

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, following is a concise explanatory statement:

AGENCY: Rhode Island Department of Administration

DIVISION: Human Resources

RULE IDENTIFIER: 220-RICR-40-00-02

RULE TITLE: IRS Publication 1075 – Background Check Process and Criteria

REASON FOR RULEMAKING: The reason for promulgation is to comply with IRS Publication 1075, which requires a national background check for individuals with access to "Federal Tax Information," as defined by the IRS. The State (Taxation and Child Support Enforcement) is facing IRS audit findings for failing to implement the background check requirements. As a worst case scenario, continued audit findings and failure to implement IRS requirements could result in the IRS shutting off access to crucial information that the State uses to collect significant revenue. Article 3, Sections 5-7, of the Governor's Budget enacts R.I. Gen Laws § 36-3-16 and § 37-2-81, which expressly authorize these background checks and the promulgation of regulations. These regulations set out the process and criteria required to facilitate the background checks as required by the IRS.

IRS Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies ("Publication 1075") is available on the IRS' website at <https://www.irs.gov/pub/irs-pdf/p1075.pdf>.

Publication 1075, in pertinent part, requires that a criminal background investigation be conducted for all applicants and employees who are given access to Federal Tax Information ("FTI"). FTI, as defined in Publication 1075, includes federal tax return or return information received directly from the IRS or obtained through an authorized secondary source, such as the Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an Internal Revenue Code ("IRC") 6103(p)(2)(B) Agreement. FTI expressly excludes information received directly from taxpayers or other third-parties. See IRS Publication 1075 Section 1.4.4.

Publication 1075 expressly requires that the background check include:

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)

See Publication 1075, Section 5.1.1 (Page 27).

In order to comply with Public Law (Pub. L.) 92-544 and use the FBI's background check system, the State was required to pass legislation expressly authorizing these background checks. Upon passage, the Department is now promulgating regulations to provide the review criteria and provide the process to implement the background check requirements.

TESTIMONY AND COMMENTS: See attached "Summary of Comments and Responses" document outlining changes made in response to comments and reasons for not accepting other arguments.

CHANGE TO TEXT OF THE RULE: See attached "Summary of Comments and Responses" detailing and explaining the changes made to the proposed regulation.

REGULATORY ANALYSIS: Rhode Island is required to implement these background checks by the Federal Government and specifically the IRS. Failure to do so would result in additional audit findings and possible sanctions which could be significant.

From a policy standpoint, it makes sense to require national background checks of employees and vendor employees with access to sensitive federal tax information (provided by the federal government) of our citizens. The societal benefit is additional protection of this sensitive information for the benefit and identity protection of the citizens of Rhode Island. This protection of confidential and sensitive information far outweighs the minimal cost of requiring and conducting these background checks.

The State cost to implement background checks for existing employees for a 10-year period is estimated at \$35,000 (1000 employees x \$35 cost per background check). Applicants and vendors will cover the per person cost (\$35), which is estimated to be less than 100 per year.