

Policy Name: Marital Status and Tax Filing Status Policy

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Introduction and Disclaimer

The following information includes discussion of individual federal income tax provisions. While the staff at the Minnesota Office of Higher Education (OHE) are not qualified to provide legal or tax advice, the following represents OHE's interpretation of how various sources of information related to the filing of a FAFSA interact. OHE's interpretation is subject to change if new or additional information becomes available. OHE strongly advises anyone with a tax or legal question to consult with a professional tax or legal advisor.

Overview

OHE's program reviewers have recently identified an increasing number of issues related to student's and/or parents' marital status versus their federal tax filing status. This issue, when it occurs with an ISIR that has been selected for verification, has resulted in the most serious audit findings. When data on tax and other verification documents in the school's possession do not match (even if the data are not required verification elements), this is conflicting information which must be resolved prior to awarding or disbursing aid. When conflicting information is not correctly resolved, the result is an invalid ISIR. Without a valid ISIR, OHE may require the return of any Minnesota aid disbursed to a student.

The federal 2018-19 Application and Verification Guide (AVG) Chapter 5, pages 115-16 makes clear that financial aid administrators "...are obligated to know: (1) whether a person was required to file a tax return, (2) what the correct filing status for a person should be, and (3) that an individual cannot be claimed as an exemption by more than one person." The AVG goes on to suggest aid administrators use IRS Publication 17 "Your Federal Income Tax For Individuals" as a resource. Pages 5 through 35 contain information about who must file, filing statuses, and other related material.

ISIR/SAR comment codes 361-368 indicate a potential error when the tax filing status and the marital status do not match. The 2018-19 SAR Comment Codes and Text publication explains these codes on pages 114-120. Under the "Action Needed" column, it states that "The Department of Education encourages, but does not require, institutions to review the applicant's record to determine if the reported status is correct and that the correct income and other information were reported on the FAFSA." On its own, the presence of one or more of these comment codes does not create conflicting information. The full explanation of these codes and guidance can be found in federal Electronic Announcement 2014-05-15.

OHE has identified issues at several schools within the past year. The most common findings have related to tax filing status including the improper use of the head of household status as well as issues concerning the correct filing status and/or the proper inclusion of income for resident and non-resident aliens who may also be married to a U.S. citizen (for tax purposes, immigration status is usually not relevant). IRS Publication 519 "U.S. Tax Guide for Aliens" provides more detailed information.

Example 1—Marital Status versus Tax Filing Status:

A Minnesota student (or parent if the student is dependent) answers the FAFSA questions as follows:

Marital status: “I am separated”, and

Marital question under the dependency section: “Yes” (this answer includes both married and separated but not divorced), and

Tax filing status: “Head of Household” (HOH).

Analysis:

This combination of answers could trigger one or more of the previously discussed comment codes 361-368. If the ISIR has been selected for verification or if the school has tax documents or other information in hand which conflict, then further action must be taken.

Resolution of conflicting information:

- Schools may not disburse aid until the conflicting information has been resolved, which is required for any student as long as he or she is at your school.
- Conflicting information concerning a previous award year must also be investigated.
- Resolution of the conflict may be a reasonable explanation (which must be documented), or the student (or parents) may have to refile and submit a copy of an amended tax return. The corrected data must then be submitted to CPS in order to obtain a valid ISIR.

Continuing with the analysis of the example:

- A person may file as HOH if he/she is considered unmarried on the last day of the tax year:
 - Per IRS Publication 17, an unmarried person is legally separated from their spouse under a divorce or separate maintenance decree.
 - ***State law governs whether you are married or legally separated under a divorce or separate maintenance decree.*** How does Minnesota handle this situation?
 - Minnesota Statute 518.06 states: “A dissolution of marriage is the termination of the marital relationship between a husband and wife. A decree of dissolution completely terminates the marital status of both parties. A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. ***A decree of legal separation does not terminate the marital status of the parties.*** A dissolution of a marriage shall be granted by a county or district court when the court finds that there has been an irretrievable breakdown of the marriage relationship.”

In this case, the student/parent may have incorrectly filed their federal tax return. The school must either obtain a copy of a divorce decree that was in effect by the last day of the tax year OR must require the student/parent to file an amended tax return. The data from the amended tax return would have to be sent through CPS in order to obtain a valid ISIR before awarding or disbursing aid.

There are other requirements and/or special circumstances where a person may qualify to file as HOH as noted in IRS Publication 17; however, if a school is uncertain, the best solution is to advise the student to speak to a tax preparer. That said, sometimes the tax preparer is the party who has incorrectly filed the return either innocently or in order to commit fraud.

Example 2—Tax Filing Status with Conflicting Information

A student's ISIR is selected for verification. Student did not use the DRT to import tax data to FAFSA. Student filed taxes as "married filing separately." School obtains the student's tax transcript along with a household size statement. Student indicates that spouse did not file taxes, but also provides a statement that the spouse earned nearly \$22,000 in wages and tips. School completes verification by adding the spouse's \$22,000 as untaxed income.

Analysis:

School may not simply add the wages as untaxed income. The spouse made more than the annual tax filing threshold for a person who is filing as "married filing separately" (since the student had already filed her taxes using that status.) Regardless of the immigration status of the spouse who did not file taxes, in nearly all cases he should have filed a tax return. The school must require either the spouse to file a separate return or the student and spouse to file an amended return as "married filing jointly". Guidance on this matter is found in IRS Publication 519. Again, the school may encourage the student to seek professional tax advice. Once the issue is settled and the taxes have been filed/refiled, then the school may complete verification and obtain a valid ISIR from CPS.

Recap of OHE Interpretation of When a School May Choose to Act Versus When it Must Act:

May choose to act/investigate potential mismatch of tax filing status and marital status:

- Presence of one or more ISIR Comment Codes 361-368 but ISIR is not selected for verification. School has no other documents with information that conflicts and/or no other reason to suspect a problem.

Must Act:

- With or without ISIR Codes 361-368 if the ISIR is selected for verification. While not verifiable items, once a school has additional tax and other information, then it must resolve any conflicting data including filing status versus marital status.
- When performing a professional judgment (PJ) if either CPS or the school has selected the student's ISIR for verification. Must complete verification and resolve conflicting data to obtain a new ISIR before performing the PJ. See 2018-19 AVG, Chapter 5, top of page 113 for additional guidance.
- Regardless of verification status, a school that has additional information provided to it by a student/family must resolve any conflicting information even if the school did not request the additional information.

Resources

Federal 2018-19 Application and Verification Guide (AVG): <https://ifap.ed.gov/fsahandbook/1819FSAHbkAVG.html>

Office of the Revisor of Statutes: <https://www.revisor.mn.gov/pubs>

2018 Minnesota Statutes 518.06: <https://www.revisor.mn.gov/statutes/cite/518.06>

Information for Financial Aid Professionals (IFAP): <https://ifap.ed.gov>

Electronic Announcement 2014-05-15:

<https://ifap.ed.gov/eannouncements/051514ResolvingMaritalStatusandTaxFilingStatusInconsistencies.html>

2018-19 SAR Comment Codes and Text: <https://ifap.ed.gov/ifap/publications.jsp> (look under the heading of "Processing Publications")

IRS Publication 17: <https://www.irs.gov/forms-pubs/about-publication-17>

IRS Publication 519: <https://www.irs.gov/forms-pubs/about-publication-519>

Minnesota Department of Revenue: <https://revenue.state.mn.us>