

<b>Mendocino County Policy #</b>	<b>Background Investigation Requirements for Individuals with Access to Federal Tax Information</b>
<b>Adopted:</b> TBD	<b>Adopted By:</b> TBD

**PURPOSE:**

This policy ensures that individuals working on behalf of Mendocino County ("County") who need access to Federal Tax Information (FTI) meet the suitability and security standards specified in IRS Publication 1075: *Tax Information Security Guidelines for Federal, State, and Local Agencies* (Pub 1075). This includes completing an initial background investigation and periodic reinvestigations.

**SCOPE/APPLICABILITY**

This policy applies to all current employees, applicants, volunteers, interns, work-study students, agents, contractors, and subcontractors ("Individuals") authorized by the County to access FTI in the course of their official job duties.

**POLICY:**

Mendocino County is committed to protecting the personal and financial information furnished by the Internal Revenue Service ("IRS"). In accordance with Pub 1075, *Tax Information Security Guidelines for Federal, State, and Local Agencies*, individuals having access to FTI must undergo a background investigation that is favorably adjudicated before being permitted access to FTI.

The Human Resources Department is responsible for maintaining this policy and its procedures. County departments are responsible for identifying positions with FTI access and conducting background investigations and reinvestigations.

Fingerprint and criminal conviction history investigation requirements must be reflected on each County classification specification and job posting for each position with access to FTI.

Individuals who do not successfully pass the background investigation shall not be permitted to hold a position with access to FTI. All employment offers and work assignments are conditional pending successful completion of policy requirements.

Contractors and subcontractors with access to FTI are subject to this policy and are fully responsible for ensuring all IRS Publication 1075 requirements are met prior to permitting individuals' access to FTI.

**BACKGROUND INVESTIGATION REQUIREMENTS**

County departments are responsible for identifying each position within their department that provides individuals with access to FTI. Identified individuals must undergo and pass a background investigation before being permitted access to FTI and are subject to reinvestigation thereafter.

A favorable background investigation does not guarantee employment but determines an individual's suitability for FTI access, per Pub 1075. All individuals accessing FTI must undergo a background investigation which includes:

- A. Federal Bureau of Investigation (FBI) fingerprinting and criminal background investigation that include criminal history in all 50 states and local law enforcement records for the State of California to identify possible suitability issues.
- B. Check of local law enforcement agencies where the subject of background investigation has lived, worked, and/or attended school within the last five (5) years, and if outside of the State of California, a check of the appropriate agency for any identified arrests.

- C. Validate citizenship/residency to confirm the subject's eligibility to legally work in the United States (US) Validation of candidates' citizenship/residency for employment shall include the following:
- a. Utilization of USCIS Form I-9 and supporting documents.
  - b. Within three days of completion of USCIS Form I-9, verify employment status through the E-Verify system.
  - c. Ongoing monitoring for expired employment eligibility, if applicable.
- D. Reinvestigate everyone with access to FTI within five (5) years from the date of the previous background investigation or upon receipt of new information obtained since the last Background Investigation indicating the need for a renewed investigation.

Criminal history screening for employment purposes, including reinvestigation screening, will be conducted in accordance with Federal Equal Employment Opportunity Commission (EEOC) Enforcement Guidance, California Civil Rights Department (CRD) (formerly, the Department of Fair Employment and Housing) rules and regulations, and applicable California Labor Code provisions.

#### **CRITERIA FOR WITHDRAWAL OF EMPLOYMENT OFFER**

Conditional employment offers may be withdrawn based on the results of the background investigation and/or eligibility to be employed in the United States.

##### Disqualification Criteria

The felony and misdemeanor crimes listed below are offenses that may render any individuals' background unsuitable for employment in positions that involve access to FTI and is not meant to be an exhaustive list of all criteria for withdrawal of a conditional employment offer or termination of employment.

- Fraud: welfare, insurance, finance, theft, or bribery
- Physical: assault, sexual, murder, homicide, manslaughter, kidnapping, false imprisonment, or domestic violence
- Misuse of data
- Inappropriate access to data
- Drug and/or alcohol
- Stalking
- Theft/Burglary
- Evasion of law enforcement
- Crimes of moral turpitude

Criminal background investigation results will be considered utilizing an individual assessment, which includes the nature and gravity of the offense; the time that has passed since the offense or conduct and completion of any criminal sentence; and the nature of the job held or sought, with any basis for denial being job-related and consistent with business necessity.

After performing the individual assessment, should the County determine the candidate's criminal history warrants revoking the job offer, the County will provide a written preliminary notice to the individual that includes:

- The identity of the disqualifying conviction;
- A copy of the conviction history report, if any;
- Notice of their right to respond to the notice within five business days before a final decision is made; and
- An explanation that the response can include evidence challenging the accuracy of the report and/or evidence of rehabilitation or mitigating circumstances.

- If the individual notifies the County within the deadline that they will dispute the report's accuracy and are obtaining evidence to that effect, the individual will be granted another five (5) business days to do so.
- If the individual establishes that the record is factually inaccurate, then that record cannot be considered in the employment decision.

Once the individual has submitted evidence, or declined to do so, and after performing the individual assessment, the County still wishes to revoke the offer, the County will provide a written statement to the individual that includes the final reason for denial or disqualification, and the individual's right to file a complaint with the California Civil Rights Department.

## **CURRENT EMPLOYEES**

Employees hired before this policy's implementation who require FTI access in their official job duties must pass a background investigation to continue access. Employees failing the investigation may be:

- Reassigned or voluntarily demoted to a suitable position without FTI access.
- Subject to due process under the applicable Memorandum of Understanding (MOU).

Employees may challenge the accuracy of information used in separation decisions, and factually inaccurate records shall not be used in employment determinations.

## **DEFINITIONS**

**Access to FTI** – Access necessary to perform official job duties per, IRC 6103.

**Citizenship/Residency Validation** - Validation of an individual's eligibility to legally work in the United States using the USCIS Form 1-9 and USCIS E-Verify System. This requirement applies to employment candidates only.

**Criminal Conviction History Screening** - Review of (FBI) fingerprint results and local agency checks. Subsequent arrest notifications shall be requested under Government Code section 1044(d).

**Custodian of Records** – Agency or department representative responsible for records security.

**Direct Access** - FTI from IRS or authorized secondary source acting on behalf of the IRS under IRC 6103.

**E-Verify** - A USCIS system for work eligibility verification.

**Federal Tax Information (FTI)** - Includes tax returns or information received directly from the IRS or authorized secondary source acting on behalf of the IRS under IRC 6103.

**Reinvestigation** – Updated background check based on new information or expiration of prior check.

**Unauthorized Access** – Improper or negligent access to FTI without authorization, under IRC 6103.

**IRS Office of Safeguards** - Monitors safeguard measures utilized by agencies receiving FTI.

**Department of Justice** – Agency responsible for processing fingerprint-based background checks for the requesting agency.

## **REFERENCES**

26 United States Code (U.S.C.) § 6103

Equal Employment Opportunity Commission (EEOC) Enforcement Guidance 915.002

Family Code§ 17202

Government Code§ 1044, 12952 (if applicable upon passage of AB 1008) 19572, and 18935

IRS Publication 1075

Labor Code§ 432.7 and 432 .9

Penal Code§ 11105(b)

State Personnel Board Rule 172

Title 2, California Code of Regulations (CCR)§ 11017 and 11017.1