

May 4, 2018

ALL COUNTY LETTER NO. 18-51

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY SPECIAL INVESTIGATIVE UNIT CHIEFS
ALL COUNTY INCOME AND ELIGIBILITY VERIFICATION
SYSTEM COORDINATORS

SUBJECT: FEDERAL TAX INFORMATION ACCESS BACKGROUND
INVESTIGATION

REFERENCE: [UNITED STATES CODE TITLE 26 - INTERNAL REVENUE CODE \(IRC\) SECTION 6103](#)
[INTERNAL REVENUE SERVICE PUBLICATION 1075 "TAX INFORMATION SECURITY GUIDELINES FOR FEDERAL, STATE AND LOCAL AGENCIES" \("PUB 1075"\)](#)
[MANUAL OF POLICIES AND PROCEDURES SECTION 20-006](#)
[ALL COUNTY WELFARE DIRECTORS LETTER DATED JUNE 21, 2017: REVISION TO INTERNAL REVENUE SERVICE PUBLICATION 1075 EFFECTIVE SEPTEMBER 30, 2016](#)
[CALIFORNIA PENAL CODE SECTION 11105\(b\)](#)
[CALIFORNIA GOVERNMENT CODE SECTION 1044](#)

This All County Letter (ACL) is to provide information to County Welfare Departments (CWDs) of the requirement to implement and utilize Background Investigations (BI) that include fingerprinting of CWD employees who have access to Federal Tax Information (FTI) provided by the California Department of Social Services (CDSS).

Background

The CDSS receives FTI from the Internal Revenue Service (IRS) and the Social Security Administration under the authority of [Title 26, United States Code §6103\(l\)\(7\)](#),

and as such is subject to the requirements of [IRC §6103\(p\)\(4\)](#). This FTI is included in two Income and Eligibility Verification System (IEVS) matches: the IRS Asset and the Beneficiary Earnings Exchange Record match. Because FTI may exist in electronic, static, and verbal formats, the requirements of this ACL apply to all FTI in all forms. As a reminder, verbal FTI must always be secured and must never be recorded.

Effective September 30, 2016, the IRS issued the requirement to implement BIs of all persons “whose duties or responsibilities require access” to FTI in the [Publication 1075](#) “Tax Information Security Guidelines for Federal, State and Local Agencies” (Pub 1075). This ACL transmits these new BI requirements to CWDs.

The IRS gave CDSS and CWDs until January 26, 2018, to meet the new BI requirements. However, CDSS requires CWDs to fully implement the requirements for BIs using the guidance provided in this ACL no later than August 31, 2018.

Scope

This ACL applies only to the FTI provided to CWDs by CDSS and employees of the CWDs. This also includes all FTI created from the FTI provided by CDSS. Any other FTI provided to the counties by other agencies is not covered by this ACL.

The CWDs are expected to work with their employee unions, legal advisors, and governing bodies to ensure the implementation of BIs complies with existing laws or regulations.

This ACL is not intended to supersede the requirements of the current or future versions of Pub 1075. All CWDs must apply all requirements provided in Pub 1075 for the FTI CDSS provides to CWDs.

Developing BI Policy and Procedures

The CWDs must develop and document policy and procedures for implementing BIs and fingerprinting. The policies and procedures must, at a minimum, include:

- Identifying positions and classifications for which the duties or responsibilities require access to FTI.
- Notifying current employees of the BI and fingerprinting requirements.
- Initiating BIs that include fingerprinting of employees in the identified positions to obtain criminal history information from the California Department of Justice (DOJ) and the Federal Bureau of Investigation and a personal history statement to allow for a check of local law enforcement (LE) agencies where the individual has lived, worked and/or attended school within the last five years.
- Developing pass/fail criteria which would result in preventing an applicant or removing an employee from accessing FTI.
- Assessing the results (if any) of the criminal conviction history check to determine suitability for hiring, reassignment, or other actions.

- Reinvestigating employees every ten years.
- Retain documentation in accordance with all applicable laws and regulations.

The CWDs should include in their policy and procedures any other information necessary to comply with the BI requirements.

Consideration of BI Results

The CWDs have a responsibility in safeguarding FTI. For this reason, CWDs must review and consider all data from the resulting BI for suitability determination. When determining suitability for access to FTI, the CWD must consider, at a minimum, the following factors:

- The specific job duties and responsibilities in relation to access to FTI by the applicant.
- The relevancy, if any, of the criminal offense or offenses for which the applicant was previously convicted will have on his/her fitness and trustworthiness to access and safeguard FTI, and the potential risk of misuse of such information.
- The time which has elapsed since the occurrence of the criminal offense or offenses.
- The age of the applicant at the time of the occurrence of the criminal offense or offenses.
- The seriousness of the offense or offenses.
- Any information produced by the applicant, or produced on his/her behalf, in regards to rehabilitation and good conduct.

The [California Department of Fair Employment and Housing](#) and the federal [Equal Employment Opportunity Commission](#) websites can provide more information on this topic.

Local LE Check and Ten-Year Re-Investigation

The [ACWDL](#) issued on June 21, 2017 (Revision to Internal Revenue Service Publication 1075 Effective September 30, 2016), provided information on conducting BIs. In order to conduct BIs, CWDs will need to work with their human resources or personnel staff to initiate the fingerprinting and local LE check.

The DOJ uses LiveScan technology, which is available in all counties. The DOJ retains all of California's local LE records. LiveScan will meet the five-year local LE requirement if the individual lived, worked, and/or attended school solely in California for the full five years prior to the BI. However, if the individual has lived, worked, and/or attended school outside of California for any portion of the prior five years, the CWDs are required to submit a request to the LE in any other state(s). CWDs shall document that a request has been submitted to the out of state LE and keep a copy of the letter. This is to show proof that the CWDs complied with the requirement, most importantly in cases when the out of state LE failed to provide a response.

The local LE check produced by the DOJ includes arrests and convictions for criminal activities not reportable to the FBI. The local LE check is not intended to look for LE calls to the individual's residence, complaints made against the individual, or to determine if an individual is simply "known" to LE as this level of BI is unnecessary for FTI access. Crimes reportable to the FBI include violations of federal law, terrorism, or criminal activities across multiple states. The local LE check focuses on criminal activity not reportable to the FBI.

The DOJ provides an additional service, the Subsequent Arrest Notification Service, referred to as "Rap Back." The Rap Back transmits updates when new arrests or convictions are added to the individual's record. The Rap Back service covers California arrests and convictions and does not cover arrests and convictions from other states. For this reason, CWDs are required to complete the reinvestigation every ten (10) years to trigger the DOJ and FBI checks to comply with this requirement. The DOJ Rap Back service and the FBI check are not automatically included with the LiveScan. The CWDs must work with the DOJ to use the Rap Back service and obtain the FBI check with the LiveScan process.

If you have any questions, please contact the CDSS Welfare Fraud Bureau Safeguard Coordinator at (916) 653-1826, or FraudPrevention@DSS.ca.gov, or your county's IEVS Review Analyst.

Sincerely,

Original Document Signed By:

TODD R. BLAND
Deputy Director
Family Engagement and Empowerment Division