

UNIVERSITY POLICY FOR HUMAN RESOURCE

Policy No. UPHR-5

BACKGROUND CHECKS

1 General Information.

- 1.1 Scope: This policy governs background checks on applicants selected for employment in certain employment categories at Marshall University and
- 1.2 Authority: WV Code §18B-1-6.
- 1.3 Passage Date: June 28, 2019.
- 1.4 Effective Date: August 1, 2019.
- 1.5 Controlling Over: Marshall University
- 1.6 History:
 - 1.6.1 Amends original policy to include additional positions. This is the first formal background check policy implemented at Marshall University and was originally approved by the BOG on October 16, 2007.
- 1.7 Purpose:
 - 1.7.1 The fulfillment of the institutional mission depends on the ethical and lawful conduct of employees, who comport themselves in a manner that protects the safety and well-being of the institution's constituents, including students, visitors, and employees. Employees must be competent and qualified to perform their respective roles, and conduct themselves in accordance with approved institutional policies and procedures. It is also incumbent upon the institutions involved to enact policies that protect their funds, property, and other assets.
 - 1.7.2 This policy is designed to ensure and document the verification of credentials, credit history, and other pertinent information related to employment decisions by the institutions, including information concerning the criminal history, if any, of the prospective new employee.

2 Application of Policy.

- 2.1 This policy applies to all applicants selected for employment at Marshall University (hereinafter called the "Institutions"), including faculty, who would serve in employment categories subject to the provisions of this document.

3 Statement of General Policy.

- 3.1 It is the policy of the Institutions that all applicants selected for full-time employment or employed in safety sensitive areas have relevant credentials, criminal records, and/or other background information verified as a condition of employment.
- 3.2 Additional background checks may be required by external third-party partners as a result of a memorandum of understanding, and/or conditions of grant or research funding.

4 Definitions.

- 4.1 Background check: a generic term for either an individual check or verification of information as described below or the process of completing the component checks and verifications.
- 4.2 Credit history check: checking the credit history of the applicant. (Federal laws prohibit discrimination against an applicant or employee as a result of bankruptcy.)
- 4.3 Criminal history check: verifying that the applicant does not have any undisclosed criminal history in all jurisdictions where the applicant currently resides or has resided for the last ten (10) years.

- 4.4 Education verification: ensuring that the applicant possesses all educational credentials beyond high school listed on the application, resume, or cover letter, or otherwise cited by the candidate that qualify the individual for the position sought.
- 4.5 Selected applicant: any person who is selected for employment by the Institutions, whether full-time or part-time, and who is subject to the background checks prescribed in this policy.
- 4.6 Employment verification: ensuring that the applicant actually worked in the positions listed on the application, resume, or cover letter, or otherwise cited by the candidate that qualify the individual for the position sought, as well as all employment during a period of at least ten (10) years immediately preceding application at the Institutions. This verification should include dates of employment and reasons for leaving each position.
- 4.7 Healthcare sanctions check: a check to identify sanctioned individuals and entities in the healthcare field. Sanctioned individuals are those who have been determined to be fraudulent in their field, and/or those individuals who have had adverse actions taken against them by the licensing boards of state governments.
- 4.8 License verification: ensuring that the selected applicant possesses all the licenses listed on the application, resume, or cover letter, or otherwise cited by the candidate that qualify the individual for the position sought; and verification of any license required for the position, including verification of the disposition of such licenses. This includes any motor vehicle drivers licenses required for the position.
- 4.9 Prohibited parties check: a check for specially designated nationals, terrorists, narcotics traffickers, blocked persons, and parties subject to various economic sanctioned programs who are forbidden from conducting business in the United States, as well as entities subject to license requirements because of their proliferation of weapons of mass destruction.
- 4.10 Regular status: a benefits-eligible employee as defined by the human resources department.
- 4.11 Sex and violent offender registry check: verifying that the selected applicant does not have undisclosed convictions of certain sex and violent crimes in all jurisdictions where the applicant currently resides or has resided.
- 4.12 Third party vendor: an outside service that the University has contracted with to perform all or part of the verification and/or background checks on applicants for employment.

5 Policy Provisions.

- 5.1.1 Applicants selected for regular status, full-time employment.
- 5.1.2 All applicants selected for regular status, full-time employment shall have the following background checks completed as a condition of employment with the Institutions. Except where noted, the human resources office will perform, or have performed, the following background checks:
 - 5.1.2.1 Employment verification.
 - 5.1.2.2 Education verification (to be initiated by the respective institution's Office of Academic Affairs for full-time faculty employees).
 - 5.1.1.3 License verification.
 - 5.1.1.4 Criminal history check.
 - 5.1.1.5 Sex and violent offender registry check.
- 5.1.2 In addition to checks required in 5.1.1 above, foreign nationals who have been selected for employment shall have the following background checks completed as a condition of employment with the Institutions:

- 5.1.2.1 A criminal history check covering the time residing in the United States.
- 5.1.2.2 A criminal history check in the individual's prior countries of residence only if the individual's visa and/or authorization to work in the United States was issued before implementation of the Patriot Act on October 24, 2001. The Institutions will not require that a criminal history check be conducted in the individual's prior countries of residence if the visa or authorization to work was issued or renewed under the provisions of the Patriot Act.
- 5.1.2.3 Prohibited parties check.
- 5.1.3 In addition to checks required in 5.1.1 and 5.1.2 above, all applicants selected for employment for healthcare, health care-related, and research positions (including student employee applicants) shall have the following background checks completed as a condition of employment with the Institutions:
 - 5.1.3.1 Healthcare sanctions check.
 - 5.1.3.2 Prohibited parties check.
- 5.1.4 All applicants selected for any of the following positions shall also have the below listed additional background checks completed as a condition of employment with the Institutions: President, Vice President, Associate or Assistant Vice Presidents, University Athletics Director, CEO of Marshall Alumni Association, and other positions as determined by the President. The human resources office will perform, or have performed, the background checks.
 - 5.1.4.1 Credit history check.
- 5.2 Applicants selected for part-time employment (including individuals with student status).
 - 5.2.1 All applicants selected for part-time employment to perform work listed in 5.2.3 shall have the following background checks completed as a condition of employment with the Institutions (all part-time employees not listed in 5.2.3 are not required to have background checks completed):
 - 5.2.1.1 Criminal history check.
 - 5.2.1.2 Sex and violent offender registry check.
 - 5.2.2 In addition to checks required in 5.2.1 above, foreign nationals who have been selected for part-time employment shall have the following background checks completed as a condition of employment with the Institutions:
 - 5.2.2.1 A criminal history check covering the time residing in the United States.
 - 5.2.2.2 A criminal history check in the individual's prior countries of residence only if the individual's visa and/or authorization to work in the United States was issued before implementation of the Patriot Act on October 24, 2001. The Institutions will not require that a criminal history check be conducted in the individual's prior countries of residence if the visa or authorization to work was issued or renewed under the provisions of the Patriot Act.
 - 5.2.2.3 Prohibited parties check.
 - 5.2.3 Part-time employment that requires these background checks includes:
 - 5.2.3.1 Work that involves responsibility for, regular systematic interaction with, or providing services to anyone under the age of 18.
 - 5.2.3.2 Any other part-time positions that the human resources office determines should be included.

- 5.2.4 All new applicants selected for any type of part-time employment to perform work that requires a license, regardless of age, shall have the following background check completed as a condition of employment with the Institutions:
 - 5.2.4.1 License verification.
- 5.2.5 At the discretion of the hiring department or human resources office, an applicant selected for part-time employment may have an education verification and/or employment verification completed.
- 5.3 Previous checks - If the Institutions have performed any of the above verifications or background checks on an individual within the past twelve (12) months, a new verification or history check of that specific category will not be required. The results of any previously performed verification and/or history check will be considered in any pending employment decision.

6 Responsibilities.

- 6.1 Human resources office or hiring department responsibilities
 - 6.1.1 The human resources office will determine which of the components of the background check that it or the hiring department will perform or have performed by a third-party vendor.
 - 6.1.2 No applicant subject to the provisions of this policy shall be employed until the required background checks are completed except as provided in Section 10 of this policy.
 - 6.1.3 Employment verification, education and license verifications, criminal history checks, and sex and violent offender registry checks must be completed before making an offer of employment to any individual.
 - 6.1.3.1 The selected applicant's official name, date of birth, and social security number will be obtained from the person and may be provided to a third-party vendor that the Institutions have contracted with for associated background check services.
 - 6.1.3.2 The selected applicant must execute an authorization form allowing the background checks.
 - 6.1.4 If the criminal history check by the Institutions or a third-party vendor indicates that there are convictions, the third-party vendor will inform the human resources office. The human resources office will indicate that the report may be reviewed in the human resources office and that a copy will be provided to the individual upon request and following the review. All related information will be treated as confidential.
 - 6.1.5 If the criminal history check reveals convictions that the individual disclosed in the application or if other background checks show issues of concern, the human resources office will review the report with the hiring department and, jointly, they will evaluate each conviction/issue, including any additional information that the individual provides, before making an offer of employment. The existence of a conviction/issue does not automatically disqualify an individual from employment. Relevant considerations may include, but are not limited to, the nature and number of the convictions/issues, their dates, and the relationship that any conviction/issue has to the duties and responsibilities of the position. Any decision to accept or reject an individual with a conviction/issue is solely at the discretion of the Institutions. All related information will be treated as confidential.
 - 6.1.6 If unreported convictions are revealed in the criminal history check, an offer of employment may not be offered, and, if working under the provisions of Section 10, the individual will be separated from employment, unless the individual shows that the report is in error. The decision to reject or terminate an individual with an unreported conviction is solely at the discretion of the chief executive officers of the Institutions or their designees. All related information will be treated as confidential.

- 6.1.7 In the event that the results of the background check influence a decision to allow an offer of employment to be made, the human resources office will inform the hiring department and the selected applicant.
- 6.1.8 For all employment, education, and license checks/verifications required, the office performing the particular check shall maintain records indicating the item checked/verified, the name of the department personnel completing the check/verification, the date of the check/verification, and the results from or status of the check/verification. Records relating to checks performed shall be preserved in a secure manner in the files of the department performing the check and shall be kept for the period set forth in Section 8.1 below.
- 6.1.8.1 All results of criminal and sex and violent offenders convictions or issues are considered confidential and will be maintained in confidential files within the human resources office.
- 6.1.9 All invoices for fees for background checks (that incur costs) shall be processed and paid by the human resources office. The institution shall allocate sufficient funds to satisfy this requirement. All invoices arising from background checks that incur costs shall be forwarded to the human resource office for processing and payment.

7 Fair Credit Reporting Act (FCRA).

- 7.1 If the Institutions conduct their own background checks without the use of a third-party vendor, the FCRA does not apply. If a third-party vendor does any part of the background check, then the FCRA requires certain steps be taken with respect to the information obtained by the third-party vendor. Generally, the FCRA provides that the Institutions must follow the following procedure when a third-party vendor is used:
 - 7.1.1 The Institutions must notify the job candidate in writing, “in a document that consists solely of the disclosure,” that a consumer report may be used to make a hiring decision;
 - 7.1.2 The Institutions must obtain the candidate’s written authorization to obtain a consumer report from a third-party vendor;
 - 7.1.3 If the Institutions rely on the consumer report to make a negative hiring or other employment decision, then they must, prior to making the decision, give the candidate a pre-adverse action disclosure, a copy of the consumer report, and a copy of a summary of the individual’s rights under the Fair Credit Reporting Act, which the third-party vendor is required to provide along with the consumer report; and
 - 7.1.4 After the Institutions have made a negative employment decision, they must give the candidate notice of the negative action in oral, written, or electronic form. The notice must include the name, address, and telephone number of the third-party vendor that supplied the consumer report, a statement that the third-party vendor did not make the negative employment decision, and a notice of the candidate’s right to dispute the accuracy or completeness of the information provided by the third-party vendor, as well as notice of the candidate’s right to obtain a free consumer report from the third-party vendor within sixty (60) days.
 - 7.1.5 Note 1 – The consumer reports referred to above are the background check reports referred to in this policy, which are prepared by a third-party vendor.
 - 7.1.6 Note 2 – The listing of FCRA requirement above is a brief summary of the FCRA law and regulations relating to consumer reports.
 - 7.1.7 Note 3 - The Federal Trade Commission has stated that a criminal background check conducted by the state police or the FBI is not a “consumer report” because these agencies perform these roles as part of their statutory duty to protect the public.

- 7.1.8 Note 4 - The FCRA does not apply to a communication by a previous employer to a prospective employer that involves information about the candidate's employment history and job performances.
- 7.1.9 Note 5 - If the Institutions hire a third party to contact a candidate's references, current or former colleagues or neighbors, or to verify previous employment history and performance, that information would be considered to be a "consumer report" and would be subject to the FCRA. But, if the Institutions use their own employee(s) to collect such information, the FCRA will not apply.
- 7.1.10 Note 6 – Any inaccuracies in the report will be corrected before the report is placed in an applicant's file or segregated in a confidential file with limited access.

8 Record Retention.

- 8.1 Documents related to background checks are to be filed and maintained in a secure manner in the human resources office or in the office of the department that conducts a background check and retained during the term of the subject employee's employment. Records related to background checks for an employee who has ceased to be employed by the Institutions shall be destroyed three (3) years after his/her employment ended.

9 Information Release.

- 9.1 Criminal history record information is regarded as confidential and will be released only in a manner consistent with applicable law.

10 Waiver of Background Checks.

- 10.1 The Presidents or their designees are authorized to waive the terms of this policy in the case of emergencies, or when, in their discretion, it would be in the best interest of the Institutions.

11 Administrative Procedure

- 11.1 The chief human resource officer is responsible for developing, implementing, and administering sufficient administrative procedure to effectuate the provisions of this policy.