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**Background Checks – Federal Tax Information**

(PROVIDED ONLY FOR USE AS A SAMPLE)

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#### **TITLE: Background Checks – Federal Tax Information**

#### **APPLIES:** TO ALL CURRENT AND PROSPECTIVE EMPLOYEES OF AND CONTRACTORS WITH THE STATE OF WASHINGTON WHO ARE OR MAY BE AUTHORIZED TO ACCESS FEDERAL TAX INFORMATION

**LAWS:** RCW:41.04.821

## **EFFECTIVE DATE:** September June 2023

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**Signature of person authorized to sign policy**

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***DISCLAIMER:*** *This policy is intended only as a model policy. Adoption of human resource policies or procedures should only be made after reviewing all governing statutes, rules and other relevant materials. In addition, each employer should consider consulting with their human resource professionals, legal counsel, and appropriate policy decision authorities prior to development or adoption. Finally, departments with employees represented by a labor organization must satisfy its obligation to bargain. Please work with your department’s labor relations expert, and where necessary, your assigned labor negotiator to discuss the scope of the department’s bargaining obligation.*

<<Insert Employer Name Here>> (“the department”) is committed to protecting its information including Federal Tax Information (FTI). IRS Publication 1075 and RCW 41.04.821 requires that the department create a written policy that ensures compliance with IRS standards for persons having access to FTI. This policy, procedure and sample of completed background investigations will be available for inspection during an on-site safeguard review.

## For represented employees, the Collective Bargaining Agreement will supersede any specific provisions of this policy with which this conflicts. (*Note: This sentence is optional for agencies to include in their policies*).

## Purpose

The purpose of this policy is to define and establish procedural guidelines, background check requirements, timeframes and suitability standards for individuals in identified positions with access to FTI.

## Background Check Scope

This policy applies to all current employees, applicants for employment, volunteers, work-study students, contractors and sub-contractors (“individuals”) who are or may be authorized by the department to access FTI as part of their job duties. See Appendix A for a list of all identified positions.

General Provisions

Background check requirements are conducted in conjunction with the Washington State Patrol and the Federal Bureau of Investigation (FBI). It is the duty of the Appointing Authority or designee to ensure that all necessary steps have been completed before an employee is allowed access to FTI. This requirement must be noted in the employee’s Position Description Form and applicable recruitment announcements (see the recruitment section on page 3 for specific recruitment language). The department must complete a suitability background investigation that is favorably adjudicated. The individual will not be allowed access to FTI until the individual passes all required background checks with a favorable rating under the department’s Suitability Standards below.

All background checks must encompass:

1. Federal Bureau of Investigation Fingerprinting;
2. Local Law Enforcement Check; and
3. Citizenship/Residency check

**Suitability Standards**

Suitability Standards means the criteria for determining an individual’s suitability to have access to FTI. The suitability standards will be established by the department employing the individual. A person’s identifiable character traits and conduct are sufficient to decide whether an individual’s employment or continued employment would or would not protect the department and its use and storage of FTI.

Suitability standards would include criminal information obtained through the FBI and local law enforcement check, confirmation of citizenship, and any other criteria the department determines is applicable, as stated in this policy. (*Note: Each department must include this criterion in this policy*).

A criminal record will not automatically disqualify an individual from employment consideration or from access to FTI. The department will consider various factors in evaluating whether a conviction disclosed by an applicant warrants revoking a conditional offer of employment.

*Note: Agencies must immediately establish an unfavorable background investigation result criterion which, if found, would result in preventing or removing an employee’s or contractor’s access to and use of FTI.*

The department must consider any of the following factors to the extent the department deems any of them pertinent to the information obtained regarding the individual’s suitability:

* The nature of the position for which the individual is applying or in which the individual is employed;
* The nature, frequency and seriousness of the conduct;
* The circumstances surrounding the conduct;
* The recency of the conduct;
* The age of the person involved at the time of the conduct; and
* The absence or presence of rehabilitation or efforts towards rehabilitation.

**Reinvestigation Check Requirements**

IRS Pub 1075 requires that a reinvestigation of employees must be conducted within 5 years from the date of the previous background investigation for each individual having access to FTI. Re-investigations will encompass the full 5-year period.

**Recruitment**

When the department announces openings for any covered position that requires a criminal background check by operation of state or federal law, the announcement shall state the following**: “***Prior to a new hire, a background check including criminal record history will be conducted. Information from the background check will not necessarily preclude employment but will be considered in determining the applicant’s suitability and competence to perform in the position.”*

**Retention of Background Check Results**

The department must retain and store background check authorization forms, result notifications and information according to the Washington State General Retention Schedule [or the Department’s Unique Retention Schedule].

**Confidentiality of Records**

Except as otherwise required or expressly permitted by state or federal law, a criminal history obtained by the department shall be confidential and shall not be disclosed unless required by federal or state law. Any unauthorized disclosure (intentional or unintentional) shall be reported to the department HR Office immediately. Persons who release or use this information without proper authorization may be subject to disciplinary action up to and including dismissal. Disclosures that violate criminal laws may also be referred to prosecuting authorities. Background check result documentation shall not be maintained as part of an employee’s personnel file but in a separate, confidential “background check file.”

Procedure

[*Note: This procedure section will vary upon each employer. Below is a checklist of items to include in the department’s FTI Background Check Procedure:*]

* Internal Processing Procedures
* List of Potentially disqualifying Crimes
* Background Check Results - Handling and notification to employee
* Mandatory Duty to Report Arrests and Convictions
* Unfavorable Background Check - Handling and notification to employee and/or applicant and any appeal rights

Definitions

***Background Check*** means all necessary checks required in order to have access to **FTI**. 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.

***Citizenship Requirement Check*** means to validate an individual’s eligibility to legally work in the United States. Utilizes Form I-9. (e.g., a United States citizen or foreign citizen with the necessary authorization).

***Federal Tax Information (FTI)*** consists of tax returns or tax return information, or both tax returns and tax return information. 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.

***FBI Fingerprinting (FD-258)*** means review of FBI fingerprint results conducted to identify possible suitability issues. A check of federal and state criminal records conducted by the FBI through an agreement with the Washington State Patrol, when authorized by federal and state law. (Contact WSP for the correct procedures to follow.)

**Identified Position** are all positions that have or may have access to **FTI**. A list of all “**FTI** covered positions” within the department is provided in Appendix A to this Policy.

***IRS Publication 1075*** is a publication issued by the IRS that gives detail requirements for governmental agencies and their employees that have access to **FTI**. This publication provides guidance to ensure the policies, practices, controls, and safeguards employed by recipient agencies, agents, or contractors (including subcontractors) adequately protect the confidentiality of **FTI**.

**Local Law Enforcement Check** means a 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. This 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.

***Suitability Standards*** means the criteria for determining an individual’s suitability to have access to **FTI** *(note: the suitability standards will be established by the department employing the individual*).

**References**

Executive Order 16-05, Building safe and strong communities through successful reentry. Retrieved from <http://www.governor.wa.gov/sites/default/files/exe_order/eo_16-05.pdf> on June 2023.

IRS Publication 1075, November 2021 Revision. Retrieved from <https://www.irs.gov/pub/irs-pdf/p1075.pdf> on June 16, 2023.

U.S. Equal Employment Opportunity Commission. Retrieved from https://www.eeoc.gov/laws/guidance/background-checks-what-employers-need-know On June 16, 2023

**Version History**

Version 2- Updated September 18, 2023.

* Updated order under “All background checks must encompass” section to mirror the IRS 1075 publication (page 53).
* Updated “Reinvestigation Requirement” to change the 10-year reinvestigation requirement from every 10 years to every five years. This requirement was updated in the IRS Publication 1075 in 2021 (Section 2.C.3 Background Investigation Minimum Requirements page 53).
* Updated reference list.

**Appendix A: Covered Positions for FTI**

Position # and Position Title