

	INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL	
	Chapter 18: Confidentiality and Security	Effective Date: 11/4/2019
	Section 10: Background Investigation	Version: 1.2 Revision Date: 10/29/2019

BACKGROUND

IRS Publication 1075 requires that the Child Support Bureau (CSB) create a written background investigation policy that ensures compliance with IRS requirements for persons having access to Federal Tax Information (FTI). The purpose of this policy is to define and establish procedural guidelines, timeframes, and favorability standards for applicants, employees, contractors, and subcontractors who may have access to Federal Tax Information as part of their job duties under Indiana’s Title IV-D Program.

DEFINITIONS

1. **“Appointing Authority”** means the agency or person authorized to make employment determinations. For the CSB, the appointing authority is the IV-D Director (or his/her designee). For the county offices, the appointing authority is the elected Prosecutor or Clerk, or their designees.
2. **“Background Investigation”** means all necessary checks required of an employee, contractor, or sub-contractor in order to determine an individual’s suitability for access to FTI maintained by or obtained through Indiana’s Title IV-D Child Support program. IRS Pub 1075 requires that checks must include, at a minimum, fingerprint checks (as permitted by the FBI), local law enforcement checks, and citizenship verification.
3. **“Citizenship/Residency Check”** means verification of a new employee’s eligibility to legally work in the United States. Utilizes Form I-9 and verification through E-Verify.
4. **“Federal Tax Information”** consists of tax returns and tax return information. FTI can be either or both. FTI is any return or return information received from the IRS or an IRS secondary source, such as the Social Security Administration, Federal Office of Child Support Enforcement, Bureau of Fiscal Services, or the Center of Medicare and Medicaid Services. Any information derived from FTI is also considered FTI. FTI is also shared under agreements allowed by statute or regulations.
5. **“FBI Fingerprinting”** means a review of FBI national fingerprint background check results.
6. **“Local Law Enforcement Check”** means criminal background checks at local law enforcement agencies where the subject has lived, worked, and/or attended school within the past five years. These may include searches of the Indiana Data and

Communications System (IDACS) and the National Crime Information Center (NCIC), as permitted by the FBI.

7. **“Favorability Standards”** means agency criteria for determining a subject’s suitability to have access to FTI.

POLICY

CSB and its county partners are committed to safeguarding all FTI in their possession and ensuring access, transmission, storage, and disclosure of such information is limited to the extent necessary to carry out required Title IV-D responsibilities in a manner that is compliant with federal and state regulation. Upon being approved to handle FTI, employees, contractors, and subcontractors will be required to maintain safeguard procedures.

Upon implementation, all existing employees, contractors, and subcontractors with direct access to FTI will be required to submit to a background investigation meeting this policy’s requirements to determine whether continued FTI access will be authorized.

New employees, contractors, and subcontractors with direct access to FTI will be required to submit to a background investigation and a favorability standards review prior to being permitted access to FTI.

All individuals subject to the background investigation requirement will be required to submit to a reinvestigation at least once every ten years after the initial background investigation.

Employees, contractors, and subcontractors without direct access to or in possession of FTI are not required to undergo the background investigation outlined in this policy (for example, information technology support staff or cleaning staff with only potential incidental or inadvertent access to FTI).

REFERENCES

- [IRS Publication 1075 Section 5.1.1](#): Background Investigation Minimum Requirements
- [5 C.F.R. 731.201](#): Criteria for making suitability determinations
- [Ind. Code § 10-13-3-38.5](#) Use of fingerprints for employment or license; retention of fingerprints; requirement to submit to fingerprint background check based on access to confidential tax information

PROCEDURE

I. Complete the following three (3) background checks:

1. **FBI Fingerprinting.** This will require that individuals be directed to schedule an appointment to collect fingerprints through the state’s vendor for FBI Fingerprinting services. Scheduling and billing will be coordinated between the appointing authority and the state’s vendor. Results of the FBI Fingerprinting process are provided to

and evaluated by the appointing authority against favorability standards outlined below. If the appointing authority determines that FTI access should not be granted based on the background check results, the appointing authority or designee will exercise discretion in determining whether or not to hire the applicant or retain the employee, contractor, or sub-contractor in a role that does not provide direct access to FTI.

2. **Citizenship/Residency Check.** The purpose is to verify eligibility to legally work in the United States. Any new employee must be processed through E-Verify to assist with verification of their citizenship status and the documents provided with the Form I-9. The Citizenship Requirement Check can be performed online at www.e-verify.gov.

Existing employees hired after November 6, 1986 should have already undergone an initial I-9 check and will not be subject to a new I-9 check as part of an initial background investigation or reinvestigation outlined in this policy, provided it had already been completed as required. Employees hired before November 6, 1986 and who have been continuously employed will have never been required to complete and will not be subject to an I-9 check for continued employment or access to FTI.¹

3. **Local Law Enforcement Check.** This local criminal background check will occur in each county where the individual has lived, worked, and/or attended school within the last five years, and if applicable, of the appropriate agency for any identified arrests. For the required Local Law Enforcement Check, the appointing authority or designee will need to utilize the state's vendor providing this service consisting of a search of court records that contain criminal convictions and pending charges in any county, in the United States, where the individual has lived, worked and/or attended school in the past five years. Local Law Enforcement Check results are reviewed by the appointing authority or their designee against the favorability standards outlined below.

If the appointing authority determines that FTI access should not be granted based on the background check results, the appointing authority will exercise discretion in determining whether or not to hire the applicant or retain the employee, contractor, or sub-contractor in a role that does not provide direct access to FTI.

II. Timeframes:

The appointing authority will conduct all background investigations in a timely manner. Prospective employees, contractors, and subcontractors will not be authorized for access to FTI until they have passed all background investigations and have been deemed suitable for access to FTI following a review of the favorability standards.

Upon initial employment, all employees must complete a Form I-9. Within three (3) days of new hire, any new employee must also be processed through E-Verify to assist with verification of their status and documents provided with the Form I-9.

¹ U.S. Citizenship and Immigration Services *Handbook for Employers M-274* ([2.0 Who Must Complete Form I-9](#))

Independent contractors are not required to complete a Form I-9, however these individuals must also be subjected to a Residency/Citizenship Verification Check as part of the required background investigation prior to being permitted access to FTI.

III. Document Retention:

1. **FBI Fingerprinting Background Check Results.** The appointing authority is responsible for ensuring that documentation verifying completion of all required FBI fingerprinting background checks are maintained for their employees, contractors, and subcontractors.
2. **Citizenship/Residency Check Results.** The appointing authority is responsible for ensuring that documentation verifying completion of all required citizenship/residency check results are maintained for their employees, contractors, and subcontractors.
3. **Local Law Enforcement Background Check Results.** The appointing authority is responsible for ensuring that documentation verifying completion of all required local law enforcement background check results are maintained for their employees, contractors, and subcontractors.

IV. Favorability Standards:

1. **Review of FBI Fingerprinting and Local Law Enforcement Check Results.** The appointing authority will consider the following crimes and activities in determining an individual's suitability to access FTI:
 - i. Theft;
 - ii. Larceny;
 - iii. Burglary;
 - iv. Robbery;
 - v. Fraud;
 - vi. Identity Theft;
 - vii. Illegal Credit Card Use of Another;
 - viii. Any crime involving fraud, deceit, or dishonesty with a potential for financial gain to the individual or for the benefit of another;
 - ix. Any crimes with a direct link to the individual's specific job functions;
 - x. Material or intentional false statement, deception or fraud in examination or appointment; or
 - xi. Any statute or regulatory bar which prevents the lawful employment of the person involved in the position in question.
2. **Potential mitigating factors.** The appointing authority must consider any of the following additional considerations to the extent the appointing authority deems any of them pertinent to the individual case:
 - i. The nature of the position for which the person is applying or in which the person is employed;
 - ii. The nature and seriousness of the conduct;
 - iii. The circumstances surrounding the conduct;
 - iv. The recency of the conduct;
 - v. The age of the person involved at the time of the conduct; and
 - vi. The absence or presence of rehabilitation or efforts towards rehabilitation.

3. **Expunged criminal or juvenile delinquency records.** Most expunged criminal records should not appear in FBI fingerprinting or local law enforcement check results. Certain felony convictions may appear marked as “expunged”. Per Indiana law, the appointing authority shall not consider expunged criminal records in making employment related decisions.¹
4. **Appointing authority’s discretion for employment.** The appointing authority shall have discretion on the retention decisions for any current employee, contractor, or sub-contractor with access to FTI and who has been charged with or found guilty of any of the crimes or activities listed above, or similar crimes or activities.

Current employees must comply with investigation requirements, and revocation of access to FTI may result in dismissal from employment. The appointing authority shall also exercise discretion in the hiring of any prospective employee, contractor, or sub-contractor for a position that requires access to FTI and who has been charged with or found guilty of any of the crimes or activities listed above, or similar crimes or activities.

If an individual has been charged with or convicted of a crime other than those listed above, the appointing authority will exercise discretion in determining whether or not to hire the applicant or retain the employee, contractor, or sub-contractor.

V. Adverse Actions Based on Local Law Enforcement Check Results

If the appointing authority decides to:

- a. Terminate an existing employee’s employment;
- b. Decline to hire an applicant;
- c. Rescind FTI access; or
- d. Take any other negative employment action,

based in whole or in part on the results of a local law enforcement background check, they must comply with the Fair Credit Reporting Act (“FCRA”).

The FCRA requirements are:

1. Sending a **Preliminary Adverse Action Notice**, prior to taking the negative employment action
 - This notice must contain the language outlined in the FCRA
 - This notice must include a copy of the local law enforcement background check report
 - This notice must include a copy of the “Summary of Your Rights Under the Fair Credit Reporting Act” document.²

¹ IC 35-38-9-10

² 15 U.S. Code § 1681b(3)(A)

2. Sending a **Final Adverse Action Notice** at least five (5) business days from the date of the Preliminary Notices
 - This notice must contain the language outlined in the FCRA.³

The state’s local background check vendor will send the required adverse action notices on behalf of the appointing authority, unless the appointing authority elects to send these required notices directly. CSB will provide sample notices that satisfy the FCRA requirements. The use of the sample notices is not mandatory. However, compliance with the FCRA is mandatory.

VI. Reinvestigation Requirements:

IRS Pub 1075 requires that a reinvestigation of employees, contractors, and subcontractors must be conducted within ten (10) years from the date of the previous background investigation for each individual with access to FTI.

VII. Employee Reporting Requirements:

It is the individual employee, contractor or sub-contractor’s duty to notify their supervisor and appointing authority of a new pending charge or conviction of any crime and/or unauthorized access to FTI.

FORMS AND TOOLS

Template FCRA Letters for Adverse Action based on Application for Employment
 Template FCRA Letters for Adverse Action – Rescinding FTI Access
 Template FCRA Letters for Adverse Action – Termination of Current Employee

FREQUENTLY ASKED QUESTIONS

TBD

REVISION HISTORY

Version	Date	Description of Revision
Version 1	January 1, 2019	Final Approved Version
Version 1.2	November 4, 2019	<ul style="list-style-type: none"> • Added more information about the local background check process, in particular about the FCRA provisions for adverse actions based on the local checks. • Clarified that individuals without direct access to FTI are not required to undergo background checks (IT support, cleaning staff). • Finally, we provided a point about expunged records that may appear in results but which are not to be considered in employment decisions per state law.

³ 15 U.S. Code § 1681m(a)
 DCS IV-D Policy Manual/Chapter 18:
 Confidentiality and Security Section 10: Background Investigation

