

RESOLUTION NO. 2023-8779

**ADOPT RESOLUTION TO APPROVE UPDATED EMPLOYEE BACKGROUND
INVESTIGATION POLICY PER INTERNAL REVENUE SERVICES (IRS)
PUBLICATION 1075**

WHEREAS, during the Fiscal Year needs may arise to Adopt new County Policies; and

WHEREAS, in accordance with Internal Revenue Services (IRS) Publication 1075, prospective and current Local Child Support Agencies (LCSA) employees, contractors, subcontractors, volunteers and agents who have access to Federal Tax Information (FTI) must undergo a background investigation prior to having access to FTI; and

WHEREAS, this request was brought to the attention of the Human Resources Director and County Counsel and we are now requesting the Board of Supervisor to approve and adopt the updated Background Investigation Policy; and

WHEREAS, the County of Plumas has met its meet and confer obligation with Operating Engineers Local #3 bargaining unit of which these job classifications are included in this updated policy.

NOW, THEREFORE BE IT RESOLVED by the Plumas County Board of Supervisors as follows:

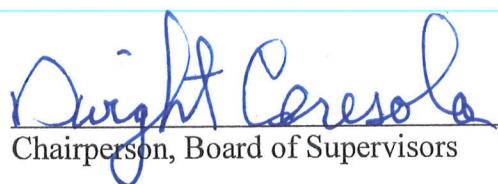
Adopt this Resolution approving updated Background Investigation Policy according to IRS Publication 1075 requiring reinvestigations every five (5) years based on employee's anniversary dates.

The foregoing Resolution is duly passed and adopted by the Board of Supervisors of the County of Plumas, State of California, at a regular meeting of said Board held on the 4th day of April 2023 by the following vote:

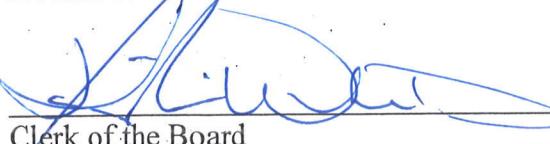
AYES: Supervisor(s) Goss McGowan, Hagwood, Engel, Ceresola

NOES: None

ABSENT: None


Dwight Ceresola
Chairperson, Board of Supervisors

ATTEST:


Clerk of the Board

PLUMAS COUNTY BACKGROUND INVESTIGATIONS POLICY

INFORMATION SECURITY

BACKGROUND INVESTIGATION REQUIREMENTS – ACCESS TO CONFIDENTIAL INFORMATION

POLICY BACKGROUND

In accordance with Internal Revenue Service (IRS) Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies* (Publication 1075), County of Plumas employees who have access to Federal Tax Information (FTI) must undergo a background investigation prior to being permitted access to FTI, which includes a criminal history screening and citizenship/residency validation. A background check will be initiated for new hires once a conditional offer of employment is made to a candidate. Individuals with access to FTI must undergo reinvestigation at least every five (5) years.

APPLICABILITY

This Policy is applicable to all current and prospective employees, volunteers, agents, contractors, and subcontractors of Plumas County having access to FTI in the following departments and/or roles as identified by the County in the attached Exhibit A, which by this reference is incorporated herein, as may be amended:

1. All current and prospective employees of the Plumas County Department of Child Support, as outlined in attached Exhibit A, as updated from time to time.
2. All current and prospective employees of Plumas County Department of Social Services as outlined in attached Exhibit A, as updated from time to time.
3. All current or prospective employees of the Plumas County Public Guardian as outlined in attached Exhibit A, as updated from time to time.

REFERENCES AND/OR AUTHORITY

- IRS Publication 1075
- 26 United States Code (U.S.C.) § 6103
- Family Code § 17202
- Government Code §§ 1044, 12952, 19572, and 18935
- Labor Code § 432.7
- Title 2, California Code of Regulations (CCR) §§ 11017 and 11017.1

- State Personnel Board Rule 172
- Penal Code § 11105(b)
- Equal Employment Opportunity Commission (EEOC) Enforcement Guidance 915.002

DEFINITIONS

TERM	DEFINITION
Federal Tax Information	Includes tax returns or return information received directly from IRS or obtained through an authorized secondary source, such as Social Security Administration, Federal Office of Child Support Enforcement, Bureau of the Fiscal Service, Centers for Medicare and Medicaid Services, or another entity acting on behalf of IRS pursuant to Internal Revenue Code (IRC) Section 6103(p)(2)(B).
Access to FTI	All individuals who have access to FTI to perform their official duties and as authorized under the IRC. Pursuant to need-to-know restrictions, an individual who has the authority to access FTI information should not access such information unless it is necessary to perform their official duties and for the purposes listed in IRC Section 6103.
Unauthorized Access	Unauthorized access occurs when an entity or individual knowingly or due to gross negligence receives or has access to FTI without authority, as defined in IRC Section 6103.
Criminal History Screening	Includes a review of Federal Bureau of Investigation (FBI) fingerprint results through the State Identification Bureau (California Department of Justice [DOJ]) to identify suitability for employment, and a check of local law enforcement agencies where the subject has lived, worked and/or attended school within the last five (5) years prior to the investigation.
Citizenship/Residency Validation	Validation of an individual's eligibility to legally work in the United States using the United States Citizenship and Immigration Services (USCIS) Form I-9 and USCIS E-Verify System. This requirement applies to employment candidates only.
Custodian of Records	Individual designated by an agency as responsible for the hiring decisions, the security, storage, dissemination, and destruction of the criminal records furnished to the agency, and who serves

	as the primary contact for DOJ for any related issues.
Reinvestigation	Includes a redetermination of the criminal history screening, based on new information obtained since the last screening, including local arrest information if the employee has lived, worked, or attended school in another state/county. At a minimum, reinvestigations will occur within 10 years from the date of the previous investigation. Subsequent arrest notifications shall be requested as required under Government Code Section 1044(d).
TERM	DEFINITION
Criminal History Information	Information obtained through the screening process, excluding criminal history prohibited for consideration by state and federal statutes, rules, and regulations (e.g. conviction judicially dismissed).
E-Verify	A USCIS internet-based system that compares information from Employment Eligibility Verification (Form I-9) to government records to confirm an individual is authorized to work in the US.
Internal Revenue Service Office of Safeguards	United States federal agency responsible for ensuring that federal, state and local agencies receiving FTI protect it as if the information remained in IRS's hands.
Department of Justice	State agency mandated to maintain the statewide criminal record repository for the State of California.

DEFINITIONS

Access to FTI

Includes individuals who require access to FTI to perform their official duties and as authorized under 26 U.S. Code Section 6103. Pursuant to need-to-know restrictions, an individual who has the authority to access FTI information should not access such information unless it is necessary to perform his/her official duties and for purposes listed in U.C. Code section 6103.

Direct Access to FTI

FTI includes tax return or return information received directly from the IRS or obtained through an authorized secondary source, such as the Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS) Centers for Medicare and Medicaid Services (CMS), or other entity acting on behalf of the IRS pursuant to an IRC 6103 Agreement.

FTI access also includes, but is not limited to, the IRS Asset and Beneficiary Earnings Exchange Record (BEER) matches produced as part of the Income and Eligibility Verification System (IEVS), the Child Support Enforcement (CSE) system access, hard

copy documents, reports, forms, and any other paper or electronic media that contains FTI.

PROCEDURES AND/OR GUIDELINES

Plumas County is responsible for identifying each position that provides individuals with access to FTI. Identified individuals must undergo and pass a background investigation prior to being permitted access to FTI and are subject to reinvestigation every five (5) years thereafter.

The minimum requirements of the background investigation include:

- Review of FBI fingerprint results that include criminal history in all 50 states (FD-258).
- Review of California Department of Justice (DOJ) fingerprint results.
- Check of local Law Enforcement (LE) agencies where the subject of the background investigation has lived, worked, and/or attended school outside of California for any portion of the last five (5) years.
- Reinvestigate each individual with access to FTI within five (5) years from the date of the previous background investigation.

Validation of citizenship/residency for employment candidates shall include the following:

- Validate citizenship/residency to confirm the subject's eligibility to legally work in the United States.
- Utilization of Form I-9 and supporting documents.
 - Within three days of completion of Form I-9, verify employment status through the E-Verify System.
- Ongoing monitoring for expired employment eligibility, if applicable.

Criminal history screening for employment purposes, including reinvestigation screening, will be conducted in accordance with Federal EEOC Enforcement Guidance, California Department of Fair Employment and Housing (DFEH) rules and regulations and applicable California Labor Code provisions.

Fingerprint and criminal conviction history screening must be reflected on each position duty statement and job posting/announcement for each position with access to FTI.

Individuals who do not successfully pass the background investigation shall not be permitted to hold a position with access to FTI.

All offers of employment and work assignments are conditional pending successful completion of the policy requirements.

Process

1. Plumas County Department Heads will track all investigation and reinvestigation dates concerning their employees, beginning with the original new-hire background completion date, and will monitor the dates to determine when reinvestigation must be initiated.
 - a. This information will be contained in the County's employee's tracking system once available.
 - b. Access to this folder is limited to the Department Head of those Plumas County Department(s) which routinely handle FTI, Human Resources (HR) Director and County Counsel or designee.

2. Background investigation for new-hires will be conducted only after a conditional offer of employment has been made to a candidate by Plumas County.
3. Background checks for current employees will be conducted within sixty days of implementation of this policy.
4. Background reinvestigation will be conducted within five (5) years, at a minimum, from completion of the first background and may occur sooner to more effectively facilitate coordination of multiple reinvestigations. Reinvestigations will occur every five (5) years on the employee's anniversary date thereafter.
5. Once Plumas County Department Heads determines which individuals must be reinvestigated, the individual employee will be provided the *Release and Authorization* form, and the *Personal History Statement* paperwork.
 - a. The employee will have seven (7) calendar days to sign the *Release and Authorization* form, and submit the completed *Personal History Statement* and *Release* form to HR in a sealed envelope addressed to the HR Custodian of Records.

LiveScan Fingerprints

6. The individual will be provided a *LiveScan* form for fingerprint screening through the Department of Justice (DOJ) and Federal Bureau of Investigation (FBI).
 - a. The individual must complete the center section of the form with name, address, and other identifying information at the HR office.
 - b. *LiveScan* fingerprint screening can be conducted by the Plumas County Sheriff's Office or other designated location.
 - c. The individual must bring the original *LiveScan* form and photo identification to the fingerprint appointment.
 - d. Employees will be given County time to have fingerprints taken.
 - e. Cost of fingerprinting will be paid by the Plumas County Department which employs the employee.
7. Plumas County Human Resources Department is the designated receiver for Plumas County DOJ/FBI *LiveScan* results.
 - a. DOJ/FBI is a comprehensive record of all reported convictions.
 - b. Clear Results: HR Custodian of Records will send an email to the department head when individual's fingerprints come back clear with no reported arrests or convictions. Results are usually received within one week.
 - c. Delayed Results: HR Custodian of Records will send an email to the department head if there is a "delay" in receiving the fingerprint results. This happens occasionally with the DOJ and is usually related to the volume of fingerprint requests it receives. Sometimes the delay can take several weeks.

HR must not request follow up with DOJ unless the request is delayed for thirty (30) days or more.

- d. Results indicating a "hit": If there is a "hit" on the DOJ/FBI prints, HR Custodian of Record sends an email to the department head advising of this.
- e. The department head will call HR to receive the information verbally – no hardcopy print out or report from DOJ/FBI is provided to the department head.
- f. HR Custodian of Records will only provide conviction information to the department head.
- g. When information is received, conviction information will be documented in either the individual's personnel file or recruitment file.

Personal History Statement and Check of Local Law Enforcement Agencies

- 8. Using the information disclosed in the *Personal History Statement*, HR will request information from local law enforcement agencies where the individual has lived, worked, and/or attended school in the last five (5) years, and, if applicable, the appropriate agency for any identified arrest and/or convictions, whether misdemeanor or felony.
 - a. A *Request for Information* will be sent to the identified law enforcement agency, along with a copy of the individual's *Release and Authorization* form.
 - b. A postage paid return envelope will be included and marked: CONFIDENTIAL – ATTENTION PLUMAS COUNTY HUMAN RESOURCES.
 - c. Return of requested information from law enforcement agencies will be monitored within thirty (30) days.
 - d. If HR is waiting for arrest/conviction information and has not received a response in thirty (30) days, a second request letter for information will be sent.
 - e. If no information is received after an additional fifteen (15) days, HR will place a follow-up telephone call to the law enforcement agency.
 - f. If no information is received after forty-five (45) days from the date of the first request, HR will consider this a good faith effort to obtain arrest/conviction information.
 - g. All information received from law enforcement agencies will be included in the background file for review and consideration during the individual assessment of the criminal history.

Individual Assessment of Criminal History

- 9. Criminal history screening for background investigation renewal purposes will be conducted in accordance with Federal EEOC Enforcement Guidance, California Department of Fair Employment and Housing (DFEH) rules and regulations, and applicable California Labor Code provisions, as amended.
 - a. HR will complete the *Individual Assessment of Applicant's Criminal History* form.
 - b. No criminal history: If the individual has no arrest or conviction history based on inquiries made to obtain such information, this will be noted on the form and a copy of the form will be given to PCDCSS Director to review.

- i. The individual will be advised in writing within five (5) business days that a reinvestigation background was completed and passed.
- c. Criminal history: All arrest and conviction information disclosed by the individual, received from law enforcement agencies, or reported on DOJ/FBI printout will be maintained by HR Custodian of Record.
- d. Arrests and conviction will be individually assessed by the Department Director to determine which offense(s) fall within the disqualification criteria (Examples of unacceptable criminal activity pursuant to State DCSS Policy include, but are not limited to, Fraud (welfare, insurance, financial, theft, bribery; Misuse of Data; Inappropriate Access of Data; Theft; Burglary.)
- e. The Department Director will consider the nature and gravity of the offense or conduct; the time that has passed since the offense or conduct occurred; and/or completion of the sentence; and the nature of the job held or sought. The basis for denial of a background must be job-related and consistent with business necessity.
- f. Individuals whose criminal history screening results in arrest(s) or conviction(s) will be notified within five (5) business days. Individuals will have the opportunity to provide additional information within five (5) business days of being notified by HR. HR will consider a reasonable extension of time for the individual to provide supporting information regarding an arrest or conviction.

CRITERIA FOR WITHDRAWAL OF EMPLOYMENT OFFER OR INITIATION OF DISQUALIFICATION PROCEEDINGS

Disqualification Criteria

The felony and misdemeanor crimes listed below are offenses that may render any individual's background unsuitable for employment in positions that have access to FTI and do not attempt to specify every unacceptable criminal activity or questionable background.

- Fraud: welfare, insurance, financial, theft, or bribery
- Misuse of data
- Inappropriate access to data
- Theft/Burglary
- Other crimes of moral turpitude

Criminal background investigation results will be considered utilizing an individual assessment with any basis for denial being job-related and consistent with business necessity. The factors that are relevant in assessing whether an exclusion is job related for the position in question and consistent with business necessity are:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense or conduct and/or completion of the sentence; and
- The nature of the job held or sought.

Individuals subject to criminal history screening will have the opportunity to provide additional information within five (5) business days of notice in the event the background investigation results in an unfavorable outcome or requires clarification. An employee whose classification is represented by a labor organization may request representation when providing additional information regarding arrests or convictions. Discrepancies in information provided in the Personal History Statement and the results of the investigation may be clarified by the applicant. Final decisions resulting in a denial of employment will be provided in a written statement of reason for denial with instructions for appeal. Time frames will be in accordance with existing laws, rules, and regulations.

With respect to employees, the use of information received as a result of the requires subsequent 5-year reinvestigation of employees is limited to convictions that will disqualify an individual from accessing or having access to FTI in the course and scope of their employment. The decision to initiate the disciplinary process will be based on factors that include, but are not limited to, the seriousness of the offense committed, the nature and background of the offense, the length of time which has passed since the conviction, and whether or not the facts that constituted a conviction are still a crime under current statutes and guidelines.

The decision to withdraw an employment offer (applicant) or begin the disqualification process (employee) will be done on a case-by-case basis after review of the documents and completion of the background investigation. Decisions made under this policy and in accordance with state and federal regulations and policies are final and not subject to review or appeal when pertaining to prospective employees.

If it is determined the employee is in violation of a County policy or Department Rule, the matter will be addressed using existing Plumas County Personnel Rules, Rules 16 and 18. A represented employee may request a representative of their choice, including but not limited to, a union representation as noted above.

Final decisions resulting in an adverse employment action based on arrest or conviction history will be provided in a written statement of the reason for denial and subsequent action. Employee will be entitled to all pre-discipline and post-discipline due process requirements as outlines in Plumas County Personnel Rules, Rules 16 and 18, the current Memorandum of Understanding between the County of Plumas and International Union of Operating Engineers, Local 3, and California law,

CITIZENSHIP/RESIDENCY VALIDATION

All new hires for Plumas County are required to complete an I-9 to verify citizenship and residency for employment.

EFFECTIVE DATE

This Policy is to remain in effect until rescinded by an executive level officer, i.e. Department Director or designee.