

RULE

**Department of Revenue
Policy Services Division**

**Criminal History Record Checks for Access to
Federal Tax Information (LAC 61:I.103)**

Under the authority of and in accordance with R.S. 15:587.5, 47:1504.1, 47:1511, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division has adopted LAC 61:I.103 to provide for the principles and procedures to be utilized in the fingerprinting and criminal history record checks of current and prospective employees, contractors and subcontractors with access to federal tax information. Fingerprinting and criminal history record checks have been mandated by Act 147 of the 2017 Regular Session, which is now R.S. 15:587.5.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 1. Office of the Secretary

**§103. Criminal History Records Checks for Access to
Federal Tax Information**

A. Introduction and Purpose

1. Safeguarding federal tax information (FTI) is critically important to the continuous protection of taxpayer confidentiality as required by the IRS statute found at 26 USCS 6103(p)(4) and its supplemental publication 1075. The Department of Revenue will conduct fingerprinting, along with national, state and local criminal history record checks on all individuals handling and those who may handle FTI in order to ensure the Department of Revenue is making a complete effort to protect the sensitive information of all taxpayers and complying with federal confidentiality laws and background investigation standards. The criminal history record checks will be used to determine the suitability of individuals to access FTI in performance of their job duties or services for the Department of Revenue. In determining suitability, the Department of Revenue will use information obtained through the criminal history record check to identify trends of behavior that may not rise to the criteria for reporting to the FBI or state database, but are a good source of information about the individual.

B. Applicability

1. This regulation applies to all current employees, prospective employees, contractors and subcontractors of the Department of Revenue.

C. Definitions

Criminal History Record Check—a review of an individual’s criminal history on the national level through the use of fingerprints sent to the Federal Bureau of Investigation (FBI), the state level, through the use of fingerprints sent to the Louisiana Bureau of Criminal Identification and Information and the local level, through various local law enforcement agencies.

Department—the Louisiana Department of Revenue.

Federal Tax Information (FTI)—consists of federal tax returns and return information (and information derived from it) that is in the department’s possession or control which is covered by the confidentiality protections of the

Internal Revenue Code and subject to its safeguarding requirements, including IRS oversight.

FTI Suitable (no reports)—an employee, contractor or subcontractor who is suitable to access federal tax information in the performance of his duties, function or service at the department.

FTI Suitable (with reports)—an employee, contractor or subcontractor where information was received during the criminal history record check process that indicated there were criminal cases, convictions, arrests or serious misconduct but a determination was made based upon compelling reasons, to allow access to FTI in the performance of his duties, function or service at the department.

FTI Unsuitable—an employee, contractor or subcontractor who is not suitable to access federal tax information in the performance of his duties, function or service at the department.

D. General Provisions for Criminal History Record Checks

1. Every current employee, prospective employee, contractor or subcontractor identified as having or who will have access to FTI, shall sign a written authorization to have the fingerprinting and criminal history record check performed.

2. Criminal history record checks will include, at minimum, a national check through the use of fingerprints that are sent to the FBI, a state check, through the use of fingerprints sent to the Louisiana Bureau of Criminal Identification and Information along with a local check, through various local law enforcement agencies.

3. Criminal history record checks will be completed, at minimum, every 10 years.

4. Criminal history record checks will only be done on prospective employees after a conditional offer of employment is signed by the prospective employee.

5. Background checks on prospective contractors must be done prior to the contractor beginning work on the contract.

E. Suitability Standards

1. Whether a current or prospective employee, contractor or subcontractor is deemed to be “FTI suitable (no reports),” “FTI suitable (with reports),” or “FTI unsuitable” is determined by the factors contained in the following table.

Designation	Criminal History Record Check Results
FTI Suitable (No Reports)	No reports of open criminal cases, convictions, arrests or serious misconduct
FTI Suitable (With Reports)	<ul style="list-style-type: none"> • No reports of open criminal cases, convictions, arrests or serious misconduct with relevance to the duties of the position or access to FTI • Reports of open criminal cases, convictions, arrests or serious misconduct relevant to the duties of the position or access to FTI; but, compelling mitigating documentation has been provided • Reports of criminal cases, convictions, arrests or serious misconduct that occurred 10 or more years prior to the date of the criminal history record check <ul style="list-style-type: none"> - The criminal case, conviction, arrest or serious misconduct cannot be one or of the nature discussed in the FTI Unsuitable category. - The current or prospective employee, contractor and/or subcontractor shall submit a detailed explanation. - The detailed explanation will be reviewed to determine FTI suitability.
FTI Unsuitable	Reports of criminal cases, convictions, arrests or serious misconduct that includes but is not limited to:

Designation	Criminal History Record Check Results
	<ul style="list-style-type: none"> • Misappropriation Crimes* • Computer Related Crimes* • Offenses Affecting Organized Government, subparts B through F* • Tax, Alcohol Beverage, Tobacco or Charitable Gaming offenses where the federal or state statute exposes the offender to a penalty of imprisonment, with or without hard labor <ul style="list-style-type: none"> - The asterisk (*) indicates a specific category of various related crimes that are listed in Title 14 of the Louisiana Revised Statutes. - Compelling or mitigating documentation must be provided to show the offense is irrelevant to FTI suitability.

2. Any criminal history record check that does not result in a determination of FTI suitable (no reports) will be reviewed on a case by case basis.

3. The case by case assessment of all open criminal cases, convictions, arrests, or reports of misconduct shall take into consideration all the items/factors below:

- a. the nature of the offense;
- b. the relation of the offense to the duties of the employee, contractor or subcontractor;
- c. any aggravating or mitigating circumstances, including the passage of time; and
- d. any evidence of rehabilitation of the subject or the lack thereof.

F. Impact of Suitability Determination

1. Prospective and current employees as well as contractors and subcontractors who have been deemed FTI suitable (no reports) or FTI suitable (with reports) will be able to exercise one of the options below that is applicable to their status:

- a. continue to or be allowed to access FTI in the performance of job duties;
- b. continue to or be allowed to access FTI in the performance of job duties with special restrictions or caveats; or
- c. be considered for a vacant position with FTI access.

2. If a current or prospective employee, contractor or subcontractor has been deemed FTI unsuitable, the department will exercise one of the options below:

- a. access or use of FTI will immediately be denied, suspended or prevented;
- b. the job offer may be rescinded;
- c. the contract may be terminated; or
- d. the contractor or subcontractor's employee may be removed or prohibited from performing work on the contract.

3. A determination of FTI unsuitable may be appealed using the procedures outlined in Subsection G of this Section.

4. A successful appeal is the only mechanism in which the impact of a FTI unsuitable determination can be avoided.

G. Appeal Procedures

1. In the event the criminal history record check reveals information that leads to a determination of FTI unsuitable for a current or prospective department employee, contractor or subcontractor, the impacted person will be notified. This notification will also inform the impacted person of their right to challenge the accuracy of the criminal history record check.

2. The impacted person will have 30 days to present documentation to refute or mitigate the determination.

3. The department will review the documentation and notify the impacted person of its determination. The department may also use this information to request a new or updated criminal history record check, if allowed by the national, state and/or local law enforcement agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.5, R.S. 47:1504.1 and R.S. 47:1511

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:000 (January 2018).

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Secretary

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