

## **Background Checks for Potential Employees, Employees, and Contractors Access to Federal Tax Information**

IRS Publication 1075 requires local agencies to establish a personnel security program that ensures background investigations are completed at the appropriate level for any individual who will have access to FTI, both current and prospective employees. Child Support Enforcement agencies may adopt the document below to establish a local background check policy or develop their own policy that complies with federal and state compliance standards. Background check policy must include at a minimum:

1. All employees with access to federal tax information (FTI) are subject to local and federal background checks, federal bureau of investigation fingerprinting and citizenship requirement check
2. All necessary steps have been taken before an employee is allowed access to FTI
3. The suitability background check is favorable
4. Current employees must submit to a background check upon implantation of the policy and every 10 years thereafter

### **Scope**

This policy applies to all applicants, employees, and contractors who have access to Federal Tax Information (FTI) in conjunction with job duties for (County Name) Child Support Enforcement). Federal Tax Information (FTI), 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. FTI is also shared under agreements allowed by statute or regulations.

### **Purpose**

To define and establish procedural guidelines and suitability standards for potential employees, employees, and contractors background checks in accordance with federal and state compliance for covered persons (applicants, employees, and contractors) who have access to FTI in conjunction with job duties for (County Name) Child Support Enforcement.

### **Policy**

In accordance with IRS Publication 1075, this policy outlines (County Name) Child Support Enforcement's responsibilities for conducting a security background investigation based on the position sensitivity of the individual's assigned position and risk designation established by the Federal Investigative Standards (FIS) when granting access to FTI. Requests for criminal record checks shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation or disabling condition as defined by N.C.G.S. 168A-3.

## Definitions

Covered Person: N.C.G.S. 143B-935.1 in accordance with DHHS Policies and Procedures defines covered persons as an applicant for employment, a current employee or contractor.

Criminal History: A State or Federal conviction of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have access to Federal Tax Information. The term includes a record of arrests that have not resulted in a conviction and those that have resulted in a favorable disposition such as a dismissal or a verdict of not guilty.

Unfavorable criminal history: Criminal pending charge or conviction of a misdemeanor or felony crime related, but not limited to embezzlement, theft, and fraud.

Criminal Offense: Convictions(s), pending charge(s) or pending indictment(s) specified on an applicant or current employee's criminal history.

Relevant Hit: Convictions specified on an applicant or current employee's criminal history that could affect their ability to be employed by \_\_\_\_\_.

Internal Review Panel: An independent body consisting of Human Resources and Executive Leadership of (County Name) charged with reviewing criminal histories and weighing the evidence and explanation of covered persons as it relates to their suitability to access FTI.

Suitability Standards: Agency criteria for determining a subject's suitability to have access to FTI.

Suitability: A person's identifiable character traits and conduct sufficient to decide whether employment or continued employment would or would not protect the integrity or promote the efficiency of (County Name) and its use and storage of FTI.

Background Check: All necessary checks are required to have access to FTI. IRS Publication 1075 requires that checks must include, at a minimum, fingerprint checks (as permitted by the FBI), local law enforcement checks, and citizenship verification.

Subject: Person for which a background check is being conducted.

## Procedure- Background Check Requirements

IRS Publication 1075 requires State and local agencies to establish a personnel security program that ensures background investigations are completed at the appropriate level for any individual who will have access to FTI using the below information as minimum standards and a reinvestigation conducted within 10 years at a minimum.

Prior to granting access to FTI, IRS Publication 1075 requires that (County Name) complete a suitability background investigation for each potential new employee or contractor and every 10 years thereafter for all employees and contractors. **Current employees and contractors must**

**submit to a background investigation within 30 days of this policy and every 10 years thereafter.**

When approved to handle FTI, employees are required to maintain safeguard procedures as established by the DHHS and the IRS. In addition, employees, and contractors will be required to have background checks every ten years.

Background investigations for any person granted access to FTI must include at a minimum:

- a) Federal Bureau of Investigation (FBI) fingerprinting (FD-258) -review of FBI fingerprint results conducted to identify possible suitability issues. (Contact the appropriate state identification bureau for the correct procedures to follow.) A listing of state identification bureaus can be found at: <https://www.fbi.gov/about-us/cjis/identity-history-summary-checks/state-identification-bureau-listing>.

This national agency check is the key to evaluating the history of a prospective candidate for access to FTI. It allows the Agency to check the applicant's criminal history in all 50 states, not only current or known past residences.

- b) 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.
- c) Citizenship/residency – Validate the subject's eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization).

Employers must complete USCIS Form I-9 to document verification of the identity and employment authorization of each new employee hired after November 16, 1986, to work in the United States. Within 3 days of completion, any new employee must also be processed through E-Verify to assist with verification of his/her status and the documents provided with the Form I-9. The E-Verify system is free of charge and can be located at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify). This verification process may only be completed on new employees. Any employee with expiring employment eligibility must be documented and monitored for continued compliance.

(County Name) Human Resources will conduct all background checks in a timely manner. The subject will not be allowed access to FTI until he/she passes all Background Checks and receives a favorable rating under (County Name) and DHHS suitability standards.

In determining an individual's suitability to access FTI, (County Name Here) and DHHS will consider crimes and activities including but not limited to:

- Conviction of a misdemeanor or felony crime that involves fraud.
- Conviction of a misdemeanor or felony crime that involves embezzlement.

- Conviction of a misdemeanor or felony crime that involves theft/identity theft.
- Conviction of a misdemeanor or felony crime that involves counterfeiting and issuing monetary substitutes.
- Conviction of a misdemeanor or felony crime that involves robbery.
- Conviction of a misdemeanor or felony crime that involves, false pretenses and cheats.
- Conviction of a misdemeanor or felony crime that involves obtaining property or services by false or fraudulent use of credit device or other means.
- Conviction of a misdemeanor or felony crime that involves financial transaction card crime act.
- Conviction of a misdemeanor or felony crime that involves, frauds and forgery.
- Refusing to consent to background investigation.
- Falsifying information provided to conduct background investigation.
- Dismissal from prior employment for unauthorized use of employment related networks and equipment, and unauthorized access, use or disclosure of tax information.

The (County Name) Child Support Enforcement Agency will identify a division administrator, who will be trained by the SBI upon request for SBI system access. The division administrator is responsible for submitting information for processing the background check to the criminal background check unit. The division administrator will also submit a request for fingerprinting in writing through the criminal background check unit to the SBI. The signed Authority for Release of Information form shall be retained by (County Name) Human Resources for a period of one (1) year from the date the fingerprints are submitted to the SBI. The criminal background check unit will receive the results of the background check and fingerprinting and must not release those results to anyone other than the division administrator.

The Program Director will be advised if the results returned were favorable or unfavorable. If no criminal history is found, the employment process can proceed. If a criminal history is found for a potential employee, employee, or contractor the Program Director, or his/her designee shall not employ or contract with any person who has been found guilty of any of the crimes or activities listed above, within the last 5 years. For guilty findings older than 10 years, the appointing director or designee shall have discretion on hiring decisions based on the age and circumstances of the underlying events leading to the guilty finding.

If there is a “relevant hit” or “unfavorable criminal history”, the Program Director or his designee, will review the results and determine the employee’s continued employability and suitability to access FTI. Additional information may be requested from the potential employee, employee, or contractor to complete the review process. Current employees and contractors must comply with investigation requirements, and revocation of access to FTI may result in dismissal.

Covered persons are required to report any arrest, criminal charges, or criminal convictions (other than minor traffic violations) as well as any protective orders entered against them or any confirmed finding of abuse or neglect against them to their supervisor no later than (5) five calendar days after such occurrence. The supervisor shall then notify the Human Resources Director. Employment actions shall be reviewed according to this policy. Criteria to be considered during the review process include:

- (1) The level and seriousness of the crime;
- (2) The date of the crime;
- (3) The age of the person at the time of the conviction;
- (4) The circumstances surrounding the commission of the crime, if known;
- (5) The nexus between the criminal conduct of the person and job duties of the person;
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed; and
- (7) The subsequent commission by the person of a crime listed in the criminal record check criteria above.

The covered person will be rejected/separated from employment if the criminal record check and supporting records reveal a "criminal history" that indicates the individual has demonstrated that he or she does not have the integrity or honesty to fulfill his/her duties as an employee, or contractor.

A decision to hire/retain a covered person with a criminal history must be reviewed and approved by the County. Request for review/approval must be made by the division/facility/school director or designee in writing and include justification for the hire or continued employment that addresses the seven (7) statutory factors listed above. The County will provide a written response to the request. The response along with the other criminal history findings is to be maintained by the division/facility/school human resources office separately from the personnel file.

### **Criminal Record Check Process**

- A. Only authorized (County Name) human resources (HR) employee or designee shall serve as "requesting officials" for the processing of criminal record checks.
- B. To process a criminal record name check, the requesting HR official shall access the DHHS Criminal Background Check System located at <https://NCCRC.DHHS.STATE.NC.US>.
- C. To process a criminal fingerprint check authorized under N.C.G.S. 143B-935.1, the Human Resources Office shall access the Live Scan fingerprinting and Paper fingerprinting card site at <http://ncchildcare.dhhs.state.nc.us/general/dhhscre-dhhsemployees.asp>
  1. For live scan use the agency guide to select an approved law enforcement agency.

2. Complete and sign the Electronic Fingerprint Submission Release of Information (on SBI letterhead) form.
  3. Complete the Applicant Information form.
  4. Once applicant is fingerprinted by Live Scan, the Certified Electronic Fingerprint Release shall be returned to the human resources manager to be kept on file. The human resources manager will then ensure the applicants information has been entered into the DHHS Personnel database so that the DHHS Criminal Record Check (CRC) Unit is aware that a fingerprint check result for the applicant is pending.
  5. All paper fingerprint cards must be submitted on a "Applicant FD-258" card only. Cards can be obtained by contacting the CRC Unit at 919-814-6423.
  6. For paper fingerprints, have the applicant complete and sign the "Authority for Release of Information" form. Keep this record on file for 1 year.
  7. The applicant FD-258 fingerprint card is to be returned by applicant to the HR office and shall be mailed by the human resources manager to: DHHS Criminal Record Check Unit, 2201 Mail Service Center, Raleigh, N.C. 27699-2201, attention: DHHS Personnel Program.
  8. The human resources manager will then ensure the applicants information has been entered into the DHHS Personnel database so that the DHHS CRC Unit is aware that a fingerprint check result is pending.
  9. Human resources office shall establish controls to protect confidential information from unauthorized access or disclosure. Records containing criminal record check information shall be kept in a file separate from the personnel file and are to be accessible only by the designated "requesting officials."
- D. Covered persons under N.C.G.S. 143B-935.1, shall have a criminal record check conducted at the time of the conditional offer.
- E. Covered employees shall be checked each time there is a break in employment, when transferring from one division to another or when an applicant for a position in a covered class/division. Covered contractors shall be checked each time there is a break in service of six or more months.

## **References**

- IRS Publication 1075- Tax Information Security Guidelines for Federal, State, and Local Agencies

-N.C. G.S. 143B-935.1- North Carolina General Statutes and Provisions

-NC.G.S. 143B-146.16 - North Carolina General Statutes and Provisions