

## BACKGROUND INVESTIGATION REQUIREMENTS

### SAFEGUARDS OFFICE HOURS CALLS

- The Treasury Inspector General for Tax Administration (TIGTA) recently reviewed Safeguards and found that Safeguards must “establish and ensure that background investigation requirements for all agency employees and contractors that have access to FTI are consistent with the IRS’s background investigation requirements for access to FTI.”
- There has always been a **personnel security** requirement as part of the Pub 1075: as evidenced in previous Pub 1075 revisions, in the SDSEM document, and in SSR (previously SPR) in section 9. However, the TIGTA finding said that Safeguards requirements imposed on the states need to look more like IRS requirements.
- Why is this important? Background Investigation Requirements are necessary because FTI, by nature, is actionable (e.g., **desirable**) data that is highly susceptible to identity theft even under the most austere protection methods. -Name, social security number, address, etc. is desirable information for identity theft. This is an issue that is becoming more prevalent and we need to work together to ensure we avoid a breach of that information.
- Background Investigation Requirements currently consist of 4 primary components: Fingerprinting; Credit Checks; Citizenship Verification and Local Law Enforcement Checks. Current conversations with TIGTA are ongoing and will ultimately determine to what extent each of the 4 components will be implemented
  - Fingerprinting
    - Congress has expressly described what Fingerprinting will be used to determine, and since that does not currently include 6103 (P)(4)(D) (Safeguards authority) it is not included.
    - The FBI’s authority to conduct criminal history record checks for non-criminal justice purposes is based upon Public Law 92-544. PL 92-544 was enacted by Congress in 1972 to empower the states to enact legislation that designates specific licensing or employment purposes for which state and local government agencies may submit fingerprints to the FBI and receive FBI Criminal History Records Information.
    - It is state law which authorizes certain governmental and private organizations to conduct fingerprint background checks. Law enforcement agencies, public or private schools, nonprofit organizations and in home support agencies are usually some of the organizations that may be authorized under state statute to conduct fingerprint background checks. Some states may already have laws that may allow them to implement FBI fingerprinting right away, some may require modification and some may not have any at all.
    - FBI has recommended to us that the states make appropriate legislative changes under PL92-544 to enable use of fingerprinting
    - Check with your states’ Department of Justice or Attorney General websites for current state information on background checks and what you may already have in place in your state.

- Credit Checks - This requirement was removed as part of the background investigation process for this revision of Pub. 1075
- Citizenship Requirement checks are conducted on applicants to verify their eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization). The E-Verify system is free and can be used in conjunction with the I-9 requirement. Citizenship checks are part of a reasonable personnel security check function, and little, if any, change would be made to that requirement.
- Local Law Enforcement Checks are checks at local law enforcement agencies where the subject has lived, worked, and/or attended school within the last 5 years. Local Law Enforcement checks are part of a reasonable personnel security check function, and little, if any, change would be made to that requirement.
- Investigation Requirements Vs. Determination Criteria - Regardless of the outcome of TIGTA discussions, state agency partners need to understand that Safeguards is only requiring that these components be used as part of your agency's *determination criteria for access to FTI*. Safeguards is **not** determining criteria thresholds or benchmarks, or what determines favorable or unfavorable outcomes.
- What Safeguards will review: Policy and Procedures, Check sheet - A state subject to SRR review or on-site review would be expected to provide documentation outlining their background investigation policies and procedures, and be able to describe/demonstrate how they are implemented. We will look at policy and procedures and possibly a check sheet that the specific components were completed. We will not be looking at individual employee results.
- Acceptance of Risk
  - State agency partners subject to the background investigation requirements must use the results to determine a given employee's risk level for accessing FTI, NOT whether or not that employee is fit for employment. We are not asking you to use the criteria for employment, just for whether the employee can have access to FTI.
  - If a state agency partner were to receive a background investigation finding, it would be addressed like any other finding: the agency would be asked to describe mitigations that they plan to implement and/or accept risk, and such responses would become part of Safeguards' internal POAM (CAP process).
- Submit agency specific questions to our mailbox at [Safeguardreports@irs.gov](mailto:Safeguardreports@irs.gov)
- [FBI State Identification Bureau listing](#)