



Office of Temporary and Disability Assistance

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Administrative Directive

Section 1

Transmittal:	17-ADM-08
To:	Social Services District Commissioners
Issuing Division/Office:	Office of Temporary and Disability Assistance
Date:	September 26, 2017
Subject:	Background Investigations of Employees with Access to Federal Tax Information
Suggested Distribution:	Local District Commissioners Temporary Assistance/Income Maintenance Directors Child Support Enforcement Coordinators Support Collection Unit Supervisors Human Resources Legal Counsel
Contact Person(s):	Child Support Services (518) 474-9081 Office of Legal Affairs (518) 474-9502
Attachments:	Attachment 1 - Justice Center Request for Staff Exclusion List Check Form Attachment 2 - DCJS Request for Access to Criminal History Record Information Attachment 3 - Criminal Background Check Consent Form
Attachment Available Online:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Correction Law 23-a Civil Service Law 50(4)		IRS Publication 1075

Section 2

I. Summary

The Internal Revenue Service (IRS) has issued new requirements for employee background investigations to ensure proper safeguarding of federal tax information (FTI). See Section 5.1 of IRS Publication 1075. The background investigation requirement applies to all State and local current and prospective employees, contractors, and subcontractors with access to FTI. “Access to FTI” shall include FTI in either written or electronic form and systems storing or using FTI.

This requirement for initial and periodic background investigations for individuals with access to FTI became effective on September 30, 2016. State and local agencies were advised that implementation of the new requirement, including the development of written policies and investigations for all individuals with access to FTI, should occur within one year.

II. Purpose

The purpose of this ADM is to advise the districts of the requirements within the revised IRS Publication 1075 regarding background investigations for employment in positions where the job duties require access to FTI. Guidance is provided on developing policies and procedures to determine the suitability of prospective employees as well as current employees applying for employment in a position outside their current job title (hereinafter collectively referred to as “applicants”). Legislation will be required to allow for the fingerprinting of current employees with access to FTI, and further guidance on background investigations of current employees will be provided when such legislation is enacted.

III. Background

The IRS, effective September 30, 2016, issued new directions about employee background investigation requirements to ensure proper safeguarding of FTI. See Section 5.1.1 of IRS Publication 1075. The background investigation requirement applies to all State and local current and prospective employees, contractors, and subcontractors with access to FTI. It also includes any Information Technology employees, contractors, or subcontractors with access to systems containing FTI.

Safeguarding FTI is required by Internal Revenue Code (IRC) § 6103. FTI consists of federal tax returns and return information (including any information derived therefrom) that is in the agency’s possession or control and covered by the confidentiality protections of the IRC. FTI includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as the Federal Office of Child Support Enforcement.

Copies of tax returns or return information provided directly by the taxpayer or his/her representative are not FTI. See Publication 1075, Section 1.4.1, 1.4.2, and 1.4.4.

Federal regulations establish IRS Publication 1075 as the official guidance for implementing the safeguard requirements of IRC § 6103(p)(4). 26 CFR § 301.6103(p)(4)-1. The requirements in IRS Publication 1075 apply to all organizational divisions of an agency receiving FTI. It is the agency's responsibility to ensure all locations and individuals within the agency, including consolidated data centers and contractors, comply with these rules.

State and local child support enforcement agencies have access to FTI. IRC § 6103(l)(6), (l)(8), and (l)(10). As part of the federal tax refund offset process, New York State and social services districts receive the following information that the IRS classifies as FTI: 1) the amount of the offset; 2) information that the return was filed jointly; and 3) the name of the joint filer.

No officer or employee of any child support enforcement agency can make further disclosures of FTI except to the custodial or noncustodial parent/taxpayer, as allowed by law. However, limited information may be disclosed to agents or contractors of the agency for the purpose of, and to the extent necessary in, establishing and collecting child support obligations from and locating individuals owing such obligations. The information that may be disclosed for this purpose to an agent or a contractor is limited to the:

- Taxpayer's address;
- Social Security Number of an individual with respect to whom child support obligations are sought to be established or enforced; and/or
- Amount of any reduction under IRC §6402(c) in any overpayment otherwise payable to such individual.

See IRS Publication 1075 Section 5.5.

IV. Program Implications

Districts with access to FTI are subject to the requirements of Publication 1075, and therefore must develop policies and procedures to implement background investigations of employees with access to FTI, including contractors, subcontractors and information technology and data center employees where FTI is stored on the system.

V. Required Action

A. Written Policies for Background Investigations

Districts must establish a written personnel security policy that ensures a background investigation is completed for any individual requiring access to FTI to perform his/her job duties and must ensure a reinvestigation is conducted within 10 years from the date of the previous background investigation. The policy will identify the process, steps, timeframes, and suitability standards for determining whether an employee may be granted access to FTI. "Suitability" shall include verified citizenship or residency and no prior criminal offense or offenses where the nature of the offense creates a risk of misuse of confidential information. Applicants must be advised that a criminal record does not necessarily disqualify them from employment or from access to FTI, and that an individualized determination will be made as to how any conviction would impact their suitability to handle FTI.

Written background investigation policies and procedures must be provided to OTDA Counsel's Office, Care of Deputy Counsel for Child Support, 40 North Pearl Street, Albany, NY 12243. Policies and procedures, as well as a sample of written records of findings in employee, contractor, and subcontractor background investigations, must be available for inspection upon request by OTDA or the IRS.

The policy must apply to prospective employees, current employees, contractors, and subcontractors including those with access to systems containing FTI. However, New York State law does not currently permit fingerprinting of certain employees as a condition of retaining their current job title. As a result, at this time, policies should address only applicants where the position requires access to FTI in order to perform the job duties.

B. Background Investigations of Applicants

Background investigations for any applicant whose job duties would require access to FTI must include, at a minimum:

- a) FBI fingerprinting (FD-258): Review of Federal Bureau of Investigation (FBI) fingerprint results conducted to identify possible suitability issues.
- b) Local law enforcement investigation: Check of local law enforcement agencies where the individual has lived, worked, and/or attended school within the last 5 years, and if applicable, of the appropriate agency for any identified arrests.
- c) Citizenship/residency: Validation of the individual's eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization).

Districts must complete USCIS Form I-9 to document verification of the identity and employment authorization of each applicant hired after November 16, 1986, to work in the United States. Within three (3) days of completion, any applicant must also be processed through E-Verify to assist with verification of his/her status and the

documents provided with the Form I-9. This verification may only be completed on new employees. Any employee with expiring employment eligibility must be documented and monitored for continued compliance.

See Publication 1075, Section 5.1.1.

C. Determining suitability of an applicant for access to FTI

The results of the investigations will be reviewed and where appropriate, the district may request additional information from the applicant or any court or agency with information about the applicant's criminal history. In making a determination of suitability for access to FTI, the social services district shall consider the following factors:

- (a) The public policy of this state, as expressed in Correction Law Article 23-a, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific job duties and responsibilities necessarily related to the access to FTI by the applicant.
- (c) The bearing, if any, the criminal offense or offenses for which the applicant was previously convicted will have on his/her fitness and trustworthiness to access and safeguard confidential information, including FTI, and the potential risk of misuse of such information.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the applicant at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the applicant, or produced on his/her behalf, in regard to rehabilitation and good conduct.
- (h) The legitimate interest of the district in safeguarding confidential information, including FTI.

See Correction Law Article 23-A.

Citizenship/residency – In addition the district must validate the applicant's eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization). Applicants lacking the requisite employment status cannot be hired, regardless of the consideration and weighing of the other factors.

The district shall consider each of these factors and make a written record of its findings, setting forth how each the factors was considered and the reason for the determination.

At the request of any applicant who has been determined to be unsuitable for access to FTI, the district shall provide, within thirty days of a request, a written statement setting forth the reasons for the determination.

D. Review of determinations

In the event that the district determines that the applicant is not suitable for access to FTI, the policy must provide a process for administrative review of the challenge to the determination. An applicant determined not suitable for access to FTI must be informed in writing of this process.

E. Retention of Written Determinations and Records

The IRS, as part of its safeguard reviews, may review reports of completed background investigation determinations. Written determinations must be retained for 10 years or until the employee no longer has access to FTI, whichever is sooner.

F. Implementation

- a) Develop a written background investigation policy and procedure and submit to OTDA for review and approval. This policy should be submitted to OTDA Counsel's Office, Care of Deputy Counsel for Child Support, 40 North Pearl Street, Albany, NY 12243.

- b) Agreement with DCJS

In order to access the DCJS eJusticeNY Integrated Justice Portal to obtain criminal history record information, each social services district must review and submit the attached Request for Access to Criminal History Record Information (also available here:

<http://www.criminaljustice.ny.gov/ojis/documents/Request-for-CHRI-Access-Form.pdf>). Upon approval, DCJS will prepare and submit to each district a Use and Dissemination agreement outlining the terms and conditions of such access, which must be signed and returned to DCJS. At that time, DCJS will issue the district an ORI number, which is an agency identifier, and will be required when the applicant makes their fingerprinting appointment. The agreement will also detail additional requirements, including the designation of a Terminal Agency Coordinator (TAC) and background checks of TAC and other district staff who will have access to or will be reviewing the criminal history record information. Please note that this ADM does not recite all the requirements of the Use and Dissemination agreement.

Districts must inform applicants of the criminal background screening process and that the background check is a condition of employment. The applicant must execute the attached Criminal Background Check Consent Form. Upon receiving the signed consent, districts should assist applicants with making appointments for fingerprinting through a DCJS approved fingerprinting contractor. There is a fee for a DCJS criminal background check.

- c) Record Keeping. Each district shall establish, maintain and keep current, among other records, a current list of all employees, contractors, and subcontractors for whom a background check was submitted and a copy of the written record of findings. Every district must ensure the confidentiality of all records and information related to criminal background checks obtained through DCJS and all such information must be marked “confidential” and maintained, where authorized by DCJS, in a separate, confidential file in the personnel office or other administrative office, as appropriate.

VI. Systems Implications

None

VII. Additional Information (Optional)

VIII. Effective Date

September 30, 2017

Issued By:

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