

Background Checks and Substance Abuse Testing

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

Procedure:

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

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

¹ However, if testing results are reported directly by a lab, rather than by a credit report agency, FCRA requirements would not apply.

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

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

A. Criminal

1. Criminal record checks will include a social security number validation and trace. This process validates the applicant's social security number and helps identify the scope of the check by identifying all residences and employment within the United States (US). Except for law enforcement personnel, or as required by law, criminal record requests shall be limited to criminal convictions and arrests currently pending adjudication, and shall not include other arrests. The specific type of criminal record check to be utilized for a given position shall be determined based on the duties and risks associated with the position and shall be indicated in the grid attached as Schedule A. Checks for types of positions designated by an asterisk below (*) shall include a check for registered sex offender status, unless otherwise specified by law.

2. A criminal background check is required prior to making an offer to a final candidate for employment (new hire) or promotion or other move² for the following types of positions:

- a. Positions where handling of cash funds, including credit card processing, is a primary job duty, provided that positions which only have access to one credit card at a time when processing or facilitating a transaction may be excluded.
- b. *Positions in Finance & Administration, Development, Enrollment Services, Student Financial Aid, ISIS, and Information Technology Services that are security sensitive at such a level that they have broad access to or permanent retention of confidential information, e.g., social security numbers or system-wide passwords (employee or student), as follows:
 - i. Positions that have the ability to view or access any information housed in enterprise systems³ that contain sensitive information
 - ii. Positions that perform enterprise application development
 - iii. Positions that have physical and administrative access⁴ to campus data infrastructure systems
 - iv. Positions that are "forensic" investigators including those involved in the investigation of computer or network security breaches
 - v. Positions with broad access to sensitive student information with market value, such as financial aid administrators

² That is, where the new position is a covered position.

³ Integrated large scale systems, including mainframes, servers, and peripheral devices, interconnected by a network forming a virtual centralized computing facility, such as BASIS, ISIS, FYI, the UA Computing Network, and Blackboard.

⁴ Access necessary for those directly responsible for the system, user account, and software maintenance, also called "root" or super user access.

- c. *Positions (including faculty positions) providing care or supervision to minors (persons under 18), patients, mentally ill or developmentally disabled⁵ persons, or similar populations, as a primary job duty, including, but not limited to:
 - i. Child care workers⁶
 - ii. Health care providers such as physicians and nurses
 - iii. Clinical psychologists, social workers, or licensed professional counselors
 - iv. Pharmacists and pharmacy technicians
- d. *Positions that perform duties in residence halls and Greek houses, including resident assistants.
- e. *University police and other security positions.⁷
- f. Safety-sensitive, non-academic unit positions as follows:
 - i. Electricians (including high voltage, low voltage and alarm electricians)
 - ii. Power distribution workers
 - iii. Boiler/chiller operators
 - iv. Utility maintenance workers
 - v. *Workers who perform locksmith duties
 - vi. *Institutional service assistants with regular access to personal spaces such as residence halls, Greek houses and athletic locker rooms
 - vii. Environmental compliance workers
 - viii. Environmental Health and Safety employees
- g. Staff positions, regardless of unit, designated as safety officers or that operate facilities distributing hazardous substances
- h. *Senior administrators including the Chancellor, Vice Chancellors, Deans, Vice Provosts, Associate Vice Chancellors and other positions such as Fiscal Officers, the Executive Director of University Housing, the Director of the University of Arkansas Police Department, and the Director of the Pat Walker Health Center, who are assigned a level of responsibility and authority that provides broad access to sensitive or protected University information, are granted high level authority for transaction approval, are in executive positions for which there is limited supervision or oversight or whose conduct bears significantly on the University's reputation.
- i. Any other positions for which a check is required by law.

⁵ For this policy, developmentally disabled means a significant disability attributed to mental retardation, cerebral palsy, epilepsy, autism, or related conditions.

⁶ Checks for child care workers must be conducted by Arkansas State Police and DHS Child Maltreatment registry, and must be renewed at least every five years. Ark. Code Ann § 20-38-103(a) & (d).

⁷ Checks for law enforcement officers must include check conducted by Arkansas State Police. Ark. Code Ann. § 12-9-106 & Comm'n on Law Enforcement Standards & Training Reg. 1002.

3. Additional types of positions not listed above may be added to the list of covered positions requiring criminal record checks contained in Schedule A; however, any additional covered positions, which are not otherwise mandated by this policy, must be approved by the appropriate vice chancellor in consultation with Human Resources. Furthermore, any such checks must be job-related and a business necessity, based on a need specifically identified by University officials, or as otherwise required by law, and shall be applied in a consistent manner, in terms of type of checks and frequency, across similar positions within a given unit.

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

B. Financial (Credit)

1. Financial/credit checks include the names and addresses of the person being screened, all debts, liens, collections, bankruptcies, payment history, and charge-offs.

2. A financial (credit) background check is required prior to making an offer to a final candidate for employment or promotion or other move for those positions where such information is relevant to job duties performed, including the following types of positions:

- a. Positions with extensive cash management duties, with access to cardholder data sets or access to the cardholder data processing or storage environment⁸ as a primary job duty.⁹
- b. Senior administrators including the Chancellor, Vice Chancellors, Deans, Vice Provosts, Associate Vice Chancellors and other positions, such as Fiscal Officers, who are assigned a level of responsibility and authority that provide financial oversight or are granted high level authority for transaction approval.

3. Additional types of positions not listed above may be added to the list of covered positions requiring financial/credit checks contained in Schedule A; however, any additional covered positions which are not otherwise mandated by this policy, must be approved by the appropriate vice chancellor in consultation with Human Resources. Furthermore, any such checks must be job-related and a business necessity, based on a need specifically identified by University officials, or as otherwise required by law, and shall be applied in a consistent manner, in terms of type of checks and frequency, across similar positions within a given unit.

⁸ Does not include positions which only have access to point of sale terminals.

⁹ Payment Card Industry Data Security Standard (PCIDSS) requires financial checks for all persons who have access to cardholder data sets or the cardholder data processing or storage environment.

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

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

A. Substance abuse testing will include a urine analysis, unless an alternative, reliable method is determined in consultation with HR.

1. Any pre-employment, pre-promotion, or pre-move substance abuse test will be a 5-panel screening unless otherwise required by law. Alteration or falsification of a substance abuse test shall be grounds for disqualification or termination.

2. A substance abuse test is required prior to making an offer to a final candidate for employment or promotion for the following types of positions:

- a. Senior administrators including the Chancellor, Vice Chancellors, Deans, Vice Provosts and Associate Vice Chancellors.
- b. Positions that perform duties in residence halls and Greek houses, including Resident Assistants.
- c. Bus and van drivers (primary job duties), or positions which otherwise require a Commercial Driver's License.¹⁰
- d. University police and other security positions.
- e. Safety-sensitive, non-academic unit positions as follows:
 - i. Electricians (including high voltage, low voltage and alarm electricians)
 - ii. Power distribution workers
 - iii. Boiler/chiller operators
 - iv. Utility maintenance workers
 - v. Heavy Equipment Operators
 - vi. Institutional service assistants with regular access to personal spaces such as residence halls, Greek houses and athletic locker rooms

3. Additional types of positions not listed above may be added to the list of covered positions requiring substance abuse tests contained in Schedule A; however, any additional covered positions, which are not otherwise mandated by this policy must be approved by the

¹⁰ Includes any employee whose position requires driving a motor vehicle: a) with a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of more than 10,000 pounds; b) with a gross vehicle weight rating of 26,001 or more pounds; c) designed to transport 16 or more passengers, including the driver; or d) of any size that is used to transport hazardous material which requires the vehicle to be placarded under the hazardous materials regulations. See 49 CFR §§ 382.107 & 382.301; Ark. Code Ann. § 27-23-103(7). Certain driver positions are subject to periodic/random substance abuse testing pursuant to federal law.

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

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

III. Schedule A – Summary Grid

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

IV. Re-Checking of Incumbent Employees

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

V. Use of Results

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

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

If the criminal history check reveals criminal convictions, Human Resources shall review the report with the hiring manager, in consultation with, as appropriate, General Counsel, UAPD, and the Office of Equal Opportunity and Compliance, evaluating each conviction, including any additional information that the individual provides, before a tentative decision is made whether to disqualify the individual. The existence of a conviction does not automatically disqualify an individual from employment. Appropriate consideration shall be given to the nature and number of convictions, their dates, and the relatedness each conviction has to the duties and responsibilities of the position. The basic inquiry is whether the safe and efficient conduct of the

functions of the job position would be inconsistent with the employment of the individual in view of his or her record. Relevant considerations include safety of fellow employees and students, fitness for supervisory role, and protection of property, funds, and reputation of the University of Arkansas, as well as safety of the public.

If substance abuse testing results are positive, the applicant or incumbent shall be permitted to submit relevant medical information pertaining to the positive test results. All positive substance abuse tests will be reconfirmed and reviewed by a medical examiner.

Additional information regarding disqualification criteria for applicants and incumbent employees is contained in the system policy.

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

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

VI. Adverse Action Procedures

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

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

The adverse action notice will include:

- Notice of the adverse action taken;
- The name, address, and phone number of the consumer reporting agency that supplied the report;

¹¹ Again, if substance abuse testing results are reported directly by a lab, FCRA requirements would not apply.

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

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

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

VII. Costs Associated with Background Checks and Substance Abuse Testing

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

VIII. Background Check Records

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

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August 8, 2011

July 1, 2010

Attachment: Administrative Memorandum 470.1

Schedule A: http://hr.uark.edu/Schedule_A.xlsx

Policy on Background Checks and the Use of Criminal Record, Financial, and Substance Abuse-Testing Information in Employment Decisions**I. Background and Overview.**

The University of Arkansas is permitted by law to obtain and consider criminal history, financial history, and substance abuse testing information in making employment decisions when job-related and a business necessity.¹ This policy authorizes each campus, division, and unit of the University of Arkansas System to obtain and utilize criminal history information, and, where appropriate, financial history and substance abuse testing information (collectively "background check information") in making employment decisions. This policy also provides guidance regarding the appropriate use and safeguarding of such information (including applicable standards for disqualification), consistent with state and federal law.

The University strictly prohibits the use of background check information in a manner that constitutes a violation of an individual's civil rights. Accordingly, it is important for each campus, division, and unit to follow proper procedures and criteria in obtaining and using such information, as described in this policy. Furthermore, it is critical that the confidentiality of all such records be protected to the maximum extent possible.

Note that this policy is intended for general guidance purposes only. Administrators should be aware that state and federal statutes and regulations may provide more specific restrictions, requirements or procedures with regard to particular employment categories. This policy does not create any right to procedural or substantive due process of law beyond that mandated by federal and state laws, if any, nor does it create any contract rights to any applicant or employee. Furthermore, this policy is subject to all policies of the Board of Trustees of the University of Arkansas.

II. Scope of Coverage.

This policy shall be applicable to all campuses, divisions, and units of the University of Arkansas System, except as noted herein. Each campus, division, or unit shall establish its own procedures, consistent with this policy, for conducting and utilizing background checks with regard to employment decisions. In general, job categories covered by background checks shall be determined based on the nature of job responsibilities, rather than on the nature of appointment, such as, full-time, part-time, or graduate assistant. However, because of the unique student/employee relationships of medical interns, residents, and fellows, the UAMS College of Medicine will develop a separate policy for those individuals, to be consistent with Accreditation Council for

¹ See Ark. Code Ann. § 12-12-1502(a); EEOC Policy Guidance: *Consideration of Arrest Records in Employment Decision under Title VII of the Civil Rights Act of 1964* (Sept. 7, 1990).

Graduate Medical Education guidelines and the requirements of the National Resident Matching Program.

A. Job Categories for Which Background Checks Are Required.

Criminal background checks (including registered sex offender checks), and where applicable, other registry record checks, shall be conducted for persons newly hired or promoted in the following classes of positions:

- Law enforcement officers
- Child care workers²
- K-12 teachers, administrators, and non-certified personnel³
- Other positions (including faculty) providing care or supervision to minors as a primary job duty
- Health care providers such as nurses and physicians, including faculty with access to or providing services to patients
- Positions (including faculty) providing services as clinical psychologists, social workers, and licensed professional counselors as a primary job duty
- Other positions (including faculty) providing care or supervision to mentally ill or developmentally disabled⁴ persons as a primary job duty
- Resident assistants/head residents in residence halls.

In addition, substance abuse testing shall be conducted for all persons newly hired or promoted for positions which serve primarily as bus and van drivers, or which positions otherwise require a Commercial Driver's License.⁵

² Checks for child care workers must be conducted by Arkansas State Police and Arkansas Department of Human Services (DHS) Child Maltreatment registry, and must be renewed at least every five years. Ark. Code Ann § 20-38-103(a) & (d).

³ Primarily applies to Arkansas School for Mathematics, Sciences and the Arts; checks for K-12 employees must be conducted by Arkansas State Police and DHS Child Maltreatment registry. See Ark. Code Ann. §§ 6-17-411 & 6-17-414.

⁴ For this policy, developmentally disabled means a significant disability attributed to mental retardation, cerebral palsy, epilepsy, autism, or related conditions.

⁵ Includes any employee whose position requires driving a motor vehicle: a) with a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight of more than 10,000 pounds; b) with a gross vehicle weight rating of 26,001 or more pounds; c) designed to transport 16 or more passengers, including the driver; or d) of any size that is used to transport hazardous material which requires the vehicle to be placarded under the hazardous materials regulations. See 49 CFR §§ 382.107 & 382.301; Ark. Code Ann. § 27-23-103(7).

B. Job Categories for Which Background Checks Are at the Option of the Campus.

Each campus, division, or unit may choose to designate additional job categories or titles which shall be subject to background checks, provided that officials determine that such checks are necessary to the proper conduct of the position, for example, due to considerations of public safety, responsibility for supervision of personnel, safeguarding University funds, property, or reputation, or protecting the welfare of members of the University community.

C. Contractors.

Each campus, division or unit may require any contractor to conduct background checks for positions that would require checks under this policy or any campus, division or unit background check policy.

III. Procedures for Conducting Checks and the Fair Credit Reporting Act.

All campuses, divisions, or units conducting and utilizing background check information must establish campus-, division-, or unit-level procedures that are consistent with this policy. At a minimum, such procedures shall include the following for all covered positions:

Identification of Covered Positions. Based on business necessity, the campus, division, or unit shall determine which positions should be subject to background checks and the nature of the information to be obtained (e.g., criminal, financial, or substance abuse testing).

It is the intent of this policy that financial checks and pre-employment substance abuse testing information shall only be conducted where the information is directly relevant to the job responsibilities.

Job Announcement Language. Job announcements for all positions that will be subject to a pre-employment background check should include specific notice language to that effect. Sample notice language is provided in the appendix to this policy.

Self-Disclosure of Information on Job Applications; Application Language; Interviews. Applicants for positions that are subject to a pre-employment background check, as well as any other positions designated by each campus, division, or unit shall be required to self-disclose all criminal convictions other than minor traffic offenses (including, but not limited to, status as a registered sex offender), as well as any arrests pending adjudication. Depending on the position, applicants may also be asked whether they have ever been debarred

from conducting business with any federal or state agency.

Sanctions for Failure to Provide Accurate Information. Applications shall state that failure to provide accurate information may be grounds to reject an application, withdraw an offer of employment, or for termination at any time.

Relationship to Job Requirements. Applications shall also state that the fact of a criminal conviction or arrest pending adjudication alone shall not disqualify an applicant in the absence of a relationship to the requirements of the position.

Requirement of Additional Information. For a limited number of appropriate positions, applications may also require applicants to furnish job-related, relevant financial history information, such as recent bankruptcies, or substance abuse testing information.

Job Interview Questions. In the interview process it is acceptable to inquire about convictions and arrests pending adjudication, but generally not other arrests unless required by law.

Written Authorization for Release of Information. Applicants for positions subject to background checks shall be required to execute a separate written authorization for the release of criminal and/or financial information as part of the job application process. If a check is conducted, the authorization shall be maintained in the files of the campus, division or unit for at least three (3) years.⁶ A separate authorization form shall be utilized, if necessary, for any substance abuse testing to occur.

Fair Credit Reporting Act. If a private background check provider (known as a "consumer reporting agency") is utilized, the requirements of the Fair Credit Reporting Act (FCRA) must be followed.⁷ Note that such requirements do not apply to Arkansas State Police checks or credential checks carried out by University officials.⁸ Criminal or financial history information obtained through a private provider is referred to by the FCRA as a "consumer report."

⁶ See Ark. Code Ann. § 12-12-1506(a)(4)(A).

⁷ 15 U.S.C. §1681 et seq. 16 CFR Part 601.

⁸ See Fed. Trade Comm'n FCRA Staff Opinion Letter "Pickett (07-10-98)", located at <http://www.ftc.gov/os/statutes/fcra/index.htm>.

Separate Written Notice and Authorization. Under the FCRA, the University must provide the applicant with a “clear and conspicuous” written notice that the University intends to obtain a consumer report, as well as written authorization from the applicant. The notice must be a “separate disclosure” that cannot simply be part of an employment application form. Sample FCRA disclosure and authorization forms are attached in the Appendix to this policy, or may be supplied by the contractor.

Certification. The University must certify to the private provider that the consumer report will be used only for permitted purposes under the FCRA, and not in violation of any applicable state or federal equal opportunity law or regulation. Under the FCRA, the report may only be obtained for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

Investigative Consumer Reports. Additionally, if an “investigative consumer report” is to be requested from a consumer reporting agency in which information regarding an applicant or employee’s character, general reputation, personal characteristics, and mode of living is obtained through personal interviews by such agency, the campus, division, or unit must provide notice to the consumer not later than three days after the date that the report was first requested.⁹

Upon the request of the subject, the campus, division, or unit must make a complete disclosure of the nature and scope of the investigation within five days after the request or after the date of the request for the report, whichever is later.

Background Checks to be Conducted for Finalists, Pre-Offer. Background checks shall be conducted prior to extending an offer of employment, but only after a candidate becomes the finalist or one of the finalists for a position. Substance abuse testing, for any covered positions, shall also be conducted pre-offer.

Submission of Background Check Requests. Each campus, division, or unit shall designate one or more officials (for example, within its human resources office) as authorized to submit background check requests on behalf of the

⁹ This affirmative duty of notice under the FCRA only applies when information is obtained through a third-party vendor, rather than gathered directly by representatives of the institution, such as a search committee.

campus, division, or unit. Requests shall be provided to an appropriate, qualified background check information provider based on the type of position and the nature of the information sought. Note that for certain types of positions, such as child care workers, requests are required by law to be directed to the Identification Bureau of the Arkansas State Police and the Child Maltreatment Registry of the Arkansas Department of Human Services.¹⁰

Criminal History Requests Limited to Convictions and Arrests Pending Adjudication. Except for law enforcement personnel, criminal history requests shall be limited to criminal convictions and arrests currently pending adjudication, and shall not include other arrests. The requestor shall follow the requirements of the information provider.

Qualified Providers. A qualified background check provider may include the Arkansas State Police or a private contractor, given the nature of the position and other factors, such as the length of the subject's residence in the State of Arkansas.

Costs. Costs of any background checks shall be borne by the hiring authority, or as otherwise determined by the campus, division, or unit.

Review and Use of Information. The authorized recipient of the background check report shall review the report. If the recipient receives a notice of address discrepancy, the recipient shall take steps designed to enable the recipient to form a reasonable belief that a consumer report relates to the intended person.¹¹ If job-related adverse information appears on the report, the recipient shall notify the hiring authority of the relevant information and confer with the hiring authority regarding any employment action to be taken.

Adverse Determinations. The determination to deny employment to a finalist for a position due to adverse, job-related background check information shall be made by the hiring authority, in consultation with the director of the campus, division, or unit human resources office and, as appropriate, with the Office of the General Counsel and/or the campus, division, or unit public safety office or equal employment opportunity office and shall be subject to all other University policies.

Approval of Decisions to Hire or Promote. A decision to hire or promote an applicant with adverse, job-related background check information shall require the approval of a vice chancellor or comparable

¹⁰ See, e.g., Ark. Code Ann. § 20-38-103(a)(3)(B).

¹¹ 16 CFR § 681.1(c)(1).

senior campus, division or unit official.

Documentation. Persons making determinations under this policy shall document the reasons, within the standards of this policy, for the employment decision made.

Notification of Adverse Information. If any information in a criminal background check or financial history report is utilized to make an adverse action regarding an employment decision, the hiring authority shall notify the applicant or employee of the information and its source in writing **before** making a final determination. When notified of the intended adverse action, the applicant or employee shall be given five business days to request, in writing, clarification or further review of the decision. If the adverse action to be taken is based on a consumer report covered by FCRA, the campus, division, or unit must use the following two step process:

1. Pre-Adverse Action Disclosure. The campus, division, or unit must first provide a "pre-adverse action disclosure" to applicant or employee, including a copy of the consumer report together with a copy of the Summary of Consumer Rights prescribed by the Federal Trade Commission pursuant to 15 U.S.C. § 1681g(c). The campus, division, or unit then must wait five business days before taking the adverse action. A copy of the Summary is attached in the Appendix to this policy.

2. Adverse Action Notice. After the adverse action is taken, the campus, division, or unit must provide the applicant or employee with an "adverse action notice" including the following information:

- a) notice of the adverse action taken;
- b) the name, address, and phone number of the reporting agency;
- c) a statement that the consumer reporting agency did not make the adverse decision and is not able to explain the decision;
- d) a notice summarizing the consumer's rights to obtain a free disclosure of his or her file from the reporting agency if requested within 60 days;
- e) a notice of the consumer's right to dispute directly with the agency the accuracy or completeness of any information provided.

A sample adverse action notice is attached in the Appendix to this policy.

Substance Abuse Testing Results. In the case of positive substance abuse testing results, the subject shall be permitted to submit relevant medical information pertaining to the positive test results.

Confidential Storage of Information; Retention Period; Statistical Data.

Background check information shall be maintained by the authorized recipient of the report (such as the campus human resources office) in a confidential file that is segregated from an application or employee personnel file. Access to background check information shall be restricted to authorized persons with a specific, job-related need to know. Background check information may be exempt from disclosure under the Arkansas Freedom of Information Act.¹² Background check information shall be retained for a period of three years from the date of any hiring decision and then destroyed by the recipient. Human resources offices shall assemble statistical data (without names) which reflects information and experience under this policy.

IV. Criteria for Disqualification – Applicants.

Where pre-employment inquiries, written or oral, are directed to a prospective employee regarding criminal history or other background check information, or information from other sources is sought and/or received regarding prior convictions or arrests pending conviction, such information shall be utilized only in accordance with the standards set out in this policy. This policy shall also apply to incumbent employees applying for positions identified as appropriate for background checks.

1. **Job Relationship and Business Necessity.** Information concerning criminal history, financial history, or substance abuse testing results shall be utilized only with reference to determining fitness of the individual to be an employee in terms of job relationship and business necessity. The basic inquiry is whether the safe and efficient conduct of the functions of the job position would be inconsistent with the employment of the individual in view of his or her record. Relevant considerations include safety of fellow employees and students, fitness for supervisory role, and protection of property, funds and reputation of the University of Arkansas, as well as safety of the public. Convictions, from that fact alone, and other background check information, shall not be treated as an absolute bar to employment if not relevant to the position sought.
2. **Number, Seriousness and Recency of Convictions; Work History.** Appropriate consideration shall be given to the number and seriousness of any convictions (or other relevant information contained in a background check report), as well as how recently the matters occurred. For example, depending on the nature of the offense, a single conviction more than fifteen (15) years old

¹² See, e.g., Ark. Code Ann. § 20-38-110(b).

might not disqualify an applicant. Consideration may also be given to the subject's intervening work history.

3. **Use of Arrest Information, if Received.** Unless otherwise required by law or University policy, arrests on charges not followed by convictions shall not be considered in making employment decisions, unless the hiring authority specifically determines that the alleged conduct was actually committed and is related to the position sought. The hiring authority should examine the surrounding circumstances, offer the applicant or employee the opportunity to explain, and, if he or she denies the misconduct, make follow-up inquiries to assess his or her credibility.
4. **Uniform Application.** These standards shall be applied uniformly to all applicants for employment with the University, and uniformly regardless of their race, color, religion, sex, national origin, disability or any other category prohibited by law or by University policy.
5. **Expunged Records.** Hiring authorities shall observe current statutory requirements regarding consideration of any expunged criminal records. In general, expunged records shall not be considered by hiring authorities, other than with respect to persons applying for law enforcement positions, positions in child care facilities, or certain other positions providing care or other services to vulnerable populations.¹³

V. Criteria for Disqualification – Incumbent Employees.

Criminal matters or other suspected misconduct arising after an individual is an employee of the University may be relevant to decisions regarding his or her future employment relationship with the University. University employees must report to their supervisor, within 24 hours or at the earliest possible opportunity thereafter, any criminal arrests, criminal charges, or criminal convictions, excluding misdemeanor traffic offenses punishable only by fine. Failure to make such a report shall constitute grounds for disciplinary action, up to and including termination. The employee shall cooperate fully during any review process undertaken by the University. The University reserves the right to conduct a criminal or financial history investigation when an employee is charged with any crime that may adversely affect his/her suitability for continued employment, or during the course of an administrative investigation. In general, the above disqualification criteria regarding applicants for employment will furnish guidance regarding incumbent employees as well.

Criminal Convictions of Employees. A criminal conviction may

¹³ See Ark. Code Ann. §§ 16-90-901 - 906, 20-38-105(c)(2)&(3).

furnish the basis for discharge where it (a) is followed by incarceration, making the individual unavailable for work, or (b) resulted from an offense directed at the University or its property, at other employees of the University, or at members of the public while on University premises, or (c) otherwise calls into question the fitness of the individual to be an employee in terms of job relationship and business necessity.

Criminal Arrests of Employees. An arrest on a felony charge may furnish the basis for discharge, suspension from employment, or leave of absence without pay pending trial upon consideration of a variety of factors including, but not limited to, whether the offense was directed against the University or its property or employees, or while on University premises, whether the individual will be incarcerated pending trial, whether retention of the individual in the position will constitute a danger to others or to him or her, and similar factors. An employee shall not be terminated based solely on the fact of an arrest; however, action may be taken against an employee prior to his/her criminal adjudication based on investigation of the available facts and circumstances if the employing office determines that the alleged conduct occurred, and that it bears significantly on the employee's continued fitness for the position, or if the employee is unavailable to report to work.

VI. Incumbent Employees – Ongoing Authorizations.

Ongoing Authorizations. Consistent with the Fair and Accurate Credit Transactions Act (FACTA), which amended FCRA, a campus, division, or unit may require employees to provide ongoing authorization to obtain updated background checks (consumer reports) at any time during the term of their employment.¹⁴ Use of such checks should be limited to sensitive positions on a job-related basis. Any such requirements should be applied and enforced in a consistent manner across similar positions.

VII. Employee Misconduct Investigations. If the campus, division or unit uses the services of a private contractor to assist in its conduct of "employee misconduct investigations," under FACTA such investigations are not considered "consumer reports" and do not require prior notice or consent under FCRA. Covered investigations pertain to 1) suspected misconduct relating to employment or 2) compliance with Federal, State or local laws and regulations, the rules of a self-regulatory organization, or any pre-existing written University policies.¹⁵

¹⁴ See 15 U.S.C. § 1681b(b)(2)(A)(I); FTC Notice to Users of Consumer Reports § III.A.

¹⁵ 15 U.S.C. § 1681a(x)(1)(B).

Adverse Action Notice. However, if investigation information provided by a consumer reporting agency forms the basis for an adverse employment action against an employee, the campus, division, or unit must provide an "adverse action notice" after the action is taken, together with a summary of the investigation report.¹⁶

VIII. Questions Regarding Application of the Policy. Questions regarding interpretation of this policy should be directed to the Office of the General Counsel.

Revised July 1, 2010

¹⁶ 15 U.S.C. § 1681a(x)(2); FTC Notice to Users of Consumer Reports § V.

SAMPLE JOB ANNOUNCEMENT LANGUAGE

[NOTE: Bracketed information may be included or omitted depending on the checks to be conducted for the position.]

This position is subject to a pre-employment [criminal background [and registry] check] [financial history background check] [drug screen]. [A criminal conviction or arrest pending adjudication] [adverse financial history information] alone shall not disqualify an applicant in the absence of a relationship to the requirements of the position. [Background check] [drug screening] information will be used in a confidential, non-discriminatory manner consistent with state and federal law.

FAIR CREDIT REPORTING ACT (FCRA) DISCLOSURE

The following contains information required by law to be disclosed when obtaining investigative/consumer/credit reports. These reports may include criminal background checks and credit checks, among others.

The Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, permits an employer to obtain a consumer report from a consumer reporting agency, regarding its employment applicants or current employees, to assist it in making employment-related decisions. The consumer report may include information which bears on your credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, mode of living, or criminal record. However, an employer must secure the prospective or current employee's authorization in writing before it may request a consumer report about them.

If the consumer reporting agency seeks information regarding character, general reputation, personal characteristics and mode of living obtained by personal interviews with neighbors, friends, or associates, i.e. an investigative consumer report, then the applicant or employee upon whom the information is sought may request a complete disclosure by the employer of the nature and scope of the investigation. This disclosure must be made in writing to the applicant or employee no later than five (5) days after the receipt of the disclosure request or from the date the employer requested the report (whichever is later).

If the University of Arkansas obtains a consumer report/investigative consumer report when making an employment-related decision that directly and adversely affects you, you will be provided with a copy of the consumer report/investigative consumer report, a summary of your rights under the FCRA and the source of the report before the decision is finalized. You also may contact the Federal Trade Commission about your rights under the FCRA.

The University of Arkansas obtains consumer/investigative consumer reports for employment purposes. The University of Arkansas will evaluate the findings of the report(s) in terms of the business necessities of the position and relatedness to the duties of the position.

Your signature below confirms that you have read this disclosure completely. Please also complete the Authorization Form, which allows you to give your consent.

Applicant's/Employee's Signature _____ Date _____

Printed Name _____

I agree that a photocopy or facsimile of this disclosure shall be valid as the original.

AUTHORIZATION TO OBTAIN INVESTIGATIVE/CONSUMER/CREDIT REPORT

[NOTE: Delete bracketed language where not applicable].

By signing below, I acknowledge that I have read the document "Fair Credit Reporting Act (FCRA) Disclosure." I voluntarily authorize the University of Arkansas (UA) to obtain a[n] [investigative/]consumer/credit report on me through the credit or consumer reporting agency of its choice in connection with my employment. [I further authorize UA to check my consumer/credit record as needed, on a continuing basis, as it relates to my employment.] UA will evaluate report findings in terms of business necessity and relatedness to the duties of the position.

I hereby authorize without reservation, any party or agency contacted by this employer to furnish the above information. I also authorize UA to consider the report when making decisions regarding my employment with UA and acknowledge that I have rights under the FCRA, including the rights discussed in the "FCRA Disclosure." I understand that information being obtained will not be used in violation of any federal or state equal opportunity law or regulation.

Except as provided for under FCRA or otherwise required by law, I hereby release the UA and its employees, as well as the report provider and its employees, from all liability resulting from furnishing this information to UA. I certify that the statements made on this form are true, complete, and correct to the best of my knowledge, and are made in good faith. I understand that any false statements could void my consideration for employment, result in termination of any offer of employment, or result in disciplinary action, including but not limited to termination of employment.

Please PRINT the following information -- Include your FULL name(s)

First Name: _____ Middle Name: _____ Last Name: _____

Other/Former Names: _____

Current Address: _____

City: _____ State: _____ ZIP: _____

Years in Residence: ____ Social Security No.: ____ - ____ - ____ Birth date: ____ - ____ - ____

The UA is requesting your social security number (SSN) to expedite obtaining a report. Your SSN will not be disclosed to anyone outside the UA or the report provider except as mandated by law. Birth date to be used solely for purposes of obtaining report.

Previous Address: _____

City: _____ State: _____ ZIP: _____

Driver's License State: _____ License Number: _____

Professional License State: _____ Type: _____ Number: _____

Signature_____
Date

I agree that a photocopy or facsimile of this authorization shall be valid as the original.

A SUMMARY OF YOUR RIGHTS UNDER THE FAIR CREDIT REPORTING ACT

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 have filed bankruptcy -- to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. 1681-1681u, 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 information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. 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.

You can dispute inaccurate items with the source of the information. If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error.

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 lists 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 OR CONCERNS REGARDING:	PLEASE CONTACT:
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470.1 -- Appendix

CRAs, creditors and others not listed below	Federal Trade Commission Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4367 (Toll-Free)
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 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 Programs Washington, DC 20552 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 703-518-6360
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Division of Compliance & Consumer Affairs Washington, DC 20429 800-934-FDIC
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

SAMPLE PRE-ADVERSE ACTION NOTICE

Current Date

Name of Applicant/Employee
Street Address
City State Zip
Dear Applicant/Employee,

When you applied for the [Job Title] position – in the [Department Name] at the University of Arkansas, you consented to a background check conducted by a consumer reporting agency.

The University of Arkansas contracted with [Contractor], whose address and telephone number are [Contractor's Address], Telephone: []

[Contractor] has reported to us the following information:

[Insert disqualifying information]

Based on this information, you would not be extended an offer of employment. [Contractor] has not made this decision and is not able to explain why the decision was made.

The University of Arkansas is enclosing a copy of the report and a summary of your rights under the federal Fair Credit Reporting Act. You have the right to obtain a free copy of your file from [Contractor] if you request the report within 60 days. You also have the right to dispute directly with [Contractor] the accuracy or completeness of any information provided by it.

If you believe the information listed above is not accurate, please contact [insert name, telephone number of contact] within five business days of receipt of this letter. The University will not make a final decision regarding your application until [insert date]. This will give you an opportunity to contact us if you want to dispute the report submitted by [Contractor].

Sincerely,

[Your Name]
[Your Title]

Enclosures: Report
FTC Summary of Rights

SAMPLE ADVERSE ACTION NOTICE

Date

Name of Applicant
Street Address
City State Zip

Dear Applicant:

I am writing to advise you that we are unable to continue to consider you as a candidate for the [Job Title] position in the Department Name at the University of Arkansas. This determination was influenced by information contained in a consumer report, made at our request and provided by:

[Contractor Name]
[Contractor Address]
[Contractor Address]
[Contractor Telephone]

Under the federal Fair Credit Reporting Act we are required to make the following disclosure to you:

You have the right to obtain a free copy of your file from the consumer-reporting agency if you make a request with the agency within 60 days. Enclosed with our letter to you dated [date of Pre-Adverse Notice], you were provided with a copy of the report we received from [Contractor]. You also have the right to obtain from the consumer reporting agency, free of cost, an additional copy of the report. You also must be provided with a copy of the Federal Trade Commission's summary of Consumer Rights, which is attached to this letter. The summary was also included with our letter to you dated [Date of Pre-Adverse Notice].

You have the right to dispute directly with the consumer reporting agency the accuracy or completeness of any information provided by the consumer reporting agency. The consumer reporting agency did not make the adverse employment decision and is not able to explain why the decision was made.

Sincerely,

[Your Name]
[Your Title]

Enclosure: FTC Summary of Rights