

NOTICE OF INTENT

Department of Children and Family Services

Child Support Enforcement

**Criminal History Records Checks for Access to Federal Tax
Information
(LAC 67:I.205)**

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953 (A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:I. Chapter 2, Section 205, Criminal History Records Checks for Access to Federal Tax Information (FTI).

R.S. 46:51.3 grants the Department of Children and Family Services authority to perform criminal history records checks of current and prospective employees, contractors and subcontractors. The statute mandates that the department promulgate rules to implement the requirements specified in R.S. 15:587.5. DCFS proposes to amend Section 205 Criminal History Checks for Access to Federal Tax Information to align the process with other agencies subject to Internal Revenue Service oversight, including Department of Revenue and Department of Health. This amendment includes additional details of procedures the department will follow in performance of federally required criminal history checks.

Title 67

Social Services

Part I. General Administration

**Chapter 2. Criminal Background and State Central Registry
Checks**

**§205. Criminal History Records Checks for Access to Federal
Tax Information**

A. Purpose

**1. As required by the IRS statute found at 26 USCS
6103(p)(4) and its supplemental publication 1075, the Department**

of Children and Family Services (DCFS) will conduct fingerprinting, along with national, state and local criminal history record checks on all individuals handling and those who may handle Federal Tax Information (FTI). The criminal history record checks will be used to determine the suitability of individuals to access FTI in performance of their job duties or services for the Department of Children and Family Services.

B. Applicability

1. Pursuant to R.S. 46:51.3, the Department of Children and Family Services shall perform criminal history records checks of this regulation applies to all current and prospective employees, contractors, or subcontractors, within of the office of family support or child support enforcement and family support, that have access to federal tax information (FTI) and/or criminal history record information. This provision shall also apply to employees of contractors or subcontractors of the office of family support or child support enforcement who require access to FTI.

C. Definitions

Criminal History Record Check—a review of an individual's criminal history using fingerprints sent to the Louisiana Bureau of Criminal Identification and Information for submission to the Federal Bureau of Investigation (FBI) and compilation of data from state and local law enforcement agencies.

Federal Tax Information (FTI)—consists of federal tax returns and return information (and information derived from it) that is in the department's possession or control which is covered by the confidentiality protections of the Internal Revenue Code and subject to its safeguarding requirements, including IRS oversight.

FTI Suitable (no reports)—an employee, contractor or subcontractor whose criminal history records check results in a report containing no information and who is permitted to access FTI in the performance of his duties, function or service to the department.

FTI Suitable (with reports)—an employee, contractor or subcontractor whose criminal history records check results in a report containing criminal cases, convictions, or arrests and access to FTI for the performance of his duties, functions or service of the department is permitted after determination.

FTI Unsuitable—an employee, contractor or subcontractor whose criminal history records check results in a report containing criminal cases, convictions or arrests who deemed not suitable to access federal tax information in the performance of his duties, function or service of the department after determination.

D. General Provisions

1. ~~In compliance with the requirements of R.S. 15:587.5, All~~ current or prospective employees, contractors, or subcontractors within the office of family support and child support enforcement and family support requiring access to FTI shall be required to submit to a criminal history records check by providing authorization, fingerprints and other identifying information to DCFS.~~to be conducted by the Louisiana Bureau of Criminal Identification and Information.~~

2. Fingerprints and other identifying information shall be submitted to the Louisiana Bureau of Criminal Identification and Information for performance of the criminal history records check.~~by the current or prospective employee, contractor, or subcontractor.~~

~~23. The department shall also may request local criminal history records checks for current or prospective employees, contractors, or subcontractors within the office of child support enforcement and family support with access to FTI and/or criminal history record information. The local criminal history records checks request shall be sent to from any jurisdiction where the current or prospective employee, contractor, or subcontractor has lived, worked, or attended school within the last five years.~~

3. ~~Fingerprinting and national, state, and local criminal~~ Criminal history records checks shall be used by the department to determine the suitability of current or prospective employees, contractors, or subcontractors within the office of child support enforcement and family support sections to access FTI and records.

a. Prospective employees shall be subject to ~~fingerprinting and national, state, and local criminal history~~ records checks only after a conditional offer of employment has been made.

b. Current employees, contractors and subcontractors shall be subject to fingerprinting and national, state, and local criminal history records checks, at a minimum of every 10 years.

c. Criminal history record checks on prospective contractors or prospective employees of contracts must be performed prior to obtaining access to FTI.

4. The costs of providing the criminal history records check for current employees, contractors, or subcontractors within the office of child support enforcement and family support shall be charged to the department by the Louisiana Bureau of Criminal Identification and Information for furnishing information contained in its criminal history and

identification files, including any additional costs of providing the national and local criminal history records checks, which pertains to the current or prospective employee, contractor or subcontractor.

E. Suitability Standards

1. Any criminal history record check resulting in a report containing criminal cases, convictions, or arrests must receive a case by case assessment.

2. The case by case assessment must consider:

a. the nature of the offense;

b. the relation of the offense to the duties of the employee, contractor or subcontractor;

c. any aggravating or mitigating circumstances, including the passage of time; and

d. any evidence of rehabilitation of the subject or the lack thereof.

3. An individual is deemed to be FTI suitable or FTI unsuitable based on the following table:

<u>Criminal History Record Check Result</u>	<u>FTI Access Determination</u>
<u>No Reports</u>	
<u>Report resulting from criminal history records check contains no information.</u>	<u>FTI Suitable</u>
<u>Reports</u>	
<u>A case-by-case assessment must be performed.</u>	
<u>Reports of criminal cases, convictions, arrests or serious misconduct that includes but is not limited to:</u> <ul style="list-style-type: none"> • <u>Misappropriation Crimes (as designated in Louisiana Revised Statutes)</u> • <u>Computer Related Crimes (as designated in Louisiana Revised Statutes)</u> • <u>Offenses Affecting Organized Government, subparts B through F (as listed in Louisiana Revised Statutes)</u> • <u>Tax, Alcohol Beverage, Tobacco or Charitable Gaming offenses where the federal or state statute exposes the offender to a penalty of imprisonment with or without hard labor.</u> <u>Compelling mitigation documentation to show the offense irrelevant to duties of the position or FTI suitability may be provided during appeal.</u>	<u>FTI Unsuitable</u>

<p><u>No reports of open criminal cases, convictions, or arrests with relevance to the duties of the position requiring access to FTI.</u></p> <p><u>Reports of open criminal cases, convictions, or arrests related to the duties of the position or access to FTI but compelling mitigation documentation has been provided during appeal.</u></p>	<p><u>FTI Suitable (with reports)</u></p>
--	---

F. Impact of Suitability Determination

1. Individuals who have been deemed FTI suitable (no reports) or FTI suitable (with reports) will be able to exercise one of the options below that is applicable to their status:

a. continue to or be allowed to access FTI in the performance of job duties;

b. continue to or be allowed to access FTI in the performance of job duties with special restrictions or caveats; or

c. be considered for a vacant position with FTI access.

2. If a current or prospective employee, contractor or subcontractor has been deemed FTI unsuitable, the department will exercise one of the options below:

a. access or use of FTI will immediately be denied, suspended or prevented;

b. the job offer may be rescinded;

c. the contract may be terminated; or

d. the contractor or subcontractor's employee may be removed or prohibited from performing work on the contract.

3. A determination of FTI unsuitable may be appealed using the procedures outlined in Subsection G of this Section.

4. A successful appeal is the only mechanism in which the impact of a FTI unsuitable determination can be avoided.

G. Appeal Procedures

1. In the event the criminal history record check reveals information that leads to a determination of FTI unsuitable for a current or prospective department employee, contractor or subcontractor, the impacted person will be notified. This notification will also inform the impacted person of their right to challenge the accuracy of the criminal history record check.

2. The impacted person will have 30 days to present documentation to refute or mitigate the determination.

3. The department will review the documentation and notify the impacted person of its determination. The department may also use this information to request a new or updated criminal history record check, if allowed by the national, state and/or local law enforcement agencies.

AUTHORITY NOTE: Promulgated in accordance with Act 147 of the 2017 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Child Support Enforcement Section, LR 45:651 (May 2019), LR 46:

Family Impact Statement

The proposed rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

The proposed rule is not anticipated to have an impact on poverty as defined by R.S. 49:973.

Small Business Analysis

The proposed rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement


The proposed rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

All interested persons may submit written comments through August 25, 2020, to Sammy Guillory, Deputy Assistant Secretary, Department of Children and Family Services, Post Office Box 94065, Baton Rouge, Louisiana, 70804-90656.

Public Hearing

A public hearing on the proposed rule will be held on August 25, 2020, at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, Louisiana beginning at 10:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).


Marketa Garner Walters
Secretary

6/22/20

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

Person Preparing Statement:	<u>Lydia Scales</u>	Department:	<u>Children and Family Services</u>
Phone:	<u>225-342-1312</u>	Office:	<u>Child Support Enforcement</u>
Return Address:	<u>627 N. 4th Street, P.O. Box 94065 Baton Rouge, LA 70802</u>	Rule Title:	<u>Criminal History Records Checks for Access to Federal Tax Information</u>
		Date Rule Takes Effect:	<u>November 1, 2020</u>

SUMMARY

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will have no fiscal impact on state or local governmental units because there is no change in the estimated number of background checks that DCFS performs each year.

In June 2019, DCFS promulgated Title 67, Part I. General Administration, Chapter 2, Section 205 Criminal History Records Checks for Access to Federal Tax Information to comply with Act 147 of the 2017 RLS, which requires background checks every ten years of DCFS employees, contractors, and subcontractors who have access to federal tax information.

The rule amends Title 67, Part I. General Administration, Chapter 2, Section 205 Criminal History Records Checks for Access to Federal Tax Information to provide clarifying definitions for criminal history record check, federal tax information (FTI), FTI suitable, and FTI unsuitable. The rule also specifies which criminal reports are suitable for DCFS employees, contractors, and subcontractors to access federal tax information.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed change will have no effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed change has no known effect on competition and employment.



Signature of Agency Head or Designee

7/6/2020

Date

LEGISLATIVE FISCAL OFFICER
OR DESIGNEE

Sammy Guillory
Deputy Assistant Secretary of Family Support

Typed Name and Title of Agency Head or Designee

DATE OF SIGNATURE

Eric Horent

DCFS Undersecretary

Digitally signed by Eric Horent
DN: cn=Eric Horent, o=DCFS, ou=email-erichorent@la.gov,
c=US
Date: 2020.07.06 15:36:37 -0500

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated)

IRS Publication 1075 required states to conduct criminal history record checks on all individuals with access to federal tax information (FTI). Act 147 of the 2017 Regular Session of the Louisiana Legislature fulfilled this requirement by enacting LA R.S. 15:587.5 and LA R.S. 46:51.3. This amendment is necessary to align Department of Children and Family Service's process with other agencies subject to Internal Revenue Service oversight, including Department of Revenue and Department of Health.

- B. Summarize the circumstances which require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.

Changes are proposed as requirement of IRS Publication 1075 and Act 147 of the 2017 Regular Session. This amendment is necessary to align Department of Children and Family Service's process with other agencies subject to Internal Revenue Service oversight, including Department of Revenue and Department of Health.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

- (1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

The proposed rule is anticipated to result in an increase in the expenditure of funds.

- (2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) Yes. If yes, attach documentation.

(b) No. If no, provide justification as to why this rule change should be published at this time.

The costs associated with this rule are included in the department's annual operating budget appropriated by the Legislature.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 21	FY 22	FY 23
Personal Services	\$0	\$0	\$0
Operating Expenses	\$0	\$0	\$0
Professional Services	\$0	\$0	\$0
Other Charges	\$0	\$0	\$0
Equipment	\$0	\$0	\$0
Major Repair & Constr.	\$0	\$0	\$0
Total	\$0	\$0	\$0
Positions (#)			

2. Provide a narrative explanation of the costs or savings shown in "A.1.," including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The proposed rules will have no fiscal impact on state or local governmental units, other than the publication fees associated with the proposed rule change.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 21	FY 22	FY 23
State General Fund	\$0	\$0	\$0
Agency Self-Generated	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0
Dedicated	\$0	\$0	\$0
Other (Specify)	\$0	\$0	\$0
Total	\$0	\$0	\$0

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The department currently has sufficient funds to implement the proposed action.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There are no estimated costs or savings to local governmental units resulting from this rule.

2. Indicate the sources of funding of the local governmental unit, which will be affected by these cost or savings.

The rule will have no impact on local governmental units.

**FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET**

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

Revenue Increase/Decrease	FY 21	FY 22	FY 23
State General Fund	\$0	\$0	\$0
Agency Self-Generated	\$0	\$0	\$0
Dedicated Funds *	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0
Local Funds	\$0	\$0	\$0
Total	\$0	\$0	\$0

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

Implementation of the proposed change will have no effect on revenue collections of state or local governmental units.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be no impact on receipts and/or income.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

The proposed rule will have no impact on competition and employment.