


State of Vermont Agency of Human Services (AHS)

Policy Title: 5.26 Federal Tax Information Related Background Checks	Revision Date: 8/1/21, 1/1/22
Attachments/Related Documents:	Revision Number: 1.1
Name/Title of Authorizing Signature: Jenney Samuelson, AHS Interim Secretary	Effective Date: 1/1/22
<input checked="" type="checkbox"/> Trauma Informed Review	
<input type="checkbox"/> Racial Equity Review	

Authorizing Signature: 

POLICY STATEMENT:

The purpose of this policy is to establish the procedure for conducting background investigations of current and prospective employees, AHS partners, contractors, subcontractors and volunteers who have access to Federal Tax Information (FTI) through the Agency of Human Services (AHS). This policy also establishes the criteria for determining if specific criminal activity disqualifies a current or prospective employee from having access to federal tax information. This policy clarifies Agency procedures necessary to ensure the security and confidentiality of the taxpayer information entrusted to the Agency.

BACKGROUND:

Four departments in the Agency of Human Services handle sensitive Federal Tax Information: Children and Families, Health, Mental Health and Vermont Health Access. FTI consists of federal tax returns and information that may be received directly from the Internal Revenue Service (IRS) or obtained through an authorized secondary source like the Social Security Administration. FTI may include personally identifiable information such as name, address, telephone number, bank account number, date and place of birth, or Social Security Number. FTI is subject to strict confidentiality protections and safeguarding requirements (see Authorities section). State agencies, such as AHS that access FTI, must ensure that background investigations and re-investigations are conducted every 5 years on any individual whose job duties include access to FTI. Vermont law authorizes fingerprint supported checks of current and prospective employees, contractors, subcontractors, and volunteers who have access to FTI. [3 V.S.A. chapter 10.](#)

DEFINITIONS:

FTI: Federal Tax Information includes return or return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient that is derived from federal return or return information received from the IRS or obtained through a secondary source.

SCOPE:

Before allowing employees access to FTI as part of their job duties, the Agency must ensure that each individual completes a fingerprint supported criminal background check administered by the Vermont Crime Information Center (VCIC). The Agency will review the local, State, and national records returned by the background check for any potentially disqualifying information before making a final hiring decision. If the Appointing Authority or designee determines that the record shows disqualifying information, then the offer of employment shall be revoked. If a current or prospective employee submits inaccurate or misleading information, then the offer of employment shall be revoked. This background check requirement applies to all current and new employees, contractors, subcontractors and volunteers. Background checks must be done once every five-year period. Temporary employees who are hired and re-hired more than once will only have to complete the background check once per five-year period.

PROTOCOL:

- **Recruitment:** All recruitment announcements for employment positions that have access to FTI shall include notice of the requirement to successfully complete local, state and national fingerprint supported criminal background checks as required by the IRS and as authorized by state law.
- **Offer:** At the time of any offer of employment or throughout the course of employment if appropriate, the Agency shall notify the individual of the background check requirement and obtain the individual's written authorization before initiating any background check. The notice shall inform the individual of this policy on background checks and of their right to challenge the accuracy of the record by appealing to the VCIC. Individuals who decline to provide their fingerprints or other information necessary to carry out the background check shall be considered to have declined the employment offer or rescind current employment.
- **FBI Fingerprinting (FD-258):** The hiring manager will be responsible for ensuring fingerprinting appointments are scheduled as soon as possible after an offer of employment is made. The department will cover the cost of fingerprinting. The hiring manager is responsible for working with DHR to obtain pertinent forms.
- **Receipt of the Record:** VCIC will send the federal, state, and local criminal history records to the Department of Human Resources.
- **Review of the Record:** Results of the background check shall be reviewed by the Appointing Authority or designee and the human resources manager for potentially disqualifying information as set out in the Disqualifying Criteria below.
 - **No Criminal Record.** If no criminal history records are returned by the background check, the hiring process may continue.
 - **Criminal Record.** If a criminal record is returned by the background check, then the Appointing Authority or designee shall determine whether the criminal record is automatically disqualifying or whether an individualized review by the relevant department management is necessary under the Disqualifying Criteria.
 - **Notification and opportunity to complete record.**

- I. Any criminal history records returned by the background check must be forwarded to the individual.
 - II. The individual must be informed in writing of:
 1. the policy on background checks;
 2. the individual's right to challenge the accuracy of the criminal history record by appealing to the VCIC; and,
 3. the opportunity to explain the information about the individual's background within 10 business days, then the Appointing Authority or their designee and the relevant department management may make a final determination.
 - III. If the individual does not respond to the department's attempt to gather additional information about the individual's background within 10 business days, then the Appointing Authority or their designee and the relevant department management may make a final determination.
- **Final Determination:** After consideration of the additional information provided by the individual, if any, the Appointing Authority or their designee, and the relevant department management shall make a final, written determination and notify the individual in writing of the final determination. The final determination must take into consideration:
 - The nature of the job sought;
 - The nature of the offense;
 - The age of the offense;
 - The gravity of the offense; and,
 - Any evidence of rehabilitation including evidence provided by the individual.
 - **Revocation of Offer:** If the individual's criminal history records contain automatically disqualifying information, then any offer of employment or if pertinent current employment shall be revoked. If the department's final determination is that the individual's criminal history records contain disqualifying information indicating that the individual is unfit to have access to FTI, then any offer of employment or current employment shall be revoked.

DISQUALIFYING CRITERIA

- **Automatically disqualifying information:** the agency's disqualifying criteria policy is that no current or prospective employee or other individual shall be given access to FTI if the individual's criminal record contains a conviction of a felony within the last five (5) years of the date of the most recent criminal background check or any time thereafter.
- **Potentially disqualifying information:** If an individual has been convicted of a crime not included in paragraph 9, above, the individual is not automatically disqualified from having access to FTI. The determination of whether such an individual may have access to FTI will be made on an individual basis. The primary consideration will be the relatedness of the crime to the qualifications, functions, or duties of the specific employment sought by the individual. Other considerations will include but not be limited to:
 - The facts or circumstances surrounding the offense or conduct, particularly if it is a crime of dishonesty, embezzlement, theft, fraud, or conviction of any other financial crime;
 - The number of offenses for which the individual was convicted;
 - The amount of time passed since the conviction, or release from prison;
 - Evidence that after conviction the individual performed the same type of work; with the same or a different employer, with no known incidents of criminal conduct;
 - The length and consistency of employment history before and after the offense or conduct;
 - Rehabilitation efforts, e.g., education/training;
 - Employment or character references, and any other information regarding fitness for the particular position; and,
 - Whether the individual is bonded under a federal, state, or local bonding program.

RECORD SECURITY AND RETENTION

- All employment decisions shall be made based upon the official record obtained from the background check by VCIC. Only the Appointing Authority or their designee, department management, and/or personnel of the Department of Human Resources with a legitimate “need to know” will be advised by VCIC of the records returned from the background check.
- All background check records, regardless of content, shall be stored in a secured location and destroyed in accordance with state and federal law and regulations.
- All background check records are exempt from public inspection and copying under the Vermont Public Records Act and shall be kept confidential by the agency. Background check records shall not be shared with any person within or outside of the Agency of Human Services or the Department of Human Resources, except as necessary and consistent with state and federal law and regulations.
- The Agency cannot be held liable for errors in the records received from the background check by VCIC. If there are errors, it is the individual’s responsibility to have the record corrected.

AUTHORITIES:

FTI requirements are set out in IRS Publication 1075 (section 2.C.3), November 2021. See, 26 U.S.C. § 6103(p)(4); Treas. Reg. § 301.6103(p)(4)-1.

Criminal Justice Information Services (CJIS) policy/authority which is updated every 6-12 months can be found at <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>

Act 58, Sec. 1. 3 V.S.A. § 241, amended to allow background investigations of current or prospective employees, AHS partners, volunteers, contractors or subcontractors, to whom the Recipient will permit access to FTI for the purpose of assessing the individual’s fitness to be permitted access to FTI.

REFERENCES:

S.134 (Act 58), signed by the governor on June 10, 2019

Sec. 1. 3 V.S.A. § 241 The recipient shall conduct an initial background investigation of any individual, including a current or prospective employee, volunteer, contractor, or subcontractor, to whom the recipient will permit access to FTI for the purpose of assessing the individual’s fitness to be permitted access to FTI.