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From the desk of...

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## **My thoughts on GEN-24-71 (Resolving Conflicting Information) and important Federal Tax Information (FTI) Updates**

A colleague brought GEN-24-71 to my attention when I was in the Federal Tax Information (FTI) session at the NASFAA conference in Milwaukee, Wisconsin. I was able to quickly review the document and talk to some representatives from Federal Student Aid (FSA) at the conference, so this update includes some information learned by talking with Federal Student Aid (FSA) representatives who were available at the NASFAA conference.

Before I get into the new information, I want to share something from the NASFAA conference that I think may be one of the most important instructions announced by FSA. **Do not include FTI in emails, even to representatives of the Department of Education (ED) or others who have access to it.** Email is not a secure medium, and including FTI in an email is a data security breach. You can mention your concerns in communications to ED and name the fields you are concerned about but should not include the values in those fields. If ED needs more information, they will reach out with instructions about what they need and if it needs to be shared in a secure manner, how to do that.

This serves as a reminder about **how easy it is to casually share sensitive and protected data**, creating reporting requirements and liability.

### **What's New in FTI?**

FSA has been promising to release comprehensive guidance about how FTI can and cannot be used for months. It is clear they are negotiating with the IRS, who owns the FTI, to make the data as available as possible while remaining in compliance with the IRS Code. In the NASFAA FTI session, FSA shared a few new and very important details, indicating that they are making progress in their negotiations.

Remember, staff members and consultants under the control of the institution are authorized to access FTI “solely for the use in the application, award, and administration of financial aid...”. Institutions cannot use FTI for functions that are not covered by these activities.

First, FSA has taken the position that three institutional functions are covered under the applications, award, or administration provisions and FTI can be used for these purposes. The following three bullets are taken directly from FSA’s NASFAA presentation, slide 19:

*The Department interprets “the application, award, and administration of aid” as used in HEA section 483 as the administrative and business functions necessary to deliver federal, state, and institutional financial aid efficiently and effectively to students, which may include, but are not limited to:*

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- *Performing analyses related to financial aid, including leveraging and modeling and other research necessary to administer student financial aid programs consistent with Section 483 of the HEA;*
  - *Complying with mandatory reporting for participation in Title IV, HEA programs, including (but not limited to) Integrated Postsecondary Education Data System (IPEDS) reporting (20 U.S.C. § 1094(a)(17)) and publishing net price calculators (20 U.S.C. § 1015a(k)); and*
  - *Conducting audits, program evaluations, or other research to support the efficient and effective administration of student aid programs.*

This is a significant expansion (at least in my understanding) of the allowable uses of FTI. FSA is stating that many components of enrollment management, IPEDS required reporting, and financial aid administrative audits are allowable uses of FTI.

Second, FSA provided clarification about the Institution’s responsibilities when the applicant or a contributor request information from the applicant’s ISIR. The Higher Education Act (HEA) requires institutions to provide an applicant, upon request, with an unredacted copy of their ISIR data, including any FTI provided by contributors to their application, without the contributor’s consent. The consents and approvals the contributor must sign that allows the FA-DDX to attempt to perform the FAFSA – IRS match and data transfer includes a statement that the contributor is allowing for this disclosure to the applicant and any other family members.

If the *contributor* asks for an unredacted copy of the ISIR, however, the institution has discretion to provide the ISIR, or deny the request. The school’s option to disclose this information is discussed in [An Eligible Student Guide to the Family Educational Rights and Privacy Act \(FERPA\)](#), reproduced here:

*FERPA provides ways in which a school may share, without the consent of an eligible student, education records of the eligible student with their parents. Schools may, but are not required to, disclose any and all PII from education records to parents, without the consent of the eligible student, if the student is a “dependent student,” as that term is defined in Section 152 of the Internal Revenue Code. Generally, if either parent has claimed the student as a dependent on the parent’s most recent income tax return, a school may disclose the student’s education records to either parent, without the eligible student’s consent.*

In the above quoted paragraph, “PII” stands for Personally Identifiable Information.

Note that the individuals referenced here are not “FAFSA contributors” but “parent(s) that has claimed the student as a dependent on the parent’s most recent income tax return”. It is possible that this FAFSA disclosure authorization may not apply to FAFSA a contributor if the FAFSA contributor did not claim the student as a dependent on their most recent tax return. Also note that the relevant tax return is not the base year tax return (2022 for 2024-2025), but the most recently filed tax return, which will most likely be the 2023 tax return until 2024 tax returns are filed.

Finally, the controlling verb is “may”, not “must”. Earlier information suggested that institutions were required, if asked, to release an unredacted ISIR to any contributor to the FAFSA.

### **What’s New in FTI When Resolving Conflicting Information?**

*Disclaimer: Before I explain this new guidance, I want to state emphatically that I am not an attorney and am not qualified to review complicated legislation. But even so, if I were a financial aid administrator (FAA) I would be very reluctant to follow a piece of guidance provided in GEN-2024- 71 without my institution’s legal counsel allowing me to do so. Even with their approval, I might look for an alternative approach. My personal opinion is*

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that following the guidance FSA has laid out might put the institution and FAA at civil and criminal risk. **Please consult your institution's legal counsel for guidance specific to your institution.**

In GEN-2024-71, FSA acknowledges that in some cases, independent students or a dependent student's parent(s) manually reported that they did not file a tax return, but the ISIR contains FTI. Because manual data entered by a contributor will be used in place of FTI when both are present in these ISIR, these applicants are flagged as eligible for Maximum Pell as non-filers (or as having non-filing parents) even though the FTI might indicate that they should not be eligible for Maximum Pell. FSA has defined this (quite reasonably) as conflicting information that must be resolved.

It is the instructions that FSA gives us about how to resolve this information that troubles me. Here is the entire paragraph, word for word:

*When resolving the conflicting information, a school may use the FTI retrieved from the IRS via the FA-DDX to correct the manually entered income and tax information by re-entering the FTI in the appropriate manual entry data fields and submitting the correction to FPS. Schools must update all the manual entry data fields associated with the taxes, including tax filing status. Changing the tax filing status from "did not file" to "filed" is not enough to trigger FPS to use the FTI in the student's calculations.*

This guidance very specifically applies to ISIRs where the contributor is being treated as a non-filer due to their manual answer to the "Did or will you file a 1040 or 1040-NR?" question in the FAFSA, but clearly filed a tax return. It in itself does not address the similar situation where a contributor for whom a successful transfer of tax information into the FAFSA took place entered corrections that changed the tax data going into the SAI calculation and Pell eligibility tests. At the NASFAA conference I asked if this guidance covered this latter situation and was told it does.

I also asked whether the institution could use the FTI without collecting additional information or documentation from the student and was told that the FTI alone without additional information is all that is needed.

Here's my concern about this guidance: FTI is only identifiable as FTI if it is properly labeled. In the ISIR, FTI, and only FTI, appears between two occurrences of the string "CUI//SP-TAX". FSA has spent the last year making sure FAAs knew that they could not transfer FTI from the ISIR into other electronic systems, or print FTI data, or move FTI data to the CSS Profile, or an Excel spreadsheet, etc. without making sure it was properly labeled with the CUI//SP-TAX label.

*Moving the FTI to the manual section of the FAFSA de-labels it.* The data is not identifiable as FTI in the manual fields of the ISIR because the manual fields are not between instances of the CUI//SP-TAX label. This means that when following the guidance above, FTI will be unlabeled in the ISIR.

Again, I am not an attorney, but I am confident that the Secretary of Education does not have the authority to override the IRS Code (that controls the use and disclosure of FTI). Moving FTI from a labeled area of the FAFSA to an unlabeled one feels like it violates the IRS code, even with the imprimatur of FSA, especially since for the last year they were telling us that we could not do this.

An alternative way to resolve this conflicting information would be to ask the student or contributor for an explanation of why they reported that they did not file a tax return when they did, or to simply collect a signed copy of their tax return (or amended return, just in case the corrections are from a 1040-X), which would provide you with a set of tax data that is not FTI and can be entered into the manual section of the ISIR without labeling.

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I believe that FSA's de-labeling guidance comes from trying to avoid having to ask for tax returns from people from whom we already have tax data. And I acknowledge that FSA may see an FAA's request for a tax return from a contributor with FTI might be unacceptable (remember, we are not allowed to delay awarding or disbursement of Title IV aid if we have all the information necessary to complete a file review). So, I think FAAs are in a tough position on this one and need to get their legal counsel involved before taking action based on this guidance.

I hope FSA follows up GEN-2024-71 with either a clearly articulated justification about why, in this case, FTI can be de-labeled, or revokes this guidance (as they have frequently done this year) and replaces it with something that leaves FAAs free of civil and criminal risk. Once the FTI is de-labeled and available in the manual section of the FAFSA, it becomes *de facto* FAFSA data that is not governed by the IRS Code.

### **A quick reversal on the 1040-X – we have less discretion to ignore amended returns than we did in May.**

GEN-2024-71 seems to reverse, at least partially, guidance that was issued in late May update of the *Application and Verification Guide (AVG)*. In this version of the AVG, FSA stated that institutions may, but are not required to update an ISIR that contains FTI (which is now sourced from the contributor's original tax return) with data from a 1040-X or a statement from the IRS explaining changes to the original tax return. GEN-2024-71 says this instead (the change is introduced in the second paragraph):

*In cases when taxpayer information was updated through an amended tax return or other adjustment, the FA-DDX transferred the most recent AGI and filing status and the original values for other tax return elements. The Department reprocessed all impacted records. The IRS also updated the FA-DDX to transfer original tax data only, which means the FA-DDX will not include amended or updated tax data. Further, ISIRs will not include an indicator that amended or updated tax data is available.*

*In general, while institutions are not required to determine whether taxpayer information on the FAFSA form was amended before awarding or disbursing Title IV funds, institutions that become aware that amended tax information exists for a student or their contributors should treat those circumstances as conflicting information that must be reviewed and resolved.*

According to the most recent version of the AVG, at least for V1 selected students, FAAs were permitted to consider FTI verified even if the school later learned that the applicant or contributor had amended their tax return (or the IRS changed their tax return) and using the data from the 1040-X was solely at the discretion of the FAA. At the EASFAA conference, FSA tried to make a distinction between applications that were V1 selected vs. those that were not, by saying that FSA had only updated the verification section of the AVG and not the other sections. They appeared to be suggesting that the discretion to accept FTI applied only to selected files. This new guidance does not seem to make this distinction, though it does not explicitly revoke the statement in the AVG that *[i]f the applicant is selected for verification, you may still consider the FTI transferred from the IRS to be verified and are not required to collect documentation* (see page 50).

**If you have read this far, I have a question for you.** I have heard from a couple of FAAs that they have seen applications in which the applicant meets the criteria for not being required to *report* assets but has reported assets. In these cases, the SAI calculation is including the asset portions of the calculations, even though the assets did not have to be reported. We know that in 2023-2024, if an applicant qualified for the simplified formula, the assets would be ignored in the calculation of the EFC even if they had been reported. What are you seeing? Please let me know at [robert@ironbridgeresources.com](mailto:robert@ironbridgeresources.com), and please reach out to the Department to let them know you are seeing this.