

HR 2015-08 BACKGROUND CHECK POLICY GUIDANCE

HR 2015-08 Policy and Attachments

I. Types of Background Checks Required

Employment Verification and Reference Checks

1: What is the difference between the employment verification and a reference check?

Answer: The employment verification verifies the dates of employment and prior employers. The campus may send an inquiry to the candidate's current employer only if s/he specifically consents. A reference check gives a professional assessment of the candidate's work history and skills. A reference check is typically done by contacting a past employer, supervisor or co-worker whose name is suggested by the candidate.

2: What information must be collected and from whom to verify past employment?

Answer: Information from past employers should include the name of the prior employer, dates of employment, and position titles.

3: Should we verify employment if the position previously held is not relevant to the position under consideration? What if there are gaps in employment? What if the former employer has gone out of business or does not to respond to the verification request?

Answer: The campus and/or the vendor should attempt to verify all relevant employment reported by the candidate. For faculty, it is only necessary to verify relevant employment that is actually listed on the CV. If there are gaps in employment, the perfect time to address this issue is during the interview process. If a previous employer cannot be reached or does not respond, gather as much information as possible. Accurate Background will advise the campus of any discrepancies found. The campus has discretion to consider whether any discrepancies found warrant further consideration.

4: Does the Policy prohibit the campus from doing its own employment verifications and reference checks or using online tools that can verify employment and check references?

Answer: The campus may choose to conduct its own employment verifications and reference checks and may use online tools to do so. Prior authorization must be obtained from the

candidate before initiating employment verification and reference checks. The campus must be consistent in the methods it uses to verify employment and check references for all candidates being considered for the same position. This means you must use the same online tools with all candidates for the same position.

Education Verification

5: What education should we verify? What if the job classification doesn't require specific education for the position? What if the candidate reports degrees that aren't required?

Answer: If the advertised position requires a specific level of education, the campus should verify that the candidate has the required education. However, the campus should verify all post-secondary degrees claimed by the candidate. If the candidate has a post-secondary degree when only a high school diploma or GED is required, verification of the post-secondary degree is sufficient. For example, if the position requires a high school diploma or GED certificate and the candidate has a Bachelor's degree, then the campus should verify the Bachelor's degree. If the position requires a JD degree and the candidate has both a JD and an MBA, the JD degree must be verified, but it is also good practice to verify the MBA. If the job classification does not require specific education and the candidate does not claim a specific degree, it is not necessary to verify education.

II. Job-Related Background Checks

6: May the campuses subscribe to subsequent criminal records updates?

Answer: The campuses may not subscribe to subsequent criminal records updates unless the law requires updates for the position held. See **Attachment A, VII. B.**

7: May the campuses use the DMV Employer Pull Notification System?

Answer: Yes. Campuses are specifically allowed to require employees who routinely transport students, faculty and/or staff to authorize periodic updates of their driving records. This provision allows the campus to continue to use the DMV Employer Pull Notification System. See **Attachment A, II. B. 2.**

III. Persons Subject to Background Check Requirements

New Hires

8: Are prospective new hires who currently or previously worked at another CSU campus required to undergo a background check at the appointing campus? If the current/former campus already has a copy of the completed background check results, can the appointing campus use the results to satisfy the background check requirement?

Answer: Candidates who were employees at another CSU campus and/or the Chancellor's Office (CO) are considered "new hires" under this Policy and the appointing campus is required to conduct a background check on the candidate. The campus has the discretion to use existing background check results from a previous campus (or components of the background check, such as education verification); however, the appointing campus should ensure that the background check results are complete and valid (i.e., that all appropriate checks were done, and that the criminal records check was completed within the last twelve (12) months.)

9: When should transcripts be required for new hires?

Answer: If submission of transcripts is required, the job posting should state the requirement. Transcripts may be required of candidates for faculty positions. Transcripts may also be required to confirm that certain courses were taken or certain performance (e.g., passing grades or minimum GPA) was achieved.

10: Are reference checks required for new faculty members when the job posting requires the candidate to provide letters of recommendation with their application materials?

Answer: Yes. Reference checks are required for all new hires, including faculty members. If letters of recommendation are submitted directly by the referees (not the candidate), the campus may accept these as valid references. However, we strongly recommend that at least one additional reference check be carried out. Letters of recommendation submitted by the candidate cannot be substituted for reference checks under this Policy.

11: Many campuses have ROTC programs staffed by members of the United States military, who may already hold "Secret" or "Top Secret" security clearances. Is the campus required to conduct background checks on these individuals?

Answer: It is recommended that CSU military faculty and staff undergo the same background checks required for any other CSU employee. Individuals who work on campus but are employees of other government agencies should be treated like employees of outside entities operating on the CSU campus. Assuming the positions they hold are designated as *sensitive* by the campus, the campus should notify the outside entity of the background check requirement and ensure that the entity provides verification that it has completed background checks on its employees in compliance with this Policy. If the positions are not considered *sensitive*, verification would not be required. See **Attachment A, III. E., F. and G.**

Current Employees Who Must Undergo Background Checks

12: What constitutes being under "voluntary consideration" for a position?

Answer: An employee who applies for an open position and is recommended as the top candidate for it following a recruitment would be under voluntary consideration for the position, as would an employee who was offered the opportunity to assume a new, different position without a recruitment (with the opportunity to decline the position as well).

13: Is a background check required when a current employee is promoted to a new position?

Answer: A background check is required for a current employee only if the promotion is to a new position that is appreciably different from the former position and the employee is taking on new duties that are *sensitive* or require a background check *by law*. Additional guidance on what constitutes a *sensitive* position can be found in **Attachment A, V. Sensitive Positions**.

14: Must the campus conduct a background check when a tenured faculty member is promoted?

Answer: Promotion of a tenured or probationary faculty member is based on a review of the faculty member's performance rather than the assumption of new duties and does not result in the faculty member assuming a new job; therefore a background check is not required.

15. Are there other circumstances where a change in faculty status would not trigger a need for a background check?

Answer: Yes. In addition to promotions of tenure-track faculty, the following faculty status changes are not normally associated with the assumption of new duties, and would not normally trigger a requirement for a background check: lecturer range elevation; reappointment of a lecturer to a higher range; changes to pay plan (ten (10) month to twelve (12) month); acceptance of a teaching assignment in summer session or Extended Education by a faculty member, which is considered "extra pay for extra work"; and additional employment for faculty bargaining unit work using class code 2403.

16. Is a background check required if a faculty member is reassigned or appointed to department chair?

Answer: In general, no. However, if the chair assignment is associated with new duties that trigger a requirement *by law* or would indicate the need for a background check based on heightened concern for safety or security (e.g. operating campus clinics for minors; regular access to significant amounts of cash; access to Level 1 data as defined in CSU Information Security Standards) then a criminal records check would be appropriate.

17: For current employees who are voluntarily moving into *sensitive* positions and who were previously background checked, must a new background check be conducted if that previous background check was completed over twelve (12) months ago?

Answer: Yes. Every current employee voluntarily moving into a position in which a background check is required must complete it before starting the new position unless they have had a background check conducted within the last twelve (12) months. If the campus is unable to confirm that a background check was completed within the last twelve (12) months, a new background check must be completed. However, it is not necessary to re-verify education or employment previously verified.

18: When is a temporary or permanent reassignment or reclassification “voluntary”?

Answer: If the employee has the opportunity to accept or decline the reassignment, then the reassignment is voluntary. For voluntary reassignments, a background check is required only when the employee is under consideration for a position that is required *by law* to undergo a background check or is considered *sensitive*. Conversely, background checks are NOT required for involuntary reassignments including involuntary transfers. See **Attachment A, III. C. Current Employees Who Must Undergo Background Checks** for a list of positions in which background checks are currently required *by law*.

19: If a reclassification results in a position being designated as *sensitive*, is a background check required and should the background check be initiated before the review?

Answer: Reclassification of an employee within an existing position does not constitute movement into a new position, so a background check would not be necessary unless new duties led to a check being required *by law*. If that is the case, the employee should be informed and given the opportunity to accept or decline the reclassification, and management needs to ensure no adverse impact will occur for the employee.

20: Is a campus required to complete a background check for an employee who is currently working in a *sensitive* position and is voluntarily moving to another position that is designated as *sensitive* or for which a background check is required *by law*?

Answer: A background check is required if the new position into which the employee is moving requires a background check *by law* or involves new *sensitive* duties and the employee has not undergone a background check within the last twelve (12) months. If the campus previously verified prior employment and education, the campus is not required to duplicate those components of the background check process. However, if the new position requires experience or education that was not previously checked, the campus should verify it.

21: When a current employee is under voluntary consideration for a position that requires a background check, can we conduct only the criminal records check? What about rehires?

Answer: If a current employee hasn't undergone a background check at the same campus in the past twelve (12) months and voluntarily moves into a position for which a background check is required *by law* or that is a *sensitive* position, then a background check must be completed. If the campus previously verified prior employment and education, the campus is not required to duplicate those components of the background check process. However, if the new position requires experience or education that was not previously checked, the campus should conduct verifications. In the case of “rehires,” a criminal records check is only required if the employee had a break in service for more than twelve (12) months and did not undergo a background check at the same campus in the last twelve (12) months. If the break in service is less than twelve (12) months, then a background check is not necessary.

22: Are current employees who conduct, review, and store background check results required to have a background check or are they grandfathered into the policy?

Answer: Current employees who have access to CORI (Criminal Offender Records Information) are required *by law* to have a background check. If these employees have not previously had a background check (e.g., at the time of hire or when the employee was put into the role in which he/she has access to CORI), campuses are required to run a background check on these employees as soon as possible.

23: May campuses have more than one Background Check Coordinator or Records Custodian?

Answer: Campuses may have more than one Background Check Coordinator and more than one Records Custodian as long as the process remains consistent and they are thoroughly trained. If a campus uses Live Scan, the individual who is authorized by the DOJ to conduct Live Scan should be designated as a Records Custodian.

Student Workers Who Must Undergo Background Checks

24. Is it necessary to verify the educational degree and employment of student workers on our campus?

Answer: Not necessarily. Many student worker positions don't require a specific degree but instead require admittance or enrollment as a student on campus (e.g. teaching assistant positions normally require the candidate to be an enrolled student in good standing in the hiring department's graduate program.) In such cases, you should verify that the student is actually an enrolled student on your campus via your current campus student records system. There is no additional need to perform an independent verification unless the student is being considered for a position requiring a specific set of educational credentials. In that case, the student's educational background must be verified independently.

Employees, Volunteers and Consultants Who Work at CSU-Hosted Recreational Camps and Clinics On or Off Campus

25: Must all employees and volunteers who work at CSU-hosted recreational camps and clinics that are attended by minor children be fingerprinted? What if the employee or volunteer completed a criminal records check within the past twelve (12) months?

Answer: Yes, Education Code section 10911.5 specifically requires employees, volunteers, and consultants who work at recreational camps and clinics to submit fingerprints to the Department of Justice. The CSU is considered a public recreation program employer when it offers camps that are operated by the CSU or on CSU property. Therefore, CSU is required *by law* to comply with the Education Code. The definitions of "public recreation program" and "camps" cover academic and athletic programs, even those of a relatively short duration. By this Policy, CSU is requiring that fingerprints be submitted for such employees, volunteers, and consultants who work in these settings. Campuses may choose to utilize third party vendors for this component of

the background check process. There are currently over 500 fingerprinting services in California. Most use a technology called Live Scan. In cases where the employee or volunteer completed a background check within the past twelve (12) months, but was not fingerprinted, the campus should require them to submit fingerprints before allowing them to work in this setting.

26: Should a campus complete the standard background check process for all new volunteers?

Answer: No, only new volunteers who will work in positions in which the duties are *sensitive* or for which a background check is required *by law* must undergo the background check. If volunteers will work around minor children, sex offender registry checks are required as well. If volunteers work in a CSU public recreation program for minors, fingerprints are required. New volunteers working in other positions are not required to undergo background checks. Existing volunteers are not required to undergo background checks as they are considered “grandfathered.” Campuses should identify volunteer assignments that are *sensitive* or require background checks *by law* in order to determine when background checks are necessary for future incoming volunteers.

27: Are students acting as volunteers required to undergo a background check?

Answer: A student would be required to undergo a background check only if the student is volunteering for a position that is *sensitive* or for a position where a background check is required *by law*. Many student volunteer activities fall into the general category of “service learning” and are not included under this policy.

28. What factors should be considered in determining whether or not university volunteers should undergo background checks?

Answer: Factors to be considered would include the nature, frequency, and duration of the assignment as well as whether the volunteer would be working under close supervision or independently. One-time or occasional activities, such as events where community members come to the campus, often use volunteers in a wide variety of roles – setup and cleanup, staffing information tables, leading tours, etc. To the extent that these activities occur in public settings, involve only incidental contact with minors or contact with minors accompanied by adults or are supervised by responsible faculty or staff, they are unlikely to be *sensitive* and the campus would not be required to perform background checks on these volunteers. Similar standards would apply to one-time events where the campus sends volunteers into the community. Note that volunteers working in public recreation programs for minors must submit fingerprints. See **Attachment A, III. E.**

29. Is it necessary to verify employment and education for volunteers who fall under the background check policy?

Answer: Generally, no. If specific education or experience is required before the volunteer would be allowed to perform the duties, those requirements should be verified.

Employees of Auxiliaries and Outside Entities

30: What is the preferred method of background check documentation for an outside entity who is using or renting CSU facilities for events involving minors?

Answer: When outside entities use or rent campus facilities for events involving minors, such an event is likely to be considered to be a recreational program for minors. This policy requires that individuals working in such programs (including volunteers) undergo background checks and Education Code Section 10911.5 requires fingerprinting. For contracts with outside entities executed prior to the implementation of this Policy, it is recommended that the campus notify the outside entity of the requirements of Education Code Section 10911.5 (effective January 1, 1993) and request verification, by use of the CO recommended document, that the outside entities' adult employees, consultants, and volunteers are in compliance with this provision of the Education Code. For future contracts with outside entities, it is recommended that the campus include the requirement in the contract. The CO HR and Procurement Divisions are developing language for use in these contracts.

31. Attachment A, III. F. "...requires background checks for auxiliaries and outside entities that employ individuals in positions who are subject to legal background check requirements and those who perform duties that would require a background check if performed by CSU employees." Does "legal" in this context mean anyone handling sensitive information such as Level I data or financial data?

Answer: "Legal" in this context means "required by law". Refer to **Attachment A, III. C** for a list of positions where background checks are currently required *by law*. Access to Level 1 information assets is governed by CSU policy. In addition, the Integrated CSU Administrative Manual, Policy 8030.00 states that campuses must develop procedures to perform background checks on positions with access to Level 1 information assets.

32: If we have an outside entity come on campus to oversee minors on campus (e.g., high school dance team who is leasing our Theatre facilities), in addition to the signed statement they provide certifying that their employees who are supervising these minors have cleared background checks, must we also ensure that they have been fingerprinted?

Answer: Effective January 1, 1993, every public recreation program employer (including CSU) is required to fingerprint its employees who have direct contact with minors when it offers camps operated by the CSU or on CSU property under Education Code Section 10911.5. This policy requires CSU campuses to ensure that employees of outside entities that operate a recreational program on a CSU campus or under the CSU name off-campus are fingerprinted to comply with Education Code Section 10911.5.

33: Must we conduct background checks on guest lecturers, instructors who teach one-day non-credit courses offered through Extended Education on a sporadic basis, and

conference presenters who received an honorarium paid through the campus Foundation or offer their services free of charge?

Answer: Generally, no. Campuses frequently bring individuals to campus to provide one-time services such as public talks, seminars in their field of expertise, performances, conference presentations, guest lectures, workshop facilitation, etc. These activities are typically non-*sensitive* and provide very low levels of risk to the organization, and the providers do not have an ongoing employment relationship with the campus (although they may receive a payment). When that is the case, they can be considered excluded from this Policy.

34: If an auxiliary is contracted to provide food service on a CSU campus (duties not performed by CSU employees), do student and non-student hourly food service employees need to be background checked? Is a cashier position held by an auxiliary employee considered *sensitive* because the position has access to money?

Answer: Auxiliary employees would be required to complete a background check only if the positions they hold on campus are deemed *sensitive* or are required to undergo a background check *by law*. Auxiliaries have the discretion to determine which of their positions are considered *sensitive*. However, this determination should be consistent with the campus standards for determining *sensitive* positions (e.g., campuses may establish a financial threshold for cashiers).

35: Are high schools that operate on our campus, but not under the CSU name, exempt from this Policy?

Answer: High schools that operate on CSU campuses are not exempt from this Policy. While they may not be operating under the CSU name, they are still operating on CSU property, and are required to have their employees complete the appropriate background checks. The campus should confirm with the high school or high school district that all required background checks have been completed on these employees and that they are in compliance with this Policy. The campus should also require the outside entity to provide verification of fingerprinting of its employees, as required under the Education Code.

Employees of Independent Contractors

36: Are employees of independent contractors or third party vendors in *sensitive* positions that include access to Level 1 and 2 data subject to this Policy?

Answer: Independent contractors and third party vendors whose employees perform duties on a CSU campus that are *sensitive* or require a back ground check *by law* are required to conduct background checks on those employees prior to commencing services at the CSU. Employees of independent contractors or third-party vendors who have access to Level 1 security data for CSU employees are required by CSU policy to be background checked.

Police Personnel

37: Can the campuses make conditional offers of employment to Police Cadets, due to the timing of their academy graduation and their start date?

Answer: Selection of CSU police personnel, including sworn police personnel and police officer cadets, as well as background check requirements are addressed in CSU's Selection of CSU Police Personnel and Police Officer Testing Policy. Located under Public Safety policies at: <http://www.calstate.edu/HRAdm/Policies.shtml>. Also see: **Attachment A, III, H. Police Personnel** of the Background Check Policy.

IV. Persons Exempt from Background Check Requirements

Current Faculty Members

38: When current faculty members periodically perform work in E99 Special Consultant appointments (work is not *sensitive* and checks are not required *by law*), are they considered new hires under Attachment A, III. A. New Hires or would they be considered exempt from background checks due to their current employee status?

Answer: If a current employee working in a different classification (such as a faculty position) is given an additional appointment as a special consultant, the employee can be treated as a current employee under this Policy. Note that a new classification code (2403) for additional employment for faculty is now available. If the work that was previously classified as special consultant falls within the scope of work normally performed by faculty, this new classification code should be used for the appointment. The same rules for determining whether to perform a background check would apply.

Conversely, individuals who are not current employees and were newly hired as special consultants would be subject to the background check requirement. Exceptions to this rule are instances where the special consultant classification is being used to compensate individuals for one-time, non-*sensitive*, low-risk activities; in these cases, the individuals may be treated as excluded from this policy.

39: When a faculty member is ending FERP but has been hired as a part-time faculty member, is this considered a new position requiring a background check?

Answer: If the faculty member returns on a part-time basis after completing FERP, and less than twelve (12) months has elapsed since the end of the FERP, then the individual would be considered a continuing/current employee and would not be required to undergo a background check unless the new position has been defined as *sensitive* or a background check is required *by law*.

40: If a faculty member is ending a three (3) year appointment and has been selected for a new appointment, will a background check be required?

Answer: No, as long as there has not been a break in service of twelve (12) months or more, the faculty member is treated as a continuing/current employee. In a related example, a lecturer with a break in service in the middle of a three (3) year appointment is considered a continuing/current employee, not a rehire.

Student Workers

41: Are background checks required on Unit 11 student workers re-hired in a *sensitive* position at the same campus (same or different department) within twelve (12) months from their last background check?

Answer: No. A second background check is not required within twelve (12) months of the last background check. If the student is being rehired into the **same** position, no background check would be required unless the student had a break in service of more than 12 months, regardless of when the previous background check was done. However, if additional *sensitive* duties warrant a different type of background check that was not conducted previously, it should be conducted upon re-hire. For example, if the student worker's re-hire appointment is responsible for working directly with minors when the previous employment did not include that responsibility, the campus should require the student to complete the sex offender registry requirement upon rehire.

42: Is a background check required for a student worker who hands out reimbursement checks when our front desk staff are not available? Would this occasional scenario transfer the student worker's position to a *sensitive* position because they have "access to control over cash, checks, credit cards, and/or credit cards account information" as noted under the Attachment A, V. Sensitive Positions grid?

Answer: Generally, no. If the access to checks is incidental, and is not part of the student's "regular" duties and responsibilities and the level of risk to the campus is very low, this scenario would not necessarily require the position to be treated as *sensitive*.

43: Must we complete background checks on *all* Unit 11 student workers? What about student workers who are not in *sensitive* positions but have notified the campus of a criminal conviction such as a sex crime?

Answer: No. Only Unit 11 student workers in *sensitive* positions or in positions that *by law* require background checks must undergo background checks. If a student worker, who is not required to have a background check discloses a criminal conviction, then the campus has the discretion to investigate the matter as it deems appropriate.

Employees Re-appointed to the Same Class & Campus Within Twelve (12) Months

44: Is a background check required for the annual re-appointment of a temporary employee to the same class and on the same campus assuming a break in service of less than twelve (12) months?

Answer: No background check is required for a former temporary employee who is re-appointed to the same position at the same campus within twelve (12) months after the end of the previous

appointment. The former employee is not treated as a “re-hire” as defined under **Attachment A, III. B. Rehires.**

V. Sensitive Positions

45: Is a new background check required for current employees already working in a sensitive position who have new duties or changes made to their position?

Answer: No background check would be required for an employee currently working in a *sensitive* position when they stay in the same *sensitive* position but receive an in-class progression or reclassification based on changes in their duties. No background check is required when new *sensitive* duties are added to a current *sensitive* position on a temporary basis. A background check is required if the employee is under voluntary consideration for a different *sensitive* position that involves new *sensitive* duties.

46: Are we required to repeat background checks annually for employees for sensitive positions or for positions required by law?

Answer: No, the Policy does not require a background check to be completed every year for employees in *sensitive* positions. If a specific law requires an annual background check, then the campus must be in compliance.

47: What is the definition of “responsibility for detailed, personally-identifiable information about students, faculty, staff, or alumni that is protected, personal, or sensitive”?

Answer: Campuses have the discretion to determine whether to designate positions as *sensitive* and require a background check. **Attachment A, V. Sensitive Positions** provides a list of positions and tasks that is illustrative but not exhaustive regarding individuals with access to detailed, personally-identifiable information; two categories of particular concern are Level 1 information assets as defined in CSU policy, and protected health information. In determining whether a position is *sensitive*, analysis should focus on the purpose of the policy which is safety and risk management. The campus should consider the nature of the information, frequency of the responsibility and whether the person is under supervision.

48: Does the mere access to Level 1 data through CMS automatically result in a position being considered sensitive, even if the employee or volunteer does not work in Student Affairs, Finance, Human Resources or Information Technology, or use this data on a daily basis?

Answer: In order to determine whether the position should be considered *sensitive*, the campus should consider the nature and frequency of the access and whether the person is under supervision. Positions that require frequent access to Level I data are considered *sensitive*. However, a campus may designate a low-level position with routine access to social security numbers but no decision making authority as *sensitive* because of the risk for identity theft.

49: Are all academic employees considered *sensitive* positions, thus requiring a background check? For example, when faculty members or teaching assistants have access to student academic records (e.g. grades, coursework, GPA), but their access to personally-identifiable information is limited, are these positions defined as *sensitive* positions under this Policy?

Answer: No. Faculty positions are not automatically defined as *sensitive*. Regular faculty duties such as teaching, advising, and holding office hours are not *sensitive* in and of themselves, even if they may involve casual and incidental contact with minors. Therefore, unless some other aspect of a specific academic or faculty position causes it to be identified as *sensitive*, it would not automatically need to be defined as *sensitive*.

“Personally identifiable information” refers to employee records, student records, or health information that is considered restricted, sensitive, or confidential (i.e. Level I data). When access to such information is limited, the campus may choose not to designate the position as *sensitive*.

50: How do I determine if faculty members are “responsible for the care, safety, and security of people (including children and minors)” and thus in a *sensitive* position? What about situations where faculty members travel with students to competitions?

Answer: In general, a faculty member’s interactions with students in the classroom or during office hour settings do not constitute *responsibility* for the care, safety, and security of people (including children and minors); therefore, these activities do not make their positions *sensitive*. In addition, incidental contact with college students who are minors, as defined in **Attachment D** as anyone under the age of 18, during classes or office hours, does not by itself make a faculty position *sensitive* or trigger the background check requirement. However, a background check is appropriate when a major portion of the faculty member’s responsibilities involve working directly with minors. Prior to faculty members traveling with students, a campus should assess the risk(s) associated with faculty members traveling with students to competitions or similar activities to determine whether that specific situation would make that specific position *sensitive* as defined under **Attachment A, V. Sensitive Positions**.

51: Are retired faculty members who volunteer to assist with advising students required to have background checks before they can volunteer?

Answer: No background checks for such volunteers would be required as academic advising duties are not *sensitive* in and of themselves.

VI. Administration of Background Checks

Pre-Appointment Completion of Background Checks

52: Can a campus process background checks for multiple finalists for the same position before an offer of employment is made?

Answer: Under this Policy, the term “finalist” refers to the candidate to whom the campus intends to extend an offer of employment. It is recommended that the campus identify the person it wants to hire and conduct the background check only on that person and initiate the background check before extending the offer of employment.

53: Is there ever a situation where an offer of employment could be made before the background check process, including a criminal records check, is complete?

Answer: Generally, the background checks (including the criminal records check) should be completed before an appointment is finalized and before the candidate begins work in the position. However, in rare cases where the offer of employment is made before the background check process has been completed, the offer must be in writing and state that the offer is contingent upon the successful completion of the background check process including the criminal records check and that the offer may be rescinded if the background check reveals disqualifying information or that the candidate knowingly withheld or falsified information. The policy provides a specific limited exception for new faculty members where it would otherwise not be possible to offer a course to students.

Limited Faculty Exception to Completion of Background Check Prior to Beginning Work

54: In cases where the demand for classes is such that we need to hire part-time faculty and Unit 11 employees on very short notice, can we hire them with contingent language so they can be here on the first day of classes?

Answer: The Chancellor, President or designee may authorize a faculty member to begin work before the background check has been completed only in the limited circumstance where university operations will be adversely affected because otherwise it would not be possible to offer a class to students. A campus must make the offer of employment in writing and state that the offer is contingent upon the successful completion of the background check process including the criminal records check and that the offer may be rescinded if the background check reveals disqualifying information or that the candidate knowingly withheld or falsified information. See **Attachment A, VI. E. Limited Exception to Completion of Background Checks Prior to Beginning Work.**

Unit 11 employees are student employees and are only subject to background check requirements if they are being hired into a *sensitive* position or a position in which a background check is required *by law*. See **Attachment A, IV. B. Student Workers.**

55: What happens if a lecturer has been granted an exception to start work, but then receives a negative background check finding?

Answer: Under this Policy, the campus should conduct an individualized assessment to determine whether the results disqualify the employee. The contingent nature of the offer allows the campus to withdraw the offer if the campus decides that an employee’s background check results disqualify the employee from the position.

56: Does the Attachment A, VI. E. Faculty Exception apply when a current employee moves into a faculty position?

Answer: Yes.

57: Does the exception to allow faculty to teach before the background check is complete also apply to all R03 employees including librarians, counselors, and athletics?

Answer: No. This limited exception is *only* to be used for instructional faculty in situations where university operations would be adversely impacted because of the inability to offer a class. It was not meant to include non-teaching positions, such as librarian, counseling or coaching positions.

Communication

58: Should the background check notice be placed on each job posting or can we just place it once on the campus' employment page? Can our campus create our own offer letter language that states an offer of employment is contingent upon the successful completion of a background check, or must we use the Policy's suggested language?

Answer: It is recommended that all internal and external advertisements, notices and postings (including online) for positions that require background checks include the following language:

A background check (including a criminal records check) must be completed satisfactorily before any candidate can be offered a position with the CSU. Failure to satisfactorily complete the background check may affect the application status of applicants or continued employment of current CSU employees who apply for the position.

Each campus can develop its own offer letter language or can use the suggested language. While your campus has the discretion to develop a background check notice specific to your campus, the key is to remain as transparent and as detailed as possible.

59: The Policy states that job descriptions should reference the background check requirement in the qualifications. Are we required to list all of the specific background checks required for the position?

Answer: It is recommended that the specific type of background check(s) required be listed on each job description. For example, for coaching positions you may wish to add, "sex offender registry checks" and for counseling positions include, "professional licensing/credential verification required for this position."

60: Are supplemental application forms still required?

Answer: Yes. The supplemental application form is a separate requirement from the background check policy and can be found under Technical Letter HR/Appointments 2014-02. The supplemental application form should not be used as the authorization for conducting a

background check. Candidates must complete a separate form to initiate the background check process. See **Attachment D** for appropriate forms.

VII. Guidelines for Conducting Criminal Records Checks

61: Where in the Policy does it say that we cannot consider criminal records beyond seven (7) years?

Answer: Attachment A, VII. Guidelines for Conducting Criminal Records Checks, A. Conducting Criminal Records Checks states, “The CSU will not consider a conviction that occurred more than seven (7) years before the assessment.” This time period was chosen to be consistent with CA Civil Code Section 1786.18 which restricts Investigative Consumer Reporting Agencies from reporting criminal convictions more than seven (7) years prior to the report.

62: We currently use the language suggested in the HR/Appointment Letter 2014-02: “Have you ever been convicted of any crime as an adult (except traffic violations other than felonies)?” Should we revise the language or eliminate this invitation to self-disclose entirely since we are only reviewing the seven (7) years before the assessment?

Answer: The CSU prohibits the campuses from inquiring about convictions on an initial employment application. This policy allows the campuses to inquire (after determination that candidates meet the minimum qualifications) on a supplemental application about convictions that occurred within seven (7) years. It is recommended that the campuses modify the supplemental employment application to use the following inquiry:

Have you been convicted of a felony or misdemeanor within the last seven years for which the record has not been sealed or expunged? Do not include marijuana offenses more than two years old. (Note: A conviction will not necessarily disqualify you from employment.)

63: Does this mean we cannot consider sexual offenses that occurred more than seven (7) years ago for candidates, especially candidates that will work with children?

Answer: Such candidates will be identified on the sex offender registry. A campus may disqualify a candidate who is on the sex offender registry for job-related/legitimate business reasons in consultation with their respective university counsel.

64: How do we apply the criminal records check requirement to foreign faculty members (new hires)?

Answer: Foreign faculty members will be treated on a case-by-case basis as foreign countries vary in their ability to provide criminal records. The campus may accept the police clearance certificate as part of the background check. It is recommended that campuses utilize a third party vendor to conduct the criminal records check on prospective foreign faculty members. Some

third party vendors (including Accurate Background) have international access to the records that are available.

Options for Conducting Criminal Records Checks

65: When using a third party vendor for background checks on candidates, do we have to conduct a criminal records check through the third party vendor and also conduct a Live Scan fingerprinting check?

Answer: No, a campus may conduct the criminal records check *either* through a third party vendor or using Live Scan. The campus can conduct the remainder of the background checks (education, reference, employment verification) itself or through a third party vendor.

66: Where in the Policy does it state that campuses are not allowed to subscribe to a service to conduct ongoing background check updates?

Answer: Attachment A, VII. B. Options for Conducting Criminal Records Checks states, “The CSU shall not subscribe to subsequent criminal records updates on applicants or employees, unless otherwise required by law.” Campuses may subscribe to updates for positions for which background checks are required *by law*, including Government Code Sections 1029, 1031 and Commission on Peace Officer Standards and Training Regulations.

Confidentiality

67: The Policy states, “The hiring department and current department of the applicant/employee (if applicable) will not be notified of the specific results of the criminal records check.” What is the proper procedure when Human Resources hires a new employee when they are the campus office responsible for conducting background checks? Will Human Resources have to be notified of the background check results?

Answer: The Policy requires that the information be kept confidential and specifies that the only people who should have access to information revealed by the background check are the Background Check Coordinator(s), Records Custodian(s), the Decision Maker(s), and anyone with whom the Decision Maker consults (e.g., Chief of Police, university counsel). Management needs to ensure that confidentiality is maintained.

VIII. Guidelines for Conducting Credit Checks

Persons Subject to Credit Check Requirements

68: When must a campus conduct credit checks on candidates and current employees?

Answer: If specifically authorized by CA Labor Code § 1024.5 and determined to be job-related, the campus may review the candidate’s credit report, pursuant to credit check regulations. The campus’ review of the candidate’s credit report will comply with the requirements of the Consumer Credit Reporting Agencies Act (CCRAA).

This Policy does **not** require that credit checks be conducted. CA prohibits employers from conducting credit checks for most candidates or employees but specifically allows credit checks for specific categories of positions listed in CA Labor Code Section 1024.5. Each campus will determine whether, and under what circumstances, they will conduct credit checks. However, it is expected that campuses will use credit checks only in very limited circumstances. See additional guidance under **Attachment A, IX. Guidelines for Conducting Credit Checks** which lists the categories of positions for which California law allows credit checks.

69: Should a credit check be automatic for employees or student workers handling cash?

Answer: CA Labor Code Section 1024.5 allows an employer to require a credit check if the position handles cash totaling \$10,000 day or more. The campus has discretion to choose whether or not to require it.

IX. Records Retention

70: What would an auditing procedure look like for Record Custodians? Would there be a difference if the campus contracts with Accurate Background and the records are held electronically?

Answer: We anticipate that any audit will require that the campus comply with CSU Policy at **Attachment A, X. Records Retention** and **Attachment C at I., D. Role: Records Custodian**. The Records Custodian must keep all background check records (including the CORI) in a location that is secure and separate from the employee's official personnel file. It is not sufficient for the third party vendor to store the background check records they complete; the campus Records Custodian must retain the records as well.

71: Should the individualized assessment for adverse criminal records check results be documented and filed (electronic or paper)? How long must it be retained on file?

Answer: The campus should document the individualized assessment. All records, including the documentation of the individualized assessment and other related documents, must be retained by the Records Custodian separate from the employee's personnel file and in accordance with Equal Employment Opportunity Commission regulations for at least two (2) years after rejection based on the CORI or two (2) years after termination of employment. The campus should also comply with the University's Records Retention Policy for guidelines set forth at <http://www.calstate.edu/recordsretention/>.

72: Do we need to verify that reference checks were completed by a department chair for a new hire? If so, does the campus need to retain the reference check notes?

Answer: The appropriate campus HR office should verify that all reference checks were completed and that all documents related to the background check, including documentation of the reference checks are submitted to the Records Custodian for retention. Although the Policy does not state a requirement to keep physical reference check notes, it is recommended that

sufficient documentation to prove that the reference checks were done be kept by the Records Custodian in a confidential file separate from the candidate/employee's personnel file. See **Attachment A, X. Records Retention** and **Attachment C, I. D. Role: Records Custodian** for additional information.

X. Roles and Responsibilities

73: Should campuses classify a Background Check Coordinator or Records Custodian as a confidential employee?

Answer: The duties in this Policy do not provide a basis for campuses to classify either position as confidential. The express purpose of the HEERA confidential exclusion from bargaining units is to allow the employer to keep information that relates to labor relations (i.e. management/ union relations), collective bargaining, grievances or meet and confers from represented employees. This Policy does not suggest that either the Background Check Coordinator or Records Custodian (see basic functions as described in **Attachment C., I. Roles and Responsibilities**) will have access to labor relations information. There is also no anticipated involvement of this position in the meet and confer process.

74: We have several Human Resources employees who collect background check information and store it electronically. They might not be designated as the Records Custodian but will have access to background check information. Should background checks be completed for these employees?

Answer: Yes. All positions that have access to background check results are required *by law* to have background checks. See 11 Code of California Regulations Section 703. In addition, background checks are required on all personnel hired after July 1, 1975, who have access to a computer system in which criminal offender records information is stored. See 11 Code of California Regulations Section 707. Campuses should take care to comply with the confidentiality requirements set forth in this Policy at **Attachment A, IX. D. Confidentiality** and **Attachment A, X. Records Retention**.

XI. Additional Information

Accurate Background and Other Third Party Background Check Vendors

75: Can we enter into a contract with Accurate Background if it might affect the employment of current CSUEU employees?

Answer: If a campus chooses to contract out background checks to Accurate Background or any other third party vendor, it should determine if current employees will be affected or displaced and refer to the collective bargaining agreement that governs. If contracting out will involve work previously done by CSUEU represented employees, then the notice and meet and confer requirements of CSUEU Article 3 apply. Campuses should work with their CO labor relations manager if they have any questions regarding contracting out.

76: Can we use alternating, or even a combination of services and third party vendors to conduct background checks?

Answer: Yes. Campuses may do their own background checks, may continue to use their existing vendor(s), a vendor of their choice, Live Scan or Accurate Background in any combination. Systemwide Human Resources has negotiated a master contract with Accurate Background that provides discounted rates and better response times. Campuses may choose from a menu of Accurate Background services. Contact information for Accurate Background:

Kerra Flood, Senior Regional Sales Manager
(800) 784-3911
kflood@accuratebackground.com

77: What are the response times for completion of background checks if we contract with Accurate Background?

Answer: Order and completion of the background checks depend on the type of search. Accurate Background reports that the response time for “criminal only” related searches is between twenty-four (24) and seventy-two (72) hours. Education, employment, references, and other types of verifications range from one (1) to five (5) days. A campus can work with Accurate Background to request reporting within a designated time period and determine how to address issues of non-responsiveness.

78: Will auxiliaries be able to contract with Accurate Background to conduct their background checks?

Answer. Yes, auxiliaries may contract with Accurate Background separately and will be given the CSU discounted rates.

Service Learning and Work Study Students

79: Do background checks apply to the Service Learning area (e.g., students who are enrolled in a class, signed a waiver of liability and perform volunteer work via “partner agreements” with the off-site locations)?

Answer: No. Students enrolled in service learning courses are not required to undergo background checks under this Policy. Guidelines are in place to manage risks associated with service learning and community engagement (for students as well as for community partners). In addition, CSU Executive Orders govern student participation in field trips and internships. Note: Some service learning placement sites require students who perform services to be fingerprinted, complete background checks or meet other requirements. More information on service learning at CSU is available at <http://www.calstate.edu/cce/>.

80: Are background checks required for student volunteers that are associated with our service learning area who may work around minors? Could you provide clarification for campus employees who work closely with Executive Order 1062 (Field Trips) and

Executive Order 1064 (Internships) regarding service learning requirements under this Policy?

Answer: Volunteer programs affiliated with campus service learning and community engagement programs are not subject to this policy. Likewise, field trips and internships are governed by Executive Orders 1062 and 1064 respectively and are also not covered by this policy.

81: What about student volunteer activities that do not fall within the scope of service learning?

Answer: For student volunteer activities that do not fall within campus service learning, community engagement programs, field trips, and internships, the campus should do an individualized risk analysis with the goal of maintaining safety while promoting and supporting student volunteer activities. Factors that affect the risk include: the nature of the activities; frequency and duration of hours; whether the student volunteer works under the supervision of others; and whether s/he works in a public setting. The campus may choose not to require a background check when a student volunteers one time or occasionally, in a public setting, and will only have incidental contact with minors or contact with minors accompanied by adults; or when the student is supervised by responsible faculty or staff. When a student performs regular volunteer activities over an extended period of time, in a private setting, without responsible supervision or with regular or indirect contact with minors, the campus should determine whether to require a background check. In many cases, the student will be required to comply with a placement site's own risk management policies.

In most situations, the check need **not** include educational or employment verification. If a student volunteer is required to have a specific degree or be enrolled in a particular course of study, the campus should verify those factors.

82: Are campuses required to conduct background checks for CSU students working on or off campus through work study?

Answer: Work Study students technically work for the CSU, as the campus processes the hires and pays the students. The campus should verify the student is enrolled and in good standing. A background check is required only if the work study position is *sensitive* or a check is required *by law*. If a student works in direct contact with minors in a CSU-operated camp or clinic on or off campus, the campus should conduct a background check and fingerprint the student. If the campus places a work study student with an outside agency off campus, the campus is not required to conduct a background check, but the student should comply with the outside placement agency's background screening requirements.