

TITLE 220 – DEPARTMENT OF ADMINISTRATION

CHAPTER 40 – HUMAN RESOURCES

SUBCHAPTER 00 – N/A

PART 2 – IRS Publication 1075 – Background Check Process and Criteria

2.1 Statement of Need/Purposes

A. Statement of Need

1. Employees and contractors of the State of Rhode Island (“State”) may, in some circumstances, have access to and/or work with confidential information including, but not limited to, federal tax return information, healthcare records, financial information, and confidential business records. The State has an obligation to protect such information from unauthorized inspection or disclosure. As part of this obligation, the State must comply with the requirements of Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies. These requirements include a background check of individuals who have access to sensitive information.

B. Purpose

1. To set forth procedures governing administration of the provisions of Publication 1075, Tax Information Security Guidelines for Federal, State and Local Agencies.
2. To provide requirements for individuals across the Executive Branch of State government with access to certain confidential, protected information.
3. To establish criteria for disqualification for positions with access to Federal Tax Information (FTI) as defined below.
4. To establish a process for background checks required by federal law.

2.2 Authority

- A. Internal Revenue Code (“IRC”) 6103(p)(4)(C) provides: “[A]ny appropriate State officer (as defined in section 6104(c)) . . . shall, as a condition for receiving or return information . . . (C) restrict, to the satisfaction of the Secretary [of the Treasury], access to the returns or return information only to persons whose

duties or responsibilities require access and to whom disclosure may be made under the provisions of this title.”

- B. The FY 2020 State Budget (House Bill No. 5151 SUB A as amended) included Article 3 (Sections 5-7), Substitute A as amended, which enacted R.I. Gen Laws §§ 36-3-16 and 37-2-81. These statutes expressly authorize background checks for State employees and vendors with access to FTI. Additionally, R.I. Gen Laws §§ 36-3-16(h) and 37-2-81(k), expressly authorize these regulations.

2.3 Definitions

- A. “Access” means the direct use, contact, handling or viewing of federal tax information, as defined herein, in paper or electronic form, regardless of the frequency, likelihood or extent of such access.
- B. “Department” means the Department of Administration.
- C. “Disqualification” means the loss of eligibility to serve in a specific position with access to FTI (as defined herein).
- D. “Division” means the Division of Human Resources.
- E. “Federal Tax Information” or “FTI” 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 IRC 6103(p)(2)(B) Agreement.
 - 1. FTI expressly excludes information received directly from taxpayers or third-parties. (IRS Publication 1075 Section 1.4.4).
 - 2. FTI may include Personally Identifiable Information (PII). FTI may include the following PII elements:
 - a. Name of a person with respect to whom a return is filed.
 - b. Taxpayer mailing address.
 - c. Taxpayer identification number.
 - d. E-mail addresses.
 - e. Telephone numbers.
 - f. Social Security Numbers.
 - g. Bank account numbers.

- h. Date and place of birth.
- i. Mother's maiden name.
- j. Biometric data (e.g., height, weight, eye color, fingerprints).
- k. Any combination of the above.

3. FTI converted into a new medium by the State remains FTI.

- F. "Felony," as defined under R.I. Gen. Laws § 11-1-2, means "any criminal offense which at any given time may be punished by imprisonment for a term of more than one year, or by a fine of more than one thousand dollars (\$1,000)."
- G. "Misdemeanor," as defined under R.I. Gen. Laws § 11-1-2, means "any criminal offense which may be punishable by imprisonment for a term not exceeding one year, or by a fine of not more than one thousand dollars (\$1,000), or both."
- H. "Preliminary Disqualifying Offense(s)" means:
 - 1. Conviction of any felony, as defined in § 2.3(F) of this Part, under Rhode Island law or other jurisdiction within the last ten (10) years.
 - 2. Conviction of any misdemeanor, as defined in § 2.3(G) of this Part, related to the following offenses committed under Rhode Island law or other jurisdiction equivalent within the last ten (10) years:
 - a. Bribery (See, e.g., R.I. Gen. Laws § 11-7-1 *et seq.*);
 - b. Computer Crimes (See, e.g., R.I. Gen. Laws §§ 11-52-1 *et seq.*, 11-52.2-1 *et seq.*, and 11-52.3-1 *et seq.*);
 - c. Embezzlement (See, e.g., R.I. Gen. Laws §§ 11-41-3 and 11-41-11);
 - d. Extortion (See, e.g., R.I. Gen. Laws § 11-42-1 *et seq.*);
 - e. Forgery (See, e.g., R.I. Gen. Laws § 11-17-1 *et seq.*);
 - f. Fraud (See, e.g., R.I. Gen. Laws § 11-18-1 *et seq.*);
 - g. Identity theft (See, e.g., R.I. Gen. Laws §§ 11-49-1 *et seq.*, 11-49.2-1 *et seq.*, and 11-49.3-1 *et seq.*);
 - h. Larceny (See, e.g., R.I. Gen. Laws § 11-41-1 *et seq.*);
 - i. Making false representations (See, e.g., R.I. Gen. Laws § 11-58-1 *et seq.*);

- j. Ancillary Acts to Preliminary Disqualifying Offenses:
 - (1) Conspiracy;
 - (2) Attempt;
 - (3) Acting as an accessory.
- 3. Outstanding warrants, indictments or pending charges for a Preliminary Disqualifying Offense(s) as defined herein.
- I. "Site" means a location defined by the Department that is exposed to FTI.
- J. "Unauthorized access" occurs when an unauthorized entity or individual accesses FTI without authority, as defined in IRC 6103.

2.4 Requirements for Positions with Access to FTI

- A. Applicants/Transfers/New Employees in Positions with Access to FTI
 - 1. All new applicants selected for interview, including rehires and transfers, applying for a position of State employment with access to FTI, not before the time of the interview and/or prior to an employment offer, shall:
 - a. Disclose whether such applicant has ever been convicted of a Preliminary Disqualifying Offense and/or to include, but not limited to entering any admission or plea (nolo contendere, Alford or other) and/or having received any sentence, filing, probation or fine and/or whether criminal charges are pending against such applicant. In the event thereof, the applicant must identify the charges, the disposition and the court in which such charges are or had been pending. The Department shall consider the disclosures made under this provision in accordance with factors outlined in §§ 2.5(D)(1)(a) through (f) of this Part;
 - b. Consent to a criminal history record check;
 - c. Be fingerprinted and submit to a State and National background check; and
 - d. Submit to E-Verify validation of the applicant's eligibility to work in the United States. Any and all new State employees who work at a Site identified by the Department to contain access to FTI may be subject to E-Verify verification.
 - 2. Applicants selected for employment in a position with access to FTI shall also be subject to the provisions of this regulation related to existing

employees and will be required to be recertified at least once within every ten (10) year period, during the term of his or her employment.

3. Failure or refusal to complete any of the above requirements shall disqualify such applicant from employment in a position with access to FTI.

B. Existing Employees

1. Existing employees in positions in all executive branch departments with Access to FTI are obligated to inform their direct supervisor and the agency's designated human resources representative in writing within twenty-four (24) hours or the next business day, whichever is sooner, of any criminal arrest and/or conviction of a Preliminary Disqualifying Offense, including, but not limited to, any pleas, filings, nolo contendere, etc. Employees who fail to inform their supervisor and human resources of an arrest or conviction of a Preliminary Disqualifying Offense shall be subject to disciplinary action up to and including dismissal.
2. Initially, and at least once within every ten (10) year period, in addition to the affirmative obligation in § 2.4 (B)(1) of this Part, each existing State employee with FTI access must:
 - a. Complete a written certification disclosing whether such employee has ever been convicted of a crime, including, but not limited to, any plea, filings, nolo contendere or whether criminal charges are pending against such employee. The statement must identify the charges and the court in which such charges were/are pending;
 - b. Consent to a criminal history record check; and
 - c. Be fingerprinted and submit to a background check.
3. Failure or refusal to complete any of the above requirements shall result in disciplinary action up to and including dismissal.

C. Agency Requirements

1. Annually, on or before July 30th, each Executive Branch Agency and its contractors shall provide to the State Personnel Administrator, a list of employees with FTI access.
2. The agency shall promptly notify the Division if a position becomes FTI accessible.
3. The agency shall immediately notify the Division in writing within twenty-four (24) hours or the next business day, whichever is sooner, if it becomes aware that any agency employee with access to FTI is criminally

arrested and/or convicted, including, but not limited to, any pleas, filings, nolo contendere.

4. The agency shall limit access of its employees to FTI to the greatest extent possible.
5. The agency shall inform its employees of the requirements stated in these regulations.

2.5 General Provisions and Process

A. Generally

1. Access to FTI is permitted only to individuals who require FTI (as defined herein) to perform their official duties and as authorized under the IRC. FTI must never be indiscriminately disseminated, even within the recipient agency, body, or commission. Agencies must evaluate the need for FTI before the data is requested or disseminated. (IRS Publication 1075 Section 1.4.5)
2. All Executive Branch applicants and employees with access to FTI shall be subject to these regulations.
3. Applicants and employees from the Judicial or Legislative Branches who receive FTI shall voluntarily either submit to the requirements of these regulations or shall be subject to their own requirements approved by the IRS as a condition to receive FTI from the Executive Branch.
4. The State of Rhode Island is not liable for any background check errors or omissions, including conviction records, that it receives from state or federal agencies in connection with any background checks conducted in accordance with this regulation. In making any decisions with regard to new or existing employment, the Department will rely on the information received from federal or state law enforcement agencies and consider said Reports to be true, accurate, and complete, unless determined otherwise as a result of a dispute in accordance with the procedures provided herein.
5. The Division of Human Resources, with cooperation from the agencies, shall be responsible for coordinating the background check process and providing notice to affected applicants or existing employees and the agency employer.
 - a. The Division of Human Resources shall promptly notify an agency and the applicant/employee that it has received a report that would disqualify the applicant or employee from a position with access to FTI.

6. It is the responsibility of the applicant or employee to correct any errors in any reports received and do so within fifteen (15) business days from the time notice and the Report is sent, unless otherwise granted an extension by the Personnel Administrator in writing. After fifteen (15) business days, determinations made by the State are final.

B. Procedures

1. Recruitment

- a. All recruitment announcements involving positions with FTI Access shall contain a statement informing applicants of the requirement to complete and pass a background investigation and E-Verify validation as part of the application and hiring process.
- b. Applicants shall be informed of the requirement to undergo a background check and E-Verify validation no later than the formal interview.
- c. Not before the time of interview, but not later than an offer of employment, the applicant shall:
 - (1) Disclose whether such applicant has ever been convicted of a Preliminary Disqualifying Offense and/or to include, but not limited to, entering any admission or plea (nolo contendere, Alford or other) and/or having received any sentence, filing, probation or fine and/or whether criminal charges are pending against such applicant. In the event thereof, the applicant must identify the charges, the disposition and the court in which such charges are or had been pending. The Department shall consider the disclosures made under this provision in accordance with factors outlined in §§ 2.5(D)(1)(a) through (f) of this Part.
 - (2) Consent to criminal history record check.
 - (3) Be fingerprinted and submit to a background check.
 - (4) Consent to an E-Verify validation of the applicant's eligibility to work in the United States.

- d. All recruitment shall comply with the requirements set forth herein.

2. Background Check Procedure – The Division shall facilitate the background check procedure outlined herein.

- a. All background checks shall be conducted by the appropriate law enforcement agency.

- b. The Division of Human Resources shall submit all necessary materials for a background check for existing employees within a reasonable time. The background check shall be based on the criteria stated herein.
- c. Consistent with Publication 1075, background checks shall, at a minimum, include the following:
 - (1) A national criminal background check based upon FBI fingerprinting; and
 - (2) If not covered by the national criminal background check, a local law enforcement criminal background check where the applicant has lived, worked, and/or attended school within the last five years; and
 - (3) Validation of the applicant's eligibility to legally work in the United States through E-Verify.
- d. The Division of Human Resources shall promptly review the results of each Report/E-Verify results and take any employment action consistent with these regulations, including, but not limited to transfer, demotion, and/or termination.
- e. If an applicant or employee is disqualified or removed from a position which has access to FTL, the Division of Human Resources shall provide reasonable notice of such employment action to the impacted individual and include a copy of the Report and/or E-Verify results. The notice also shall include information for disputing or appealing any such determination as provided herein.

C. Criteria

- 1. Applicants: Any individual applying to a position with access to FTL, who is convicted or charged with a Preliminary Disqualifying Offense, as defined in 2.3(H) of this Part, may be rejected from the position.
- 2. Employees: Any employee with access to FTL, who is convicted or charged with a Preliminary Disqualifying Offense, as defined in 2.3(H) of this Part, may be transferred, demoted or terminated.
 - a. Outstanding warrants, indictments or pending charges for one or more Preliminary Disqualifying Offense for existing employees may result in an administrative investigation and appropriate disciplinary action, including, but not limited to, transfer, demotion and/or termination. Employees failing to report an arrest in accordance with this policy and/or within the required timelines are subject to disciplinary action including, but not limited to, transfer, demotion

and/or termination. In addition to the factors stated in § 2.5(D)(1) of this Part, the Personnel Administrator shall also take into consideration whether the person has yet to be convicted of a disqualifying offense. The Personnel Administrator may take reasonable actions, including, but not limited to, placing an individual on leave (paid or unpaid) during the pendency of charges in order to balance the individual's rights with the protection of FTL of Rhode Island citizens.

3. E-Verify validation of the individual's right to legally work in the United States shall be required as a condition of employment in a position that has access to FTL.
4. In accordance with R.I. Gen. Laws § 37-2-81(c), this criteria shall also apply to vendors with access to FTL.

D. Applying Criteria

1. The criteria above serve as a basis for a determination related to the disqualification, transfer, demotion and/or termination of an applicant and/or an employee from positions with access to FTL. However, in the event of an appeal, in reaching a final determination as to whether an applicant or employee shall be disqualified or permitted to obtain and/or retain a position with access to FTL, the Department, in collaboration with the involved agency, shall consider the following factors:
 - a. Whether the person has yet to be convicted of the Preliminary Disqualifying Offense;
 - b. Whether the Preliminary Disqualifying Offense is related to the employee's current duties and/or might reasonably be expected to prevent the employee from performing the duties of the position;
 - c. The nature of the Preliminary Disqualifying Offense;
 - d. The number of convictions;
 - e. When the conviction(s) occurred;
 - f. Whether the employee or prospective employee made any false or misleading verbal or written statements regarding his or her criminal history;
 - g. Other relevant factors depending on the specific facts and circumstances.

E. Disputes and Appeals

1. The applicant or employee shall have fifteen (15) business days from the date that written notice results are sent to the applicant or employee to notify the Department of any disputes or errors involving the background check and of the applicant or employee's intent to appeal. The Personnel Administrator may extend this time to provide notice of intent to dispute and/or appeal the background check results.
2. In the discretion of the Personnel Administrator, the applicant and/or employee shall be granted a reasonable time to correct a disputed background check and/or submit an appeal.
3. The Personnel Administrator shall review the appeal or dispute submitted by the applicant or employee and shall make a final determination. The Personnel Administrator may extend this time-period as necessary for good cause.
4. Applicants or employees who have not yet completed their new hire probationary period or who fail to contest and/or resolve an E-Verify "tentative non-confirmation" shall have no right of further appeal of the Personnel Administrator's determination.
5. Employees who have achieved "permanent" status who remain aggrieved may use one of the established grievance procedures as appropriate through the Rhode Island Administrative Procedures Act or the Personnel Appeal Board to appeal any employment action taken under this regulation. Once administrative remedies are exhausted, the aggrieved employee may further appeal in accordance with R.I. Gen. Laws § 42-35-15.
6. An existing employee shall not be granted further access to FTI until the appeal is resolved, unless otherwise determined by the Personnel Administrator, in consultation with the agency director, to allow continued access during such a dispute or an appeal.
7. All appeals of E-Verify results shall be conducted in conformance with federal regulations.

2.6 Severability

If any provision of this regulation or the application thereof to any individual or circumstance is held invalid, such invalidity shall not affect the provisions or application of the remaining portions of the regulation which can be given effect. The provisions of these rules and regulations are declared to be severable.

220-RICR-40-00-2

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SUBCHAPTER 00 - N/A

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Type of Filing: Refile Capabilities

Department of State

Regulation Effective Date

Original Signing Date

Department of State Initials

Department of State Date