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John Bel Edwards, Governor  
Ava Cates, Secretary

Office of the Secretary

September 9, 2022

Senator Patrick Page Cortez  
President of the Senate  
P.O. Box 94183  
Baton Rouge, LA 70804

Via Email to: [APA.SenatePresident@legis.la.gov](mailto:APA.SenatePresident@legis.la.gov)

**Electronic Mail - Delivery Receipt Requested**

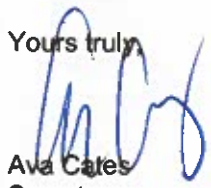
Dear Senator Cortez:

The Louisiana Workforce Commission has initiated the rulemaking process to amend LAC tit. 40:IV.379 (Rule 379) relative to background checks for employees with access to federal tax information. The proposed amendment changes the background check from every ten years to the frequency required by IRS's Pub. 1075, which is currently every five years. The following documents are contained in this packet:

- Notice of Intent
- Proposed Rule
- Family Impact Statement
- Poverty Impact Statement
- Small Business Analysis
- Provider Impact Statement
- Solicitation of Comments
- Public Hearing Request Instructions
- Fiscal and Economic Impact Statement
- Copy of relevant portions of IRS Pub. 1075

The Louisiana Workforce Commission is submitting the Notice of Intent to the Office of the State Register today for publication in the September 2022 edition of the *Louisiana Register*. In the event you have any questions, please contact me directly at [ACates@lwc.la.gov](mailto:ACates@lwc.la.gov) or 225.342.3001.

Yours truly,

  
Ava Cates  
Secretary

cc: Chair, House Labor and Industrial Relations Committee  
Via Email: [APA.H-LIR@legis.la.gov](mailto:APA.H-LIR@legis.la.gov)  
Chair, Senate Labor and Industrial Relations Committee  
Via Email: [APA.S-L&IR@legis.la.gov](mailto:APA.S-L&IR@legis.la.gov)  
Speaker, House of Representatives  
Via Email: [APA.HouseSpeaker@legis.la.gov](mailto:APA.HouseSpeaker@legis.la.gov)  
Editor, *Louisiana Register*  
Via Email: [Reg.Submission@la.gov](mailto:Reg.Submission@la.gov)

## NOTICE OF INTENT

### Louisiana Workforce Commission

#### Background Check for Access to Federal Tax Information

(LAC 40:IV.379)

Pursuant to the authority granted by R.S. 15:587.5, 23:1657.1, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Workforce Commission proposes to amend LAC 40:IV.379(C)(2). The purpose of the amendment of this Rule is to allow the frequency of conducting criminal history records checks for access to federal tax information to be dependent upon the requirements in Internal Revenue Service's Pub. 1075.

#### Title 40

#### LABOR AND EMPLOYMENT

#### Part IV. Employment Security

#### Subpart 1. Board of Review

#### Chapter 3. Employment Security Law

#### §379. Criminal History Background Check for Access to Federal Tax Information

A. - B.1.c. ...

C. General Provisions for Criminal History Background Checks

1. ...

2. Criminal history background checks will be completed at the frequency required by the Internal Revenue Service's Pub. 1075.

C.3. - F. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 15:587.5 and R.S. 23:1657.1.

**HISTORICAL NOTE:** Promulgated by the Workforce Commission, Office of Unemployment Insurance Administration, LR 44:2026 (November 2018), amended LR 48:

#### Family Impact Statement

Implementation of the proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on the six criteria set forth in R.S. 49:972(B).

#### Poverty Impact Statement

The proposed Rule will have no known impact on poverty as described in R.S. 49:973.

#### Small Business Statement

The proposed Rule's impact on small businesses has been considered in accordance with R.S. 49:978.4 and 978.5, and it is estimated that the proposed action will have negligible impact on small businesses as

defined in the Regulatory Flexibility Act. Therefore, a Small Business Economic Impact Statement has not been prepared.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, it is anticipated that this proposed Rule will have no known or foreseeable effect on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

All interested parties are invited to submit views, arguments, information, or comments on the proposed Rule amendment via U.S. mail to: Robert Wooley, Assistant Secretary, Office of Unemployment Insurance Administration, Louisiana Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9094. All written comments are required to be signed by the person submitting the comments, dated, and received on or before 4:00 p.m. on October 10, 2022.

#### **Public Hearing**

A request pursuant to R.S. 49:953(A)(2)(a) for oral presentation, argument, or a public hearing must be in writing and received by the Louisiana Workforce Commission no later than October 10, 2022. The request should be submitted by U.S. mail to: Louisiana Workforce Commission, ATTN: Robert Wooley, Assistant Secretary, P.O. Box 94094, Baton Rouge, LA 70804-9094.



Ava Cates

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person  
Preparing  
Statement: Danelle Gilkes Dept.: Louisiana Workforce Commission

Phone: 225-342-3531 Office: Office of Unemployment Ins. Admin.

Return  
Address: P.O. Box 94094 Rule  
Baton Rouge, LA Title: Criminal History Background Check for  
70804-9094 ~~Access to Federal Tax Information~~  
Date Rule  
Takes Effect: Upon Promulgation

SUMMARY  
(Use complete sentences)

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 purpose of this proposed amendment to LAC 40:IV.379 is to allow the frequency at which criminal background checks are repeated to follow the precedent of federal code set by the Internal Revenue Service (IRS) publication 1075, "Tax Information Security Guidelines for Federal, State and Local Agencies." The IRS recently updated the frequency requirement of background checks from every ten years to every five years. By referencing the IRS publication rather than specifying the timeframe within state administrative code, the Louisiana Workforce Commission (LWC) hopes to avoid future rule changes and associated expenses when/if the IRS changes the requirement again. Minor implementation costs of about \$707 will be included in FY24 LWC budget request as administrative costs related to the Unemployment Insurance Trust Fund in the same manner as the current background checks for the 11 employees that are expected to require the service. The services will be provided by LA State Police for federal and state background checks (estimated at \$542) and fingerprinting who will appropriate the funds by Statutory Dedication through the Criminal Identification and Information Fund and with local authorities for local background checks (estimated at \$165).

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

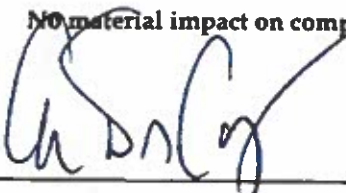
Because the expenses are administrative costs related to the Unemployment Insurance Trust Fund, they qualify for federal funding. The LWC will draw down the federal funds through the Office of Unemployment Insurance Administration Program, then transfer the funds by IAT to LA State Police, who will classify the funds into the Criminal Identification and Information Fund. The remaining federal draw will fund the payments to local authorities.


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

No material impacts on costs or economic benefits are anticipated for affected personal or non-governmental groups due to this proposed rule change. No private agencies are used in the processing of background checks or fingerprinting by LWC.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No material impact on competition or employment is anticipated due to this proposed rule change

  
Signature of Agency Head or Designee

  
Legislative Fiscal Officer or Designee

9/6/22

Ava Cates, Secretary

\_\_\_\_\_  
Typed Name & Title of Agency Head or Designee

8/31/2022

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Typed Name of Fiscal Officer or Designee

9/6/22

\_\_\_\_\_  
Date of Signature

**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 deliberation 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).

In order for a governmental entity to handle federal tax information, the entity must agree to follow all requirements set forth in IRS Pub. 1075, which is periodically changed and updated. When the original LAC 40: IV.379 was promulgated, IRS Pub. 1075 required employees and others handling federal tax information to have a background check conducted at least every ten years. IRS Pub. 1075 has recently updated that requirement to at least every five years. As such, the amendment to LAC 40: IV.379 deletes the reference to every ten years and replaces it to reflect that background checks will be conducted at the frequency prescribed by IRS Pub. 1075.

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

The amendment of the existing Rule is required by the latest version (November 2021) of the IRS Pub. 1075, "Tax Information Security Guidelines for Federal, State and Local Agencies." The relevant portions of that guidance are attached to this submission.

- 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.

This proposed amendment will result in an estimated increase in expenditures for LWC in FY24 of \$26 for each state background check, \$13.25 for each FBI check, \$10.00 for each state fingerprinting, and an estimated cost of \$15 for each local law enforcement background check. There are approximately 11 employees that will require checks earlier than previously expected, for an estimated total expenditure of \$707, of which \$542 is estimated to be expended by LA State Police and \$165 by local authorities. The original source of funding will be federal funds under the Office of Unemployment Insurance Administration program.

- (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)  X  NO. If no, provide justification as to why this rule change should be published at this time

The additional background checks are not needed until FY24 at which time the Louisiana Workforce Commission will request appropriate federal funding to cover the associated expenditures.

**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?

<b>COSTS</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>
Personal Services	0	0	0
Operating Expenses	0	\$707	0
Professional Services	0	0	0
Other Charges	0	0	0
Equipment	0	0	0
Major Repairs & Constr.	0	0	0
<b>TOTAL</b>		<b>\$707</b>	

**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 amendment will require eleven current LWC employees in the Office of Unemployment Insurance Administration to undergo a repeat background check in FY24. The costs for these checks in FY24 will include \$26.00 for the State background check, \$13.25 for the FBI background check, and \$10.00 for State fingerprinting. Additionally, at least one local check for each person will be required. Costs vary for local background checks, but could reach up to \$15 per person based on the local jurisdiction of the employee.

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

<b>SOURCE</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>
State General Fund	0	0	0
Agency Self-Generated	0	0	0
Dedicated	0	0	0
Federal Funds	0	\$707	0
Other (Specify)	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>\$ 707</b>	<b>0</b>

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 additional background checks are not needed until FY24 at which time the Louisiana Workforce Commission will request appropriate federal funding to cover the associated expenditures.

**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.

Local authorities with LWC employees requiring an additional local background check will incur related expenses.

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

**LWC will transfer federal funds to local authorities to cover eligible expenses.**



**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?

<b>REVENUE INCREASE/DECREASE</b>	<b>FY 23</b>	<b>FY 24</b>	<b>FY 25</b>
State General Fund	0	0	0
Agency Self-Generated	0	0	0
Dedicated Funds*	0	0	0
Federal Funds	0	\$707	0
Local Funds	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>\$ 707</b>	<b>0</b>

\*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.

**Because the expenses are administrative costs related to the Unemployment Insurance Trust Fund, they qualify for federal funding. The LWC will draw down the federal funds through the Office of Unemployment Insurance Administration Program, then transfer the funds by IAT to LA State Police, who will classify the funds into the Criminal Identification and Information Fund. The remaining federal draw will fund the payments to local authorities.**

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

**III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS**

- A. What persons, small businesses, 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.

**No material impacts on costs or economic benefits are anticipated for affected personal or non-governmental groups due to this proposed rule change. No private agencies are used in the processing of background checks or fingerprinting by LWC.**

- 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.

**The proposed rule should have no material effect on receipts and/or income to these groups.**

**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 should have no material effect on competition or employment.**

### 2.C.3 Background Investigation Minimum Requirements

Determining the suitability of individuals who require access to U.S. government SBU information, including FTI, is a key factor in ensuring adequate information security. Prior to granting access to FTI and periodically thereafter, the Agency must complete a suitability background investigation that is favorably adjudicated by the Agency and to include, at a minimum, the following requirements:

- Agencies must develop a written policy requiring that employees, contractors, and sub-contractors (if authorized), with access to FTI must complete a background investigation that is favorably adjudicated. The policy will identify the process, steps, timeframes, and favorability standards that the agency has adopted. The agency may adopt the favorability standards set by the Federal Investigative Standards (FIS) or one that is currently used by another state agency, or the Agency may develop its own standards specific to FTI access.
- The written background investigation policy must establish a result criterion for each required element that defines what would result in preventing or removing an employee's, contractor's and sub-contractor's access to FTI.
- Agencies must initiate a background investigation for all employees, contractors, and sub-contractors prior to permitting access to FTI.
- State agencies must ensure a reinvestigation is conducted within five (5) years from the date of the previous background investigation for each employee, contractor, and sub-contractor requiring access to FTI. ★
- Agencies must make written background investigation policies and procedures as well as a sample of completed employee, contractor, and sub-contractor background investigations available for inspection upon request.
- Background investigations for any individual granted access to FTI must include, at a minimum:

1. FBI fingerprinting (FD-258) - review of Federal Bureau of Investigation (FBI) fingerprint results conducted to identify possible suitability issues. Contact the appropriate state identification bureau for the correct procedures to follow. A listing of state identification bureaus can be found at: <https://www.fbi.gov/about-us/cjis/identity-history-summary-checks/state-identification-bureau-listing>.

This national agency check is the key to evaluating the history of a prospective candidate for access to FTI. It allows the Agency to check the applicant's criminal history in all 50 states, not only current or known past residences.

2. Check of local law enforcement agencies where the subject has lived, worked, and/or attended school within the last five (5) years and if applicable, of the appropriate agency for any identified arrests.

The local law enforcement check will assist agencies in identifying trends of misbehavior that may not rise to the criteria for reporting to the FBI database but is a good source of information regarding an applicant.

3. Citizenship/residency – Validate the subject's eligibility to legally work in the United States (e.g., a United States citizen or foreign citizen with the necessary authorization).

Employers must complete USCIS Form I-9 to document verification of the identity and employment authorization of each new employee hired after November 16, 1986, to work in the United States. Within three (3) days of completion, any new employee must also be processed through E-Verify to assist with verification of their status and the documents provided with the Form I-9. The E-Verify system is free of charge and can be located at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify). This verification process may only be completed on new employees. Any employee with expiring employment eligibility must be documented and monitored for continued compliance.

Federal agencies must conduct a suitability or security background investigation based on the position sensitivity of the individual's assigned position and risk designation associated with the investigative Tier established by the FIS. Granting access to FTI requires, at a minimum, a Tier 2 level investigation.

A FIS Tier 2 standard background investigation meets the suitability investigative requirement for non-sensitive positions designated as moderate risk public trust (requested using Standard Form 85P). Investigations conducted at Tiers 2-5 meet the minimum standard for an employee, contractor, and sub-contractor with access to FTI. Federal agencies may be asked to provide evidence that the required background investigation was conducted for each individual granted access to FTI. FIS standards require reinvestigation, at a minimum, every five (5) years.

State and local agencies that are not required to implement the federal background investigation standards must establish a personnel security program that ensures a background investigation is completed at the appropriate level for any individual who will have access to FTI using the guidance above as the minimum standard, with a reinvestigation conducted within five (5) years from the previous investigation. ✪

### 2.C.3.1 Background Investigation Requirement Implementation

Agencies must establish a written background investigation policy that conforms to the standards of [Section 2.C.3](#). Agencies must also identify all employees, contractors, and sub-contractors who currently have access to FTI and have not completed the required personnel security screening and initiate a background investigation that meets these standards. Agencies must initiate a background investigation for all newly hired employees, contractors, and sub-contractors who will require access to FTI to perform assigned duties. All adjudications must be done by the agency or another state agency delegated to perform, such as an Office of Administration or HR agency.

Federal agencies that completed a Moderate-Risk Background Investigation (MBI) or higher for individuals with access to FTI, prior to the October 2014 implementation date of the FIS Tier 2 standard investigation, have met the minimum standard and no further investigation is needed so long as reinvestigation is timely scheduled. Individuals granted access to FTI based on a National Agency Check with Inquiries (NACI) is not sufficient and a Tier 2 investigation must be initiated for continued access to FTI.

## 2.C.4 Personnel Actions

### 2.C.4.1 Personnel Transfer

When reassignments or transfers of individuals are permanent or of such extended durations certain actions are warranted. Agencies must define actions appropriate for these types of reassignments or transfers, whether permanent or extended. Actions that may be required for personnel transfers or reassignments to other positions within organizations include, for example, returning old and issuing new keys, identification cards and building passes; closing system accounts and establishing new accounts; changing system access authorizations (i.e., privileges); and access to official records to which individuals