

NOTICE OF INTENT

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, through this Notice of Intent, signals its intention to adopt a rule 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 La. R.S. 15:587.5 and the Department of Revenue, has a need for a rule to set forth clarification and detail regarding the factors the Department of Revenue, will use to comply with the statute and to determine suitability to access federal tax information.

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 U.S.C.S. 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)	<ul style="list-style-type: none"> • 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

	<p>includes but is not limited to:</p> <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.
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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.

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 43: _____ (October 2017).

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.
2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. Implementation of this proposed Rule will have no effect on the functioning of the family.
4. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.
5. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Rule will have no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule will impact the provider in the following manner:

1. The proposed Rule may require the department to hire two additional “When Actually Employed” (WAE) human resource analysts for approximately three months in order to process the high volume of criminal history record checks that will need to be conducted on current and prospective employees, contractors and subcontractors along with providing the same level of service.
2. The department anticipates having to provide for fingerprinting and criminal history record checks on approximately 705 employees at a cost of approximately \$33,840 and on approximately 132 new hires at a cost of \$6,336, resulting in a total cost of \$40,176. The cost of the additional WAE human resource analysts is estimated to be \$19,200. The department will bear indeterminable, variable costs related to employees and prospective employees who submit fingerprints at local law enforcement agencies that can charge up to \$15. The department will incur these costs in order to provide the same level of service while conducting and processing the necessary criminal history record checks.
3. With the addition of two WAE human resource analysts, the department should have no problem providing the same level of service while conducting and processing the necessary criminal history record checks.

Public Comments

Interested persons may submit written data, views, arguments, or comments regarding this proposed rule to Mia Strong, Attorney, Office of the Secretary, by mail to P.O. Box 66258, Baton Rouge, LA 70896 or by fax to (225) 219-2708. All comments must be received no later than 5 p.m., November 27, 2017.

Public Hearing

A public hearing will be held on November 29, 2017 at 1:30 p.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson

Date

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Kimberly Lewis Robinson

Date

Fiscal and Economic Impact Statement For Administrative Rules

Person preparing
statement:
Phone:
Return Address:

Ed Landry
(225) 219-2797
617 North Third Street
Baton Rouge, LA 70802

Department: Revenue
Office: Tax Administration Division
Rule Title: LAC 61:I.103
Date Rule
Takes Effect: January 20, 2018

Summary

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. The following summary statements, based on the attached worksheets, will be published in the *Louisiana Register* with the proposed agency rule.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be a one-time implementation cost of approximately \$60,000 plus an indeterminable cost for local criminal history checks in FY 18 and a recurring marginal but indeterminable cost in subsequent fiscal years as a result of the proposed rule.

The proposed rule requires the Louisiana Department of Revenue (LDR) to perform local, state, and national criminal history record checks on current and prospective employees, contractors and subcontractors that have access to federal tax information (FTI). Implementation costs for FY 18 are estimated at \$40,176 for the cost of state and federal criminal history record checks, \$19,200 for temporary personnel to process the initial checks for current employees and an indeterminable amount associated with local criminal history record checks. LDR's budget for FY 18 includes \$40,000 for criminal history record checks. Implementation cost amounts above the budgeted amount for the current fiscal year will come out of LDR's current year budget allocation. In subsequent years marginal expenditures related to employee turnover are expected. Also, LDR is required to repeat the local, state and national checks at least once every 10 years, the cost of which is indeterminable at this time.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will increase revenues for the statutorily dedicated Criminal Identification and Information Fund by an estimated \$31,806 in FY 18 and an indeterminable, though likely marginal, amount in subsequent years. To the extent LDR obtains local criminal history record checks, revenues would accrue to local governmental entities by an indeterminable amount.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

This rule will affect current and potential employees, contractors and subcontractors of LDR. No significant effect on workload, costs, or paperwork is anticipated for the affected persons. Persons being found "FTI unsuitable" will be denied access to FTI. In extreme cases, a contractor or subcontractor's contract may be terminated. The department does not have the information needed to estimate any of these impacts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Prospective employees, contractors and subcontractors will be notified of this requirement during the application process (even though the actual checks will not be done until a prospective employee, contractor or subcontractor has been chosen). People who do not believe they can meet this requirement will likely remove themselves from the process without LDR's knowledge. However, the degree to which the rule will affect aggregate competition and employment is indeterminable.

Signature of Agency Head or Designee

Kimberly Robinson, Secretary
Typed Name and Title of Agency Head or Designee

Date of Signature

Legislative Fiscal Officer Designee

Greg Albrecht, Chief Economist
Typed Name of Legislative Fiscal Officer Designee

Date of Signature