

Office/Contact: Office of Human Resources

Source: SDBOR Policies 4.1.9, 1.7.4 and 1.6.4

Link: <https://public.powerdms.com/SDRegents/documents/1726691>;

<https://public.powerdms.com/SDRegents/documents/1729415>;

<https://public.powerdms.com/SDRegents/documents/1729393>

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## SOUTH DAKOTA STATE UNIVERSITY

### Policy and Procedure Manual

SUBJECT: Employment Background Checks

NUMBER: 4:1

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#### 1. Purpose

In accordance with SDBOR Policy 4.1.9, the University identifies positions of employment that require a background check. The following University policies and procedures are designed to promote a safe and secure environment for faculty, staff, students, volunteers, and visitors and to lessen unnecessary risk. This policy supports the verification of credentials, criminal history, credit status, and other information related to employment decisions.

#### 2. Definitions

- a. Background Check: the process of acquiring records regarding a final candidate that is used to determine suitability for employment. This may include, as defined by SDBOR Policy 4.1.9:
  - i. Credit History Check,
  - ii. Criminal History Check,
  - iii. Educational Verification,
  - iv. Employment Verification,
  - v. License Verification,
  - vi. Limited Criminal History Check,
  - vii. Limited Sex and Violent Offender Registry Check,
  - viii. Sex and Violent Offender Registry Check, and/or
  - ix. Sanction Check.
- b. Fair Credit Reporting Act: the federal law that regulates collection, dissemination, and use of consumer credit information.
- c. Final Candidate: an internal or external applicant identified as the finalist for the position of employee or volunteer.
- d. Favorable Background Check: a Background Check that does not indicate any criminal record, information inaccuracies or discrepancies, or other position related concerns.

- e. Personally Identifiable Information: information that can be used to distinguish or trace an individual's identity or, when combined with other personal or identifying information, is linked or linkable to a specific individual.

### 3. Policy

- a. Certain positions at the University require credential, criminal, and other background information verified as a condition of employment, volunteer status, or as required in SDBOR Policy 1.6.4 – Minors on Campus. These Background Checks may be conducted by law enforcement agencies, credit reporting agencies, designated employees of the SDBOR or University, and/or a vendor selected or approved by the SDBOR.
- b. The University reserves the right to conduct independent Background Checks of prospective employees using SDBOR or University personnel, and such checks may include the review of information accessible by the public through the Internet.
- c. As a condition of employment or appointment as a volunteer, the University performs the following Background Check components on positions with the following responsibilities in conformity with applicable laws, regulations, and standards (This includes, but is not limited to, both emergency hire and temporary positions. Positions are listed by way of example, not exclusion):
  - i. The University will perform criminal history checks, sex and violent offender registry checks, or combinations thereof for all positions which entail:
    - 1. Direct access to, or responsibility for, controlled substances (e.g. Wellness Center, Pharmacy, laboratories);
    - 2. Direct access to, or responsibility for, hazardous materials or hazardous biological agents (e.g. laboratories);
    - 3. Access to, or control of confidential data files, essential electronic information resources, confidential information, Personally Identifiable Information, or combinations thereof (e.g. HR, auditing, student affairs officers, information technology, faculty, etc.);
    - 4. Master key access to multiple buildings or large amount of space, or control of University facilities (e.g. facilities coordinators/directors, locksmith, custodian, staff or student positions with access to facilities or residences);
    - 5. Extensive authority for committing the financial resources of the University, or direct access to large amounts of cash (e.g. VPs, Bursar, cashiers, and other staff with responsibility for handling cash assets, approving purchases or committing financial resources);
    - 6. Direct responsibility for care, safety, or security of human beings, including also vulnerable individuals, minors, or disabled persons (e.g. instructional faculty, health and counseling staff, residence hall staff, coaches, 4-H staff, Trio academic coordinators, camp staff, Instructional graduate students, coaches, police, and other staff directly related to students and/or transporting staff or students);
    - 7. All senior administrators;
    - 8. Operating a vehicle or motorized equipment as an essential function of the position;

9. Any other position funded by a contract which lawfully requires a Background Check (e.g. National Child Study).
  - ii. The University will perform educational and employment verifications on all post verbal offer accepted, pre-employment candidates consistent with the job requirements of the position (e.g. all teaching positions, deans, directors, managers, information technology, fiscal affairs positions, VPs, etc.).
  - iii. The University will perform licensure verifications for all positions for which it is a requirement for the individual to perform their job duties, and the absence of which would expose the University to legal liability, adverse public reaction, or both (e.g. nurses, electricians, counselors, engineers, pharmacists, legal counsel, drivers, police officers, etc.).
  - iv. When a Background Check must be conducted by a consumer credit agency, the University will contract for such services through the vendor selected or approved by the SDBOR.
  - v. HR may determine additional background checks are required for a position not designated in this policy in conformity with applicable law and SDBOR policy.
- d. Notices and advertisements for open positions must provide notification that Final Candidates are subject to this policy.
- e. A Final Candidate's failure to submit to a required Background Check or to fully and accurately disclose requested information to conduct a Background Check will result in withdrawal of the conditional offer of employment or volunteer designation.
- f. All offers are contingent upon successful completion of the Background Check. All offers of employment, oral or written, must include a statement that indicates this contingency.
- g. HR maintains the confidential records of the Background Check results as part of, but separate from, the individual's official personnel file. Records will be maintained and destroyed in accordance with applicable record retention schedules.
- h. The cost for the Background Check at the amount fixed by HR is the responsibility of the hiring department.
- i. In accordance with SDBOR Policy 1.7.4, HR will determine whether a sanctions check is necessary based on the employee job duties and responsibilities. If a sanctions check is necessary, the University will ensure a sanction check screening is completed for the candidate as part of their Background Check and for verification of employment eligibility prior to the hire date.
- j. If the Background Check indicates that there are debarments, sanctions list, convictions, or other anomalies, the SDBOR approved vendor will inform HR and will supply the report to the applicant.

- k. If unreported debarments, sanctions list, or convictions are revealed in the Background Check, the offer of employment may be withdrawn and, if employed, the individual could be subject to discipline, unless the individual shows that the report is in error. The decision to reject or discipline an individual with an unreported debarment, sanctions list, or conviction is solely at the discretion of the University or SDBOR.
- l. When a new employee is not subject to a Background Check under this policy, Shared Services is responsible for sanction check screening if necessary based on the employee's job duties and responsibilities.
- m. HR is responsible for application, notifications, and training related to this policy and its procedures.

#### 4. Procedures

- a. The hiring unit will initiate recruitment effort and submit position duties information in accordance with applicable hiring procedures.
- b. HR will determine appropriate Background Check requirements for the position in accordance with applicable law and job-related duties for the position in question and consistent with business necessity.
- c. HR may, at its discretion, elect to rely on Background Checks recently conducted by other means and forgo requiring an additional Background Check. Situations of this nature include, but are not limited to, the following:
  - i. HR may elect to rely on the criminal background check conducted during the U.S. Government VISA process if a candidate has entered the United States on a VISA less than thirty (30) days prior to the offer of employment and forgo requiring an additional criminal background check.
  - ii. HR may elect to rely on the criminal background check conducted for University programmatic entry and forgo requiring an additional criminal background check.
- d. Notice that a position requires a Background Check will be included in the job announcement.
- e. All offers for volunteer appointments, employment, or promotion where a Background Check is required, verbal or written, shall state: "This offer is contingent on the University's verification of credentials and other information required by law and/or University policies, including, but not limited to, a criminal background check."
- f. HR will initiate the Background Check after the candidate has accepted the initial offer. The hiring proposal is then in a "Conditionally Hired" status. Candidate may not begin duties until the University has received the results of the Background Check and finally approved engagement of the candidate.

- g. The candidate must sign an appropriate release (electronic) for the Background Check. The Background Check Disclosure, Authorization, and Release form as well as the Summary of Your Rights under the Fair Credit Reporting Act will be used and applicable laws will be followed.
- h. HR will review the final results of the Background Check and contact the hiring manager upon completion of the required Background Check.
  - i. Background Check information is considered sensitive and confidential. HR will only release results to hiring managers or administrators if there is a potential concern about the results of the Background Check in relation to the essential functions of the job and on a need-to-know basis.
  - ii. Upon receipt of a Favorable Background Check, the hiring manager will be notified that the conditional offer may be confirmed.
  - iii. Upon receipt of information that gives rise to potential concern, HR will notify the Final Candidate in conformity with applicable law, including notice of right to dispute the accuracy of reports.
    - 1. Final Candidate will be provided the opportunity to provide additional clarifying information.
    - 2. HR and the hiring manager will evaluate each identified concern, including any additional information provided by the individual. Factors will be considered in conformity with applicable law and SDBOR Policy 4.1.9. As a conviction does not give rise to an automatic disqualification, consideration may include, but is not limited to, the nature and number of convictions, dates of convictions, and the relationship of the conviction to the duties and responsibilities of the position.
    - 3. The candidate will be notified of acceptance or rejection of the conditional offer after this review.
- i. Violations of policies, including providing false or misleading information used for any of the background checks, will be handled in accordance with the policies applicable to the person's employment or volunteer status with the University, which may include disciplinary action up to and including termination from employment.
- j. If an employee is terminated as a result of an unreported conviction, sanction list, or debarment, the employee may appeal the termination pursuant to SDBOR and University policy and procedures.

## 2) Responsible Administrator

The Director of Human Resources, successor, or designee is responsible for annual and ad hoc review of this policy and its procedures. The University President is responsible for the approval of this policy.

SOURCE: Approved by President 07/22/2013. Revised; Approved by President on 08/01/2014. Revised; Approved by President on 09/22/2023. Revised 01/29/2024 (clerical).