

	INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL	
	Chapter 18: Confidentiality and Security	Effective Date: 10/31/2022
	Section 5: Background Investigation	Version: 1.3 Revision Date: 10/31/2022

BACKGROUND

The Child Support Bureau (CSB) and its county partners are committed to safeguarding all Federal Tax Information (FTI) in their possession pursuant to federal and State regulations. One of those safeguard procedures is the requirement that CSB create a written background investigation policy that ensures compliance with Internal Revenue Service (IRS) requirements for persons having access to FTI.¹ The purpose of this policy is to define and establish procedural guidelines, time frames, and favorability standards for applicants, employees, contractors, and sub-contractors who may have access to FTI 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 CSB, the appointing authority is the Title IV-D Director, or his or her designee. For the county offices, the appointing authority is the elected Prosecutor or Clerk of Court, 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 program. IRS Publication 1075 requires that checks must include, at a minimum, Federal Bureau of Investigation (FBI) fingerprint checks, local law enforcement checks, and citizenship verification.²
3. **“Citizenship/Residency Check”** means verification of a new employee’s eligibility to legally work in the United States utilizing Form I-9 and verification through E-Verify.³
4. **“FBI Fingerprinting”** means a review of FBI national fingerprint background check results.⁴
5. **“Local Law Enforcement Check”** means criminal background checks at local law enforcement agencies where the subject has lived, worked, and/or attended school

¹ Publication 1075, Sections 2.C.3 and 2.C.3.1

² Publication 1075, Section 2.C.3

³ Publication 1075, Section 2.C.3

⁴ Publication 1075, Section 2.C.3

within the past five (5) years.⁵ These may include searches of the Indiana Data and Communications System (IDACS) and the National Crime Information Center (NCIC).

6. **“Favorability Standards”** means agency criteria for determining a subject’s suitability to have access to FTI.⁶

POLICY

Upon implementation, all existing employees, contractors, and sub-contractors 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.⁷

New employees, contractors, and sub-contractors with direct access to FTI will be required to submit to a background investigation and favorability standards review prior to being permitted access to FTI.⁸

All individuals subject to the background investigation requirement will be required to submit to a reinvestigation at least once every five (5) years after the initial background investigation.⁹

Employees, contractors, and sub-contractors without direct access to nor in possession of FTI are not required to undergo the background investigation outlined in this policy (for example, information technology support staff, cleaning staff with only potential incidental or inadvertent access to FTI, or elected prosecutors not involved in the performance of direct Title IV-D duties).

REFERENCES

- [IC 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
- [IC 35-38-9-10](#): Unlawful discrimination against a person whose record has been expunged; exceptions
- [15 U.S.C. § 1681b](#): Permissible purposes of consumer reports
- [15 U.S.C. § 1681m](#): Requirements on users of consumer reports
- [IRS Publication 1075](#): Tax Information Security Guidelines for Federal, State and Local Agencies: Safeguards for Protecting Federal Tax Returns and Return Information

PROCEDURE

1. Required Background Checks
 - a. FBI Fingerprinting

⁵ Publication 1075, Section 2.C.3

⁶ Publication 1075, Section 2.C.3

⁷ Publication 1075, Section 2.C.3.1

⁸ Publication 1075, Section 2.C.3

⁹ Publication 1075, Sections 2.C.3 and 2.C.3.1

This will require that individuals be directed to schedule an appointment to collect fingerprints through the State's vendor for FBI fingerprinting services.¹⁰ 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.¹¹

b. Citizenship/Residency Check

The purpose is to verify eligibility to legally work in the United States.¹² 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-9.¹³ The citizenship requirement check can be performed online at www.e-verify.gov.

Employees hired before November 6, 1986, that have been continuously employed, and have never been required to complete an I-9 check, will not be required to complete one for continued employment or access to FTI.¹⁴

c. Local Law Enforcement Check

This local law enforcement check will occur in each county where the individual has lived, worked, and/or attended school within the last five (5) years and, if applicable, of the appropriate agency for any identified arrests.¹⁵ For the required local law enforcement check, the appointing authority or designee will need to utilize the State's vendor providing this service. This will consist 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 (5) 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.

2. Time Frames

The appointing authority will conduct all background investigations in a timely manner. Prospective employees, contractors, and sub-contractors will not be authorized for

¹⁰ Publication 1075, Section 2.C.3

¹¹ IC 10-13-3-38.5(a)(2)

¹² Publication 1075, Section 2.C.3

¹³ Publication 1075, Section 2.C.3

¹⁴ U.S. Citizenship and Immigration Services *Handbook for Employers M-274* ([2.0 Who Must Complete Form I-9](#))

¹⁵ Publication 1075, Section 2.C.3

access to FTI until they have passed all background investigations and been deemed suitable for access to FTI following a review of the favorability standards.

Upon initial employment, all employees must complete a Form I-9.¹⁶ Within three (3) business 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-9.¹⁷ Independent contractors are not required to complete a Form I-9, however these individuals must also be subjected to a citizenship/residency verification check as part of the required background investigation prior to being permitted access to FTI.

3. Document Retention

a. 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 sub-contractors.

b. 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 sub-contractors.

c. 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 sub-contractors.

4. Favorability Standards

a. 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;
- viii. Any crime involving fraud, deceit, or dishonesty;
- 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 of employment; or

¹⁶ Publication 1075, Section 2.C.3

¹⁷ Publication 1075, Section 2.C.3

- xi. Any statute or regulatory bar which prevents the lawful employment of the person involved in the position in question.

b. 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.

c. 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”. As a general rule, if the appointing authority is CSB or the Clerk of Courts, it shall not consider expunged criminal records in making employment related decisions.¹⁸ However if the appointing authority is the Title IV-D Prosecutor’s Office, it may, in its discretion, consider expunged records.¹⁹

d. 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 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 convicted 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 hiring the applicant or retaining the employee, contractor, or sub-contractor is appropriate.

5. Adverse Actions Based on Local Law Enforcement Check Results

An appointing authority must comply with the Fair Credit Reporting Act (FCRA) if, based in whole or in part on the result of a local law enforcement background check, the appointing authority decides to:

¹⁸ IC 35-38-9-10

¹⁹ *Id.*

- 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.

The FCRA requirements are:

- a. 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.²⁰
- b. 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.²¹

The appointing authority will send the required adverse action notice. The appointing authority may also request the State's local background check vendor to send the required adverse action notices on behalf of the appointing authority. 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.

6. Reinvestigation Requirements

IRS Publication 1075 requires that a reinvestigation of employees, contractors, and sub-contractors must be conducted within five (5) years from the date of the previous background investigation for each individual with access to FTI.²²

7. 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

1. [E-Verify](#)
2. [Template FCRA Letters for Adverse Action based on Application for Employment](#)
3. [Template FCRA Letters for Adverse Action – Rescinding FTI Access](#)
4. [Template FCRA Letters for Adverse Action – Termination of Current Employee](#)

FREQUENTLY ASKED QUESTIONS

N/A

²⁰ 15 U.S.C. § 1681b(b)(3)(A)

²¹ 15 U.S.C. § 1681m(a)

²² Publication 1075, Section 2.C.3

RELATED INFORMATION

N/A

REVISION HISTORY

Version	Date	Description of Revision
Version 1	01/01/2019	Final Approved Version
Version 1.2	11/04/2019	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.
Version 1.3	10/31/2022	Updated hyperlinks and renumbered. Reviewed for accuracy pursuant to IRS Publication 1075.