Pension Benefit
Guaranty Corporation

Order

Subject: Safeguarding Tax Return Information

Directive Number: IM 10-2

Effective: 11/19/08 **Originator: BAPD**

Stephen E. Barber
Chief Management Officer

---

1. **PURPOSE:** This Directive explains PBGC policies and procedures for requesting, maintaining and disclosing Federal tax returns and tax return information obtained by the PBGC under section 6103 of the Internal Revenue Code (IRC) (hereinafter "FTI").

2. **CANCELLATION:** This Order updates and replaces PBGC Directive IM 10-2 dated 9/16/08. The revision adds the Deputy Director of Operations as the Director's delegate to request copies of FTI from the IRS. All other provisions of the directive remain the same.

3. **SCOPE:** This Order applies to all PBGC employees and contractors.

4. **AUTHORITIES:**

   a. IRC § 6103. Confidentiality and disclosure of returns and return information.

   b. IRC § 7213. Unauthorized Disclosure of Information.

   c. IRC § 7213A. Unauthorized Inspection of Returns or Return Information.

   d. IRC § 7431. Civil Damages for Unauthorized Inspection or Disclosure of Returns or Return Information.

   e. 29 U.S.C. § 1302(b)(3).

   f. 26 CFR § 301.6103(l)(2)-3. Disclosure to Department of Labor and Pension Benefit Guaranty Corporation of certain returns and return information.

   g. 26 C.F.R. § 301.6402-6. Offset of past-due legally enforceable debt against overpayment.

5. BACKGROUND:

a. As a condition of receiving FTI, PBGC must establish procedures to protect against the unauthorized use, inspection or disclosure of FTI.

b. Among other purposes, the PBGC uses FTI in the administration of the defined benefit pension plan termination insurance program established under title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"):

(1) To identify any related entities that share common ownership with the sponsor of a terminated plan as part of a "controlled group" under IRS regulations. The plan sponsor and each member of its controlled group are jointly and severally liable to the PBGC on plan termination for the plan's unfunded benefit liabilities and unpaid premiums, and for unpaid minimum funding contributions owed to the plan.

(2) To analyze the potential effects on the PBGC's termination insurance program of a plan sponsor's request to the IRS for a waiver of required minimum funding contributions to a covered plan because of financial hardship.

(3) When records about a terminated plan are incomplete or out of date, to seek earnings records submitted by the plan sponsor to SSA to calculate or verify the benefits due a participant that are based, in part, on the participant's wages, or to verify that an individual worked for the plan sponsor long enough to earn a vested benefit.

(4) Prior to January 1, 1999, to collect past due debts owed to the PBGC under the Federal Tax Refund Offset program.

6. DEFINITIONS: For the purpose of this directive, the following definitions apply

a. **PBGC employee** means any officer or employee of the PBGC.

b. **PBGC contractor** means any individual who provides services to PBGC under a contract or purchase order, or who is an employee of a firm or entity that provides services to the PBGC under a contract or purchase order.

c. **Safeguards** mean the policies, practices, controls, and procedures adopted by the PBGC to ensure the confidentiality and prevent unauthorized inspection or disclosure of FTI.

d. **Authorized PBGC employee or contractor** means any PBGC employee or contractor whose duties require access to FTI for the proper administration of Title IV of ERISA, and who has received written approval to access FTI in accordance with this directive. (Refer to § 7.q.(3). in this directive for policies and procedures for authorizing access and disclosure of FTI to contractors.)

e. **Federal Tax Information (FTI)** generally means tax returns and return information submitted to PBGC by the Internal Revenue Service (IRS) or other Federal agency such as The Social Security Administration (SSA), The Department of Labor (DOL), or the Depart of Justice (DOJ) if the source of the information was IRS. FTI includes:

(1) Any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under the provision of the IRC which is filed with the Secretary of the Treasury by, or on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed;

(2) A taxpayer's identity, the nature, source, or amount of taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the Secretary of the Treasury with respect to a tax return or with respect to the determination of the existence or possible existence of liability (or the amount thereof) of any person under the IRC for any tax, penalty, interest, fine, forfeiture, or other imposition or offense;

(3) Any part of any written determination or any background file document related to such written determination (as such terms are defined in IRC § 6110(b)) which is not open to public inspection under this section;

(4) Earnings records obtained by the PBGC from SSA though direct terminal access without the written consent of the individual to whom the records pertain; and

(5) Information disclosed to PBGC by IRS under IRC § 6103(l)(10) and (m)(2) relating to past due debts referred by PBGC for collection under the Federal Tax Refund Offset Program prior to January 1, 1999;

Except, FTI does not include information in a form that is not associated with, or does not directly or indirectly permit the identification of, a particular taxpayer. It also does not include tax returns or return information that PBGC receives from a source other than IRS, SSA, DOL, or DOJ under IRC § 6103 such as information submitted to PBGC directly by a taxpayer, plan administrator, plan sponsor, controlled group members, or public source.

f. **Safeguard Facility (SF)** is the centralized, restricted area maintained by the Management Control Unit (MCU) of the Benefits Administration and Payment Department (BAPD) in accordance with security requirements outlined in IRS Publication 1075. This is where FTI received by the PBGC is stored in a locked container when not being used.

g. **SSA Safeguard Facility (SSA SF)** means the restricted area maintained by the Participant Support Branch (PSB) of BAPD's Retiree Services Division (RSD) in accordance with security requirements outlined in IRS Publication 1075 where PBGC maintains a stand-alone computer that provides direct terminal access to earnings records maintained by SSA, and where FTI obtained from SSA is stored when not being used.

h. **SF Coordinator** means any of the BAPD/MCU employees assigned to maintain records of requests, receipt, disclosure, and disposition of FTI, who are also authorized to enter the SF to file and retrieve FTI for authorized employees and contractors.

i. **SSA SF Coordinator** means any of the BAPD/RSD employees who have been trained and authorized by SSA to access SSA databases by direct terminal access to obtain FTI, who are responsible for maintaining a record of requests, receipt, disclosure, and disposition of FTI obtained from SSA, and who are authorized to enter the SSA SF to file and retrieve FTI for authorized employees and contractors.

7. <u>POLICIES AND PROCEDURES</u>:

a. **Individual Responsibility**.

The effectiveness of PBGC's safeguard program depends on the attentiveness, reliability, and discretion of the PBGC employees and contractors authorized to access FTI.

(1) There are criminal and civil sanctions for the unauthorized disclosure or inspection of FTI.

(a) UNAUTHORIZED DISCLOSURE IS PUNISHABLE BY FINE NOT TO EXCEED $5000, UP TO FIVE YEARS OF IMPRISONMENT, OR BOTH, AND FOR A PBGC EMPLOYEE, TERMINATION OF EMPLOYMENT UNDER IRC § 7213(a) AND 18 U.S.C. § 1905.

(b) UNAUTHORIZED INSPECTION IS PUNISHABLE BY A FINE NOT TO EXCEED $1000, UP TO ONE YEAR OF IMPRISONMENT, OR BOTH, AND FOR A PBGC EMPLOYEE, TERMINATION OF EMPLOYMENT UNDER IRC § 7213A.

(c) If a PBGC employee knowingly, or by reason of negligence, improperly inspects or discloses any FTI with respect to a taxpayer, the taxpayer may bring an action for civil damages against the PBGC in Federal district court under IRC § 7431. In addition to costs and attorneys fees, the taxpayer is entitled to recover the greater of:

i. $1,000 for each act of unauthorized inspection or disclosure; or

ii. The sum of the actual damages incurred by the taxpayer as a result of the unauthorized inspection or disclosure, plus punitive damages if the unauthorized inspection or disclosure is determined to be willful or the result of gross negligence.

(d) If an authorized PBGC contractor knowingly, or by reason of negligence, improperly inspects or discloses any FTI with respect to a taxpayer, the taxpayer may bring an action for civil damages directly against the PBGC contractor in Federal district court for the damages and costs described above.

(2) Authorized PBGC employees and contractors must participate in annual safeguard awareness briefings conducted by BAPD/MCU under § 7.u.(1).11).

b. **Confidentiality of FTI**

(1) FTI disclosed to PBGC under IRC 6103 is confidential and must not be disclosed to or discussed in the presence of an unauthorized individual.

(2) Only PBGC employees or contractors who have a “need-to-know” to perform their duties will be authorized to access FTI.

c. **Copying**

(1) FTI should only be copied when required as a direct result of PBGC’s involvement in litigation or in other special circumstances.

(2) Copying includes making any reproduction or duplicate of FTI either by hand, manual typing, using word processing or spreadsheet applications, photocopying, faxing, imaging, or by any other means.

(3) If duplication is required, the authorized PBGC employee or contractor making the copy(ies) must notify the SF Coordinator within 24 hours of the number and disposition of the copies so that PBGC can properly account for the FTI. This notification can be made by e-mail.

(4) Any copy of FTI must be safeguarded to the same extent as the original FTI.

(a) The authorized employee or contractor making the copy(ies) must attach PBGC Form 347, Safeguard Information Cover Sheet, to the duplicate.

(b) All duplicates of FTI must be maintained in the SF.

d. **Prohibition on Commingling of FTI**

(1) Authorized employees and contractors are prohibited from storing or maintaining FTI in official case files (paper or imaged), participant files, or personal work files.

(2) FTI must be stored in a secured area. Except as provided under § 10.d., all FTI must be returned to the SF or the SSA SF by 4:00 p.m. each workday.

(3) When FTI is received by the PBGC, the authorized employee or contractor who requested the FTI or who is otherwise responsible for the case must complete and file PBGC Form 348, Cross Reference Information, in the official case file to alert others that FTI associated with the case is stored in the SF or SSA SF.

(4) Documents or working papers created by an authorized employee or contractor that include or refer to FTI (including handwritten notes) must be safeguarded to the same extent as the original FTI from which the information is derived.

(5) The authorized employee or contractor must complete and attach PBGC Form 347 to any PBGC-generated documents or working papers that include or refer to FTI and store the documents or working papers in a secured area.

e. **Computer Usage**

(1) Unless protected as described below, FTI must not be entered, saved, or stored in PBGC computer applications or networks. The PBGC's automated information processing system environment does not meet IRS security requirements because access to electronic files is not limited to employees or contractors whose duties require access to FTI.

(2) An electronic document that includes or refers to FTI may be saved on a diskette or CD ROM, if the document is encrypted and password protected and the diskette or CD-ROM is stored in the SF, the SSA SF, or other secured area.

(3) Alternatively, an electronic document that includes or refers to FTI may be saved on the hard drive (e.g., "C" drive) of an authorized employee, or on a contractor's personal computer (PC), if the file is encrypted and password protected.

(4) The password selected to protect an electronic document containing FTI must be at least 8 characters in length and include at least 3 out of 4 of the following types of characters:

i. Uppercase letters (A through Z);
ii. Lowercase letters (a through z);
iii. Numeric values (0 through 9); or
iv. Non-alphanumeric characters (~!@#$%^&*()_+-=,./<>?;':"|\ )

(5) Many word processing and other applications automatically create a temporary or back up copy of an electronic document. Authorized employees or contractors must ensure that any temporary or back up copy of an electronic document that contains FTI is also encrypted and password protected.

(6) Any electronic files or paper records created by merging, extracting, or other analysis of FTI must be safeguarded to the same extent as the FTI from which it is derived.

(7) When an electronic file containing FTI is printed, the authorized employee or contractor must complete and attach PBGC Form 347 to the document, store the document in a secured area, and complete and file PBGC Form 348 in the official case file.

f. **Electronic Mail**

(1) FTI should not be communicated or transferred by electronic mail unless:

(a) Both the sender and recipient are authorized to access the FTI; and.

(b) The FTI is contained in an encrypted attachment to the message that is password protected.

g. **Protecting FTI in the Workspace**

(1) If it becomes necessary for you to leave your work area for a short period of time when you are reviewing FTI, you must lock the FTI in a file cabinet, desk drawer, or overhead bin.

(2) When FTI is transferred from one location to another, care must be taken to safeguard the information. FTI must be hand-carried by PBGC employees to and from the SF and between authorized employees. Never send FTI through interoffice mail.

(3) Never transfer FTI to another PBGC employer or contractor unless he or she has received written authorization to access FTI. A list of PBGC employees authorized to access FTI is available at http://intranet/safeguard/safeguard.cfm.

(4) If you are transferring FTI to another authorized user, never leave FTI unattended on a desktop or placed in an in box where it could be subject to unauthorized inspection or disclosure. Instead, hand the FTI to that person. The authorized employee or contractor transferring the FTI must notify the SF Coordinator within 24 hours of the transfer and the identity of the authorized recipient. This notification can be made by e-mail.

h. **Employees in Travel Status**

(1) If FTI must be taken or is obtained while on official travel, the authorized employee or contractor should hand carry the FTI to maintain custody and control.

(2) The FTI must be doubled sealed, i.e., placed in one envelope that is sealed inside another sealed envelope. The inner envelope should be marked "Confidential" so that the FTI is not disclosed when the outer envelope is exposed.

(3) If it becomes necessary to leave the material for a short period of time in an automobile, the FTI should be locked in a briefcase or suitcase that is placed out of sight in the trunk of the locked vehicle.

(4) FTI should be locked inside a suitcase or briefcase if it must be left unattended in a hotel room.

i. **Mailing FTI**

(1) Express mail, overnight express services, or courier services that assign individual package tracing numbers (e.g., Federal Express) may be used to transfer FTI to an authorized recipient.

(2) The transferred FTI must be doubled sealed, i.e., placed in one envelope that is sealed inside another sealed envelope. The inner envelope should be marked "Confidential—to be Opened by Addressee Only" so that the FTI is not inspected by or disclosed when the outer envelope is processed by unauthorized, mail or file room personnel.

j. **Sending FTI by Facsimile**

(1) Because the transmission is not secure, authorized employees and contractors should avoid sending FTI by facsimile (fax). If a fax transmission is necessary:

(a) An authorized PBGC employee or contractor must be present to initiate and receive the fax transmission to ensure that FTI is not subject to unauthorized inspection or disclosure.

(b) In addition to including PBGC Form 347 as part of the fax transmission, the sender should also use a PBGC fax cover sheet that contains a notice of the sensitive nature of the information being transferred, and directs any unintended recipient to contact the sender for instructions should the transmission be misdirected.

(c) The sender must notify the SF Coordinator within 24 hours of the fax transmission so that PBGC can account for the additional copy of the FTI

created, and the identity of the recipient. This notification can be made by e-mail.

k. **SSA Direct Terminal Access**

(1) For FTI accessed through a telecommunications network such as PBGC's direct terminal access to SSA databases, the PBGC will implement security measures to make the terminals secure, either by physical or electronic means, or both, to prevent unauthorized use. For example:

(a) Authorization codes must be used to prevent users from automatically accessing FTI.

(b) Authorization codes must be protected, controlled, and periodically changed to ensure that only authorized employees access FTI.

(c) When an employee's duties require access to only a portion of the FTI available, access must be restricted to that portion.

(d) The specific security measures implemented by the PBGC to prevent the unauthorized use of direct terminal access to SSA databases are set out in a Memorandum of Understanding ("MOU") between the SSA and the PBGC concerning direct terminal access.

l. **Delegation of Authority to Request FTI from IRS and to Authorize PBGC Employees and Contractors to Access FTI.**

(1) Under IRC § 6103(l)(2) and IRS implementing regulations, the Director of PBGC or the Deputy Director of Operations may request copies of FTI from the IRS. The Director, through this directive, delegates the authority to request return information under IRC Section 6103(l)(2) to the PBGC employees holding the positions identified in Attachment 1.

(2) In addition to requesting FTI from IRS, the PBGC officials identified in Attachment 1 are delegated the authority to authorize any PBGC employee within their organizational component to have access to FTI, if access is necessary for the employee to perform his or her duties.

(3) The PBGC officials identified in Attachment 1 are also delegated the authority to authorize any PBGC contractor that performs services for their organizational component to access FTI in accordance with section 7.q.(3).

m. **Obtaining Authorization for Access to FTI.**

(1) All PBGC employees and contractors who require access to FTI to perform PBGC duties must follow the procedures under this directive to obtain authorization.

(2) NO EMPLOYEE IS ENTITLED TO REVIEW OR TAKE POSSESSION OF FTI SOLELY BY VIRTUE OF THE EMPLOYEE'S OFFICIAL POSITION OR DEPARTMENT.

(3) Before accessing FTI, a PBGC employee must submit a completed PBGC Form 262, Access Authorization for Tax Return Safeguard Information to the SF Coordinator.

(a) By signing the PBGC Form 262, the employee certifies both that he or she will follow the safeguards established under this Directive and that the employee is aware of the civil and criminal penalties for unauthorized inspection or disclosure of FTI.

(b) PBGC Form 262 must also be signed and dated by a PBGC official who holds a position identified in Attachment 1 from the organizational component to which the employee is assigned. Authorization will only be approved when the PBGC employee has a "need-to-know" FTI to perform his or her duties.

(4) When disclosure to a PBGC contractor has been authorized under § 7.q.(3), the contractor who will require access to FTI to perform services for the PBGC must submit a completed PBGC Form 262 to the SF Coordinator.

(a) The form must be signed and dated by a PBGC official who holds a position identified in Attachment 1 from the organizational component for which the PBGC contractor provides services.

(5) Authorization will be complete and access to FTI will be granted when the SF Coordinator signs PBGC Form 262, and returns a copy to the PBGC employee or contractor.

(6) Authorization must be renewed annually. PBGC employees and contractors who continue to require access to FTI to perform official duties or services for the PBGC must complete and submit a new PBGC Form 262 to the SF Coordinator.

n. **Procedures for Requesting FTI from IRS and SSA.**

(1) Requests to IRS.

(a) The PBGC makes an annual request to the Commissioner to automatically receive FTI pertaining to certain filings and determinations listed in 29

C.F.R. 301.6102(l)(2)-3(a) that are necessary for the administration of Title IV of ERISA. BAPD is responsible for preparing this annual request to the Commissioner for the signature of the Director.

(b) When an authorized PBGC employee requires access to other specific FTI in a case or matter under 26 C.F.R. § 301.6103(l)(2)-3(b), the employee must prepare a cover letter addressed to the IRS disclosure office and attach a PBGC Form 333, Request for Access to Tax Returns or Return Information, that specifies:

i. The identity of the particular taxpayer(s) who filed or to whom the requested FTI relates;

ii. The taxpayer identification number (TIN), employer identification number (EIN), or social security number (SSN) of the taxpayer(s), if known;

iii. The specific forms or other FTI to be disclosed;

iv. The tax years covered by the request; and

v. The purpose for which the FTI will be used.

(c) The request must specify that FTI should be delivered to the PBGC by first class mail or overnight courier, and addressed to the attention of the SF Coordinator.

(d) The cover letter and attached PBGC Form 333 must be signed by a PBGC Official identified in Attachment 1, and mailed to the IRS Disclosure Office:

Internal Revenue Service
EP Classification Office
31 Hopkins Plaza, Room 1520
Baltimore, MD 21201
Telephone (410) 962-0690

(e) The authorized PBGC employee initiating the request must file a copy of the signed cover letter and PBGC Form 333 in the official PBGC case file, and forward a second copy to the SF Coordinator within 7 days after the request is sent to the IRS.

o. **Requests for SSA earnings records.**

(1) When requesting earnings records from the SSA without the consent of the individual to whom the records relate, an authorized PBGC employee must

complete Form SSA-581 and submit it to the SSA SF Coordinator for processing.

(2) Form SSA-581 must be signed by a PBGC Official identified in Attachment 1. before the requested FTI will be processed by the SSA SF Coordinator.

(3) The authorized PBGC employee initiating the request must file a copy of the completed Form SSA-581 in the official PBGC case file within 24 hours after the request is submitted to the SF Coordinator.

p. **Secure Storage and FTI Log Out Procedures.**

(1) FTI must be maintained in the SF when it is not being used. All PBGC components will use this central location for permanently securing FTI, except for FTI obtained from SSA via direct terminal access that is maintained in the SSA SF.

(2) When FTI is needed by an authorized employee or contractor, the employee or contractor must log the materials out of the SF.

(a) The SF Coordinator will record the FTI that was requested for review, the reviewer's name and title, the date, and time.

(b) Both the SF Coordinator and the requester must initial the log.

(3) FTI is available from the SF from 9:00 a.m. to 5:00 p.m. daily. The FTI must be returned to the SF at the end of each work day.

(4) Analogous procedures have been implemented to secure FTI obtained from SSA and maintained in the SSA SF.

q. **Disclosure Authority**

(1) FTI disclosed to the PBGC under IRC § 6103(l)(2) may be disclosed by the PBGC in accordance with 26 C.F.R. § 301.6103(l)(2)-3(c), if PBGC determines that:

(a) The disclosure is for a purpose or activity necessary in connection with the administration of the provisions of title IV of [ERISA], including a Federal grand jury proceeding, and proper preparation for any administrative or judicial proceeding (or investigation that may result in such a proceeding); and

(b) The purpose or activity "cannot otherwise properly be accomplished without making the disclosure."

(2) Examples of when FTI may be disclosed include, but are not limited to, disclosures necessary:

(a) To obtain the services of persons having special knowledge or technical skills;

(b) To interview, consult, depose, or interrogate or otherwise obtain relevant information from the taxpayer to whom a return or return information relates (or the legal representative of such taxpayer), or any other potential witness who may be called to give evidence in a proceeding authorized under title IV of ERISA (or an investigation that may lead to such a proceeding.);

(c) To conduct negotiations for settlement, other disposition, or as stipulations of fact in a proceeding authorized under title IV of ERISA;

(d) For use by officers or employees of DOL or DOJ who are personally and directly engaged in a purpose or activity necessary in connection with the administration of the provisions of titles I or IV of ERISA, including a Federal grand jury proceeding, and the proper preparation for any administrative or judicial proceeding (or investigation that may result in such a proceeding), and to officers and employees of any other Federal agency working under the direction and control of officers and employees of the PBGC, DOL or DOJ; or

(e) To court reporters.

(3) Disclosure to Contractors

(a) The PBGC may disclose FTI to a contractor when necessary to obtain services requiring special knowledge or technical expertise for litigation authorized under title IV of ERISA, or for an investigation that may result in such litigation.

(b) A request to authorize disclosure of FTI to a PBGC contractor must be made in writing by an authorized PBGC employee to both the Director, BAPD and to the General Counsel. The request should describe the purpose or activity for which the FTI will be used(s), and why the purpose or activity cannot be properly accomplished without making the disclosure to the contractor.

(c) The request will be approved if the Director, BAPD and the General Counsel determine that the purpose or activity:

i. is necessary in the administration of Title IV of ERISA; and

ii. could not be properly accomplished without disclosure to the contractor.

(d) If the request is approved, the firm or entity that employs the PBGC contractor must enter into a confidentiality agreement with the PBGC that requires the firm or entity to follow PBGC's safeguards.

i. OGC must prepare the confidentiality agreement.

ii. The confidentiality agreement must be signed by General Counsel and an authorized representative of the firm or entity that employs the individual who requires access to FTI to perform services for the PBGC, or the individual contractor if he or she is not employed by a firm or entity.

(e) Before FTI is disclosed by the PBGC, the PBGC contractor who requires access to FTI must submit a completed PBGC Form 262, to the PBGC's SF Coordinator in accordance with § E.

(f) For record keeping purposes, an authorized PBGC employee or contractor must notify the SF Coordinator within 24 hours of the specific FTI disclosed to the authorized PBGC contractor, and of any new FTI created and submitted to the PBGC by the contractor that must be safeguarded. These notifications can be made by e-mail.

(4) Litigation Disclosure

(a) FTI may be submitted into evidence by PBGC, DOL, or DOJ and made part of the public record of a civil or criminal judicial proceeding authorized under Title IV of ERISA.

(b) When practical, the PBGC will attempt to have FTI filed with a court under seal so that it is only available to the court and the parties to the litigation.

(c) For record keeping purposes, an authorized PBGC employee must notify the Safeguard Coordinator within 24 hours of the specific forms or documents containing FTI that have been disclosed in the litigation, the name of the case, the court, and the parties to whom the FTI was disclosed. This notification can be made by e-mail.

(5) Limitations

(a) The safeguards required under this Order will cease to apply to any FTI that is disclosed by the PBGC, DOL, or DOJ, in a judicial or

administrative proceeding authorized under Title IV of ERISA, and that is made part of the public record of the proceeding.

r. **Disposition of FTI When No Longer Needed by the PBGC**

(1) When FTI is no longer needed by the PBGC, a PBGC employee assigned to the case or matter associated with the FTI must notify the SF Coordinator or SSA SF Coordinator that the FTI may be destroyed or returned to the IRS.

(2) Unless otherwise directed by the IRS, the SF Coordinator or SSA Safeguard Coordinator will destroy FTI no longer needed by the PBGC in accordance with procedures outlined in IRS Publication 1075.

(a) FTI in paper form must be shredded.

(b) FTI maintained in electronic form must be erased electronically or overwritten at least 3 times.

(3) The SF Coordinator or SSA SF Coordinator will maintain a record of the disposition of the FTI for five years after the destruction of the FTI.

(4) If FTI has not been destroyed or returned to the IRS within six years after receipt, the SF Coordinator will annually contact the requester or another PBGC employee assigned to the case to confirm that the FTI should continue to be maintained.

s. **Debriefing When Access to FTI is No Longer Required**

(1) When an authorized PBGC employee is terminating employment or an authorized PBGC contractor will no longer be providing services to the PBGC, the employee or contractor must be debriefed by the SF Coordinator. The authorized employee or contractor must complete PBGC Form 273, Debriefing for Safeguard Information which explains the civil and criminal penalties for unauthorized inspection or disclosure of FTI.

(2) For PBGC employees, the FTI debriefing is part of the separation clearance process outlined in PBGC Directive PM 05-01. The SF Coordinator must sign the authorized employee's separation clearance form before the employee's final paycheck will be issued.

(a) For a PBGC contractor, the Contracting Officer's Technical Representative ("COTR") assigned to monitor the PBGC contract must refer the contractor to the SF Coordinator for a debriefing, or obtain a signed PBGC Form 273 from the contractor and forward it to the SF Coordinator.

(b) If a PBGC employee or contractor's access authorization has been revoked by the submission of a PBGC Form 273 to the SF Coordinator, the employee or contractor must complete and submit a new PBGC Form 262 to regain access to FTI.

t. **Reporting the Loss, or Unauthorized Inspection or Disclosure of FTI**

(1) If a PBGC employee or contractor becomes aware that FTI may have been lost, improperly inspected, or disclosed, the employee or contractor must promptly report the circumstances in writing to his or her supervisor and the PBGC's Senior Agency Information Security Officer, the Information Systems Security Officer or the Office of Inspector General (see also PBGC Directive IM 10-3, Protecting Sensitive Information). The supervisor will, in turn, report the circumstances on an expedited basis through supervisory channels to the Chief Operating Officer ("COO").

(2) When the circumstances indicate that FTI has been lost, improperly inspected, or disclosed, the COO shall refer the matter to the Special Agent-in-Charge of the appropriate field office of the Treasury Inspector General for Tax Administration (TIGTA) (Attachment 2).

(3) The COO will also determine what actions, if any, are necessary prevent a reoccurrence and whether PBGC's safeguards are adequate or should be modified.

(4) PBGC employees and contractors may also refer allegations that FTI has been lost, improperly inspected, or disclosed directly to the Special Agent-in-Charge of the appropriate TIGTA field office.

8. RESPONSIBILITIES:

a. Coordinate Safeguard Activity:

(1) The Director has delegated to the Director, BAPD, the responsibility for coordinating safeguards within PBGC.

b. BAPD/MCU is delegated the specific responsibilities for:

(1) Establishing and updating PBGC's safeguards to satisfy the requirements outlined in IRS Publication 1075.

(2) Staffing and maintaining PBGC's centralized Safeguard Facility (SF) in accordance with the security requirements imposed under IRS Publication 1075 to protect FTI from unauthorized inspection or disclosure when it is not in use by authorized employees or contractors.

(3) Maintaining a record of the PBGC employees and contractors who have submitted a completed PBGC Form 262, Access Authorization for Tax Return Safeguard Information, and who are therefore authorized to access FTI. PBGC employees and contractors must renew their authorization annually by submitting new PBGC Form 262.

(4) Preparing the PBGC's annual request to the Commissioner of the IRS to automatically receive FTI pertaining to certain filings and determinations listed in 29 C.F.R. 301.6102(l)(2)-3(a) that are necessary for the administration of Title IV of ERISA.

(5) Acknowledging the receipt of all FTI received from IRS by completing and returning IRS Form 3210, Document Transmittal, to the IRS Disclosure Office making the disclosure to the PBGC. If IRS mistakenly sends FTI to the PBGC without including IRS Form 3210, the Safeguard Coordinator will prepare and send a letter acknowledging receipt of the FTI.

(6) Notifying the authorized PBGC employee who initiated a request that FTI has been received from IRS. If the disclosure was initiated by IRS under 26 C.F.R. 6103(l)(2)-3(a), the SF Coordinator will notify a Supervisor in the Division of Insurance Supervision and Compliance of the Department of Insurance so that the matter can be assigned.

(7) Maintaining a complete record of all requests made by PBGC employees for FTI, and disclosures of FTI to the PBGC initiated by the IRS, including:

(a) The name of the taxpayer(s) to whom the FTI relates;

(b) The taxpayer identification number, employer identification or plan number, or social security number of the taxpayer(s);

(c) The type of FTI (e.g., Forms 1040, 1120, or a minimum funding waiver request);

(d) The tax year(s);

(e) The date the FTI was received;

(f) The PBGC case name, appeal number and any number to which the FTI relates;

(g) The authorized PBGC employees who have accessed the FTI;

(h) If the FTI was destroyed, the date and method of its destruction; or

(i) If the FTI was returned to the IRS, the date and the IRS office to which it was returned.

(8) If FTI was disclosed under 26 C.F.R. § 301.6103(l)(2)-3 to someone other than an authorized PBGC employee, maintaining a record of:

(a) To whom the FTI was disclosed;

(b) The date it occurred;

(c) The types(s) of FTI disclosed; and

(d) The reason the disclosure was necessary.

(9) Conducting the annual review of PBGC's safeguard program for compliance with PBGC and IRS policies as required by IRS Publication 1075, including a review of the safeguards established to protect FTI obtained from SSA by direct terminal access.

(10) Preparing and submitting the annual Safeguard Activity Report (SAR) covering the previous calendar to the IRS by January 31 of the following calendar year. The topics that must be addressed by the SAR are outlined in IRS Publication 1075.

(11) Conducting annual safeguard awareness briefings for authorized employees and contractors that address:

(a) the confidentiality provisions of the IRC;

(b) the definition of FTI, and

(c) the civil and criminal sanctions for unauthorized inspection or disclosure of FTI.

(12) Debriefing authorized PBGC employees and contractors about the criminal and civil sanctions for unauthorized inspection or disclosure of FTI when the employee or contractor leaves the PBGC employment or otherwise no longer requires access to FTI, and maintaining a record of those debriefings (PBGC Form 273).

(13) Destroying or returning FTI to the IRS in accordance with procedures established under IRS Publication 1075 after being notified that the FTI is no longer needed by PBGC. The PBGC's record of the request for and disposition of FTI described above will be maintained for five years after the FTI associated with the request is destroyed or returned to the IRS.

(14) If FTI has not been destroyed or returned to the IRS within six years after receipt, contacting the requester or another PBGC employee assigned to the case on an annual basis to confirm that PBGC should continue to maintain the FTI.

(15) Preparing and submitting a Safeguard Procedures Report (SPR) to the IRS every six years or sooner if significant changes occur in PBGC's safeguard program. The topics that must be addressed in the SPR are outlined in IRS Publication 1075.

c. BAPD/RSD is delegated the specific responsibilities for:

(1) Staffing and maintaining the SSA SF in accordance with the security requirements imposed under IRS Publication 1075 to protect FTI obtained from SSA by direct terminal access from unauthorized inspection or disclosure.

(2) Maintaining a permanent system of standardized records of requests made by authorized employees for FTI, the FTI received in response to those requests, and the disposition of the FTI, including:

(a) The name of the requester;

(b) The name and number of the PBGC case for which the FTI is needed;

(c) The taxpayer(s) name;

(d) The taxpayer(s) social security number(s);

(e) Tax year(s);

(f) Type of information requested (e.g. earnings records maintained by SSA);

(g) The reason for the request;

(h) The date of the request;

(i) The date FTI was received by the PBGC;

(j) The location where the FTI is or was stored;

(k) Who has or had access to the FTI;

(l) Whether the FTI was destroyed, the date and method of its destruction.

(3) If the FTI is disclosed under 26 C.F.R. § 301.6103(l)(2)-3 to someone other than an authorized PBGC employee, a record of:

(a) To whom the FTI was disclosed;

(b) The date it occurred;

(c) The types(s) of FTI disclosed; and

(d) The reason the disclosure was necessary.

(4) Destroying FTI in accordance with procedures established under IRS Publication 1075 after being notified that the FTI is no longer needed by PBGC. The PBGC's record of the request for and disposition of FTI described above will be maintained for five years after the FTI associated with the request is destroyed or returned to the IRS.

(5) If FTI has not been destroyed within six years after receipt, contacting the requester or another PBGC employee assigned to the case on an annual basis to confirm that PBGC should continue to maintain the FTI.

d. Audit Responsibility:

(1) The PBGC's safeguard program is subject to review and approval of the IRS. The PBGC shall cooperate with the IRS in implementing any additional controls or safeguard deemed necessary to ensure the confidentiality of FTI disclosed to PBGC under IRC § 6103.

(2) SSA is authorized to review the procedures established to protect FTI obtained from SSA by direct terminal access.

(3) The PBGC Inspector General has authority to conduct periodic audits of the PBGC's safeguard program to ensure the confidentiality of FTI.

(a) These audits will primarily address compliance with PBGC safeguards and IRS policies, procedures and standards and the adequacy of PBGC's internal physical security of FTI.

(b) These audits are in addition to the annual audits performed by the SF Coordinator.

(4) PBGC safeguard program is also subject to review by the United States General Accounting Office (GAO).

9. SAFEGUARD FORMS

a. The following forms are on JetForms:

(1) PBGC Form 262, Access Authorization for Tax Return Safeguarded Information

(2) PBGC Form 273, Debriefing for Safeguard Information

(3) PBGC Form 347, Protection and Reproduction of Safeguard Information

(4) PBGC Form 348, Cross Reference Information

(5) PBGC Form 333, Request for Access to Tax Return Information Disclosed by the Internal Revenue Service.

b. SSA Form 581, Authorization Obtain Earnings Data from the Social Security Administration, is available from the SSA SF Coordinator.

Attachment 1

OFFICIAL AUTHORIZED TO REQUEST FEDERAL TAX INFORMATION (FTI) AND TO AUTHORIZE EMPLOYEES TO HAVE ACCESS TO FTI

The PBGC Director, through Directive IM 10-2, delegates to the employees holding the following positions the authority to (1) request return information from IRS and SSA, (2) authorize any PBGC employee within their organizational component to have access to FTI, if access is necessary for the employee to perform his or her duties:

- Deputy Director for Operations,
- Chief Operating Officer,
- Chief Financial Officer and Director of the Financial Operations Department,
- Chief Management Officer,
- Inspector General and Deputy Inspector General of the Office of Inspector General,
- General Counsel, Deputy General Counsel, and Manager of Appeals Division of the Office of General Counsel,
- Director, Deputy Director, Division Managers, and Associate Division Managers of the Benefits Administration and Payment Department,
- Chief, Deputy Chief, and Division Managers of the Insurance Program Office,
- Chief Counsel, Deputy Chief Counsel, and Assistant Chief Counsels of the Office of Chief Counsel,
- Director, Deputy Director, Corporate Finance & Restructuring Advisor, Chief Negotiating Actuary, and Program Managers of the Department of Insurance Supervision and Compliance,
- Chairperson of Trusteeship Working Group.

Attachment 2

REPORTING IMPROPER INSPECTIONS OR DISCLOSURES TO THE IRS

The IRS Field Offices, Special Agent-in-Charge, Treasury Inspector General for Tax Administration, for Reporting Allegations of Loss, Unauthorized Inspection, or Unauthorized Disclosure of FTI are:

Field Office Serving Washington, D.C.:

Treasury Inspector General for Tax Administration
Ben Franklin Station
P.O. Box 589
Washington, DC 20044-0589

Hotline Number: 1-800-366-4484

Web Site: www.treas.gov/tigta

Other Field Offices:

Field Division	States Served by Field Division	Telephone Number
Atlanta	Alabama, Florida, Georgia, North Carolina, South Carolina, Tennessee	(404) 338-7449
Chicago	Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Ohio, North Dakota, South Dakota, Wisconsin	(312) 886-0620
Dallas	Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, Oklahoma, Texas	(972) 308-1400
Denver	Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, Wyoming	(303) 446-1880
New York	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	(917) 408-5641
San Francisco	California, Hawaii	(510) 637-2558

Washington	Delaware, Maryland, New Jersey, Pennsylvania, Virginia, Washington DC, West Virginia	(202) 283-3001
Special Inquiries and Inspection	Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, Commonwealth of Northern Mariana Islands, Trust Territory of the Pacific Islands	(703) 812-1688