

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Human Resource Management
(Amendment)

900 KAR 1:009. Employee Access to Federal Tax Information (FTI).

RELATES TO: KRS 18A.095, 194A.005, 194A.062, 335B.010, 335B.020, 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103

STATUTORY AUTHORITY: KRS 194A.062~~[(2)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.062(1) requires each employee of the cabinet, including contract staff, with access to or use of federal tax information (FTI) to submit to a criminal background investigation by means of a fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation. KRS 194A.062~~(2)~~ requires the cabinet to promulgate an administrative regulation to implement that requirement. This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current employees, including contract staff whose job duties include access to or use of FTI.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 194A.005(1).
- (2) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor during the preceding seven (7) years, or offense the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the security of federal tax information, as determined by the cabinet.
- (3) "Federal tax information" or "FTI" means federal tax returns and return information that may:
 - (a) Contain personally identifiable information; and
 - (b) Include information created by the recipient that is:
 1. Derived from federal return or return information; and
 2. Received directly from the Internal Revenue Service (IRS) or obtained through an authorized secondary source, which may include:
 - a. Social Security Administration (SSA);
 - b. Federal Office of Child Support Enforcement (OCSE);
 - c. Bureau of the Fiscal Service (BFS);
 - d. Centers for Medicare and Medicaid Services (CMS); or
 - e. Another entity acting on behalf of the IRS.
- (4) "Rap back service" means a notification program in which the cabinet or responsible agency, upon approval to participate in the program, will be informed if an individual who has undergone a fingerprint-based criminal background check in accordance with the requirements of this administrative regulation, and whose fingerprints are retained by the Department of Kentucky State Police or the Federal Bureau of Investigation, is subsequently arrested.
- (5) "Responsible agency" means an office or department within the cabinet, or an entity under contract with the cabinet, that employs or offers a job to an individual in a position for which the job duties include access to or use of FTI.

Section 2. Requirement for Criminal Background Checks.

- (1) As a condition of initial application for employment or continued employment either directly or by contract in a position for which the job duties include access to or use of FTI, the cabinet or responsible agency shall require a prospective or current employee, including contract staff, to submit to a fingerprint-based state and national criminal background check:

- (a) After the individual is offered a job but before he or she begins working; and
 - (b) At least one (1) time during each ~~five (5)~~~~ten (10)~~ year period for a current employee or contract staff.
- (2) The responsible agency that requests a fingerprint-based state and national criminal background check on behalf of a prospective or current employee shall incur all fees included in the actual cost of each background check requested, including the rap back service.
- (3) The cabinet or responsible agency shall not employ directly or by contract an individual in a position for which the job duties include access to or use of FTI if the individual:
- (a) Refuses to consent to a fingerprint-based state and national criminal background check; or
 - (b) Is found to have a disqualifying offense.
- (4) The cabinet or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification for Other Criminal Offenses or Factors. The cabinet or responsible agency shall not be obligated to employ or offer employment to an individual with a criminal offense not specifically listed in Section 1(2) of this administrative regulation or other factor that bears upon the fitness of the individual to work in a position for which the job duties include access to or use of FTI.

Section 4. Challenges to Criminal History Record Information. An individual subject to a criminal background check required by KRS 194A.062(1) and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 5. Rehabilitation Review.

- (1) A prospective or current cabinet employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.
- (2) A prospective or current cabinet employee may submit a written request for a rehabilitation review to the Office of Human Resource Management no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2(4) of this administrative regulation.
- (3) A current cabinet employee who requests a rehabilitation review may be retained on staff if the employee is assigned duties that do not include access to or use of FTI.
- (4) The request for a rehabilitation review shall include the following information:
 - (a) A written explanation of each disqualifying offense, including:
 - 1. A description of the events related to the disqualifying offense;
 - 2. The number of years since the occurrence of the disqualifying offense;
 - 3. The age of the offender at the time of the disqualifying offense;
 - 4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and
 - 5. Any other circumstances surrounding the offense;
 - (b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;
 - (c) The date probation or parole was satisfactorily completed, if applicable; and
 - (d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently.

- (5) A rehabilitation review shall be conducted by a committee of three (3) employees of the Office of Human Resource Management.
- (6) The committee shall consider the information required under subsection (4) of this section, and shall also consider mitigating circumstances including:
- (a) The amount of time that has elapsed since the disqualifying offense;
 - (b) The lack of a relationship between the disqualifying offense and the:
 - 1. Position for which the prospective employee has applied; or
 - 2. Cabinet employee's current position; and
 - (c) Evidence that the prospective or current cabinet employee has pursued or achieved rehabilitation with regard to the disqualifying offense.
- (7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Human Resource Management shall send the committee's determination on the rehabilitation waiver to the prospective or current employee.
- (8) The prospective or current employee may appeal the results of a rehabilitation review to the Personnel Board in accordance with KRS 18A.095.

Section 6. Pardons and Expungement. An applicant or current employee who has received a pardon for a disqualifying offense or has had the record expunged may be employed in a position with job duties that include access to or use of FTL.
(44 Ky.R. 1779; eff. 3-15-2018; 51 Ky.R. 578; eff. 2-5-2025.)

MICHELE BARNES, Executive Director
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 25, 2025

FILED WITH LRC: August 14, 2025 at 2:10 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on October 21, 2024, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by October 14, 2024, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until October 31, 2024. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jay Klein or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of Federal Tax Information (FTI).

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to comply with the fingerprint-based background check requirement established by IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing requirements for fingerprint-based state and national criminal background checks for prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The frequency of the background checks is revised from ten (10) years to five (5) years.

(b) The necessity of the amendment to this administrative regulation:

The amendment is necessary to meet the new requirement of IRS Publication 1075 (Rev. 11-2021) for a background check to be every five (5) years.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment revises the background check requirement from every ten (10) to every five (5) years.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment revises the background check requirement from every ten (10) to every five (5) years.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation affects prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI and are therefore subject to fingerprint-based state and national background checks in accordance with IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Prospective and current cabinet employees including contract staff will be subject to fingerprint-based state and national background checks in accordance with the IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The cabinet will absorb the cost of the fingerprint-based state and national background checks required by IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Determining the suitability of individuals who require access to FTI is a key factor in ensuring adequate information security. Moreover, this administrative regulation ensures the cabinet's compliance with current state and federal requirements governing the security of FTI.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The cabinet estimates approximately 3,000 staff will be subject to fingerprint-based state and national criminal background checks, resulting in approximately \$73,575 in costs to the cabinet.

(b) On a continuing basis:

Cabinet expenditures on a continuing basis are indeterminable but anticipated to be less than the costs incurred during the first year of implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The source of funding to be used for the implementation and enforcement of this administrative regulation is from State Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

The cabinet will absorb costs associated with the required fingerprint checks.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation will not establish or increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applicable as compliance with this administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 194A.062

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

This administrative regulation affects the Cabinet for Health and Family Services, Office of Human Resource Management, who will administer the requirements to prospective and current cabinet employees including contract staff whose job duties include access to or use of FTI and are therefore subject to fingerprint-based state and national background checks in accordance with IRS Publication 1075 (Rev. 11-2021) and KRS 194A.062.

(a) Estimate the following for the first year:

Expenditures:\$73,575

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Subsequent years will have lower expenditures until the five year mark is reached again for employees and contract staff still employed since the first background checks. Due to attrition and a turnover rate of approximately 10%, the costs will even out in future years. New employees and contract staff cost is \$65.25 for the initial background check and the redetermination of existing staff is \$20.00 per background check.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

Because the Department of Kentucky State Police (KSP) charges \$25 for a criminal background check, including rap back, and approximately 300 cabinet staff and contractors are expected to submit to fingerprint checks during the first year, this administrative regulation is expected to generate approximately \$7,500 in revenue for KSP initially.

(a) Estimate the following for the first year:

Expenditures:The volume of fingerprint checks facilitated in accordance with this administrative regulation is indeterminable during subsequent years.

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

No change expected due to the turnover rate.

(4) Identify additional regulated entities not listed in questions (2) or (3):

None.

(a) Estimate the following for the first year:

Expenditures:Not applicable

Revenues:Not Applicable

Cost Savings:Not Applicable

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Not applicable.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

The cabinet will absorb costs associated with the required fingerprint checks.

(b) Methodology and resources used to determine the fiscal impact:

Approximately 3,000 employees have access to FTI, and there is an estimated 10% turnover rate. Accordingly, 300 would have an initial background checks at the \$65.25 rate, and the remaining 2,700 at the \$20 redetermination rate per current employee. The cost of 300 new staff at \$65.25 is \$19,575. The cost of 2,700 existing employees at \$20 is \$54,000, added to \$19,575 totals \$73,575.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

This administrative regulation will not have an overall negative or adverse major economic impact.

(b) The methodology and resources used to reach this conclusion:

Not applicable

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

IRS Publication 1075 (Rev. 11-2021), 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103.

(2) State compliance standards.

KRS 194A.062

(3) Minimum or uniform standards contained in the federal mandate.

IRS Publication 1075 (Rev. 11-2021) requires an FBI fingerprint check for any individual granted access to FTI. 26 C.F.R. 301.6103(p)(7)-1 allows the Internal Revenue Service (IRS) to terminate or suspend disclosure of returns and return information to any authorized recipient if the IRS determines that: (1) The authorized recipient has allowed an unauthorized inspection or disclosure of returns or return information and the authorized recipient has not taken adequate corrective action to prevent the recurrence of an unauthorized inspection or disclosure; or (2) The authorized recipient does not satisfactorily maintain the safeguards for protecting returns and return information, and has made no adequate plan to improve its system to maintain the safeguards satisfactorily. 26 U.S.C. 6103 pertains to the confidentiality and disclosure of returns and return information.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation does not impose stricter requirements than those required by federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.