide by the safeguard requirements contained in the federal IRS Publication 1075.

The IRS conducted a safeguard review of the CDSS in 2004, which included on-site visits in two counties. This review found several areas of non-compliance with federal safeguard requirements. The CDSS corrective action plan, which was accepted by the IRS included preparing this ACIN to remind the counties of the IRS safeguard requirements contained in IRS Publication 1075. If FTI is not safeguarded properly, counties and/or employees could be found in violation of IRC Sec 7213 with consequences of a felony punishable by a fine of up to \$5,000, or imprisonment up to five years, or both, together with the cost of prosecution.

The CDSS requests that all county staff that come in contact with FTI, review the IRS Internal Revenue Publication 1075, particularly the following items: Third Party

Verification Letters, Annual County Internal Inspection Report, Annual Certification of Employee Training, Penalties and Certification for Contractors and Physical Security – Minimum Protection Standards of Federal Tax Return Information. The Internal Revenue Code (IRC) Sections (Sec) are located within the Internal Revenue Publication 1075, Tax Information Security Guidelines for Federal, State, and Local Agencies.

The IRS audit identified the following main areas for the CDSS to address:

- Third Party Verification Letter
- Annual County Internal Inspection
- Annual IRS Safeguard Training
- IRS Exhibit 5 Inclusion in Sub-Contractor's Contracts
- Physical Security – Minimum Protection Standards of Federal Tax Return Information

Third Party Verification Letter

The IRS determined that some Third Party Verification Letters developed by the counties did not meet IRS Safeguard Requirements. Third Party Verification Letters are used by the counties when wage discrepancies appear between CDSS provided county reports and recipient provided information. To eliminate the possibility of FTI exposure, the IRS is requiring the CDSS to provide counties with a standard Third Party Verification Letter to be used for the purpose of obtaining income verification from a third party. The CDSS will be releasing another All County Information Notice with examples of general third party verification letters that will eliminate FTI exposure and be in compliance with federal requirements.

Annual County Internal Inspection

The IRS requires counties to perform an annual internal inspection (IRC)6103(p)(4)(D). The purpose of these annual internal inspections is to ensure that adequate safeguard or security measures have been maintained. Once the internal inspection is performed, the county is to complete the Annual County Internal Inspection form (attachment 1) and send no later than September 1st of each year to:

CDSS Fraud Bureau
744 P Street, MS 19-26
Attn: IRS Coordinator
Sacramento, CA 95814

Annual IRS Safeguard Training

IRS requires that all individuals having FTI access receive annual IRS Safeguard training (IRC 6103(p) (4) (D)). Training can be met by performing one of the following:

- Viewing IRS videos available through the CDSS, Fraud Bureau
- County in-house verbal training

Reading the Tax Information Security Guidelines for Federal, State, and Local Agencies, Publication 1075.

In addition, IRS requirements (see attachment 2) state at the end of annual training, each employee is to be given:

IRS Exhibit 3 which describes unauthorized FTI disclosure including criminal penalties;

Exhibit 4 covering civil damages for unlawful disclosure with civil penalties and includes a certification for employee's signature.

Employee signed certifications are to be kept on file within the county for three years for IRS and/or CDSS audit purposes.

The County Certification Letter (attachment 3) acknowledging employees have received annual training is to be signed by the County Income and Eligibility Verification System (IEVS) Coordinators and sent annually no later than September 1st of each year to the following address:

CDSS Fraud Unit
744 P Street, MS 19-26
Attn: IRS Coordinator
Sacramento, CA 95814

IRS Exhibit 5 Inclusion in Sub-Contractor's Contracts

It is recommended that any contractor that has potential access to areas where FTI is maintained is provided IRS Exhibit 5 (attachment 4). Exhibit 5 explains contractor responsibilities and the criminal/civil sanctions that may be imposed if the contractor discloses FTI.

A copy of the signed Sub-Contractor Certification Letter (attachment 5) is to be provided annually, no later than September 1st of each year to:

CDSS, Fraud Unit
744 P Street, MS 19-26
Attn: IRS Coordinator
Sacramento, CA 95814

Physical Security – Minimum Protection Standards of Federal Tax Return Information

FTI shall be kept in a centralized location under IRS Minimum Protection Standards (IRC 6103(p) (4) (B) within a two barrier environment at all times. The two barriers may consist of FTI stored in a locked cabinet within a locked room, a locked room within a locked room or a bar lock on a locked cabinet.

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The IRS Publication 1075 indicates that a locked room with FTI stored in an unlocked filing cabinet is an example of an unacceptable security practice. A guard, janitor or other unauthorized person may have access to the locked room containing the unlocked filing cabinet which contains FTI information.

If you have questions concerning this letter or attachments, please contact Mark Gagnon of the CDSS Fraud Bureau at (916) 263-5735.

Sincerely,

Original Document Signed By:

DEBORAH ROSE, Branch Chief
Program and Integrity Branch

Attachments

Annual County Internal Inspection Report

The following report must be completed annually by each county.

Send original to:

*CDSS, Fraud Unit
744 P Street MS 19-26
Attn: IRS Coordinator
Sacramento, CA 95814*

File copy in County files.

County	Date
1. Who receives IRS data from the Fraud Bureau?	
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2. How is receipt of the data documented and maintained?	
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3. Where are the documents stored?	
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4. How is IRS information access granted to employees?	
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5. Do employees receive annual IRS security training?	
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6. Does the county conduct an awareness program to ensure employees remain alert to all security requirements and penalties for unauthorized disclosure of IRS information? (bulletin boards, newsletters, posters, videos, etc.)	
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7. Does the county have security procedures and instructions for employees?	
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8. What are the facility's security procedures?	
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A) Describe the county's external building security	

B) Describe the county's internal area security where the IRS data is used. (Type of lock, alarm, safe, container, etc.)

C) Describe the county's after hours security.

9. Who has access to the safe or other secure storage container in which IRS data is stored?

10. Who is responsible for changing keys or safe combinations?

11. What measures are taken to ensure that IRS information is not co-mingled with the continuing eligibility case records, both in case files and in computer data systems?

12. What are the county procedures for disposing of IRS information? (Shredded, burned, etc. If contracted out, is it shredded prior to pick-up? Provide a copy of the contract.) No shredding by a contractor is to take place unless observed and documented by an authorized "welfare" agency staff person. A 5/16" criss-cross shredder is applicable for in-house shredding. Provide a copy of the disposal log.

13. What activities occur in the area where IRS information is secured?

14. Describe the county's computer security for system equipment, data receipt and storage, accessibility, etc., with regard to the handling and storage of FTI.

15. Have there been any changes since submission of the county's last IRS Internal Inspection Report? If so, what are they?

16. If deficiencies are noted in the above areas, what corrective action will be taken by the county to ensure that all IRS safeguard procedures are met?

17. Name(s) and title(s) of county person(s) completing this report:

Signature of County person who performed inspection

Date

File one copy

Send original to:

CDSS, Fraud Unit

744 P Street MS 19-26

Attn: IRS Coordinator

Sacramento, CA 95814

EXHIBIT 3

IRC SEC. 7213 UNAUTHORIZED DISCLOSURE OF INFORMATION.

(a) RETURNS AND RETURN INFORMATION.-

(1) **FEDERAL EMPLOYEES AND OTHER PERSONS.-** It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information [as defined in section 6103(b)]. Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) **STATE AND OTHER EMPLOYEES.-** It shall be unlawful for any person [not described in paragraph (1)] willfully to disclose to any person, except as authorized in this title, any return or return information [as defined in section 6103(b)] acquired by him or another person under subsection (d), (i)(3)(B)(i), (1)(6), (7), (8), (9), (10), (12), (15) or (16) or (m)(2), (4), (5), (6), or (7) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the cost of prosecution.

(3) **OTHER PERSONS.-** It shall be unlawful for any person to whom any return or return information [as defined in section 6103(b)] is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the cost of prosecution.

(4) **SOLICITATION.-** It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information [as defined in 6103(b)] and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the cost of prosecution.

(5) **SHAREHOLDERS.-** It shall be unlawful for any person to whom return or return information [as defined in 6103(b)] is disclosed pursuant to the provisions of 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the cost of prosecution.

SEC. 7213A. UNAUTHORIZED INSPECTION OF RETURNS OR RETURN INFORMATION

(a) PROHIBITIONS.-

(1) FEDERAL EMPLOYEES AND OTHER PERSONS.- It shall be unlawful for-

- (A) any officer or employee of the United States, or
- (B) any person described in section 6103(n) or an officer willfully to inspect, except as authorized in this title, any return or return information.

(2) STATE AND OTHER EMPLOYEES.- It shall be unlawful for any person [not described in paragraph(l)] willfully to inspect, except as authorized by this title, any return information acquired by such person or another person under a provision of section 6103 referred to in section 7213(a)(2).

(b) PENALTY.-

(1) IN GENERAL.- Any violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.

(2) FEDERAL OFFICERS OR EMPLOYEES.- An officer or employee of the United States who is convicted of any violation of subsection (a) shall, in addition to any other punishment, be dismissed from office or discharged from employment.

(c) DEFINITIONS.- For purposes of this section, the terms "inspect", "return", and "return information" have respective meanings given such terms by section 6103(b).

EXHIBIT 4

IRC SEC. 7431 CIVIL DAMAGES FOR UNAUTHORIZED DISCLOSURE OF RETURNS AND RETURN INFORMATION.

(a) IN GENERAL.-

(1) INSPECTION OR DISCLOSURE BY EMPLOYEE OF UNITED STATES.- If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(2) INSPECTION OR DISCLOSURE BY A PERSON WHO IS NOT AN EMPLOYEE OF UNITED STATES.- If any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring

a civil action for damages against such person in a district court of the United States.

(b) **EXCEPTIONS.**- No liability shall arise under this section with respect to any inspection or disclosure

- (1) which results from good faith, but erroneous, interpretation of section 6103, or
- (2) which is requested by the taxpayer.

(c) **DAMAGES.**- In any action brought under subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of-

(1) the greater of-

(A) \$1,000 for each act of unauthorized inspection or disclosure of a return or return information with respect to which such defendant is found liable, or

(B) the sum of-

(i) the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure, plus

(ii) in the case of a willful inspection or disclosure or an inspection or disclosure which is the result of gross negligence, punitive damages, plus

(2) the cost of the action.

(d) **PERIOD FOR BRINGING ACTION.**-Notwithstanding any other provision of law, an action to enforce any liability created under this section may be brought, without regard to the amount in controversy, at any time within 2 years after the date of discovery by the plaintiff of the unauthorized inspection or disclosure.

(e) **NOTIFICATION OF UNLAWFUL INSPECTION AND DISCLOSURE.**- If any person is criminally charged by indictment or information with inspection or disclosure of a taxpayer's return or return information in violation of-

- (1) paragraph (1) or (2) of section 7213(a),
- (2) section 7213A(a), or
- (3) subparagraph (B) of section 1030(a)(2) of title 18, United States Code, the Secretary shall notify such taxpayer as soon as practicable of such inspection or disclosure.

*Tax Information Security Guidelines for Federal, State, and Local Agencies
Safeguards for Protecting Federal Tax Returns and Return Information
Publication 1075 (Rev.6-2000)*

DEFINITIONS.- For purposes of this section, the terms "inspect", "inspection", "return" and "return information" have the respective meanings given such terms by section 6103(b).

(g) EXTENSION TO INFORMATION OBTAINED UNDER SECTION 3406.- For purposes of this section-

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any inspection or use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103.

~~For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.~~

I certify that I have read and understand the civil and criminal penalties associated with unauthorized disclosure of information provided to the California Department of Social Services by the Internal Revenue Service.

Signature

Date

County Certification Letter

I certify that all employees having FTI access have received annual training. Employees have signed certification that they have read and understand the civil penalties associated with unauthorized disclosure of information provided to the California Department of Social Services by the Internal Revenue Service. These Employee certifications will remain on file within the County for a period of three years.

Signature

Title

Date

Please Print Name

County

Please mail this annually, no later than September 1st to:

CDSS
744 P Street MS 19-26
Attn: IRS Coordinator
Sacramento, CA 95814

CONTRACT LANGUAGE FOR GENERAL SERVICES

I. PERFORMANCE

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the contractor or the contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (4) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems processing, storing, or transmitting Federal tax information must meet ISO STD 15408, called common criteria - functional (Protection Profile) and assurance (EAL). To meet functional and assurance requirements, the operating security features of the system must have the following minimum requirements: a security policy, accountability, assurance, and documentation. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (7) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (8) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (9) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

- (10) (Include any additional safeguards that may be appropriate.)

II. CRIMINAL/CIVIL SANCTIONS:

(1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

(2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

III. INSPECTION:

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

