



March 20, 2023

Administrative Procedure Manual Transmittal Letter No. 389

TO: Administrative Procedure Manual (APM) Holders
FROM: Matt Damschroder, Director
SUBJECT: Safeguarding federal tax information (FTI)

This letter transmits the amendment of rule 5101:9-9-26 of the Administrative Code as a result of a periodic five-year review.

5101:9-9-26: "Safeguarding federal tax information (FTI) using background investigations." This rule identifies definitions to be used with safeguarding FTI and outlines general provisions and policy guidance with regard to safeguarding FTI using background investigations. Changes to the rule include: adding "bank account information" to paragraph A2c; added "subcontractor" throughout the rule; in paragraph B1 changed the reinvestigation requirements from 10 to 5 years. The appendix was rescinded and a new appendix was added with changes made to add "subcontractors" throughout and also updated the reinvestigation requirement from 10 to 5 years.

INSTRUCTIONS:

The following chart depicts what materials should be inserted in the APM.

LOCATION	REMOVE AND FILE AS OBSOLETE	INSERT/REPLACEMENT
Chapter 9	5101:9-9-26 (effective 5/9/19)	5101:9-9-26 (effective 4/1/23)

5101:9-9-26

Safeguarding federal tax information (FTI) using background investigations.

(A) Definitions used in this rule.

- (1) "Federal Tax Information (~~FTI~~)" (FTI) is any return or return information received from the internal revenue service (IRS), or secondary source, such as the social security administration (SSA), federal office of child support enforcement (OCSE), or U.S. department of the treasury, including the bureau of the fiscal service, centers for medicare and medicaid services (CMS) and also includes any information created and/or maintained by the Ohio department of job and family services (ODJFS) or a county agency that is derived from these sources.
- (2) "Return and Return Information." A return is any tax or information return, estimated tax declaration, or refund claim (including amendments, supplements, supporting schedules, attachments or lists) required by or permitted under the internal revenue code (IRC) and filed with the IRS by, on behalf of, or with respect to any person or agency. Return information includes:
 - (a) The potential liability of any person under the IRC for any tax, penalty, interest, fine, forfeiture, or other imposition or offense.
 - (b) The taxpayer's name, address and identification number.
 - (c) Personally identifiable information (PII), including:
 - (i) The name of a person with respect to whom a return is filed.
 - (ii) The taxpayer mailing address.
 - (iii) The taxpayer identification number.
 - (iv) Email addresses.
 - (v) Telephone number(s).
 - (vi) Social security number(s).
 - (vii) The date and place of birth.
 - (viii) The mother's maiden name.
 - (ix) The biometric data (e.g. height, weight, eye color, fingerprints).
 - (x) Bank account information.

~~(x)~~(xi) Any combination of the PII identified in this paragraph.

- (3) "County Agency" means the county department of job and family services, the public children services agency, and the child support enforcement agency. This definition is intended to be the same as "County Family Services Agency" used in section 307.981 of the Revised Code.
- (4) "County Agency Contractor" means any governmental or non-governmental entity, which can include an individual, that receives funds from the county agency, whether directly or indirectly, to provide services, assistance, or benefits to individuals or that performs duties or activities for the county agency pursuant to a contract, grant, or other agreement. County agencies authorized to receive FTI to administer temporary assistance for needy families (TANF), supplemental nutrition assistance program (SNAP) and medicaid are prohibited from contracting for services that allow disclosure of or access to FTI in those programs.
- (5) A "final candidate" is an individual, whether or not currently employed by a county agency, who has submitted an application for employment at the county agency and who has received an offer of employment conditioned upon a favorable adjudication of an FBI and BCI fingerprint background check.

(B) Safeguarding FTI using background investigations; general provisions.

- (1) All final candidates, current employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, or temporary service personnel that have access to or use FTI shall be subject to a background check that meets the requirements of IRS publication 1075, "Tax Information Security Guidelines for Federal, State and Local Agencies." Once an initial background check has been successfully completed and the final candidate, current employee, current or prospective intermittent employee, county agency contractor/contract employee, subcontractor, or temporary service personnel is found to be suitable for access to FTI, reinvestigation shall occur at least every ~~ten~~five years, at a minimum, from the date it was initially determined that the individual is suitable for access to FTI, if remaining in a position with access to FTI.
- (2) Effective September 30, 2019, to maintain access to systems containing FTI, all current employees, intermittent employees, county agency contractors/contract employees and temporary service personnel that have access to or use FTI shall have submitted to an FBI and BCI fingerprint background check.

- (3) Effective October 1, 2019, prior to being granted access to FTI, all final candidates, prospective intermittent employees, prospective county agency contractors/contract employees, subcontractors, and prospective temporary service personnel shall complete an FBI and BCI fingerprint background check and investigation that is favorably adjudicated in accordance with the written policy developed by the county agency pursuant to paragraph (B)(5) of this rule.
 - (4) Effective December 31, 2019, to maintain access to systems containing FTI, all current employees, intermittent employees, county agency contractors/contract employees, subcontractors, and temporary service personnel that have access to or use FTI shall have submitted to an FBI and BCI fingerprint background check and investigation that is favorably adjudicated in accordance with the written policy developed by the county agency pursuant to paragraph (B)(5) of this rule.
 - (5) Effective September 3, 2019, county agencies shall develop a written policy requiring all final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary service personnel with access to FTI to submit to an FBI and BCI fingerprint background check and investigation that is favorably adjudicated.
 - (6) Background investigations conducted by the county agencies for final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary services personnel who are or will be granted access to FTI shall include, at a minimum:
 - (a) FBI finger printing (FD-258), a review of federal bureau of investigation (FBI) fingerprint results conducted to identify possible suitability issues.
 - (b) Ohio bureau of criminal investigation (BCI) finger printing, a review of the BCI fingerprint results conducted to identify possible suitability issues.
 - (c) Citizenship/residency. Validate the individual's eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization.)
- (C) Safeguarding FTI using background investigations; policy guidance.
- (1) County agencies are required to have a policy that requires final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary services personnel, who will use or have access to FTI to complete an FBI and BCI fingerprint background check and investigation that is favorably

adjudicated. This policy will identify the process, steps, timeframes, and favorability standards that the county agency has adopted. The policy shall establish the criteria upon which final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary services personnel, would have access to FTI denied or withdrawn. County agencies may use ODJFS' model background check policy, as outlined in the appendix to this rule, or design their own substantial equivalent.

- (2) A county agency shall identify in its policy any criminal convictions that may disqualify final candidates, employees, current and prospective intermittent employees, county agency contractors/contract employees, subcontractors, and temporary services personnel from having access to FTI based upon the criminal record, the nature of the duties of the position held or applied for, and the nature of the access to FTI. County agencies should consult, at a minimum, sections ~~2961.02~~, 2921.02, 2921.41, ~~and 2921.43~~ and 2961.02 of the Revised Code, when identifying potentially disqualifying offenses.
- (3) A county agency shall set forth in its policy or procedure the factors it will consider when determining if an individual with a criminal record should be adjudicated favorably. Factors that county agencies may want to consider are:
 - (a) Relationship of the criminal record to access to the type of FTI used or accessible in the position.
 - (b) Nature of work to be performed.
 - (c) The time that has lapsed since the conviction.
 - (d) The age of the individual at the time of the offense.
 - (e) The seriousness and specific circumstances of the offense, including the type of harm that the individual caused, and/or the legal elements involved in the specific crime committed.
 - (f) The number of offenses on the criminal record.
 - (g) Whether the individual has pending charges.
 - (h) Any evidence of rehabilitation or contrition.
 - (i) Any other relevant information, including that submitted by or on behalf of the individual, or other information obtained by the county agency.

- (4) A county agency shall set forth in its policy or procedure the notification, appeal, and final determination process that it will offer to final candidates, current and prospective employees, intermittent employees, county agency contractors/contract employees, subcontractors and temporary service personnel, for those with convictions who are not favorably adjudicated as being eligible for access to FTI.

(D) Remedial action.

A county agency found to have failed to conduct background investigations in accordance with this rule and IRS publication 1075, or who has failed to create a policy as described in paragraph (B) of this rule, shall be notified of these failures by ODJFS in writing within thirty days after completion of the investigation or review. Any action taken by ODJFS to bring the county agency into compliance with this rule and IRS publication 1075 shall be done pursuant to section 5101.24 of the Revised Code. Examples of remedial action include corrective action plans or the withholding of funds. The county agency is responsible to ensure that county agency contractors or subcontractors that currently have or will have access to FTI or who provide contract employees to county agencies who currently have or will have access to FTI to secure FBI and BCI fingerprint checks that are favorably adjudicated. ODJFS may take action against the county agency pursuant to section 5101.24 of the Revised Code if the county agency fails to obtain compliance by the county agency contractor.

Effective: 4/1/2023

CERTIFIED ELECTRONICALLY

Certification

03/17/2023

Date

Promulgated Under: 111.15
Statutory Authority: 5101.02, 124.74
Rule Amplifies: 5101.02, 329.04, 124.74
Prior Effective Dates: 05/09/2019

Ohio Department of Job and Family Services

Model Background Check Policy

I. PURPOSE/REASON:

The purpose of this policy is to establish standards within (enter entity name here—e.g. county department of job and family services, child support enforcement agency, or public children services agency) regarding criminal background checks, and to set uniform procedures for conducting investigations and evaluating investigation results to make suitability determinations for general employment and access to Federal Tax Information (FTI).

II. AUTHORITIES:

1. Ohio Revised Code (ORC) 301.22, 307.981, 329.02
2. ORC 2921.02, 2921.41, 2921.43 and 2961.02
3. ORC 124.25, 124.74
4. IRS Publication 1075, issued September 2021.
5. R.C. 5101:9-9-26

III. SUPERSEDES:

Previous policy on background checks.

IV. SCOPE:

- A. This policy applies to all final candidates selected for and offered positions with (entity name), including all current (entity name) employees applying for positions.
- B. This policy also applies to employees, current and prospective contract or subcontract employees, intermittent employees, and temporary service personnel, including those who have or will have access to Federal Tax Information (FTI).
- C. The (enter name of office that manages human resources for the entity) is responsible for implementing the procedures contained within this policy and ensuring they are equally applied to all final candidates, employees, current and prospective intermittent employees, contract or subcontract employees, and temporary service personnel working for (entity name).

V. DEFINITIONS:

Conviction – As used in this policy, a conviction means a finding of guilty, no contest, or the imposition of a sentence by a judge or jury in any federal or state court.

Employee – As used in this policy, an individual who is currently appointed to a position at (entity name).

Favorable Adjudication – Is either the determination that a final candidate, employee, a current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel has no criminal conviction or record of criminal activity or the outcome of a background check of an individual with a criminal conviction or record of criminal activity when it is determined by the (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds) that the conviction or record of criminal activity does not prevent the individual from holding or continuing to hold a position having access to FTI. This term is used interchangeably within this policy with the concept of suitability.

Federal Tax Information (FTI) – Includes federal tax returns (including supplements, schedules, attachments, 1040s, 1099s, or W-2s) and information found on the tax return, if the return and return information have been provided to (entity name) directly from a federal agency like the IRS, Social Security, OCSE, Health and Human Services or from the Ohio Department of Job and Family Services, where the original source is the IRS, Social Security, OCSE, or Health and Human Services.

Final Candidate – A "final candidate" is an individual, whether or not currently employed by a county agency, who has submitted an application for employment at the county agency and who has received an offer of employment conditioned upon a favorable adjudication of an Federal Bureau of Investigation (FBI) and Ohio Bureau of Criminal Investigation (BCI) fingerprint background check.

Intermittent employee – Means an appointment where an employee is required to work less than one thousand hours per fiscal year, or for the duration of a specific project or grant which may exceed one thousand hours in a fiscal year.

Local Law Enforcement Check – Includes checks with local law enforcement agencies where the subject has lived, worked, and/or attended school within the past five years. A fingerprint background check conducted by BCI is acceptable as a local check.

VI. PROCEDURES – CRIMINAL BACKGROUND CHECKS:

A. INTRODUCTION:

1. (entity name) requires that final candidates submit to a background check which is conducted in accordance with state and federal law. Background checks ensure that (entity name) does not employ any individual who is barred from county, state or federally funded employment because of the conviction of certain crimes. (entity name) is also responsible for assuring that those individuals who have criminal convictions are suitable for the applied for position with (entity name).

2. Except as otherwise provided for in R.C. 5101:9-9-26 (B)(2),(3), and (4) final candidates, employees, current and prospective intermittent employees, contract or subcontract employees, and temporary service personnel who will have or have access to FTI are required to have an FBI and BCI fingerprint background check conducted by BCI and the FBI with IRS Publication 1075 that is favorably adjudicated in accordance with this policy before being afforded access to FTI, and then every five years thereafter if remaining in a position that has access to FTI.

B. REVIEWING A CRIMINAL RECORD:

Unless provided by law, a record of criminal conviction(s) will not automatically disqualify a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel from being appointed to or maintaining a position with (entity name).

If a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary services personnel has a criminal conviction, (name of office that manages human resources for the county), with assistance, if required, from (name of the office that provides legal guidance to the entity, whether it be the county prosecutor or law director), will determine whether the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel is or remains qualified and suitable to hold the position, given the criminal conviction record.

1. Disqualifications from employment provided by law or policy: The following will disqualify a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel from appointment, working or continued employment at (entity name):
 - (a) Refusal to consent to a background check, including unusual delay in executing the consent to conduct a background check;
 - (b) A conviction listed in ORC 2961.02;
 - (c) A felony conviction or guilty plea for a violation of any of the following sections of the Ohio Revised Code or a felony conviction (or equivalent) or guilty plea in another state for the same type of violation:
 - (1) Bribery, ORC 2921.02;
 - (2) Theft in Office, ORC 2921.41;

- (3) Soliciting/Receiving Improper Compensation, ORC 2921.43; any conviction for this offense within seven years of submission of the employment application to (entity name).

2. Criminal convictions considered for positions with access to FTI:

When a position includes access to FTI, (entity name) will engage in the individualized analysis below when reviewing any conviction involving a crime of theft, dishonesty or fraud, including the following: theft, identity fraud, embezzlement, forgery, burglary, robbery, or any equivalent crime in another jurisdiction.

3. General relevance of criminal convictions to employment at (entity name):

Even when a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service personnel will not, in the course of employment, have access to or use FTI, (entity name) will conduct an individualized analysis on a final candidate, employee, intermittent employee, contract employee, or temporary service personnel's conviction history, as is set forth below.

4. Individualized analysis:

(a) Unless otherwise provided by federal or state law, to determine whether a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel is or continues to be suitable for a position, (entity name) will conduct an analysis of the duties of the position and the crime(s) committed, along with the following, which is not intended to be an exclusive list:

- (1) Relationship of the criminal record to the type of FTI used or accessible in the position;
- (2) The nature of the work to be performed;
- (3) The time that has lapsed since the conviction;
- (4) The age of the final candidate, employee, current or prospective intermittent employee, contract employee or temporary service personnel at the time of the offense;
- (5) The seriousness and specific circumstances of the offense, including the type of harm that the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, temporary service personnel caused, and/or the legal elements involved in the specific crime committed;
- (6) The number of offenses;

- (7) Whether the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel has pending charges;
- (8) Any evidence of rehabilitation or contrition;
- (9) Any other relevant information, including that submitted by or on behalf of the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel, or other information obtained by **(entity name)**.

(b) Assessing a criminal background check with arrests: Since arrests are not evidence of the commission of a crime, they cannot serve as the basis for a denial of employment or continued employment. However, if the identity of the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel is confirmed, and if there is corroborating evidence of criminal activity involving acts identified in section VI, B, 2, above, these may be considered when performing the individualized analysis in determining suitability for a position with access to FTI.

The **(enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds)** will determine from these factors, and other information deemed appropriate, whether there is a significant relationship between the duties that the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel would perform for **(entity name)** and the crime(s) committed and/or criminal record and whether this renders this individual unsuitable for the job or access to FTI as a matter of business necessity. The final decision whether to withdraw a conditional offer of employment or to seek termination of employment based on this analysis will be made by the **(enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds)**.

5. Notification of automatic disqualification or unsuitability.

- (a) If the **(enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds)** determines in accordance with section VI, B, above, that a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service personnel's criminal record automatically disqualifies or renders the individual unsuitable or no longer suitable for the position, the individual will be notified immediately.
- (b) The final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service

personnel will be provided a copy of the background check information upon which the (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds) relied, a copy of this policy, and will be provided the reason why the criminal record rendered this individual disqualified or unsuitable for employment with (entity name).

- (c) The final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service personnel will also be informed of the right to dispute the accuracy and/or relevancy of the criminal record within eight (8) business days. This individual may dispute the accuracy or relevancy of the criminal record by providing verified information indicating that the criminal record is inaccurate or by providing information that demonstrates the irrelevance of the criminal record to the duties of the position being sought or maintained.
- (d) Once (entity name) has received the final candidate, employee, current or prospective intermittent employee, contract or subcontract employee or temporary service personnel's dispute and accompanying information, the (enter name of individual or office that will make final determinations on suitability of individuals with criminal backgrounds) shall make a final determination about the disqualification or suitability within two (2) business days. After a final decision has been made about the disqualification or suitability of a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, temporary service personnel, there is no further appeal.

C. REPORTING OF KNOWN OFFENDERS

Should the results of the criminal background check disclose outstanding warrant(s), violation(s) of probation or parole, or any other similar outstanding actions against a final candidate, employee, current or prospective intermittent employee, contract or subcontract employee, or temporary service personnel any pertinent information supplied as part of the background check process will be forwarded to the (enter the name of the office that provides legal guidance to the entity, whether it be the county prosecutor or law director), for appropriate action on behalf of (entity name).