

<b>TRAINING AND EMPLOYMENT NOTICE</b>	<b>NO.</b> 5-17
	<b>DATE</b> July 31, 2017

**TO:** STATE WORKFORCE AGENCIES  
STATE WORKFORCE ADMINISTRATORS  
STATE WORKFORCE LIAISONS

**FROM:** BYRON ZUIDEMA  
Deputy Assistant Secretary



**SUBJECT:** Required Background Investigations for Employees and Contractors Who Access Federal Tax Information

- 1. Purpose.** To advise State Unemployment Insurance (UI) agencies of the need to conduct background investigations on agency or contract staff that use or plan to use Federal Tax Information (FTI) in the performance of their jobs. This Internal Revenue Service (IRS) requirement is designed to ensure appropriate safeguards are in place to protect FTI to the greatest extent possible.
- 2. Background.** Section 6103 of the Internal Revenue Code outlines the confidentiality and disclosure requirements for federal tax returns and the information contained therein. In September, 2016, the IRS issued Publication 1075, which provides additional guidance on the methods and requirements that are to be employed to safeguard FTI. The latest revision to Publication 1075 specifies elements that require state UI agencies to implement procedures to comply with the IRS Safeguards requirements related to the use of FTI. Specifically, Sections 5.1.1 and 5.1.2 outline minimum requirements for background investigations for all employees, contractors, and subcontractors (if authorized) who access or will require access to FTI within state agencies, including the UI agency, in the performance of their work duties. These safeguard requirements pertain to current employees and contractors and newly hired employees and contractors. The requirements do not mandate that state and local agencies perform background investigations on all applicants prior to an offer of employment; however, a background investigation meeting the minimum requirements set out in the attachment below must be completed before a newly hired employee is allowed access to FTI.

The background investigations component of the IRS Safeguards requirements became effective September 30, 2016. IRS Safeguards staff communicated the summary of new Safeguards requirements via conference calls with designated UI agency FTI point(s) of contact. FTI data recipients were instructed to review the updated version of IRS Publication 1075 for complete details related to the new Safeguards requirements. Effective October 1, 2017, states that have not implemented the background investigations requirement will be subject to an IRS Safeguards Corrective Action Plan to remediate this IRS Safeguards requirement.

Generally, state UI agency staff that access FTI include staff working in Tax Operations, but may also include staff working in Benefit Payment Control, Appeals, Internal Security, and Information Technology. States should coordinate efforts with their human resources department to identify all program areas and staff that may access FTI and develop policies and procedures to ensure compliance with the IRS Safeguard requirements. Further, states with centralized, consolidated or inter-agency organizational units that include UI staffing and UI functions will need to communicate these IRS Safeguard requirements to all appropriate parties and ensure the background investigations component is applied uniformly.

3. **Action Requested.** State UI agencies are required to access FTI to perform federally-mandated UI program integrity initiatives. Accordingly, State UI agencies must ensure the background investigations component is implemented by September 30, 2017 and that it meets the minimum requirements outlined in IRS Publication 1075. An excerpt of Publication 1075 regarding the minimum requirements and implementation procedures for background investigations is attached.
4. **Inquiries.** Questions related to IRS Publication 1075 IRS Safeguards regarding background minimum requirements or implementation procedures should be emailed to [SafeguardReports@irs.gov](mailto:SafeguardReports@irs.gov). Questions related to the guidance in this memorandum, or its attachment, may also be directed to the appropriate Regional Office.
5. **Attachment.** Excerpt – Publication 1075, Sections 5.0 – 5.1.2

## **Excerpt – IRS Publication 1075 (September 2016)**

### ***5.1.1 Background Investigation Minimum Requirements***

Determining the suitability of individuals who require access to U.S. government Sensitive But Unclassified (SBU) information, including FTI, is a key factor in ensuring adequate information security. Prior to granting access to FTI, and periodically thereafter, the Agency must complete a suitability background investigation which is favorably adjudicated by the Agency.

Federal agencies must conduct a suitability or security background investigation based on the position sensitivity of the individual's assigned position and risk designation associated with the investigative Tier established by the Federal Investigative Standards (FIS). Granting access to FTI requires a Tier 2 level investigation at a minimum.

A FIS Tier 2 standard background investigation meets the suitability investigative requirement for non-sensitive positions designated as moderate risk public trust (requested using Standard Form 85P). Investigations conducted at Tiers 2-5 meet the minimum standard for an employee or contractor access to FTI. Federal agencies may be asked to provide evidence that the required BI was conducted for each individual granted access to FTI. FIS standards require reinvestigation every five years at a minimum.

State and local agencies which are not required to implement the federal background investigation standards must establish a personnel security program that ensures a background investigation is completed at the appropriate level for any individual who will have access to FTI using the guidance below as the minimum standard and a reinvestigation conducted within 10 years at a minimum.

- Agencies must develop a written policy requiring that employees, contractors and sub-contractors (if authorized), with access to FTI must complete a background investigation that is favorably adjudicated. The policy will identify the process, steps, timeframes and favorability standards that the agency has adopted. The agency may adopt the favorability standards set by the FIS or one that is currently used by another state agency, or the Agency may develop its own standards specific to FTI access.
- The written background investigation policy must establish a result criterion for each required element which defines what would result in preventing or removing an employee's or contractor's access to FTI.
- Agencies must initiate a background investigation for all employees and contractors prior to permitting access to FTI.
- State agencies must ensure a reinvestigation is conducted within 10 years from the date of the previous background investigation for each employee and contractor requiring access to FTI.

- Agencies must make written background investigation policies and procedures as well as a sample of completed employee and contractor background investigations available for inspection upon request.
- Background investigations for any individual granted access to FTI must include, at a minimum:
  - a) FBI fingerprinting (FD-258) - review of Federal Bureau of Investigation (FBI) fingerprint results conducted to identify possible suitability issues. (Contact the appropriate state identification bureau for the correct procedures to follow.) A listing of state identification bureaus can be found at: <https://www.fbi.gov/services/cjis/identity-history-summary-checks/state-identification-bureau-listing>.

This national agency check is the key to evaluating the history of a prospective candidate for access to FTI. It allows the Agency to check the applicant's criminal history in all 50 states, not only current or known past residences.

- b) 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.

The local law enforcement check 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.

- c) Citizenship/residency – Validate the subject's eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization).

Employers must complete USCIS Form I-9 to document verification of the identity and employment authorization of each new employee hired after November 16, 1986, to work in the United States. Within 3 days of completion, any new employee must also be processed through E-Verify to assist with verification of his/her status and the documents provided with the Form I-9. The E-Verify system is free of charge and can be located at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify). This verification process may only be completed on new employees. Any employee with expiring employment eligibility must be documented and monitored for continued compliance.

### ***5.1.2 Implementing the Background Investigation Requirement***

The requirements of Section 5.1.1 pertaining to initial and periodic background investigations for individuals before authorizing access to FTI is effective upon date of this publication. Implementation of the new standards, including the development of written policies and verification that all individuals with access to FTI have an appropriate level of investigation and initiating new required investigations to comply with the requirement may occur within one year.

Upon publication, agencies should initiate action to establish a written background investigation policy that conforms to the standards of Section 5.1.1. Agencies should also identify all employees or contractors who currently have access to FTI and have not completed the required personnel security screening and initiate a background investigation which meets these standards. Agencies should initiate a background investigation for all newly hired employees and contractors who will require access to FTI to perform assigned duties as soon as practicable upon notification of the requirement.

Federal agencies that completed a Moderate-Risk Background Investigation (MBI) or higher, for individuals with access to FTI, prior to the October 2014 implementation date of the FIS Tier 2 standard investigation, have met the minimum standard and no further investigation is needed so long as reinvestigation is timely scheduled. Individuals granted access to FTI based on a National Agency Check with Inquiries (NACI) is not sufficient and a Tier 2 investigation should be initiated for continued access to FTI.

Agency implementation efforts to achieve full compliance with the minimum background investigation requirement may vary based on based on state legislation, budget and labor relation hurdles. Some state agencies have published standards which meet or exceed these requirements while others may have minimal or no standards established for background investigations. The expectation is that all agencies receiving FTI will take the steps necessary towards full compliance with this requirement.

As a part of the annual Safeguard Security Report, (SSR), and during an agency on-site review, compliance with and efforts underway to achieve compliance will be evaluated. Any deficiencies will be documented in the agency's Corrective Action Plan, (CAP), and there will be an expectation that each agency response includes an update on progress and a plan to continue moving forward towards compliance.