

ATTACHMENT C

Background Checks and Substance Abuse Testing

Background

This campus policy is designed to implement UA System University-wide Administrative Memorandum 470.1, Policy on Background Checks and Use of Criminal Record, Financial, and Substance Abuse-Testing Information in Employment Decisions, a copy of which is attached. Administrators responsible for hiring activities and background checks should reference both the campus and system-wide policies. Note that this policy is intended for general guidance purposes only. State and federal statutes and regulations may provide more specific restrictions, requirements or procedures with regard to particular employment categories. This policy does not create any right to procedural or substantive due process of law beyond that mandated by federal and state laws, if any, nor does it create any contract rights to any applicant or employee. Furthermore, this policy is subject to all policies of the Board of Trustees of the University of Arkansas.

Procedure

Each position (including faculty) that is determined to require pre-employment screening will have language in the job announcement indicating that a background check, substance abuse test, or combination of these checks is required.

For the positions determined to require pre-employment screening, satisfactory completion of background checks and/or substance abuse testing shall be required **prior to** extending an offer of employment. Checks/testing shall only be conducted once a candidate becomes the finalist or one of the finalists for a particular position. For checks to be conducted by the University's third-party background check provider, Human Resources shall supply finalists with documents to complete, which shall include a separate written authorization and notification of the individual's rights with regard to the checks. Unless another arrangement is specifically agreed to between the hiring department and Human Resources, or as provided by law, all background check/substance abuse testing requests will be submitted by HR, and the results shall be returned to HR for initial evaluation, with any potentially disqualifying information to be reviewed with the hiring manager, in consultation with other appropriate units as described in more detail below. The results of criminal or credit/financial checks and substance abuse testing¹ performed by a third-party vendor (as opposed to state agencies, such as the Arkansas State Police), are considered consumer reports and fall under the Fair Credit Reporting Act (FCRA) regulations.

1. Types Of Background Checks; Positions Covered for Each Type of Check

For covered positions, a background check is required prior to making an offer to a final candidate for employment or upon promotion or other move to a new position (excludes faculty rank promotions). The types of background checks include the following:

1. Criminal

1. Criminal record checks will include a social security number validation and trace. This process validates the applicant's social security number and helps identify the scope of the check by identifying all residences and employment within the United States (US). Except for law enforcement personnel, or as required by law, criminal record requests shall be limited to criminal convictions and arrests currently pending adjudication, and shall not include other arrests. The specific type of criminal record check to be utilized for a given position shall be determined based on the duties and risks associated with the position and shall be indicated in the grid attached as **Schedule A**. Checks for types of positions designated by an asterisk below (*) shall include a check for registered sex offender status, unless otherwise specified by law.
2. A criminal background check is required prior to making an offer to a final candidate for employment (new hire) or promotion or other move² for the following types of positions:
 1. Positions where handling of cash funds, including credit card processing, is a primary job duty, provided that positions which only have access to one credit card at a time when processing or facilitating a transaction may be excluded.
 2. *Positions in Finance & Administration, Development, Enrollment Services, Student Financial Aid, UAConnect, and Information Technology Services that are security sensitive at such a level that they have broad access to or permanent retention of confidential information, e.g., social security numbers or system-wide passwords (employee or student), as follows:
 1. Positions that have the ability to view or access any information housed in enterprise systems³ that contain sensitive information
 2. Positions that perform enterprise application development
 3. Positions that have physical and administrative access⁴ to campus data infrastructure systems

4. Positions that are "forensic" investigators including those involved in the investigation of computer or network security breaches
5. Positions with broad access to sensitive student information with market value, such as financial aid administrators
3. *Positions (including faculty positions) providing care or supervision to minors (persons under 18), patients, mentally ill or developmentally disabled⁵ persons, or similar populations, as a primary job duty, including, but not limited to:
 1. Child care workers⁶
 2. Health care providers such as physicians and nurses
 3. Clinical psychologists, social workers, or licensed professional counselors
 4. Pharmacists and pharmacy technicians
4. *Positions that perform duties in residence halls and Greek houses, including resident assistants.
5. *University police and other security positions.⁷
6. Safety-sensitive, non-academic unit positions as follows:
 1. Electricians (including high voltage, low voltage and alarm electricians)
 2. Power distribution workers
 3. Boiler/chiller operators
 4. Utility maintenance workers
 5. *Workers who perform locksmith duties
 6. *Institutional service assistants with regular access to personal spaces such as residence halls, Greek houses and athletic locker rooms
 7. Environmental compliance workers
 8. Environmental Health and Safety employees
7. Staff positions, regardless of unit, designated as safety officers or that operate facilities distributing hazardous substances
8. *Senior administrators including the Chancellor, Vice Chancellors, Deans, Vice Provosts, Associate Vice Chancellors and other positions such as Fiscal Officers, the Executive Director of University Housing, the Director of the University of Arkansas Police Department, and the Director of the Pat Walker Health Center, who are assigned a level of responsibility and authority that provides broad access to sensitive or protected University information, are granted high level authority

for transaction approval, are in executive positions for which there is limited supervision or oversight or whose conduct bears significantly on the University's reputation.

9. Any other positions for which a check is required by law.
3. Additional types of positions not listed above may be added to the list of covered positions requiring criminal record checks contained in **Schedule A**; however, any additional covered positions, which are not otherwise mandated by this policy, must be approved by the appropriate vice chancellor in consultation with Human Resources. Furthermore, any such checks must be job-related and a business necessity, based on a need specifically identified by University officials, or as otherwise required by law, and shall be applied in a consistent manner, in terms of type of checks and frequency, across similar positions within a given unit.
4. Criminal background checks for incumbent positions may be conducted as required by law or as specifically determined to be necessary by the Vice Chancellor responsible based on need. Positions for which checks are required for incumbents shall be designated in **Schedule A**.

2. **Financial (Credit)**

1. Financial/credit checks include the names and addresses of the person being screened, all debts, liens, collections, bankruptcies, payment history, and charge-offs.
2. A financial (credit) background check is required prior to making an offer to a final candidate for employment or promotion or other move for those positions where such information is relevant to job duties performed, including the following types of positions:
 1. Positions with extensive cash management duties, with access to cardholder data sets or access to the cardholder data processing or storage environment⁸ as a primary job duty.⁹
 2. Senior administrators including the Chancellor, Vice Chancellors, Deans, Vice Provosts, Associate Vice Chancellors and other positions, such as Fiscal Officers, who are assigned a level of responsibility and authority that provide financial oversight or are granted high level authority for transaction approval.
3. Additional types of positions not listed above may be added to the list of covered positions requiring financial/credit checks contained in **Schedule A**; however, any additional covered positions which are not otherwise mandated by this policy, must be approved by the appropriate vice chancellor in consultation with Human Resources. Furthermore, any such checks must be job-related and a business

necessity, based on a need specifically identified by University officials, or as otherwise required by law, and shall be applied in a consistent manner, in terms of type of checks and frequency, across similar positions within a given unit.

4. Financial checks for incumbent positions may be conducted as specifically determined to be necessary by the Vice Chancellor responsible based on need. Positions for which checks are required for incumbents shall be designated in **Schedule A**.

2. **Substance Abuse Testing; Positions Covered For Each Type of Check**

1. Substance abuse testing will include a urine analysis, unless an alternative, reliable method is determined in consultation with HR.
 1. Any pre-employment, pre-promotion, or pre-move substance abuse test will be a 5-panel screening unless otherwise required by law. Alteration or falsification of a substance abuse test shall be grounds for disqualification or termination.
 2. A substance abuse test is required prior to making an offer to a final candidate for employment or promotion for the following types of positions:
 1. Senior administrators including the Chancellor, Vice Chancellors, Deans, Vice Provosts and Associate Vice Chancellors.
 2. Positions that perform duties in residence halls and Greek houses, including Resident Assistants.
 3. Bus and van drivers (primary job duties), or positions which otherwise require a Commercial Driver's License.¹⁰
 4. University police and other security positions.
 5. Safety-sensitive, non-academic unit positions as follows:
 1. Electricians (including high voltage, low voltage and alarm electricians)
 2. Power distribution workers
 3. Boiler/chiller operators
 4. Utility maintenance workers
 5. Heavy Equipment Operators
 6. Institutional service assistants with regular access to personal spaces such as residence halls, Greek houses and athletic locker rooms
 3. Additional types of positions not listed above may be added to the list of covered positions requiring substance abuse tests contained in **Schedule A**; however, any additional covered positions, which are not otherwise mandated by this policy must be approved by the appropriate vice chancellor in consultation with Human Resources.

Furthermore, any such tests must be job-related and a business necessity, based on a need specifically identified by University officials, or as otherwise required by law, and shall be applied in a consistent manner, in terms of type of tests and frequency, across similar positions within a given unit.

4. Periodic or substance abuse testing for incumbent positions may be conducted as required by law or as specifically determined to be necessary by the Vice Chancellor responsible based on need. Positions for which substance abuse testing is required for incumbents shall be designated in **Schedule A**. Unless specifically designated, substance abuse testing is limited to reasonable suspicion-based testing as provided for in other University policies.

3. **Schedule A – Summary Grid**

A schedule (grid) with specific positions and the type of required checks/testing for the positions based on the above conditions is **attached**, and may be updated from time to time.

4. **Re-Checking of Incumbent Employees**

With respect to any positions for which re-checking is required, employees shall be required to provide a separate authorization for each round of checks/testing, unless 1) employees have specifically consented to an ongoing authorization to obtain updated checks at any time during their employment, or 2) a check is conducted as part of an employee misconduct investigation.

5. **Use of Results**

If background check/substance abuse test results indicate there are no convictions or other information or results that might disqualify the applicant or employee, the third party vendor shall inform Human Resources, who in turn shall inform the hiring manager that the candidate is viable for employment.

In instances where job-related adverse information is obtained, Human Resources shall review the report with the hiring manager, in consultation with, as appropriate, General Counsel, the University of Arkansas Police Department, and the Office of Equal Opportunity and Compliance, in order to assess the appropriateness of hiring, promoting, or moving the individual in light of the information obtained and the duties of the position. In the context of hiring for positions utilizing a committee process, the hiring manager shall be considered the relevant unit head and the chair of the committee (if the person is different).

If the criminal history check reveals criminal convictions, Human Resources shall review the report with the hiring manager, in consultation with, as appropriate,

General Counsel, UAPD, and the Office of Equal Opportunity and Compliance, evaluating each conviction, including any additional information that the individual provides, before a tentative decision is made whether to disqualify the individual. The existence of a conviction does not automatically disqualify an individual from employment. Appropriate consideration shall be given to the nature and number of convictions, their dates, and the relatedness each conviction has to the duties and responsibilities of the position. The basic inquiry is whether the safe and efficient conduct of the functions of the job position would be inconsistent with the employment of the individual in view of his or her record. Relevant considerations include safety of fellow employees and students, fitness for supervisory role, and protection of property, funds, and reputation of the University of Arkansas, as well as safety of the public.

If substance abuse testing results are positive, the applicant or incumbent shall be permitted to submit relevant medical information pertaining to the positive test results. All positive substance abuse tests will be reconfirmed and reviewed by a medical examiner. Additional information regarding disqualification criteria for applicants and incumbent employees is contained in the system policy.

A decision to hire, promote, or otherwise move an applicant with adverse, job-related background check information shall require the approval of the Vice Chancellor for the division where the position is located, in consultation with the Vice Chancellor for Finance and Administration. Persons making determinations under this policy shall document the reasons, within the standards of this policy, for the employment decision made.

In the context of hiring for positions utilizing a committee process, if a final decision is made not to hire based on adverse information, the committee may be informed that the applicant was disqualified based on the background check, but detailed information shall be limited to the hiring manager.

6. **Adverse Action Procedures**

If, upon review of the results of the criminal or financial background check or substance abuse test,¹¹ a tentative decision is made to disqualify an applicant/employee based on the background check/substance abuse test results, Human Resources will provide the individual a pre-adverse action disclosure that includes a copy of the individual's consumer report and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act." When notified of the intended adverse action, the applicant or employee shall be given five business days to request, in writing, clarification or further review of the decision.

After five business days, if no additional information has been presented establishing that disqualification based on the initial results of the check is inappropriate, the decision to disqualify the applicant may be finalized. When the decision to disqualify an applicant/employee is finalized, Human Resources shall provide the applicant/employee with an adverse action notice.

The adverse action notice will include:

- Notice of the adverse action taken;
- The name, address, and phone number of the consumer reporting agency that supplied the report;
- A statement that the consumer reporting agency that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for the decision; and
- A notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.

In instances where the applicant/employee disputes the accuracy of the information provided by the vendor agency, the Human Resources representative may request the vendor to verify the accuracy of the information before final action is taken.

If information provided by a consumer reporting agency in connection with an employee misconduct investigation forms the basis for an adverse employment action against an employee, the University must provide an "adverse action notice" after the action is taken, together with a summary of the investigation report.

7. Costs Associated with Background Checks and Substance Abuse Testing

The hiring department will be responsible for all fees associated with any of the components of the background check process, unless otherwise agreed to by the dean or vice chancellor in charge of the unit which will be responsible.

8. Background Check Records

Records of background checks/tests and communication to the applicant/employee concerning results will be maintained for three years from the date of any hiring decision by Human Resources, and then destroyed. Access to background check information shall be restricted to authorized persons with a specific, job-related need to know. Background check records shall be stored separately from other employee application or personnel files; electronic records will be stored securely in password-protected files, and any paper records will be stored in locked file in HR or the office responsible for obtaining the check.

- (1) However, if testing results are reported directly by a lab, rather than by a credit report agency, FCRA requirements would not apply.
- (2) That is, where the new position is a covered position.
- (3) Integrated large scale systems, including mainframes, servers, and peripheral devices, interconnected by a network forming a virtual centralized computing facility, such as BASIS, UAConnect, FYI, the UA Computing Network, and Blackboard.
- (4) Access necessary for those directly responsible for the system, user account, and software maintenance, also called "root" or super user access.
- (5) For this policy, developmentally disabled means a significant disability attributed to mental retardation, cerebral palsy, epilepsy, autism, or related conditions.
- (6) Checks for child care workers must be conducted by Arkansas State Police and DHS Child Maltreatment registry, and must be renewed at least every five years. Ark. Code Ann § 20-38-103(a) & (d).
- (7) Checks for law enforcement officers must include check conducted by Arkansas State Police. Ark. Code Ann. §12-9-106 & Comm'n on Law Enforcement Standards & Training Reg. 1002.
- (8) Does not include positions which only have access to point of sale terminals.
- (9) Payment Card Industry Data Security Standard (PCIDSS) requires financial checks for all persons who have access to cardholder data sets or the cardholder data processing or storage environment.
- (10) Includes any employee whose position requires driving a motor vehicle: a) with a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of more than 10,000 pounds; b) with a gross vehicle weight rating of 26,001 or more pounds; c) designed to transport 16 or more passengers, including the driver; or d) of any size that is used to transport hazardous material which requires the vehicle to be placarded under the hazardous materials regulations. See 49 CFR §§ 382.107 & 382.301; Ark. Code Ann. § 27-23-103(7). Certain driver positions are subject to periodic/random substance abuse testing pursuant to federal law.
- (11) Again, if substance abuse testing results are reported directly by a lab, FCRA requirements would not apply.

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Attachment:

Administrative Memorandum 470.1

Schedule A

POLICY DOCUMENTS

- [Schedule A](#)
- [Universitywide Administrative Memorandum 470.1](#)