

SOUTH DAKOTA BOARD OF REGENTS

Budget and Finance

AGENDA ITEM: 7 – C

DATE: March 28-30, 2017

SUBJECT: BOR Policy 4:47 – Background Checks

IRS publication 1075 was issued in September 2016. The new guidelines create specific policy and background check requirements for organizations that receive Federal Tax Information (FTI) directly from the IRS, or a secondary source (SS Administration, Federal Office of Child Support Enforcement, etc.). In the Regental system, some employees working with financial aid information are impacted by this new regulation because of the information that is received through the financial aid verification process from the Department of Education, and also through the receipt of tax transcripts.

For most new hires, institutions are likely already completing the criminal background check through our third party vendor, however, will now need to implement processes to have FBI fingerprinting completed on employees with access to that information as well. The employees will have to have fingerprinting done at the local police or sheriff departments to be sent in to DCI for processing; the price is \$43.24 per check (\$19.25 for the FBI, \$24.00 for DCI), plus any charges by the local offices that physically take the fingerprints.

Kayla Bastian and Dave Hansen have been working with the enrollment services center and financial aid experts on campuses to evaluate the impact of this, determine what data we receive from the IRS or a secondary source, and where that information is housed in our student system. We have identified a set of colleague forms we believe will be impacted by this change and have sent the user lists out to campuses to validate whether or not those employees are still active and/or still need access to that information. As we begin to better understand the scope, this issue will be taken forward to the appropriate councils and/or committees to determine how to proceed with implementation.

IRS publication 1075 requires that employer policies include specific requirements. In Attachment I you will find the proposed revisions to BOR Policy 4:47 to comply with the IRS regulation. As you will see, most changes are language cleanup, however, Section C (3) has been added to address the new IRS requirements. Essentially the changes require that any employee, contractor or subcontractor who has access to FTI undergo a criminal history check, including FBI

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DRAFT MOTION 20170328_7-C: I move to approve the first of the proposed revisions to BOR Policy 4:47 as presented in Attachment I.

fingerprinting, and will have to do so every ten years. In addition, any convictions of crimes related to identity theft, misuse, misappropriation or mishandling of funds would preclude an individual from getting security access to FTI.

SOUTH DAKOTA BOARD OF REGENTS

Policy Manual

SUBJECT: Background Checks

NUMBER: 4:47

A. PURPOSE

~~It is the policy of the Board of Regents, to~~ To promote a safe and secure environment for its faculty, staff, students, volunteers, and visitors by establishing minimum standards for the verification of credentials, criminal history, credit status, and other information related to employment decisions made by an institution. ~~Therefore, the system will take reasonable steps to ensure hiring decisions effectively contribute to lessening unnecessary risk. The system has established this background check policy and minimum standards to accomplish this purpose.~~

B.

~~Furthermore, this policy is intended to support the verification of credentials, criminal history, credit status, and other information related to employment decisions that assist the University, Special School, or Board of Regents in meeting its commitments.~~

C.B. DEFINITIONS

1. **Applicant:** Any person who submits an employment application to be considered for an open position at an institution.
2. **Background Check:** ~~is~~ The process of acquiring or verifying records or information regarding an applicant for employment or a consultant final candidate that are used in the process of determining suitability for employment. Components of a background check may include, but are not limited to, the following: credit history, civil and criminal history, Social Security verification, motor vehicle records, sex offender registry, violent offender registry, education verification, employment verification, and licensure verification.
 - 2.1. ~~"Credit history check" means checking the credit history of the selected applicant or employee. (Federal laws prohibit discrimination against an applicant or employee as a result of bankruptcy.)~~
 - 2.2. ~~"Criminal history check" means verifying that the selected applicant or employee does not have any undisclosed criminal history in every jurisdiction where the applicant or employee currently resides, has resided, or has been employed.~~
 - 2.3. ~~"Educational verification" means ensuring that the selected applicant or employee possesses the 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.~~
 - 2.4. ~~"Employment verification" means ensuring that the selected applicant or employee 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 seven (7) years immediately preceding application. This verification should include dates of employment and reasons for leaving each position.~~

- ~~2.5. "License verification" means ensuring that the selected applicant or employee 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 associated position.~~
- ~~2.6. "Limited criminal history check" means verifying that the selected applicant or employee does not have any undisclosed criminal history in the jurisdiction where the applicant or employee currently resides or has been previously employed, or where the applicant or employee last resided, if the applicant or employee only recently moved to a location near the institution or location working.~~
- ~~2.7. "Limited sex and violent offender registry check" means verifying that the selected applicant or employee does not have undisclosed convictions of certain sex and violent crimes in the jurisdiction where the applicant or employee currently resides, or where the applicant or employee last resided, if the applicant or employee only recently moved to a location near the institution or location working.~~
- ~~2.8. "Sex and violent offender registry check" means verifying that the selected applicant or employee does not have undisclosed convictions of certain sex and violent crimes in every jurisdiction where the applicant or employee currently or has resided.~~
3. **Contractor:** Any individual, including a subcontractor, who provides services to an institution, and who is not an employee of an institution.
 4. **"Employee" is defined:** as any Any person employed by the Regental system an institution,; whether full- or part-time.
 5. **Fair Credit Reporting Act:** ~~is~~ †The federal law that regulates the collection, dissemination, and use of consumer credit information (15 U.S.C. § 1681, as amended).
 6. **Federal Tax Information or FTI:** Tax return or tax return information received directly from the IRS or obtained through an authorized secondary source, such as Social Security Administration (SSA), Federal Office of Child Support Enforcement (OCSE), Bureau of the Fiscal Service (BFS), or Centers for Medicare and Medicaid Services (CMS), or another entity acting on behalf of the IRS pursuant to an IRC 6103(p)(2)(B) Agreement. FTI includes any information created by the recipient institution that is derived from federal tax return or tax return information received directly from the IRS or obtained through an authorized secondary source. FTI does not include information provided to the institution directly from an applicant.
 7. **Final Candidate** ~~includes:~~ †The internal or external a applicant identified as the finalist for the position.
 8. **Human Resources:** The human resources office of the institution or other department designated by the institution to comply with the requirements of this policy.

9. Institution: The Office of the Executive Director and any SDBOR-University, University Center, or Special School governed by the Board of Regents or the Office of the Executive Director.

D.C. POLICY

1. General Policy and Applicability

As a condition of employment, It is the policy that certain positions require the verification of credentials, and the review of criminal, and other background information, verified as a condition of employment. Background checks may be conducted by law enforcement agencies, credit reporting agencies, and by the institutions using its own employees or using vendor(s) approved by the Executive Director. by Board personnel.—Law enforcement agency checks are required by statute and federal regulations for certain positions. The Board or ~~institutions~~ institutions may require credit, criminal, education, employment reporting, ~~etc or any other applicable verifications for other~~ for applicable positions, ~~in which case, a reporting agency selected or approved by the Executive Director will be used.~~ Independent of any requirement that a background check be conducted ~~Whether or not a law enforcement or reporting agency background check is required,~~ the Board and institutions reserves the prerogative right to conduct ~~independent~~ background checks of prospective ~~employee~~ employees ~~using Board or institutional personnel,~~ and such ~~checks~~ background checks may include the review of information accessible by the public ~~through the Internet.~~

Each ~~University, Special School, and the Board Office~~ institution will identify positions ~~needing requiring~~ a background check background check consistent with. ~~Because each institution has different needs, there are no system standards established to identify core or applicable positions. This responsibility will be held at the institution level. Each institution shall identify the positions for which background checks are deemed appropriate in their~~ the institution's hiring practices and affirmative action plans.

2. Policy Provisions

- 2.1. Each institution must conduct a background check for all positions requiring such background check by this policy. Additionally, each institution shall develop criteria to determine other positions that require a background check as a condition for employment, unless it is otherwise required by this policy. Background checks must be conducted ~~on all positions with certain responsibilities identified at the local University, Special School or Board of Regents~~ in compliance with applicable laws, regulations, and standards. Where an institution ~~institution~~ requires utilizes a third party to conduct ~~that a background check~~ background check be conducted by a consumer credit agency, human resources will contract for such services through ~~the~~ a third party vendor(s) identified approved by the Regental system Executive Director.
- 2.2. ~~Notices and advertisements~~ Position postings ~~for open positions~~ must contain provide notification notice that final candidates are subject to a background check consistent with this policy.
- 2.3. Human Resources may determine the need to conduct ~~background check~~ background checks on final candidates for positions that are not designated by the institution as

requiring a ~~background check~~background check ~~listed at their University, Special School, or the Board Office.~~ When doing so conducting such background checks, the ~~institution~~institution must comply with Minimum Standards for Conducting Background Checks and this policy. ~~perform the check with the Regental system approved vendor(s).~~

- 2.4. All offers of employment are contingent upon successful completion of the ~~background check~~background check. All offers of employment, oral or written, must include a statement ~~as follows:~~that notifies the applicant that ~~“This offers of employment are offer is~~ contingent on the ~~institution~~university’s verification of credentials and other information required by law and/or ~~university~~institutional policies, including but not limited to a ~~criminal background check~~ background check.” ~~–The YourFuture-BOR applicant tracking system has been~~shall be set up to identify conditional offers of employment.
- 2.5. The Background Check Disclosure, Authorization, and Release form as well as the Summary of Your Rights under the Fair Credit Reporting Act must be used for any background checks.

3. Individuals with Access to Federal Tax Information (FTI)

- 3.1. As required by the Internal Revenue Service (IRS) guidelines, employees and contractors with access to FTI are required to undergo criminal background checks, including Federal Bureau of Investigation (FBI) fingerprinting. At a minimum, the criminal history verification will include a check of local law enforcement agencies where the applicant, employee, or contractor has lived, worked, or attended school within the last five (5) years. Employees and contractors with access to FTI will have a reinvestigation conducted every ten (10) years thereafter.
- 3.2. Convictions of identity crimes as outlined in South Dakota Codified Law (SDCL) Chapter 22-40 (identity crimes), or crimes relating to the misuse, misappropriation or mishandling of funds, will preclude an employee or contractor from gaining access to FTI. The institution will have discretion regarding convictions outside of those identified in this section that are severe or pervasive enough to warrant restriction of access, discipline or termination of an employee or contractor, or the withdrawal of a contingent offer of employment to an applicant.

4. Responsibilities

- 4.1. Human Resources ~~Office or Other Designated Department by the Institution~~
- 4.1.1. The human resources office at each ~~institution~~ University, Special School, and Board Office will determine which ~~of the~~ components of the background check it will perform based on job duties. ~~HR- Human resources~~ will work directly with the department and vice presidents to determine such ~~on the~~ components if not ~~defined~~identified by institutional policy. ~~at their institution.~~
- 4.1.2. ~~All offers of employment (if a background check is used), oral and written, shall include a statement as follows: “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.”~~All written or oral offers of employment for positions requiring a

background check will be contingent upon the institution's verification of credentials and other information required by law and/or institutional policies, including, but not limited to, a background check.

- 4.1.3. If the background check indicates that there are no convictions, ~~or other indications of misleading information,~~ or adverse information, ~~the third-party vendor will inform human resources of the request results,~~ human resources will then notify the applicant that the offer of employment is confirmed. ~~who in turn will inform the applicant that the employment offer is confirmed.~~
- 4.1.4. If the background check indicates that there are pending criminal charges, convictions, discrepancies, or other ~~anomalies~~ adverse records information, ~~the third-party vendor will inform~~ human resources. ~~The approved third-party vendor will~~ inform the applicant and also shall supply the applicant with the reported information to the applicant.
- 4.1.5. If the background check reveals convictions which the ~~individual applicant~~ disclosed in the application, human resources will review the report in light of the position duties. Human resources and the hiring department will evaluate each incident, including any additional information that the ~~individual applicant~~ provides, before the offer of employment is confirmed or withdrawn. The existence of a conviction does not automatically disqualify an ~~individual applicant~~ from employment. Relevant considerations may include, but are not limited to, the nature and number of the convictions, the dates of convictions, and the relationship that a conviction has to the duties and responsibilities of the position. Any decision to accept or reject an ~~individual applicant~~ with a conviction is solely at the discretion of the ~~University, Special School, or Board of Regents;~~ institution. ~~(All related information will be treated as confidential, and protected as such.)~~
- 4.1.6. If unreported convictions are revealed in the background check, the offer of employment may be withdrawn from the applicant and, if employed, the ~~individual employee~~ could be subject to discipline or termination, unless the ~~individual applicant or employee~~ shows that the report ~~is in error~~ is not accurate. The decision to reject ~~or discipline an individual applicant or discipline an employee~~ with an unreported conviction is solely at the discretion of the ~~institution.~~ ~~University, Special School, or Board of Regents.~~ ~~(All related information will be treated as confidential, and protected as such.)~~
- 4.1.7. In the event that the results of the background check influences a decision to withdraw an employment offer or terminate employment, human resources will inform the hiring department and the ~~individual applicant or employee.~~ individual applicant or employee.
- 4.2. The ~~University, Special School, or Board of Regents;~~ institution will be responsible for any fees associated with any of the components of the background check process. ~~(Institutions will decide how to fund the cost of associated fees.)~~

5. Confidentiality

Records gathered as a result of a background check will be maintained in a confidential and secure database. Records gathered as a result of a background check are part of an

employee's personnel file; however, if a third party vendor is used, the ~~approved~~-third party vendor will keep such records in files segmented by the individual's name separately from the individual's personnel file held at the ~~University, Special School, or the Board Office.~~institution. ~~These records will be maintained in a secure vendor on-line database.~~

6. Sanctions for Violations

Violations of policies, including providing false or misleading information used for any ~~of the above background~~background checks, will be handled in accordance with applicable ~~institution~~institutional or BOR policies and procedures, which may include disciplinary actions up to and including termination from employment.

7. Appeals

If ~~the~~an offer of employment is withdrawn as the result of a background check or if ~~the~~an employee is terminated as the result of an unreported conviction, the applicant or employee may appeal the withdrawal of the offer, or the termination pursuant to applicable Board of Regents policy and procedures (BOR Policy 4.7, BOR Policy 4.8, BOR Policy 4.9, ~~BOR Policy 4.7~~, or the Collective Bargaining Agreement as applicable to the classification of the position/employee).

FORMS/APPENDICES:

None

SOURCE:

BOR December 2010; BOR October 2011