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John Bel Edwards, Governor  
Ava Dejoie, Secretary

## Office of the Secretary

October 2, 2018

The Honorable Taylor F. Barras  
House Speaker  
LA House of Representatives  
P.O. Box 94062  
Baton Rouge, LA 70804-9062  
Via email to: [apa.housespeaker@legis.la.gov](mailto:apa.housespeaker@legis.la.gov)

The Honorable John A. Alario, Jr.  
Senate President  
LA Senate  
P.O. Box 94183  
Baton Rouge, LA 70804  
Via email to: [apa.senatepresident@legis.la.gov](mailto:apa.senatepresident@legis.la.gov)

The Honorable Patrick O. Jefferson, Chairman  
House Committee on Labor & Ind. Relations  
House of Representatives  
P.O. Box 94062  
Baton Rouge, LA 70804-9062  
Via email to: [apa.h-lir@legis.la.gov](mailto:apa.h-lir@legis.la.gov)

The Honorable Neil Riser, Chairman  
Senate Committee on Labor & Ind. Relations LA  
LA Senate  
P.O. Box 94183  
Baton Rouge, LA 70804  
Via email to: [apa.s-l&ir@legis.la.gov](mailto:apa.s-l&ir@legis.la.gov)

RE: Oversight Report on Louisiana Workforce Commission's Proposed Rulemaking for Background Checks for Access to Federal Tax Information

Honorable Members of the Louisiana Legislature:

In accordance with the Administrative Procedure Act (R.S. 49:950 et seq.) as amended, we are submitting the attached documents for the proposed Rule for Background Checks for Access to Federal Tax Information.

The Workforce Commission published a Notice of Intent on this proposed Rule in the August 20, 2018 issue of the *Louisiana Register* (Volume 44, Number 08). A public hearing was held on September 27, 2018 at which only Workforce Commission staff was present. No oral testimony or written comments were received regarding this proposed Rule.

The Workforce Commission anticipates adopting the Notice of Intent as a final Rule in the November 20, 2018 issue of the *Louisiana Register*.

The following documents are attached: (1) a copy of the Notice of Intent; and (2) the public hearing attendance roster.

In the event you have any questions or need additional information, please contact me directly at [adejoie@lwc.la.gov](mailto:adejoie@lwc.la.gov) or 225.342.3001.

Yours Truly,

A handwritten signature in blue ink, appearing to read "Ava M. Dejoie".

Ava M. Dejoie  
Secretary

Attachments (2)

## NOTICE OF INTENT

### Louisiana Workforce Commission Office of Unemployment Insurance Administration

#### 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 promulgate LAC 40:IV.379. The purpose of the promulgation of this Rule is to allow the Workforce Commission to delineate procedures for the background checks mandated by Act 147 of the 2017 Regular Session.

#### 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. Definitions

*Criminal History Background Checks*—a review of an individual's criminal history on the national level through the use of fingerprints sent to the Federal Bureau of Investigation (FBI), the state level, through the use of fingerprints sent to the Louisiana Bureau of Criminal Identification and Information and the local level, through various local law enforcement agencies.

*Federal Tax Information (FTI)*—consists of federal tax returns and return information (and information derived from it) that is in the Louisiana Workforce Commission's possession or control which is covered by the confidentiality protections of the Internal Revenue Code and subject to its safeguarding requirements, including IRS oversight.

##### B. Applicability

1. All prospective Louisiana Workforce Commission employees who will be expected to handle FTI and have signed a conditional job offer, all prospective Louisiana Workforce Commission contractors and subcontractors expected to handle FTI, and all current employees, contractors and subcontractors that handle FTI will submit fingerprints and other identifying information and undergo the following criminal history background checks:

- a. state criminal history record check;
- b. national criminal history record check from the F.B.I.;
- c. check of all local law enforcement agencies where the subject has lived, worked and/or attended school in the last five years.

##### C. General Provisions for Criminal History Background Checks

1. Every current employee, prospective employee, contractor or subcontractor employee identified as having or who will have access to FTI, shall sign a written authorization to have fingerprinting and criminal history background checks performed.

2. Criminal history background checks will be completed, at minimum, every 10 years.

3. Criminal history background checks will only be done on prospective employees after a conditional offer of employment is signed by prospective employee.

4. Criminal history background checks on prospective employees of contractors and subcontractors must be done prior to beginning work on the contract.

##### D. Suitability Determination

1. Unless otherwise excluded from employment under federal or state laws, all criminal conduct revealed by the criminal history background checks will be considered based upon the following criteria:

- a. relevance of criminal record or conduct to the position sought or held;
- b. the nature of the work to be performed;
- c. the time that has elapsed since the conviction or conduct;
- d. the seriousness and specific circumstances of the offense/conduct, including the type of harm caused, and/or the legal elements involved in the specific crime committed;
- e. the number of offenses;
- f. whether the candidate has pending charges;
- g. whether the individual is likely to have committed the offense/conduct;
- h. the nature and gravity of the offense/conduct;
- i. any evidence of rehabilitation or contrition; and
- j. any other relevant information, including that submitted by or on behalf of the final candidate, current employee, contractor or subcontractor, or other information obtained by LWC.

2. If no criminal conduct is revealed by the criminal history background checks, the prospective employee or current employee will be deemed suitable to handle FTI based on the criminal background checks only if the prospective or current employee also is a citizen or legally authorized to work in the U.S. and no other issues involving the trustworthiness of the prospective or current employee arise. Contractors and subcontractors will be determined suitable relevant to the background checks if no criminal conduct is found and all other requirements under IRS Publication 1075 are met.

3. If criminal conduct is discovered by the criminal history background checks, the Louisiana Workforce Commission will consider the criteria and make a suitability determination. If an unfavorable determination is made, the prospective employee, current employee, contractor's employee or subcontractor's employee will be notified in writing and will be given 30 days from the date of mailing, as evidenced by the date indicated on the letter, to present documentation to refute the suitability determination. If no documentation is submitted within 30 days, then the suitability determination will be final. If documentation is presented within 30 days, the Louisiana Workforce Commission will review the documentation and either affirm or reverse its original suitability determination. The Louisiana Workforce Commission's reconsidered determination shall be final. Even if a contractor's employee or subcontractor's employee receives a favorable suitability determination or redetermination, if all other requirements provided for by IRS Publication 1075 are not met, the contractor employee's or subcontractor employee's access to FTI will be denied or terminated.

**E. Consequences of Unsuitability Determinations**

1. access or use of FTI will be immediately denied, suspended, or terminated;
2. job offer will be rescinded for prospective employees if unsuitability determination is final;
3. contract may be terminated;
4. contractor's employee or subcontractor's employee will be removed or prohibited from performing work;
5. a current employee that receives a determination of unsuitability will have access suspended, and a current employee that receives a final determination of unsuitability will have access to FTI terminated;
6. current employees with access to FTI that receive a final determination of unsuitability may be reassigned or face disciplinary action depending upon the specific circumstances.

F. Nothing in this Rule shall prohibit the Louisiana Workforce Commission from taking adverse action against a prospective employee, or current employee with access to FTI based upon factors other than the outcome of the criminal background checks including, but not limited to, falsifying information on the application, unusual delay in completing or delivering required forms, or any action indicating the individual is unfit for a position of trust. All actions against a classified civil service employee will be taken in accordance with civil service rules.

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:

**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 Analysis**

The proposed Rule's impact on small businesses has been considered in accordance with R.S. 49:965.6, and it is estimated that the proposed action will have negligible impact on small businesses as defined in the Regulatory Flexibility Act.

**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 to Renita Williams, Office of Unemployment Insurance

Administration, Workforce Commission, P.O. Box 94094, Baton Rouge, LA 70804-9094. The deadline for receipt of all written comments is 4 p.m. on September 25, 2018. No preamble was prepared.

**Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, September 27, 2018, at 10 a.m. at the LWC Training Center, 2155 Fuqua Street, Baton Rouge, LA 70802.

Ava M. Dejoie  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

**RULE TITLE: Background Check for Access to Federal Tax Information**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule adds criminal background checks for Louisiana Workforce Commission (LWC) employees, contractors, and subcontractors that have access to federal tax information. This rule is being proposed to comply with Act 147 of the 2017 RLS, which requires background checks every ten years of LWC employees, contractors, and subcontractors who have access to federal tax information.

The proposed rule change is estimated to increase expenditures for the LWC by approximately \$1,008 in FY 19 and an indeterminable, though likely marginal, amount in subsequent years as new LWC employees, contractors, and subcontractors are granted access to federal tax information. The estimated cost for LWC to obtain a local, state, and federal criminal background check is \$63 per person. LWC anticipates requesting background checks on 16 individuals in FY 19. Therefore, the total implementation cost is estimated to be \$1,008 (16 individuals x \$63 per background check).

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

The proposed rule will increase revenue in the statutorily dedicated Criminal Identification and Information Fund by an estimated \$608 for 16 state and national background checks in FY19, and an indeterminable, though likely marginal, amount in subsequent years as new LWC employees, contractors, and subcontractors are granted access to federal tax information. The Office of State Police will administer the state and federal background checks that include fingerprinting at an anticipated charge of \$48 each, of which \$38 will be deposited into the Criminal Identification and Information Fund (16 individuals x \$38 = \$608) and \$10 will be remitted to the federal government.

The proposed rule will also increase revenue for local government by an estimated \$240 for 16 local background checks in FY19, and an indeterminable, though likely marginal, amount in subsequent years as new LWC employees, contractors, and subcontractors are granted access to federal tax information. Local jurisdictions will administer local background checks at an anticipated charge of \$15 each

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There may be an economic cost to LWC employees that have adverse findings on their criminal record, as this may deem the employee unsuitable to handle federal tax information, which will impact their ability work for LWC.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The degree to which the rule will affect competition and employment is indeterminable. Prospective employees, contractors, and subcontractors will be notified of this requirement during the application process. People who do not believe they can meet this requirement will likely remove

themselves from the pool of candidates without LWC's knowledge.

Ava Dejoie  
Secretary  
1808

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

# LOUISIANA WORKFORCE COMMISSION

## PUBLIC HEARING

Office of Unemployment Insurance Administration

September 27, 2018

10:00 a.m.

2155 Fuqua Street, Baton Rouge, LA 70802

On Proposed Rule: LAC 40:IV.379

"Background Check for Access to Federal Tax Information"

### ATTENDANCE ROSTER

NAME	ADDRESS	PHONE NUMBER	AGENCY or GROUP you represent
1. <i>Janelle Gilkes</i>	<i>10813 N. Shoreline BR 70809</i>	<i>(225) 342-3531</i>	<i>LWC</i>
2.			
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