

THE CALIFORNIA STATE UNIVERSITY
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To: CSU Presidents

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Vice President
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Subject: Background Checks

INTRODUCTION

California State University (CSU) presidents have delegated authority to establish campus requirements for background checks for applicants and university employees within the guidelines herein, as determined appropriate, to help protect the campus community and its assets. The need to investigate an applicant or employee must be balanced with the need to protect the privacy of the applicant or employee. Background checks, which may include checks of employment records, social security records, workers' compensation claims, criminal records, civil records, credit reports, motor vehicle records, and sex offender registries, may be initiated as a part of the selection process. As well, fingerprinting may be used to accomplish background checks.

If a campus creates a background check policy for the first time or revises its current background check policy, the campus will need to contact its Chancellor's Office labor relations representative before the policy is issued so it can be reviewed for potential notice and meet and confer issues. If a campus has an existing background check policy in place, no action is required.

The campus president determines the appropriate entity to conduct background checks. Background checks may be conducted by an outside vendor or by a campus department. **If an outside vendor is used, complicated notice and reporting requirements will be required.** These are described below only in general terms. If the campus conducts its own background checks, it must still comply with the Information Practices Act, Civil Code § 1798, *et seq.* It may be appropriate to consult with systemwide Human Resources or the campus counsel, as needed. As determined appropriate, background checks may be conducted for applicants and employees hired, promoted, reclassified, retained or reassigned to sensitive positions. Background check requirements may apply to volunteers and consultants. This policy does not apply in instances where a campus is conducting an investigation of a current employee for alleged wrongful conduct.

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CAMPUS RESPONSIBILITIES

It is the campus responsibility to:

- develop and maintain general written guidelines regarding background checks that comply with governing laws, including provisions to obtain the applicant's or employee's authorization when required.
- develop a process for the employee to challenge the accuracy of a background check report and to ensure that information regarding the process is provided to the employee at the time the authorization form is provided.
- determine whether a position should be designated as sensitive and document that information on the position description.
- ensure all recruitment information, announcements and position descriptions state if a position requires a background check.
- initiate background checks either itself or by using an outside vendor prior to the hire and transfer, reclassification, promotion or reassignment of individuals into sensitive positions, if determined appropriate.
- notify the individual under consideration for a sensitive position that offer of any personnel action is conditional on successful completion of a background check and that falsification of information provided may be cause for corrective action or rejection.
- maintain confidentiality of background check information.

POSITIONS SUBJECT TO BACKGROUND CHECKING

The campus president, or designee, shall determine whether a position is a sensitive position that requires a background check. Such positions may involve, but are not limited to, those which have:

- responsibility for the care, safety and security of people, including children and minors, or property.
- direct access to, or control over, cash, checks, credit cards, and/or credit card account information.
- authority to commit financial resources of the university through contracts greater than \$5,000.
- control over campus business processes, either through functional roles or system security access.
- access to detailed personally identifiable information about students, faculty, staff or alumni, which might enable identity theft.
- access to controlled substances.
- possession of building master or sub-master keys for building access.

USE OF BACKGROUND CHECK INFORMATION

The entity that conducts the background check will provide the results of the check to the campus human resources or faculty affairs department, as appropriate, which will determine whether the individual is suited for employment in the position for which he/she applied. If the background check reveals a conviction relevant to the sensitive position, the individual may be disqualified from holding the sensitive position. In making such a decision, the campus would consider the nature of the crime, the job for which the applicant is being considered, when the crime and the conviction occurred and

the applicant's conduct, performance and/or rehabilitation efforts since. Certain types of convictions should automatically preclude hiring or promoting individuals into sensitive positions. For example, individuals with convictions for theft, embezzlement, identity theft or fraud should not be hired into positions with fiduciary responsibilities. Individuals with convictions for child molestation and/or other sex offenses should be precluded from employment that involves direct unsupervised contact with children, students, outreach programs or access to residence facilities. Individuals with workplace or domestic violence convictions or other convictions for behaviors that would be inappropriate for specific jobs may be denied certain employment opportunities. This list is not inclusive, but illustrative. Other information revealed in background checks, apart from criminal convictions, also may affect campus employment decisions.

GOVERNING LAWS

CSU background checks are subject to a number of federal and state statutes. These include the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, *et seq.*; the Investigative Consumer Reporting Agencies Act (ICRA), Civil Code § 1786, *et seq.*; the Consumer Credit Reporting Agencies Act (CCRAA), Civil Code § 1785.1, *et seq.*; the Information Practices Act (IPA), Civil Code § 1798, *et seq.*; and Labor Code § 432.7. Although FCRA and ICRA overlap, both statutes apply to CSU. Their key provisions are similar but not identical.

FCRA

FCRA covers "consumer reports" issued for multiple purposes, including credit checks, but FCRA also governs employment background checks for the purposes of "hiring, promotion, retention or reassignment." FCRA applies only when an employment background check is prepared by an outside screening company. When an outside company prepares the report, FCRA requires the employer to:

- Give the individual notice on a separate document that consists solely of the notice that a report may be obtained.
- Obtain the individual's permission in writing for preparation of the report and obtain specific permission if medical information is requested.
- Give a special notice if the individual's neighbors, friends or associates will be interviewed about character, general reputation, personal characteristics or mode of living. This is called an "investigative consumer report" under FCRA.
- The campus must give a "pre-adverse action notice" along with a copy of the background report before an adverse action is taken. For applicants an adverse action occurs when the campus decides not to hire the individual based on information in the report. For existing employees, an adverse action might be a termination, a demotion or a decision not to promote the employee.
- Give individuals a second notice after an adverse action, telling them how to dispute inaccurate or incomplete information.

The individual is entitled to obtain a copy of the report from and review background check files compiled and maintained by the outside company regardless of the employment outcome.

If the campus does not hire a third party to conduct the background investigation, but compiles the report itself, the FCRA provisions do not apply.

While FCRA disclosure and approval requirements for background checks by outside vendors do not apply to investigations of suspected misconduct relating to employment, if such an investigation is conducted by an outside vendor and adverse action is taken based on that investigation, FCRA requires that the campus must disclose to the employee a summary containing the nature and substance of the consumer report on which the adverse action was based, except that the sources of information need not be disclosed.

The FCRA text is available at: <http://www.ftc.gov/os/statutes/050131fcra.pdf>. Further information about FCRA is available at <http://www.ftc.gov/os/statutes/fcrajump.htm>.

ICRA

The CSU also is subject to the provisions of the California law, ICRA, which include notice requirements and the need for prior approval by the subject of the background check when a third party conducts background investigations. These notice requirements are somewhat different than under FCRA and include:

- A clear and conspicuous disclosure in writing to the applicant or employee before the investigative consumer report is procured from an outside vendor, in a document consisting solely of the disclosure, that includes:
 - A statement that an investigative consumer report may be obtained;
 - The permissible purpose of the report;
 - A statement that the disclosure may include information on the subject's character, general reputation, personal characteristics, and mode of living;
 - The name, address and telephone number of the outside vendor;
 - The nature and scope of the requested investigation and information on how the subject may inspect the outside vendor's investigatory files.

Both FCRA and ICRA limit the information that may be included in reports from outside vendors, usually excluding information that antedates the report by more than seven years.

Unlike FCRA, ICRA also establishes notice requirements when the employer conducts the background check itself. However, these statutory requirements under ICRA do not apply to CSU which must, instead, comply with applicable requirements under the Information Practices Act.

IPA

The California Information Practices Act at Civil Code § 1798.17 requires the university to provide notice to individuals who are asked by the university to supply it with information about themselves for the purpose of conducting background checks. The university need not obtain consent from the individuals to obtain that information from them. The notice must include the authority which authorizes the maintenance of the

information; whether submission of such information is mandatory or voluntary; the consequences of not providing the information; the principal purpose for which the information is to be used; certain foreseeable disclosures of the information; and the individual's right of access to such records maintained by CSU. The university itself may also obtain information about individuals directly from third parties, without using agencies subject to FCRA or ICRA, and need not give the individuals notice of its actions or obtain the individuals' consent. However, the university may need to provide all or some of the information it obtains and the sources of that information to the subject individual upon the latter's request.

CCRAA

The campus may consider credit history reports for employees who can affect the institution financially. This may include employees in accounting functions, but also may include employees who may, for example, have a procurement card. Credit reports and companies that compile credit reports are governed in California by the CCRAA. The CCRAA allows the employer to obtain a copy of an individual's credit report for employment purposes. Job applicants and employees have certain rights when a credit report is requested as part of an employment background check.

LABOR CODE § 432.7

If an individual has been detained and/or arrested without conviction, the campus cannot use that information in the personnel decision-making process or as valid grounds for an employment decision. Only criminal convictions that have not been pardoned are to be considered. If an employee has a criminal case pending, his or her suitability for continued employment could be reviewed upon disposition of the case.

SAMPLE FORMS

Enclosed for reference are the following sample forms:

- Applicant/Employee FCRA and ICRA Disclosure Statement (Attachment A)
- Applicant/Employee Authorization (Attachment B)
- Request for Information from Applicant/Employee and California IPA Notice (Attachment C)

FINGERPRINTING

Campus presidents have delegated authority to establish fingerprinting requirements of CSU employees as communicated via FSA 82-31 and Supplement 1 and FSR 85-72 located under Fingerprinting policies at: <http://www.calstate.edu/HRAdm/policies.shtml>. Campuses must comply with the IPA if fingerprinting is to be undertaken.

POLICE PERSONNEL

Selection of CSU police personnel, including sworn police personnel and police officer cadets, and 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 Police Officer Standards and Training (P.O.S.T.) sets background check requirements for Police Dispatchers.

DEPARTMENT OF MOTOR VEHICLE (DMV) CHECKS

The campus shall perform verification of a valid motor vehicle license, generally a California driver's license, for each employee who drives as a part of his/her university duties. The license must be appropriate to the vehicle operated (e.g., a bus driver has a special license). In certain cases, including but not limited to employees whose primary responsibility is driving or employees who routinely transport groups of students, faculty or staff, a more thorough Department of Motor Vehicle check may be conducted, as determined appropriate by the campus.

If you have any questions regarding this policy, please contact systemwide Human Resources at (562) 951-4411 or your campus counsel. This document is available on the Human Resources Administration's Web site at:
<http://www.calstate.edu/HRAdm/memos.shtml>.

JRMcC/cr

Attachments

Sample Form

**California State University (campus)
Applicant/Employee Disclosure Statement
FCRA – ICRA**

In connection with your application for employment or consideration of you for a different position at the University, a consumer report or an investigative consumer report may be obtained. The University will determine in its sole discretion which positions require background checks. The consumer report or investigative consumer report will be used for employment purposes: to evaluate an individual for employment, promotion, reclassification, reassignment or retention as an employee. The University will obtain any such reports from [name, address and telephone number of the specific consumer reporting agency to be used].

The background check may include information concerning your employment history, education, qualifications, motor vehicle record, character, general reputation, personal characteristics, social security verification, police and criminal records, civil records, workers' compensation claims, credit and indebtedness history, and mode of living, and may be obtained from public records, through personal interviews with your neighbors, friends, or associates or with others with whom you are acquainted or who may have knowledge concerning the above items of information, in compliance with applicable law.

Attached to this Disclosure Statement are: (1) a summary of your rights under the federal Fair Credit Reporting Act (FCRA); and, (2) a summary of the provisions of Civil Code § 1786.22, a section of the California Investigative Consumer Reporting Agencies Act (ICRA) that sets forth certain duties of investigative consumer reporting agencies to provide you with files and information.

You must acknowledge below receipt of this Disclosure Statement. You must also authorize in writing the procurement of the consumer report or investigative consumer report before such a report may be obtained. A separate authorization form is attached.

I hereby acknowledge that I have received the Applicant/Employee Disclosure Statement, FCRA – ICRA.

Signature: _____ Date: _____

THE FAIR CREDIT REPORTING ACT (FCRA) A SUMMARY OF YOUR RIGHTS

The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you - - such as if you pay your bills on time or filed bankruptcy - - to creditors, employers, landlords, and other businesses. CRAs also gather information supplied by public record sources - - such as information contained in criminal records and driving records - - for the use of employers and others. You can find the complete text of the FCRA, 15 U.S.C. §§ 1681- 1681 u, at the Federal Trade Commission's web site (<http://www.ftc.gov>). The FCRA gives you specific rights, as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

You must be told if information in your file has been used against you. Anyone who uses information from a CRA to take action against you - - such as denying an application for credit, insurance, or employment - - must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.

You can find out what is in your file. At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of the information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. Otherwise, a CRA may charge you up to eight dollars.

You can dispute inaccurate information with the CRA. If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs- - to which-it has provided the data- - of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.

Inaccurate information must be corrected or deleted. A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified. If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In-addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.

Outdated information may not be reported. In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.

Access to your file is limited. A CRA may provide information about you only to people with a need recognized by the FCRA - - usually to consider an application with a creditor, insurer, employer, landlord, or other business.

Your consent is required for reports that are provided to employers, or reports that contain medical information. A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.

You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers. Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be-taken off the list indefinitely.

You may seek damages from violators. If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

The FCRA gives several different federal agencies authority to enforce the FCRA.

FOR QUESTIONS CONCERNS REGARDING:

Type of Business:	Contact:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 1-800-613-6743
Federal Reserve System member banks (except national banks and federal branches/agencies of foreign banks)	Federal Reserve Board Division of Consumer & Community Affairs Washington, DC 20551 (202) 452-3693
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 1-800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 (703) 519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs 550 17 th Street, N.W. Washington, DC 20429 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation Office of Financial Management Washington, DC 20590 (202) 366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture Office of Deputy Administrator - GIPSA Washington, DC 20250 (202) 720-7051

California Investigative Consumer Reporting Agencies Act (ICRA) A Summary of Your Rights Under California Law

Under California law, you are entitled upon presentation of proper identification* to find out from an investigative consumer reporting agency (CRA) what is in your file, as follows:

1. In person, by visual inspection of your file during normal business hours and on reasonable notice. You may be accompanied by one other person of your choosing, who must furnish reasonable identification. The CRA may require you to furnish a written statement granting permission to the CRA to discuss your file in such person's presence.
2. By obtaining a summary of it via telephone call, if you have made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by you or charged directly to you.
3. By requesting in writing, with proper identification, that a copy of it be sent to a specified addressee by certified mail. The CRA complying with such requests for certified mailings shall not be liable for disclosures to third parties caused by mishandling of mail after such mailings leave the investigative CRA.

The CRA may not charge you more than the actual copying costs for providing you with a copy of your file. The CRA will provide trained personnel to explain any information furnished to you. The CRA will provide a written explanation of any coded information contained in files maintained on you. If you choose to visually inspect the file under option 1 above, this written explanation will be provided whenever the file is provided to you.

* The term "proper identification" as used above shall mean that information generally deemed sufficient to identify a person. Such information includes documents such as a valid driver's license, social security account number, military identification card, and credit cards. Only if the consumer is unable to reasonably identify himself/herself with the information described herein, may an investigative CRA require additional information concerning your employment and personal or family history in order to verify your identity.

Sample Form

**California State University (campus)
Applicant/Employee Authorization
FCRA – ICRA**

I, [individual's name], hereby authorize [CSU campus name] to obtain a consumer report or an investigative consumer report about me from [name and address of specific investigative consumer reporting agency to be used] in connection with the University's assessment and consideration of my application for employment or any of the other purposes described in the Disclosure Statement provided to me by the University. I acknowledge that I have received the Disclosure Statement and have read it and the attachments to it thoroughly.

If you would like to receive a copy of the investigative consumer report, if one is obtained, please check this box and you will be provided a copy within 3 business days of the date it is received by the University.

I hereby authorize and request, without any reservation, any present or former employer, school, police department, financial institution, division of motor vehicle, consumer reporting agencies, or other persons or agencies having knowledge of me to furnish the University and/or [name and address of investigative consumer reporting agency to be used] with any and all background information in their possession regarding me which may be obtained pursuant to law, in order that my employment qualifications may be evaluated.

I also agree that a fax or photocopy of this authorization with my signature is to be accepted with the same authority as the original.

Signature: _____ Date: _____

