

## GEORGIA STATE UNIVERSITY

### BACKGROUND INVESTIGATION POLICY & PROCEDURE

#### **Background Investigation Policy:**

It shall be a condition of all new regular employment with Georgia State University to submit to a background investigation. A background investigation shall also be performed on any existing employee being transferred, reassigned, reclassified or promoted to a "position of trust" unless a background investigation conforming to this procedure has been performed on such employee on or after July 1, 2002. (Positions determined by the hiring unit in conjunction with the Office of Legal Affairs to be of trust are those that routinely as a part of the job involve interaction with children, after-hours access to facilities, access to financial resources or that have been otherwise identified by the hiring unit in conjunction with the Office of Legal Affairs to require a more extensive background investigation.)

Offers of employment shall be conditional pending the result of the background investigation, which shall include, at a minimum, the following:

- A state and federal criminal history check covering seven (7) years;
- A nationwide sex offender registry search;
- A social security number check;
- For positions of trust with financial responsibility, a financial report; and
- For all professional, faculty and academic positions, an academic credentials check.

Offers of employment for positions of trust may be conditional pending the result of a state and federal criminal history check covering more than the minimum of seven (7) years.

## **BACKGROUND INVESTIGATION PROCEDURE**

### **Definitions:**

**Background Investigation** – An investigation comprised of a background check as described above.

**Background Investigation Committee (BIC)** –The administrative committee charged with determining questions of suitability of hire. The BIC shall include the following members:

1. The Director of the Employment Office or designee;
2. The Chair/Head of the Hiring Unit (or designee);
3. A representative from the Office of Legal Affairs;
4. The Chair of the Senate’s Faculty Affairs Committee (or designee);
5. The Chair of Staff Council (or designee); and,
6. The Chief of Public Safety (or designee), (ex officio, non-voting member).

(Note: The Chair of the Senate’s Faculty Affairs Committee (or designee) will attend if the candidate is applying for a faculty position. The Chair of Staff Council (or designee) will attend if the candidate is applying for a staff position. In the event of a tie-vote in the Committee when only four voting members meet, the BIC shall meet again with all five voting members to resolve the tie)

**Consent Form** – A form authorizing the University to conduct a criminal background check. All employment finalists and promotion candidates (if promotion is to a position of trust) at the University are required to sign a Consent Form to be considered for employment with or promotion within the University.

**Hiring Unit** – The department hiring a new employee (whether internally or externally), or promoting an existing employee.

**Employment Office** – The University’s employment office that handles all new hires. Within the employment office, the Assistant Director for Recruitment and Retention will be designated as the contact person on all matters relating to criminal background investigations, including custodial responsibility for receiving, storing, or disposing of criminal background investigation reports.

**Regular Employee** – As defined in section 102.1 of the Employee Handbook, “Personnel employed for a continuous period expected to exceed one semester or six calendar months are ‘regular’ employees”

### **Determining Employment Eligibility for Applicants with Criminal History**

Only criminal convictions may be considered when determining a candidate’s eligibility for a specific position or employment as a whole. Detention and/or arrest without conviction do not

constitute valid grounds for adverse employment decisions and do not play a part in the decision-making process. However, if an individual has a criminal case pending, his or her suitability for continued employment will be reviewed upon disposition of the case.

1. Felony convictions and convictions involving crimes of moral turpitude automatically disqualify an individual for employment with Georgia State University in a position of trust. (For what constitutes crimes of moral turpitude in the State of Georgia, consult the University's Office of Legal Affairs.)
2. Failing to disclose a criminal conviction history where required in employment application materials will disqualify a candidate for employment with Georgia State University.
3. When determining whether a candidate with disclosed criminal convictions is eligible for employment or promotion, the Background Investigation Committee will consider the specific responsibilities of the position for which the candidate is being considered, the nature, number and gravity of crimes for which the candidate was convicted and the amount of time that has passed since the conviction. A determination of ineligibility for a specific position as the result of a criminal conviction does not necessarily mean that an individual is ineligible for all employment with the University and each such determination will be made on a case by case basis.

### **Process for Conducting Background Investigation**

Notice should be included in all job postings that an offer of employment will be conditional on background verification. Georgia State University shall set guidelines for assigning the cost of performing a background investigation.

The Hiring Unit is responsible for confirming the employment history and credentials (official transcript, copy of certification, etc., as appropriate) of an applicant before having the Employment Office initiate the Background Investigation and before extending a conditional offer of employment. The final candidate will be referred to the Employment Office to obtain all required employment paperwork, including the Consent Forms. With respect to the promotion of existing employees, the candidate for promotion shall be referred to the Employment Office to obtain the Consent Form for initiation of the Background Investigation.

A conditional offer of employment/promotion may be made at this time. **Important: All offers of employment must be made in writing and must include the following statement: "This offer of employment is contingent upon completion of a background investigation including a criminal background check demonstrating your eligibility for employment with Georgia State University, as determined by Georgia State University in its sole discretion, confirmation of the credentials and employment history reflected in your application materials and, if applicable, a satisfactory financial report."**

Upon receipt of a signed Consent Form of the Hiring Unit's selected candidate, the Employment Office will initiate the Background Investigation into that candidate. If the top candidate is not

hired for the involved position (e.g. criminal convictions that render applicant ineligible for the specific position, candidate does not accept the job offer, etc.), the Hiring Unit may select another candidate for the position. If the candidate next selected for the position has already signed the Consent Form, then the Employment Office will immediately initiate the investigation process. If the next applicant identified as the Hiring Unit's top candidate has not signed a Consent Form, then the Employment Office will initiate the Background Investigation as soon as they obtain a signed Consent Form.

### **How Criminal Background Check Information is Processed:**

Georgia State University shall contract with appropriate entities to conduct the investigation. Background Investigation reports are submitted directly to the Employment Office by the entity performing the investigation.

If adverse information is contained in the report, the Employment Office shall, after consulting the Hiring Unit but before convening the BIC, notify the candidate in writing and give the candidate the option to withdraw from further consideration for the position he or she has applied for. If the candidate chooses not to withdraw but to continue with his or her application, then the BIC shall convene. The BIC is responsible for determining the employment eligibility of the selected candidate but only as it relates to his/her criminal background. The Employment Office shall notify the Hiring Unit of this determination. The BIC shall make its decision about the selected candidate's eligibility as follows:

1. ***The Background Investigation report shows no convictions and the candidate is not on the sex offender registry:*** the selected candidate is eligible for employment. (Requires no BIC action.)
2. ***The Background Investigation report shows one or more felony convictions, inclusion on the sex offender registry, or conviction of one or more crimes of moral turpitude:*** the selected candidate is ineligible for employment with the University in a position of trust.
  - a. Prior to making this final determination, the Employment Office must give a pre-adverse action disclosure to the candidate. This pre-adverse action disclosure must include a copy of the candidate's Background Investigation report, together with the name, address and telephone number of the company that conducted the Background Investigation, and information on how to dispute information in the report. A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act" must also be provided to the candidate. This summary will be typically provided to the University with the Background Check Report by the company performing the Background Investigation.
  - b. The candidate must be given an opportunity (a minimum of five working days) to provide an explanation in writing of the circumstances surrounding the results of the Background Investigation, including any mitigating factors, and have this explanation considered prior to the finalization of the hiring decision.

- c. If the candidate successfully shows that s/he has no felony convictions or convictions of crimes of moral turpitude or was improperly listed on the sex offender registry, then the candidate shall be eligible to continue in the process for employment. The Employment Office will notify the Hiring Unit of this determination.
  - d. If the candidate is unsuccessful in showing no felony convictions or convictions of crimes of moral turpitude, improper inclusion on the sex offender registry, or mitigating factors then the candidate is ineligible for employment in a position of trust. An adverse action notice must then be sent to the candidate. This notice must include:
    - i. the name, address and telephone number of the company that supplied the Background Investigation report;
    - ii. a statement that the company that supplied the Background Investigation report did not make the decision to take the adverse action and cannot give specific reasons for it; and
    - iii. a notice of the individual's right to dispute the accuracy and completeness of any information the company furnished in the Background Investigation report and the right of the individual to obtain an additional free report from the company upon request within sixty days.
3. ***The Background Investigation report shows one or more criminal convictions or inclusion on the sex offender registry and the applicant is not applying for a position of trust.*** (Georgia State University can consider an applicant with a felony conviction or inclusion on the sex offender registry for employment provided that the applicant is not seeking a position of trust. Georgia State University should consider a felony conviction or inclusion on the sex offender registry as it does all criminal convictions in making a decision whether to hire an applicant into a position that is not a position of trust.)
- a. The criminal convictions or inclusion on the sex offender registry were all disclosed by the selected candidate in the application materials. The BIC will determine whether the candidate is eligible for the involved position based on the job description and the nature of the crimes for which the candidate was convicted.
    - i. If the BIC determines the candidate is eligible, then the Employment Office will so notify the Hiring Unit.
    - ii. If the BIC determines the candidate is not eligible, then prior to making this final determination, the Employment Office must give a pre-adverse action disclosure to the candidate.
      - 1. This pre-adverse action disclosure must include a copy of the candidate's Background Investigation report, together with the name, address and telephone number of the company that conducted the Background Investigation, and information on how to dispute information in the report. A

copy of “A Summary of Your Rights Under the Fair Credit Reporting Act” must also be provided to the candidate. This summary will be typically provided to the University with the Background Check Report by the company performing the Background Investigation.

2. The candidate must be given an opportunity (a minimum of five working days) to provide an explanation in writing of the circumstances surrounding the results of the Background Investigation, including any mitigating factors, and have this explanation considered prior to the finalization of the hiring decision.
  3. If the candidate successfully shows that s/he does not have the criminal convictions that led the BIC to determine that the candidate was ineligible for employment or was improperly listed on the sex offender registry, then the candidate shall be eligible for employment. The Employment Office will notify the Hiring Unit of this determination.
  4. If the candidate is unsuccessful in showing that s/he does not have the criminal convictions or improper inclusion on the sex offender registry or mitigating factors that led the BIC to determine that the candidate was ineligible for employment, then the candidate is ineligible for employment. An adverse action notice must then be sent to the candidate. This notice must include:
    - a. the name, address and telephone number of the company that supplied the Background Investigation report;
    - b. a statement that the company that supplied the Background Investigation report did not make the decision to take the adverse action and cannot give specific reasons for it; and
    - c. a notice of the individual’s right to dispute the accuracy and completeness of any information the company furnished in the Background Investigation report and the right of the individual to obtain an additional free report from the company upon request within sixty days.
- b. The criminal convictions or inclusion on the sex offender registry were not disclosed by the selected candidate in the application materials. The Employment Office will notify the candidate in writing that the Background Investigation revealed criminal convictions or inclusion on the sex offender registry not disclosed in his/her application materials and that s/he will be removed from consideration for the involved position due to misrepresentation and falsifying application materials unless s/he contacts the Employment Office and provides reasonable justification for not disclosing a conviction or registry inclusion within a minimum of five (5) working days. This notification will be accompanied by a pre-adverse action disclosure.
- i. The pre-adverse disclosure must include a copy of the candidate’s Background Investigation report, together with the name, address and telephone number of the

company that conducted the Background Investigation, and information on how to dispute the information in the report. A copy of “A Summary of Your Rights Under the Fair Credit Reporting Act” must also be provided to the candidate. This summary will be typically provided to the University with the Background Check Report by the company performing the Background Investigation.

- i. The candidate must be given an opportunity (a minimum of five working days) to provide an explanation in writing of the circumstances surrounding the results of the Background Investigation and have this explanation considered prior to the finalization of the hiring decision.
- ii. If the candidate successfully shows that s/he has no criminal convictions or was improperly listed on the sex offender registry, then the candidate shall be eligible for employment. The Employment Office will notify the Hiring Unit of this determination.
- iii. If the candidate provides a reasonable justification for not disclosing a conviction or sex-offender registry inclusion (e.g. court documentation indicating first offender or other similar status; legal documentation indicating the right to claim no criminal history on application in response to requests for same, prior pardon for the conviction, etc.), then the BIC may consider such justification when determining whether or not the candidate’s omission was fraudulent or a misrepresentation that would render the applicant ineligible for employment. If the BIC determines that no falsification or misrepresentation has taken place, then the BIC will make a determination about whether the applicant is eligible for employment pursuant to Paragraph 2 or 3, above, depending on whether or not the candidate’s application is one for a position. The Employment Office will notify the Hiring Unit of the BIC’s determination.
- iv. If the candidate is unsuccessful in showing no criminal convictions, improper listing on the sex offender registry, or reasonable justification for omitting criminal history information, then the candidate is ineligible for employment due to misrepresentation and falsification of application materials. An adverse action notice must then be sent to the candidate. This notice must include:
  1. the name, address and telephone number of the company that supplied the Background Investigation report;
  2. a statement that the company that supplied the Background Investigation report did not make the decision to take the adverse action and cannot give specific reasons for it; and,
  3. a notice of the individual’s right to dispute the accuracy and completeness of any information the company furnished in the Background Investigation report and the right of the individual to obtain an additional free report from the company upon request within sixty days.

## **Maintenance of Background Investigation Reports**

Background Investigation reports obtained on new or existing employees shall be delivered directly to the Employment Office by the entity performing the investigation. The report will remain with the Employment Office until the determination on employment or promotion eligibility has been made and then stored segregated from the employee's personnel file. The Employment Office shall place a certification in the employee's personnel file stating the date the report was obtained, the name of the Assistant Director of Recruitment and Retention who reviewed the report and a statement that the report showed that the employee was or was not eligible for employment or promotion. Reports on all non-successful applicants for employment and candidates for promotion must be destroyed in accordance with the USG Record Retention Guidelines. The background report itself is not provided to nor maintained by the Hiring Unit. Except as may be required by law, the Employment Office shall not release the criminal background reports to any person or entity, except to members of the BIC for purposes of determining employment eligibility.

Consent forms for Background Investigations shall be placed in the personnel file of the employee and maintained in accordance with USG Record Retention Guidelines. A new signed consent form will be required for each background check. A copy of his or her report shall be given to each applicant and/or employee as applicable.

## **Questions**

The Employment Office or Legal Affairs Department is prepared to assist you with any questions on this procedure.