

## Attachment 1

### **Questions and Answers regarding 17-ADM-08 (“ADM”) from a conference call held with local districts on 10/02/2017**

#### **Time Frames**

**1. When did this requirement become effective?**

**A:** The IRS issued the revised Publication 1075 in September of 2016. This publication superseded the previous Publication 1075 (issued October 2014) and was effective September 30, 2016. See page i of Publication 1075 (September 2016).

**2. What is the deadline for submission of our written policy and procedures that needs to be submitted to OTDA?**

**A:** The IRS advised states and local agencies that although the revisions were effective on September 30, 2016, implementation of the new standards, including the development of written policies and initiating background investigations should occur within one year, or September 30, 2017:

**5.1.2 Implementing the Background Investigation Requirement**

The requirements of Section 5.1.1 pertaining to initial and periodic background investigations for individuals before authorizing access to FTI is effective upon date of this publication. Implementation of the new standards, including the development of written policies and verification that all individuals with access to FTI have an appropriate level of investigation and initiating new required investigations to comply with the requirement may occur within one year.

Upon publication, agencies should initiate action to establish a written background investigation policy that conforms to the standards of Section 5.1.1. Agencies should also identify all employees or contractors who currently have access to FTI and have not completed the required personnel security screening and initiate a background investigation which meets these standards. Agencies should initiate a background investigation for all newly hired employees and contractors who will require access to FTI to perform assigned duties as soon as practicable upon notification of the requirement.

Pursuant to Section 5.1.2, “Agencies should initiate a background investigation for all newly hired employees and contractors who will require access to FTI to perform assigned duties as soon as practicable upon notification of the requirement.” New York State law does not permit fingerprinting of current employees as a condition of retaining their current job title. Districts should develop a policy regarding background investigations, including fingerprinting, of applicants (as defined in Section II of the ADM) on or before February 28, 2018.

3. **There is no deadline in the ADM to submit this policy. How long do we have to do this?**

A: Each district should submit its policy to OTDA on or before February 28, 2018.

### **New Hires vs Current Employees**

4. **It looks like we are just going to start this with new employees as this was not a condition for employment when current staff were hired. Is that correct?**

A: The ADM does not require background checks of current employees. Section V.A of the ADM states:

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.

See also the definition of “applicant” in section II: “[P]rospective employees as well as current employees applying for employment in a position outside their current job title...”.

5. **Do the current child support workers who work in my office have to be included in this new policy or only new employees being hired? I am still unclear on this.**

A: See answer to No. 4 above.

6. **I think that all examiners might need to be cleared. I also think this will cause a Union grievance for employees that will not be grandfathered into this ADM.**

A: See answer to No. 4 above.

7. **Will DCJS deny any requests for background checks?**

A: Civil Service Law only permits background checks for “applicants,” as defined in the ADM (see Question No. 4, above). No other requests are allowed at this time.

8. **Are transfers (current DSS employees not in child support) required to have the background check done before they can be offered a job, or can they be hired and given access to the child support system that does not allow them to view FTI?**

A: “Applicant” is defined in section II of 17-ADM-08 as “[P]rospective employees as well as current employees applying for employment in a position outside their current job title...”. If the employee is applying for a lateral transfer from a position outside of child support where there was no access to FTI, to a position that requires access to FTI, the employee is treated as an applicant and is subject to the background check requirements.

The district must consult with its own attorneys on applicable local civil service rules and regulations and any collective bargaining requirements before hiring an applicant who has not completed the background investigation. However, no new employee who has not

completed the background investigation may have access to FTI or ASSETS until a full background investigation is complete. Anyone who may, directly through systems or incidentally through paper review or other physical/casual contact, view or access FTI in their workplace must comply with the background investigation requirements before being placed in workspace or office area where FTI is accessible.

### **Developing a policy**

**9. Are there sample policies that OTDA can share with local districts?**

**A:** No. However, OTDA has developed a checklist that will be used to evaluate policies submitted to OTDA. See attachment 3 to the LCM.

**10. The ADM states that local districts must establish a written personnel security policy for background checks. The policy has to identify the process, steps, timeframes, and suitability standards for determining an employee's access to FTI. Is the state going to assist local districts on developing a policy?**

**A:** The ADM provides guidance as to the IRS-required elements of the policy. Districts have flexibility to develop policy and procedures suitable to their individual circumstances.

**11. The local district is to assist applicants with making appointments for fingerprinting through a DCJS approved fingerprinting contractor. Are we going to be provided with a list of approved contractors?**

**A:** Publication 1075 requires FBI fingerprinting (FD-258) and a review of FBI fingerprint results conducted to identify possible suitability issues. Section V.B. Districts may meet this requirement through an agreement with DCJS as discussed in Section V.F.b. DCJS will provide information about the fingerprinting process, including scheduling fingerprinting of applicants and sites where fingerprinting will be done.

**12. One of the requirements is a check of local law enforcement agencies...does the DCJS check cover that or do we need to have someone locally to do another check?**

**A:** Publication 1075, Section 5.1.1, states:

Check of local law enforcement agencies where the subject has lived, worked, and/or attended school within the last 5 years, and if applicable, of the appropriate agency for any identified arrests.

The local law enforcement check will assist agencies in identifying trends of misbehavior that may not rise to the criteria for reporting to the FBI database but is a good source of information regarding an applicant.

This is not part of the DCJS service and must be performed by the district. It is recommended that prior to making a final offer of employment for a position that requires access to FTI as part of the job duties, the district obtain an executed authorization to release information from the applicant and a list of each address where he/she lived, worked, and/or attended school during the previous 5 years. The district should forward a copy of the authorization to the local law enforcement agencies in each town, city, or

county where the applicant lived, worked, and/or attended school and request information about any identifiable arrests.

- 13. How exactly do they envision the check of local law enforcement agencies going back 5 years for any place a person has lived be done? What paperwork? What mechanism is used?**

A: See answer to No. 12 above.

- 14. I am also trying to determine who can do the fingerprinting. Would our local Sheriff's department be an authorized agency or maybe the State trooper barracks or do staff have to travel to Albany for this?**

A: Publication 1075 requires FBI fingerprinting (FD-258) and a review of FBI fingerprint results conducted to identify possible suitability issues. Section V.B. Districts may meet this requirement through an agreement with DCJS as discussed in Section V.F.b. DCJS uses a vendor that provides fingerprinting services in multiple locations, so all applicants will not have to travel to Albany. In addition, districts have flexibility to meet this requirement by other means, such as a contract with another entity or through their local law enforcement agency.

- 15. What about those individuals who have authorized access to our office (security officers, maintenance men, heads of other departments in DSS) and do not take the IRS security awareness training? Is there guidance on secondary employees with access to FTI?**

A: Section V.A of the ADM states "The policy must apply to prospective employees, current employees, contractors, and subcontractors including those with access to systems containing FTI." Applicants for jobs without access to FTI as part of their job duties are not subject to the background investigation requirement. However, applicants for employment as attorneys, legal staff, administrators, and information technology (IT) personnel who require access to FTI as part of their job duties are included in the requirement.

- 16. What about legal staff? At this time they take the IRS security awareness training.**

A: See answer to No. 15 above.

- 17. Would the County Attorney's office and Commissioner of Social Services in which we work directly with be subject to the background check?**

A: See answer to No. 15 above.

- 18. Does this apply to every employee who has access to ASSETS money screens? It makes more sense that anyone who has access to tax screens and/or tax offset notification would be subject to this, but it is not clear. Most staff have "money lite," which does not show batching and calls TROP payments "administrative offset." I would think those employees would not be subject to the entire background check, fingerprinting and/or verification or residency. However, in the questions and answers regarding disclosing FTI in court proceedings dated 9/28/16,**

**there is a note that says “please note that the information that there was a tax offset is, in and of itself, FTI” so possibly even those with money lite would be subject.**

**A:** Although it is correct that every applicant whose job duties will require access to FTI on ASSETS is subject to the background investigation requirement, there may be other jobs requiring or permitting access to FTI that are also subject to the requirement. Any applicant for a job which includes duties which may, directly through systems or incidentally through paper review or other physical/casual contact, permit or require access to FTI must comply with the background investigation requirements. For example, an IT position may require or allow access to all information or data on a system. This would trigger the background investigation requirement even if it is not contemplated that a person in that job would actually need to access the data. The full range of the job duties should be analyzed to determine if any other required job task or work location could potentially bring the applicant into contact with FTI, and require a background investigation.

**19. Must the background investigation be completed before a new hire starts working in the SCU?**

**A:** Yes, provided the individual will require access to FTI to perform the job duties for which (s)he is hired. Section V.A. states:

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.

In addition, the district must validate the applicant’s eligibility to legally work in the United States. “Applicants lacking the requisite employment status cannot be hired, regardless of the consideration and weighing of the other factors.” Section V.C.

The district must consult with its own attorneys on applicable local civil service rules and regulations and any collective bargaining requirements as to provisional employees. However, no new employee, whether provisional or not, may have access to FTI unless and until a full background investigation complying with the requirements of Publication 1075 is complete. Anyone who may, directly through systems or incidentally through paper review or other physical/casual contact, view or access FTI must comply with the background investigation requirements before being placed in workspace or office area where FTI is accessible.

**20. When there is an operational need for a vacancy to be filled immediately, can a LDSS hire provisionally the staff member, and begin training but NOT provide access to FTI through any avenue until fully cleared?**

A: See answer to No. 19 above.

21. **If our county does DCJS checks for all new hires, do we need to duplicate those efforts and set up our own account with DCJS to do them or can we work with our Personnel Office to ensure the checks are done through that office?**

A: The district has flexibility to meet the fingerprinting requirement within its existing processes, so long as those processes comply with Publication 1075.

22. **On pg. 4 of the ADM, it indicates that samples of written findings in employee, contracts and subcontractor background investigations must be available for inspection upon request by OTDA or the IRS. The problem with that is DCJS requires the destruction of any records received as part of signing up to obtain this information with them. What specific records is OTDA expecting to see maintained?**

A: Section V.F.c of the ADM states:

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.

Section V.C of the ADM requires districts to create a written record of the determination: "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."

The district is required to retain the written record it created. Any materials received from DCJS should be destroyed if required by the Use and Dissemination agreement.

23. **Why do we need to have an Applicant Consent form done if our county civil service application contains such language?**

A: An Applicant Consent form should be obtained for use in the check of local law enforcement agencies. It is possible that local law enforcement agencies will not provide information to a district without the applicant's consent.

24. **How quickly will OTDA approve the local district policies once submitted?**

A: OTDA will review the policies and advise the districts of approval or disapproval within days of submission.

25. **Are background checks required for workers that lived outside of New York State or the Country?**

A: Per the IRS, districts are only required to send background request to local law enforcement. Example, if prospective new hire stated that they lived in Haiti, a request

would be sent to the local authority there. The district is only responsible for ensuring the request is sent, and, per the IRS Office of Safeguards, they will not be held responsible for non-responsive local law enforcement agencies.

**26. Is there a Source Book with all of this information available?**

**A:** Districts may refer to 17-ADM-08 and IRS Publication 1075.

**Application of Article 23-a of New York State Correction Law**

**27. It looks like each county is supposed to develop their own standards by which to judge any unfavorable information that may be received from these investigations. I would think there could be a lot of variation if every county was developing their own standards. Is the State considering development of a standard policy to send to all counties?**

**A:** In making a determination of suitability for access to FTI, the district must consider the factors set out in Article 23-a of the Correction Law. Section V.C. The facts of each applicant's situation and the applicability of each standard to these facts necessitates a case-by-case review and determination.

**28. An employee that has a very good working record with us might have a conviction that occurred when they were much younger and could potentially not be able to continue work.**

**A:** Although the ADM applies to applicants only, note that a prior conviction does not necessarily bar employment from a job that requires access to FTI. The ADM states in Section V.A:

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.

In determining whether a prior criminal offense disqualifies an applicant from employment in a position requiring access to FTI, the district shall consider the factors outlined in Correction Law 23-a, including the time that has elapsed since the occurrence of the criminal offense or offenses. Section V.C.

**29. It appears that each district is to develop their own policies and procedures and will each determine someone's "suitability" for the position, which we will put in writing to the individual and they will have a right to appeal. This leaves a lot of room for differences among counties (and liability, of course).**

**A:** See answer to No. 28 above.

**30. Who conducts the review of the background check for determination of suitability for access to FTI?**

**A:** The districts have flexibility to determine their internal review process, so long as their policy and procedures comply with IRS Publication 1075. Note that secondary

dissemination of Criminal History Record Information is prohibited unless authorized by law.

**31. Who writes the contract?**

**A:** Each district should follow the guidance set forth in Section V.F.b. of the ADM on executing an agreement with DCJS. DCJS requires use of a standard agreement form.

**Cost**

**32. Is OTDA negotiating a free Use and Dissemination Agreement with DCJS, similar to that provided to our Children Services units, so that there is no charge? The current fee is \$62, not including the charge for a contractor to process fingerprints and submit them. (I can provide the OCFS Agreement, if you don't have it.)**

**A:** The Use and Dissemination Agreement between the district and DCJS is a Memorandum of Understanding. With respect to costs associated with background investigations of new employees, this is a federal requirement that the State and localities must meet. However, for child support positions and IT providers (to the extent they are working on child support systems), the cost may be claimed for 66% federal financial participation.

**33. Will the LDSS be fully reimbursed for any and all charges associated with this new state mandate? If so, what forms/procedures must our financial operations units have in place?**

**A:** This is a federal, not State mandate. With respect to costs associated with background investigations of new employees, see answer to No. 32 above.

**34. Is there reimbursement for conducting the required background checks?**

**A:** See answer to No. 32 above.

**Forms**

**35. Attachment one "Request for Staff Exclusion List Check Webform: Authorized Person Email" is not mentioned in the ADM. Can we get some clarification about this form?**

**A:** This form can be disregarded.

**36. The "Request for Access to Criminal History Record Information" form requires various statutes/regulations to be stated and attached. Are we going to be given this information?**

**A:** The sample "Request for Access to Criminal History Record Information" form attached to the ADM includes this information. The statutes/regulations section should state: "Civil Services Law 50(4) (IRS Publication 1075)." A copy of the form, with the sections applicable to all counties filled in, is included as Attachment 2 to the LCM.

**37. Where can USCIS Form I-9 be located?**

**A:** The I-9 can be located by using the E-Verify link: [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify).

**38. Does OTDA have sample contracts?**

**A:** DCJS requires use of a standard agreement form, which it will provide.