

**BACKGROUND CHECK POLICY REQUIREMENTS AND CHECKING PRACTICES**

[HR 2015-08](#) updates and clarifies CSU's Background Check Policy. The information presented in Attachment A is organized as follows:

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**I. OVERVIEW**

Background checks are required for all final candidate(s) considered for new hire. Individuals who are currently employed in positions in which a background check is required by law, who are under consideration for positions in which a background check is required by law, or who are under consideration for positions that the California State University (CSU) has designated as sensitive are required to undergo background checks. Current employees are subject to background checks if they are voluntarily under consideration for positions in which background checks are required by law or that the CSU has designated as sensitive. Background checks are not required for involuntary reassignments or reclassifications. This includes all temporary, probationary, intermittent, and at-will employees. Student workers are to be background checked only if he/she is employed or being considered for employment in a position in which a background check is required by law or that the CSU has designated as sensitive. Sensitive positions are those designated by the CSU as requiring heightened scrutiny of individuals holding the position, based on potential for harm to children, concerns for the safety and security of people, animals, or property, or heightened risk of financial loss to the CSU or individuals in the university community. Background checks are required for new hires, current employees, volunteers, consultants, and the employees of auxiliaries, outside entities and independent contractors who perform work involving regular or direct contact with minor children, including at CSU-hosted recreational camps (e.g., youth activities) or who perform duties that would require a background check if performed by CSU employees.

Campuses shall ensure that all background checks are conducted in compliance with applicable federal and state statutes, and that the confidentiality of all background check information is maintained to the extent permitted by law. The types of background checks to be conducted are set forth in this policy and are based on the nature of the position. Background checks required for all positions include employment verification, education verification, reference checks, and criminal records checks. If job related, additional checks, including credit report history checks, motor vehicle records/licensing checks, sex offender registry checks and/or professional licensing/credential verification, may be initiated as a part of the selection process. Job postings for positions that require background checks shall specifically state the requirement.

The campus President determines the appropriate entity to conduct background checks. If a campus conducts its own background checks, it must comply with the California Information Practices Act (IPA), Civil Code § 1798, *et seq.* If a campus uses a third party agency to conduct background checks, it must comply with the Federal Fair Credit Reporting Act (FCRA) 15 USC § 1681 *et seq.* and the California Investigative Consumer Reporting Agencies Act (ICRA) Civil Code § 1785 *et seq.* See Section VI (Administration of Background Checks) for more details. A third party agency has been retained on a systemwide basis in efforts to afford systemwide economies and ease of administration; this service is optional to the campuses. More information will be provided to campuses as it becomes available.

## **II. TYPES OF BACKGROUND CHECKS**

Depending on the status of the applicant (new hire or rehire) and the nature of the position, one or more types of the following background checks will be conducted.

### **A. Required Background Checks**

#### **1. Employment Verification**

The campus will verify all prior employment within the past ten (10) years.

#### **2. Education Verification**

The campus will verify all educational requirements as appropriate to the position, which may include the high school diploma or General Education Development (GED) certificate, and all post-secondary degrees. Official transcripts may be required.

#### **3. Reference Checks**

The campus will contact current and former employers with a standardized inquiry to verify the applicant's work history and skills. The campus may send an inquiry to the applicant's current employer if the applicant specifically consents, or if an offer is made on such condition.

#### **4. Criminal Records Checks**

The campus will perform a criminal records check or will have a third party agency conduct this check. Fingerprinting may be performed as part of the criminal records check.

### **B. Checks That May Be Done if Job-Related**

#### **1. Credit Report History Check**

If determined to be job-related (as defined by CA Labor Code § 1024.5), the campus will review the candidate's credit report, pursuant to credit check regulations. The campus' review of the applicant's credit report will comply with the requirements of the Consumer Credit Reporting Agencies Act (CCRAA) (refer to Attachment D1 for more details).

#### **2. Motor Vehicle Records/Licensing Check**

The campus will verify that applicants have a valid California or other State driver's license for employees who drive as a part of their university duties. The license must be appropriate to the vehicle operated (automobile, commercial vehicle, machinery or equipment). For positions that require employees to routinely transport students, faculty and/or staff, the campus may require the applicants to authorize the Department of Motor Vehicles to provide a copy of their past driving record and to authorize the campus to obtain periodic updates.

**3. State/National Sexual Offender Registry Check**

For all employment positions with regular or direct contact with minors, the campus will verify if applicants have been included in any state or federal sexual offender registry. Campuses may access records from the Megan's Law website (<http://www.meganslaw.ca.gov/>) to conduct a California state sexual offender registry check. For a national sexual offender registry search, campuses may access the U.S. Department of Justice's website ([www.nsopr.gov](http://www.nsopr.gov)) and/or the Federal Bureau of Investigation's website ([www.fbi.gov/scams-safety/registry](http://www.fbi.gov/scams-safety/registry)).

**4. Professional Licensing, Certification, and/or Credential Verification**

The campus will verify the applicant's professional licenses, certifications, and/or credentials to ensure that they are current and valid for practice. The campus will also assess if any disciplinary action(s) have been taken against the applicant through the licensing board or other appropriate source.

**III. PERSONS SUBJECT TO BACKGROUND CHECK REQUIREMENTS**

**A. New Hires**

Effective with this policy, the CSU will conduct thorough background checks for all newly hired employees. This includes all temporary, probationary, intermittent, and at-will employees. Any current CSU employee who transfers from one campus to another will be considered a new hire. Background checks for all final candidate(s) considered for new hire will include employment verification, education verification, reference checks, and a criminal records check.

**B. Rehires**

Any former employee (including a rehired annuitant and temporary faculty member) who is re-appointed to a CSU position after a break in service of twelve (12) months or more and who has not had a CSU background check within the past 12 months on the same campus will be subject to background check requirements appropriate to the new position.

**C. Current Employees Who Must Undergo Background Checks**

Individuals who are under voluntary consideration for positions in which a background check is required by law, or who are under voluntary consideration for positions that the CSU has designated as sensitive are required to undergo background checks. This provision applies to current employees unless they have successfully completed a CSU background check within the past 12 months on the same campus.

Positions in which background checks are currently required by law include, but are not limited to the following:

- Sworn CSU Police Personnel (California Government Code §1029 and 1031)
- Police Officer Cadets (California Government Code §1029 and 1031)
- Police Dispatchers (Commission Regulation 1959)
- Positions with direct contact with minor children at a camp operated by the CSU (Education Code §10911.5)
- Positions with access to stored criminal offender record information (11 CCR §703 and 11 CCR § 707)
- Positions with access to patients, drugs or medication (California Labor Code § 432.7)

The background check requirement will also apply to current CSU employees in positions for which new laws require such background checks.

A guide to what is considered a sensitive position can be found in Section V of this attachment. Sensitive positions include employees who have access to Level 1 information assets (Level 1 data). For more information, visit the Integrated CSU Administrative Manual's Information Security Policy at <http://www.calstate.edu/icsuam/sections/8000/8030.0.shtml> and/or Information Security Management's Information Security Data Classification Policy at [http://calstate.edu/icsuam/sections/8000/8065\\_FINAL\\_DRAFT\\_Data\\_Classification\\_CW\\_V4.pdf](http://calstate.edu/icsuam/sections/8000/8065_FINAL_DRAFT_Data_Classification_CW_V4.pdf).

**D. Student Workers Who Must Undergo Background Checks**

The CSU is required to conduct a background check on student workers only if they are being considered for a position in which a background check is required by law or for a position that has been designated as a sensitive position. These student workers will be required to have background checks if they have not had checks within the past 12 months on the same campus. Student workers are CSU students appointed to a CSU student classification whose educational relationship with the university is predominant and who qualifies for the student FICA exemption under IRS Code § 3121 (b)(10) or has a nonresident alien tax status (e.g., F, J, M or Q visa holders).

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

In an effort to provide the safest possible environment for minor children, the CSU will conduct a background check, including a criminal records check and sexual offender registry check for all CSU employees, volunteers and consultants who perform work involving direct contact with minor children at CSU-hosted recreational camps (e.g., youth activities) that are operated by the CSU or on CSU property, a CSU auxiliary, or by an outside entity. The term "recreational" is used in this capacity to include, but are not limited to, sports, dance, academic, and other recreational camps or clinics (e.g., youth activities) for minor children hosted by the CSU. As part of the agreement to operate on

CSU property or under the CSU name, volunteers and consultants are responsible for ensuring that the appropriate background checks are completed for its volunteers and employees. The CSU may provide background check services for a fee; otherwise these volunteers and consultants must provide confirmation of completed and cleared background checks.

The Education Code § 10911.5 requires the submission of fingerprints to the Department of Justice for any employee or volunteer who will have direct contact with minor children at a camp operated by the CSU or on CSU property.

Bargaining unit employees who have worked in the past or who are currently working with camps and/or clinics on the campus (e.g., youth activities) are subject to this requirement unless they have successfully completed a criminal records check and sexual offender registry check within the past 12 months on the same campus.

**F. Employees of Auxiliaries and Outside Entities**

It is the campus' responsibility to ensure that the HR policy requirement to conduct background checks is enforced for individuals employed by auxiliaries and other entities that operate programs on CSU premises. The CSU 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. In addition, the CSU requires those entities that employ individuals to perform work or services at CSU-hosted camps or clinics where minor children (e.g., youth activities) participate to conduct background checks, including criminal record checks and sexual offender registry checks, on those employees. As part of the agreement to operate on CSU property or under the CSU name, auxiliaries and other outside entities are responsible for ensuring that the appropriate background checks are completed for its employees. The CSU may provide background check services for a fee; otherwise these auxiliaries and outside entities must provide confirmation of completed and cleared background checks.

**G. Employees of Independent Contractors**

As part of the agreement to operate under the CSU name or on CSU property, independent contractors are responsible for attesting that the appropriate background check has been completed. This includes entities that employ individuals who are in positions subject to legal background check requirements and/or perform work or services at CSU-hosted camps or clinics (e.g., youth activities) where minor children participate. The CSU may provide background check services for a fee; otherwise these outside entities must provide confirmation of completed and cleared background checks.

For administration and/or guidelines pertaining to background check requirements for independent contractors, please refer to the Integrated CSU Administrative Manual (ICSUAM) at <http://www.calstate.edu/icsuam>, and contact your respective contracts and procurement department.

**H. Police Personnel**

State University Police Association (SUPA) employees are governed by this section only. 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>. The California Commission on Peace Officer Standards and Training (P.O.S.T.) sets background check requirements for Police Dispatchers. For more information, visit <http://www.post.ca.gov/overview-selection-standards.aspx>.

**I. Refusal to Undergo a Required Background Check**

If a new hire or current employee who is required to undergo a background check refuses to do so, management reserves the right to disqualify the person from consideration. In the case of a current employee, a refusal to undergo a background check as required by this policy may result in disciplinary action up to and including dismissal.

**IV. PERSONS EXEMPT FROM BACKGROUND CHECK REQUIREMENTS**

**A. Current Employees**

Current employees of the CSU are exempt from the requirement for background checks, unless under voluntary consideration for a position in which a background check is required by law or for a position that has been designated as sensitive. Employees who are given the opportunity to be appointed to a sensitive position that requires a background check may decline the opportunity.

**B. Student Workers**

A student worker is exempt from the requirement for a background check, unless being considered for a position with duties that would require a background check if performed by a CSU employee, for a position that has been designated as sensitive, or for a position in which a background check is required by law.

**C. Faculty Participants in Faculty Early Retirement Program (FERP)**

Participants who enter the Faculty Early Retirement Program are not subject to background check requirements for the duration of the FERP appointment, unless they are moved into a sensitive position that would otherwise require a background check.

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

Former employees who are re-appointed to the same CSU position at the same campus within twelve (12) months after the end of the previous appointment shall not be treated as a rehire as defined under Section III B ("Rehires") and therefore will not be required to undergo a background check.

**V. SENSITIVE POSITIONS**

Sensitive positions are designated by the CSU as requiring heightened scrutiny of individuals holding the position, based on potential for harm to children, concerns for the safety and security of the people, animals, or property, or heightened risk of financial loss to the CSU or

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individuals in the university community. Whether a CSU position should be considered sensitive is determined by the duties and responsibilities of the position and not the job title or classification. The posted position description shall state that the position has been designated to be a sensitive position. In addition to identifying the background check requirement for sensitive positions, all posted position descriptions should include an identifier (e.g., checkbox) indicating whether or not the position will have access to sensitive data.

The campus President is responsible for determining which specific positions at the campus fall into these categories based on their duties and responsibilities, whether additional positions on a campus beyond those described in the table below should be considered sensitive, and if so, what the minimum background check requirements shall be.

The table below provides information regarding key duties and responsibilities associated with examples of occupations or positions considered sensitive. For each category, additional background check requirements beyond the minimally required background check (employment verification, education verification, reference check, and criminal records check) have been defined. New hires as well as current employees who are newly appointed, transferred, promoted, reassigned, or reclassified into a sensitive position are subject to these requirements. **The list of positions and tasks is illustrative and is not exhaustive.** For example, healthcare professionals include but are not limited to positions such as physician assistants, dentists, nurses, physicians, veterinarians, therapists, medical assistants, and speech pathologists.

<b>Key Duties and Responsibilities</b>	<b>Examples of Occupation/Position</b>	<b>Examples of position functions or task</b>	<b>In addition to the minimally required background check, include:</b>
Responsibility for the care, safety, and security of people (including children and minors), animals, and CSU property	<ul style="list-style-type: none"> <li>▪ Childcare services personnel</li> <li>▪ Coaches</li> <li>▪ Camp and Clinic Counselors and Coaches</li> <li>▪ Counseling services</li> <li>▪ Health Care services</li> <li>▪ Public Safety services</li> <li>▪ Recreation related services</li> <li>▪ Healthcare professionals</li> </ul>	<ul style="list-style-type: none"> <li>▪ Provides services for and/or directly works with children and minors</li> <li>▪ Provides student and employee counseling services</li> <li>▪ Provides health care and related services</li> <li>▪ Has access to computers and other valuable equipment</li> <li>▪ Provides services for and/or work with animals</li> </ul>	Sexual offender registry check for those who perform work involving regular or direct contact with minor children and those who are identified as mandated reporters of child abuse and neglect under Executive Order 1083 and California Penal Code §11165.7(a).
Authority to commit financial resources of the university through contracts greater than \$10,000	<ul style="list-style-type: none"> <li>▪ Contracts and Procurement Managers and Staff</li> <li>▪ Buyers</li> <li>▪ Controllers</li> <li>▪ Financial Managers</li> <li>▪ Administrative Managers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Approves contracts</li> <li>▪ Approves bids and RFP's</li> <li>▪ Approves vendors or products</li> <li>▪ Approves payments</li> <li>▪ Ability to commit funds and services for programs and projects</li> </ul>	
Access to, or control	<ul style="list-style-type: none"> <li>▪ Business and Accounting</li> </ul>	<ul style="list-style-type: none"> <li>▪ Transfers, withdraws, and/or</li> </ul>	



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<b>Key Duties and Responsibilities</b>	<b>Examples of Occupation/Position</b>	<b>Examples of position functions or task</b>	<b>In addition to the minimally required background check, include:</b>
over, cash, checks, credit cards, and/or credit card account information	Managers and staff <ul style="list-style-type: none"> <li>▪ Procurement</li> <li>▪ Collections</li> <li>▪ Cashiers</li> <li>▪ Employees with access to Level 1 information assets (Level 1 data) through campus data centers/systems</li> <li>▪ Other employees whose duties require access to or control over the above information</li> </ul>	deposits money <ul style="list-style-type: none"> <li>▪ Uses a company-issued credit card to purchase items</li> <li>▪ Handling/receipt of funds</li> </ul>	
Responsibility or access/possession of building master or sub-master keys for building access	<ul style="list-style-type: none"> <li>▪ Building Engineers</li> <li>▪ Facilities personnel</li> <li>▪ Custodians</li> <li>▪ Locksmiths</li> <li>▪ Maintenance personnel</li> </ul>	<ul style="list-style-type: none"> <li>▪ Access to master keys</li> <li>▪ Access to offices for maintenance or repair of equipment</li> <li>▪ Access to residences and other facilities for ongoing maintenance</li> <li>▪ Maintains building security</li> <li>▪ Access to facilities for installation and/or cleaning</li> </ul>	
Access to controlled or hazardous substances	<ul style="list-style-type: none"> <li>▪ Pharmaceutical personnel</li> <li>▪ Healthcare professionals</li> <li>▪ Custodians</li> <li>▪ Other faculty or staff with access to hazardous chemicals or controlled substances</li> </ul>	<ul style="list-style-type: none"> <li>▪ Dispenses prescription medication</li> <li>▪ Maintains drug formulary</li> <li>▪ Access to drugs</li> <li>▪ Access to potentially hazardous chemicals</li> </ul>	
Access to and responsibility for detailed personally identifiable information about students, faculty, staff, or alumni that is protected, personal, or sensitive	<ul style="list-style-type: none"> <li>▪ Auditors</li> <li>▪ HR and Payroll Managers and staff</li> <li>▪ Information Technology (IT) personnel</li> <li>▪ Information Systems personnel</li> <li>▪ Programmers</li> <li>▪ Healthcare staff</li> <li>▪ PC Coordinators</li> <li>▪ Student Affairs Officers</li> <li>▪ Counselors</li> <li>▪ Registrars</li> <li>▪ Employees with access to Level 1 information assets (Level 1 data) through campus data</li> </ul>	<ul style="list-style-type: none"> <li>▪ Access to employee records</li> <li>▪ Access to student records</li> <li>▪ Access to personal or other restricted, sensitive or confidential data (e.g., Level 1 data)</li> <li>▪ Access to protected health information</li> <li>▪ Access to restricted data</li> <li>▪ Systems maintenance</li> </ul>	

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<b>Key Duties and Responsibilities</b>	<b>Examples of Occupation/Position</b>	<b>Examples of position functions or task</b>	<b>In addition to the minimally required background check, include:</b>
	centers/systems		
Control over campus business processes, either through functional roles or system security access	<ul style="list-style-type: none"> <li>▪ IT management</li> <li>▪ HR management</li> <li>▪ Information Officers</li> <li>▪ Information Security</li> <li>▪ Business and Finance management</li> </ul>	<ul style="list-style-type: none"> <li>▪ Control over/ability to modify employee, student, financial databases</li> </ul>	
Responsibilities that require the employee to possess a license, degree, credential or other certification in order to meet minimum job qualifications and/or to qualify for continued employment in a particular occupation or position	<ul style="list-style-type: none"> <li>▪ Athletic Trainers</li> <li>▪ Attorneys</li> <li>▪ Counselors</li> <li>▪ Diving/Water Safety</li> <li>▪ Engineers</li> <li>▪ Healthcare professionals</li> <li>▪ Heavy Equipment Operators</li> <li>▪ Pest Control</li> <li>▪ Police Officers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Counsels employees or students</li> <li>▪ Designs or build facilities and offices</li> <li>▪ Provides legal advice</li> <li>▪ Renders medical services</li> <li>▪ Renders safety services</li> </ul>	Professional licensing, certification, and/or credential verification
Responsibility for operating commercial vehicles, machinery or equipment that could pose environmental hazards or cause injury, illness, or death	<ul style="list-style-type: none"> <li>▪ Automotive technicians</li> <li>▪ Equipment operators</li> <li>▪ Environmental health and safety officers</li> <li>▪ Groundskeepers</li> <li>▪ Police officers</li> <li>▪ Transit drivers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Operation of University or commercial vehicles</li> <li>▪ Operation of heavy equipment or machinery</li> <li>▪ Responders to emergencies involving potentially hazardous substances</li> </ul>	Motor Vehicle Records/Licensing Check

**VI. ADMINISTRATION OF BACKGROUND CHECKS**

**A. Certification of Information on CSU Application**

The campus should review the information provided on the CSU application to determine that it is accurate and does not disqualify the applicant from employment. [HR Letter 2006-03](#) establishes the information that must be obtained from each applicant prior to an

offer of employment. The applicant is required to certify that the information provided in the official employment application is true and correct. Misrepresentation, falsification, or omission of facts provided to the CSU may be considered cause for rescinding an offer of employment, termination of employment, and/or denial of consideration for future employment.

As a reminder, [HR 2014-03](#) and [Supplement #1](#) prohibit campuses from asking a job applicant (including one applying for a student worker position) about his/her criminal conviction history until it has been determined that the applicant has met the minimum qualifications of the job. Persons hired through or for employment in campus police departments (e.g., police officers, dispatchers, Community Service Officers) are exempt from this requirement. For information relating to the elimination of criminal history questions from CSU initial job applications, refer to [HR/Appointments 2014-01](#).

**B. Pre-Appointment Completion of Background Checks**

The campus will initiate background checks on the final candidate(s) before making an offer of employment. The offer of employment must clearly state that the appointment is contingent upon successful completion of the background check, and may be rescinded if the background check reveals disqualifying information and/or it is discovered that the candidate knowingly withheld or falsified information. All background checks must be completed before an appointment is finalized and the candidate, including one who is a current employee, begins work in the new position.

**C. Pre-Appointment Completion of Criminal Records Checks**

The criminal records check should be initiated and completed before offering an individual a CSU position. If circumstances require that an offer be made before the completion of the criminal records check, the offer must be in writing, state that it is contingent upon the successful completion of a criminal records check, and that the offer may be rescinded if the records check reveals disqualifying information and/or it is discovered that the candidate knowingly withheld or falsified information. The candidate, including one who is a current employee, may not start work in the new position until the results of the criminal records check are received and reviewed.

**D. Communication**

Job descriptions should reference the background check requirements in the qualifications. All advertisements, notices, and postings for positions that require background check must also state:

*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.*

**E. Limited Exception to Completion of Background Checks Prior to Beginning Work**

The Chancellor, President, or his/her designee may authorize new faculty members to begin work before the background check is completed only in the limited circumstances where university operations will be adversely affected because it would not be otherwise possible to offer a class to students. The offer of employment must be in writing and state that it is contingent upon the completion of a satisfactory background check and may be rescinded if the background check reveals disqualifying information and/or it was discovered that the candidate knowingly withheld or falsified information. Such an exception will not be permitted where the position is one in which a background check is required by law or is designated as sensitive.

**F. Notice and Information Pursuant to Information Practices Act (IPA)**

Campuses that conduct its own background checks on applicants and/or utilize Live Scan are subject to the Information Practices Act (IPA). Pursuant to the California IPA (Civil Code, § 1798 *et seq.*), campuses must give notice to the applicants/employees of its intention to obtain background check information. The notice must inform the applicants of their right to request a copy of any information obtained from the background check. Campuses should use a form like Attachment D2 for this purpose. Anyone who refuses to sign the request for information to conduct the background check will be eliminated from further consideration.

**G. Notice and Information Pursuant to Fair Credit Reporting Act (FCRA) and Investigative Consumer Reporting Agencies Act (ICRA)**

Campuses that utilize a third party agency (e.g., the systemwide background check vendor) are subject to the Federal Fair Credit Reporting Act (FCRA) and the California Investigative Consumer Reporting Agencies Act (ICRA). Pursuant to the Federal FCRA (15 U.S.C. § 1581 *et seq.*) and the California ICRA (CA Civil Code § 1760 *et seq.*) the applicant is entitled to receive a copy of the investigative consumer report within three (3) business days of the date it was received by the CSU. The disclosure requirements and forms are provided in Attachment D3, D4, and D5.

**VII. GUIDELINES FOR CONDUCTING CRIMINAL RECORDS CHECKS**

**A. Conducting Criminal Records Checks**

The cost of the criminal records check will be borne by the campus, not the employee or applicant. A criminal records search can be conducted on a state or national basis; the latter is appropriate if the applicant lived out of state. A national search may be a longer process, and will require the campus to plan accordingly. Criminal records checks for foreign nationals will be addressed on a case-by-case basis.

The CSU will not consider a conviction that occurred more than seven (7) years before the assessment. An employer may only consider felony and misdemeanor convictions, active arrests or pending criminal cases (where the candidate is the subject of a current warrant for arrest or is awaiting trial on criminal charges). A conviction includes a plea, verdict, or finding of guilt, regardless of whether a sentence was imposed by the court, unless otherwise excepted by law.

California law prohibits employers: (1) from asking about an arrest or detention that did not result in a conviction (Labor Code § 432.7(a)) and (2) from considering convictions for certain minor marijuana-related offenses after two years from the date of conviction (Labor Code § 432.8). Additionally, the CSU will not consider a plea or conviction that has been expunged, judicially dismissed or ordered sealed, pursuant to Labor Code § 432.7, unless otherwise required by law. .

**B. Options for Conducting Criminal Records Checks**

A campus may choose either to perform its own criminal records checks or to use a third party vendor to conduct the checks. Campuses that use a third party vendor may choose their own vendor or use the systemwide background check vendor to conduct criminal records checks. Campuses performing their own checks may use Live Scan, an automated process available through the California Department of Justice (CDOJ) that digitally scans and compares fingerprints to the state criminal records data base of the CDOJ and/or the federal criminal records data base of the National Crime Information Center (NCIC). The CSU shall not subscribe to subsequent criminal records updates on applicants or employees, unless otherwise required by law.

**C. Authorization and Disclosure Requirements for Criminal Records Checks**

For positions in which criminal records checks are required, the applicant for the position must authorize the criminal records check in writing, using the CSU-provided form. Specific forms used will depend on whether campuses are conducting their own criminal records check, or if they are using a third party. If campuses use a third party vendor to conduct the criminal records checks, the employee authorization provisions of the FCRA and the ICRA (see Attachments D3 and D4) are applicable. When using Live Scan, the employee authorization provisions of the Fair Credit Reporting Act (FCRA) and the Investigative Consumer Reporting Agencies Act (ICRA) are not applicable. Campuses that conduct their own checks and/or use Live Scan must comply with the employee authorization provisions of IPA (see Attachment D2). If a campus uses the systemwide vendor for background checks, the vendor will assist the campus in complying with FCRA, ICRA and/or IPA.

**D. Required Procedures**

Campus Human Resources and/or Academic Personnel departments will develop procedures to ensure that the candidate receives the appropriate forms authorizing the criminal records check and is provided with all notices required by law.

**E. Confidentiality**

The campus will maintain the confidentiality of criminal record check results, unless otherwise required by law. Only the appropriate HR personnel, the background check coordinator, decision maker(s), and records custodian will be notified of the specific results of the criminal records check. 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. The criminal records check results are confidential and will be

kept by the designated custodian of records in a location that is secure and separate from the employee's official personnel file.

**F. Notice and Information Regarding the Criminal Offender Record Information (CORI)**

The CORI is a record of all criminal court appearances for a particular individual, including arrests, convictions, dismissals, and serious violations. If the campus decides to use a third party to conduct a criminal records check and adverse action is taken based on the results of the investigation, the FCRA requires that the campus must provide the applicants with a copy of their CORI and disclose to the applicant a summary containing the nature and substance of the report on which the adverse action was based.

If there is a dispute about the results of the CORI, the campus is required to provide the applicant with information about the criminal records check appeal procedure. More details about pre-adverse and adverse action notices and forms are provided in Attachment B and Attachment D7, respectively.

For all other applicants, the campus will provide a copy of an applicant's CORI to him/her upon request. The campus should inform the applicant that the CORI may not be submitted to another agency; it is only for the employee's own record.

**VIII. GUIDELINES FOR CONSIDERING ADVERSE CRIMINAL RECORDS CHECK RESULTS**

A felony or misdemeanor conviction that is job-related may disqualify a candidate from employment and may disqualify a current employee from assuming a new position. Once the results of the criminal records check are obtained, the campus human resources or faculty affairs department, as appropriate, determines whether the results of the background check should disqualify the candidate from consideration for the position for which he/she applied. More information about considering adverse results can be found in Attachment B (Assessment and Appeals Process).

**A. If the Criminal Records Check Reveals a Conviction**

The decision maker(s) (as determined by the campus; see Attachment C for Roles and Responsibilities) is/are the person(s) responsible for reviewing criminal records check results. The decision maker(s) will review the criminal records report and make final determinations regarding the suitability of the candidate for the position. The decision maker(s) may recommend implementation of additional controls before a department can employ a candidate with a conviction.

Individual may not start the new position until the results of the criminal record check have been received, reviewed, and resolved. If campuses disqualify candidates from further consideration for a position, campuses must follow the procedures for pre-adverse and adverse action notices.

Disqualification decisions will be based on job-related/legitimate business reasons. The decision maker(s) should consider the following, in consultation with HR, in determining whether the conviction impacts the candidate's suitability for the position:

- The nature and gravity of the crime(s) and relevance to the position sought;
- The number and circumstances of the offense(s);
- The period of time since the last conviction; and
- The candidate's conduct, performance and/or rehabilitation efforts since the conviction(s).

The following examples are illustrative, but not all inclusive, of the considerations that campus personnel might use in making a hiring decision. Campuses should check with their university counsel with any questions about whether the results of criminal records checks should disqualify a candidate from appointment.

Certain types of convictions should automatically preclude hiring or otherwise appointing individuals into sensitive positions. For example:

- Individuals with convictions for theft, embezzlement, identity theft, or fraud should not be appointed to positions with fiduciary responsibilities.
- Individuals with convictions, or who are under arrest or have pending charges for child molestation and/or other sex offenses should not be appointed to positions that involve direct unsupervised contact with children, students, outreach programs, or access to residence facilities. Campuses should consult with university counsel to discuss special restrictions that may be appropriate for the proposed hire of such an individual.
- Individuals with workplace or domestic violence convictions or other convictions for violence should be screened carefully before hire. Campuses should consult with university counsel to discuss special restrictions that may be appropriate for the proposed hire of such an individual.

Detention and/or arrest that did not lead to a conviction are not valid grounds for employment decisions and cannot play a part in the decision-making process. The CSU has discretion to consider a candidate who is under active arrest or awaiting trial on pending criminal charges. For candidates that are current CSU employees, the Human Resources or Academic Personnel office will notify the candidate if the results of the criminal records check are determined to disqualify the candidate from promotion, transfer, reclassification, reassignment or appointment.

If the background check reveals an active arrest warrant, the decision maker(s) will notify the campus police for verification and follow up action, if deemed necessary.

**B. Notice and Right to Appeal Adverse Results**

If any information in the criminal records check is utilized to make an adverse action regarding an employment decision, the campus shall notify the applicant and provide a copy of the results using Attachments D5 and D7 **before** making a final determination. The applicant shall be given five (5) business days to request, in writing, clarification or

further review of the decision. The campus decision maker(s) must wait five (5) business days after notice is given and consider the applicant's appeal before making a final decision. More information about an applicant's right to appeal criminal records check results can be found in Attachment B (Assessment and Appeals Process).

**C. Effect of Conviction on Current Employee's Continued Employment**

The results of a criminal records check may subject a current employee to disciplinary action up to and including termination under the following circumstances:

- The employee was asked and failed to disclose a conviction on his/her job application(s) for employment with the CSU; or
- The criminal records check reveals a conviction that was of such a nature as to impact the employee's ability to continue in his/her current position because of concerns over the safety or security of students, faculty, staff, or CSU property.

If disciplinary or other action is taken as a result of the criminal records check, an employee shall have the rights enumerated in CSU policy, the appropriate collective bargaining agreement, and the Education Code. This provision does not create a right to appeal if none currently exists.

**D. Represented Employees**

Any disciplinary action taken against a current employee resulting from the discovery of a criminal history will be administered in a manner consistent with the applicable collective bargaining agreement and the California Education Code.

**IX. GUIDELINES FOR CONDUCTING CREDIT CHECKS**

**A. Persons Subject to Credit Check Requirements**

The California Consumer Credit Reporting Agencies Act (CCRAA) Civil Code § 1785.1, *et seq.* governs the use of consumer credit agencies to obtain credit checks. California Labor Code § 1024.5 limits an employer's use of consumer credit reports in connection with hiring and personnel decisions. The CSU may only obtain the credit history report of a candidate for a position that, on the basis of duties, responsibilities, or access, could affect the institution financially and the individual is applying for or will work in one of the following positions:

- Managerial positions (defined as persons who manage the University or a department of the University, have the authority to make hiring/retention decisions, manage two or more persons, are exempt employees, and earn more than two times the state's current minimum wage)
- Positions with the state Department of Justice
- Sworn peace officers or other law enforcement positions
- Positions for which the information contained in the credit report is required by law to be disclosed or obtained
- Positions that involve regular access (for any purpose other than the regular solicitation and processing of credit card applications in a retail establishment) to all of the following types of personal information of any one person: bank or credit card account information, social security number, and date of birth



- Positions in which the person is, or would be a named signatory on the bank or credit card account of the employer, authorized to transfer money on behalf the employer, or authorized to enter into financial contracts on behalf of the employer
- Positions that involve access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information, and (2) is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information
- Positions that involve regular access to cash totaling \$10,000 or more of the employer, a customer, or client, during the workday.

**B. Authorization and Disclosure Requirements for Credit Checks**

A campus that conducts a credit check on a candidate for a position is required to obtain authorization and provide the person with a disclosure statement (see Attachments D5 & D6) setting forth the specific basis permitting the employer to obtain a credit report.

**C. Notice and Right to Appeal Adverse Results**

The campus shall advise any individual applicant or current employee if he/she is disqualified due to results obtained from a credit history check using Attachment D5 and D7. The campus shall give the applicant an opportunity to provide additional information. If the applicant disagrees with the accuracy of any information in the report, the applicant must notify the campus within five (5) days of the receipt of the report that the applicant is challenging information in the report. The campus will not make a final decision on the applicant's employment status until the applicant has had a reasonable opportunity to address the information contained in the report. The campus decision maker(s) must wait five (5) business days after notice is given and consider the applicant's appeal before making a final decision.

**D. Confidentiality**

The campus will maintain the confidentiality of the credit check results, unless otherwise required by law. Only the appropriate HR personnel, the background check coordinator, decision maker(s), and records custodian will be notified of the specific results of the credit check. The hiring department and current department of the employee (if applicable) will not be notified of the specific results of the credit check. The credit check results are confidential and will be kept by the designated custodian of records in a location that is secure and separate from the employee's official personnel file.

**X. RECORDS RETENTION**

All background check results for applicants should be kept up to two years past the position filled date pursuant to Equal Employment Opportunity Commission (EEOC) Regulation 29 CFR § 1602.49. Records pertaining to the new hire should be kept in accordance with EEOC regulations and kept separate from the employee's personnel file. Access to these records should be restricted to a designated Records Custodian, the person authorized to conduct the

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criminal records check using Live Scan or equivalent. Release of information to unauthorized individuals can result in civil fines and criminal penalties under California Penal Code § 11142 and 11143. Please refer to CSU's Records Retention Policy for document retaining guidelines at [www.calstate.edu/recordsretention/](http://www.calstate.edu/recordsretention/).