

5101:9-9-26

Safeguarding federal tax information (FTI) using background investigations.

(A) Definitions used in this rule.

- (1) "Federal Tax Information (~~FTI~~)" (FTI) is any return or return information received from the internal revenue service (IRS), or secondary source, such as the social security administration (SSA), federal office of child support enforcement (OCSE), or U.S. department of the treasury, including the bureau of the fiscal service, centers for medicare and medicaid services (CMS) and also includes any information created and/or maintained by the Ohio department of job and family services (ODJFS) or a county agency that is derived from these sources.
- (2) "Return and Return Information." A return is any tax or information return, estimated tax declaration, or refund claim (including amendments, supplements, supporting schedules, attachments or lists) required by or permitted under the internal revenue code (IRC) and filed with the IRS by, on behalf of, or with respect to any person or agency. Return information includes:
 - (a) The potential liability of any person under the IRC for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.
 - (b) The taxpayer's name, address and identification number.
 - (c) Personally identifiable information (PII), including:
 - (i) The name of a person with respect to whom a return is filed.
 - (ii) The taxpayer mailing address.
 - (iii) The taxpayer identification number.
 - (iv) Email addresses.
 - (v) Telephone number(s).
 - (vi) Social security number(s).
 - (vii) The date and place of birth.
 - (viii) The mother's maiden name.
 - (ix) The biometric data (e.g. height, weight, eye color, fingerprints).
 - (x) Bank account information.

~~(x)~~(xi) Any combination of the PII identified in this paragraph.

- (3) "County Agency" means the county department of job and family services, the public children services agency, and the child support enforcement agency. This definition is intended to be the same as "County Family Services Agency" used in section 307.981 of the Revised Code.
- (4) "County Agency Contractor" means any governmental or non-governmental entity, which can include an individual, that receives funds from the county agency, whether directly or indirectly, to provide services, assistance, or benefits to individuals or that performs duties or activities for the county agency pursuant to a contract, grant, or other agreement. County agencies authorized to receive FTI to administer temporary assistance for needy families (TANF), supplemental nutrition assistance program (SNAP) and medicaid are prohibited from contracting for services that allow disclosure of or access to FTI in those programs.
- (5) A "final candidate" is an individual, whether or not currently employed by a county agency, who has submitted an application for employment at the county agency and who has received an offer of employment conditioned upon a favorable adjudication of an FBI and BCI fingerprint background check.

(B) Safeguarding FTI using background investigations; general provisions.

- (1) All final candidates, current employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, or temporary service personnel that have access to or use FTI shall be subject to a background check that meets the requirements of IRS publication 1075, "Tax Information Security Guidelines for Federal, State and Local Agencies." Once an initial background check has been successfully completed and the final candidate, current employee, current or prospective intermittent employee, county agency contractor/contract employee, subcontractor, or temporary service personnel is found to be suitable for access to FTI, reinvestigation shall occur at least every ~~ten~~five years, at a minimum, from the date it was initially determined that the individual is suitable for access to FTI, if remaining in a position with access to FTI.
- (2) Effective September 30, 2019, to maintain access to systems containing FTI, all current employees, intermittent employees, county agency contractors/contract employees and temporary service personnel that have access to or use FTI shall have submitted to an FBI and BCI fingerprint background check.

- (3) Effective October 1, 2019, prior to being granted access to FTI, all final candidates, prospective intermittent employees, prospective county agency contractors/contract employees, subcontractors, and prospective temporary service personnel shall complete an FBI and BCI fingerprint background check and investigation that is favorably adjudicated in accordance with the written policy developed by the county agency pursuant to paragraph (B)(5) of this rule.
 - (4) Effective December 31, 2019, to maintain access to systems containing FTI, all current employees, intermittent employees, county agency contractors/contract employees, subcontractors, and temporary service personnel that have access to or use FTI shall have submitted to an FBI and BCI fingerprint background check and investigation that is favorably adjudicated in accordance with the written policy developed by the county agency pursuant to paragraph (B)(5) of this rule.
 - (5) Effective September 3, 2019, county agencies shall develop a written policy requiring all final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary service personnel with access to FTI to submit to an FBI and BCI fingerprint background check and investigation that is favorably adjudicated.
 - (6) Background investigations conducted by the county agencies for final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary services personnel who are or will be granted access to FTI shall include, at a minimum:
 - (a) FBI finger printing (FD-258), a review of federal bureau of investigation (FBI) fingerprint results conducted to identify possible suitability issues.
 - (b) Ohio bureau of criminal investigation (BCI) finger printing, a review of the BCI fingerprint results conducted to identify possible suitability issues.
 - (c) Citizenship/residency. Validate the individual's eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization.)
- (C) Safeguarding FTI using background investigations; policy guidance.
- (1) County agencies are required to have a policy that requires final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary services personnel, who will use or have access to FTI to complete an FBI and BCI fingerprint background check and investigation that is favorably

adjudicated. This policy will identify the process, steps, timeframes, and favorability standards that the county agency has adopted. The policy shall establish the criteria upon which final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary services personnel, would have access to FTI denied or withdrawn. County agencies may use ODJFS' model background check policy, as outlined in the appendix to this rule, or design their own substantial equivalent.

- (2) A county agency shall identify in its policy any criminal convictions that may disqualify final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary services personnel from having access to FTI based upon the criminal record, the nature of the duties of the position held or applied for, and the nature of the access to FTI. County agencies should consult, at a minimum, sections ~~2961.02~~, 2921.02, 2921.41, ~~and 2921.43~~ and 2961.02 of the Revised Code, when identifying potentially disqualifying offenses.
- (3) A county agency shall set forth in its policy or procedure the factors it will consider when determining if an individual with a criminal record should be adjudicated favorably. Factors that county agencies may want to consider are:
 - (a) Relationship of the criminal record to access to the type of FTI used or accessible in the position.
 - (b) Nature of work to be performed.
 - (c) The time that has lapsed since the conviction.
 - (d) The age of the individual at the time of the offense.
 - (e) The seriousness and specific circumstances of the offense, including the type of harm that the individual caused, and/or the legal elements involved in the specific crime committed.
 - (f) The number of offenses on the criminal record.
 - (g) Whether the individual has pending charges.
 - (h) Any evidence of rehabilitation or contrition.
 - (i) Any other relevant information, including that submitted by or on behalf of the individual, or other information obtained by the county agency.

- (4) A county agency shall set forth in its policy or procedure the notification, appeal, and final determination process that it will offer to final candidates, current and prospective employees, intermittent employees, county agency contractors/contract employees, subcontractors and temporary service personnel, for those with convictions who are not favorably adjudicated as being eligible for access to FTI.

(D) Remedial action.

A county agency found to have failed to conduct background investigations in accordance with this rule and IRS publication 1075, or who has failed to create a policy as described in paragraph (B) of this rule, shall be notified of these failures by ODJFS in writing within thirty days after completion of the investigation or review. Any action taken by ODJFS to bring the county agency into compliance with this rule and IRS publication 1075 shall be done pursuant to section 5101.24 of the Revised Code. Examples of remedial action include corrective action plans or the withholding of funds. The county agency is responsible to ensure that county agency contractors or subcontractors that currently have or will have access to FTI or who provide contract employees to county agencies who currently have or will have access to FTI to secure FBI and BCI fingerprint checks that are favorably adjudicated. ODJFS may take action against the county agency pursuant to section 5101.24 of the Revised Code if the county agency fails to obtain compliance by the county agency contractor.

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CERTIFIED ELECTRONICALLY

Certification

03/17/2023

Date

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