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I. SCOPE AND PURPOSE

This procedure is designed to implement the Employee Background Checks Policy, by providing details relating to the timing and manner of conducting background checks and other guidance. It should be read together with the Employee Background Checks Policy.

II. DEFINITIONS

Background check information means any information obtained through any background check, including criminal history reports.

Background checks means criminal background checks, reference checks, and any other checks that may be performed, such as verification of degrees, certifications or credentials, credit report or financial background checks, drug screening, or driving record history checks.

Covered positions are all job positions at the university except for those excluded from the Employee Background Checks Policy; see Section IV(H).

Criminal background check is a criminal conviction check or criminal history check, as described in Section III(E) of this procedure.

Criminal conviction means a guilty verdict, a guilty plea, or a nolo contendere (no contest or Alford) plea.

Criminal history reports means all information provided to the university through any type of criminal history investigation or criminal background check, including criminal history information provided by a candidate.

Designated Background Checks Officer or DBCO means the Office of Human Resources employee designated by the Provost to perform the review and referral tasks described herein.

Final candidate is defined in the Employee Background Checks Policy.

Reference check means the process of contacting an applicant's current and former employers and educational institutions for relevant information regarding the applicant's fitness for university employment.

Sensitive Positions are defined by the Code of Virginia (§ 2.2-1201.1) as those positions designated by the university as directly responsible for the health, safety and welfare of the

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general populace or protection of critical infrastructures.¹ See Appendix A for information used in university designation of sensitive positions.

III. PROCEDURE

A. Position Advertisements/Recruitment Notices. A statement similar to the following is required on all job announcements posted or published after the effective date of this procedure:

The College of William & Mary is committed to providing a safe campus community. W&M conducts background investigations for applicants being considered for employment. Background investigations include reference checks, a criminal history record check, and when appropriate, a financial (credit) report or driving history check.

This statement may be tailored for specific positions, such as by eliminating the reference to driving history checks if not applicable (for example).

For purposes of print advertising, a condensed version of this statement may be used or applicants may be directed to the complete, online job announcement. A condensed version that may be used is:

The College of William & Mary conducts background checks on applicants for employment.

B. Determining Background Checks to be Conducted. The minimum background check includes investigation of criminal history and reference checks. Depending on the nature of the position for which the candidate is being considered, other, additional checks will be conducted. The Provost, for instructional faculty, professional and professional faculty, and executive positions, and the Office of Human Resources for all other positions, will consult with the hiring manager or unit head to designate which types of checks are required for each position. Examples of more common types of checks and the positions to which they apply are:

- verification of educational degrees – all instructional and research faculty, professional and professional faculty, and executive positions, and selected operational positions;
- verification of licenses and certifications – all positions for which the license or certification is a required or preferred qualification;
- credit report – all positions involving access to money as well as all professional and professional faculty positions in Financial Operations;

¹ Pursuant to § 2.2-1201.1, the Virginia Department of Human Resource Management provides policy guidance to agencies on the designation of sensitive positions. This guidance informs agencies that § 2.2-1201.1 was the result of Homeland Security initiatives, and for Homeland Security purpose, “critical infrastructures’ normally refers to public utility, communication, water, emergency management, law enforcement, public health, transportation, agribusiness, financial and government systems that are essential to ensuring public safety, national security and the economic stability of the state or nation.”

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- driving record – all positions for which possession of a valid driver’s license is required and positions involving regular driving of university vehicles or students; and
- drug screening – law enforcement personnel and positions requiring a commercial drivers’ license.

C. Disclosure and Consent Forms. The following two forms will be used to collect background information from candidates and to authorize criminal background checks:

- a “Criminal History Record Request Form,” providing the information and consent needed to perform a background check.
- a “Criminal and Job History Disclosure Form” disclosing
 - any past criminal convictions,
 - any past instances of a protective order being imposed on them, and
 - any termination or dismissal for cause from a job occurring within the preceding ten years.

Candidates may also provide explanatory documentation or information.

D. Timing.

1. Criminal Background Checks.

- *Disclosure and Consent Forms; Initiating Criminal Background Checks.* Typically, for searches for which on-site interviews are conducted, the disclosure and consent form required to initiate the check will be provided to all “short list” candidates, to be completed and returned to the DBCO prior to the candidates coming to campus. The hiring unit may, however, provide the forms to a broader group of applicants for a position – or only to the final candidate.
- *Review of Criminal Background Information.* Typically, background checks information will be reviewed only for the final candidate, but if a search is time-sensitive, checks may be conducted on more than one candidate.

2. Other Background Checks. Reference checks and degree, certification and licensure verifications are conducted by the hiring unit or department, and must be completed in order for the Office of Human Resources or the Provost to approve the hire. The unit or department may choose to conduct these checks and verifications only on the final candidate or may conduct them for a broader group of applicants at an early stage in the process, such as where the information may assist the unit in selecting the final candidate.

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3. Letters of Intent and Contingent Offers. If a letter of intent or offer of employment is provided prior to the background checks and this procedure being completed, the offer will be contingent on the results of the criminal history, using the following language:

This offer of employment is contingent upon the results of the background investigation conducted on final candidates for employment, which includes, at a minimum, reference checks and a criminal history check. If these checks reveal information that affects the university's decision to hire you, we will provide you with an opportunity to respond to or explain the information prior to making any decision. Further information is provided in the university Employee Background Checks Policy.

This language can be modified as necessary, such as for use in a letter of intent rather than an offer letter.

E. Criminal Background Checks. Criminal background checks will be conducted by a third-party vendor, except for checks on sensitive positions, for which fingerprint-based checks will be obtained from the Federal Bureau of Investigation through the Department of State Police pursuant to Va. Code § 2.2-1201.1.

F. Consideration of Information Obtained. The Employee Background Checks Policy describes the purpose of considering criminal history reports and the context in which such information will be considered.

1. Initial Review and Referral by DBCO. The only university employee who will review criminal history reports is the Designated Background Checks Officer, except as provided herein. The DBCO will review the report(s) for each final candidate, on a case-by-case basis, and clear the candidate for hire, unless the report(s) indicate(s):

- any criminal conviction for any of the following types of crimes, in which case the DBCO will refer the file to the Provost or Vice President for Administration, as applicable:
 - any crime of violence, such as murder, manslaughter rape, certain forms of assault, sexual abuse, child abuse
 - distribution of a controlled substance
 - distribution of alcohol to a minor
 - any other felony
 - any misdemeanor drug possession offense
 - any misdemeanor sex offense
 - any two or more misdemeanor substance abuse offenses.
- Any other misdemeanor offense or other criminal history, or other information provided by the final candidate in the background checks process, in which case the

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DBCO will consider the information as provided in the Employee Background Checks Policy and determine whether it should be referred to the Provost or Vice President for Administration.

- A substantive discrepancy between the information disclosed by the candidate and criminal history information obtained through a background check, such as an offense not disclosed by the candidate, in which case the DBCO will contact the candidate for information or explanation. The DBCO will include the information obtained in the file presented to the Provost or Vice President for review (see item 2 below).

The DBCO may consult with William & Mary Police or the entity who performed the criminal background check as needed, such as to clarify information provided in the report.

2. Review by Provost or Vice President for Administration. The Provost, for faculty, professional and professional faculty, and executive positions, or Vice President for Administration, in the case of all other positions, will review information referred by the DBCO, in accordance with the Employee Background Checks Policy. Although each case will be considered individually, given the university's obligation to provide a safe environment for its employees and, particularly, its students, any criminal conviction for a violent felony will be closely scrutinized.

3. Decision Not to Hire. Any decision not to hire a candidate (or not to promote a current employee) based on criminal background check information will be made by the Provost, in the case of a faculty, professional or professional faculty, or executive position, or by the Vice President for Administration, for all other positions, in each case in consultation with the appropriate Dean or Vice President and consideration of all relevant information.

Before making a final decision to deny or terminate employment based on criminal background check information (other than information solely disclosed by the candidate), the university will provide the information and an opportunity to respond or explain the information to the candidate and will consider any response made. This is a brief and informal process, designed primarily to help the university avoid making a decision on flawed information, and does not create any right to a formal hearing or grievance process. If any information obtained from a consumer reporting agency is part of the basis for a negative decision, the university will include the name, address, and phone number of the agency that provided the information, in compliance with the Fair Credit Reporting Act.

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G. Roles and Responsibilities.

The Provost has the following duties with respect to instructional faculty, professional and professional faculty, and executive positions:

1. In consultation with the relevant department or unit, determines which positions are sensitive positions (see Appendix A).
2. In consultation with the relevant department or unit, decides what additional background checks will be conducted for each covered position.
3. Reviews criminal history reports and other background check information regarding final candidates when referred by the DBCO.
4. In consultation with the relevant Dean or Vice President or the President (in the case of executive hires), decide when an offer of employment should not be extended on the basis of criminal history reports.
5. Ensure that final candidate are informed of the university's intent not to hire and given an opportunity to respond.
6. In consultation with the relevant Dean or Vice President or the President, reviews any response made by the final candidate (item 4 above) and makes a final decision as to whether an offer will be made.
7. Ensure that any offer letters or letters of intent include language regarding conditional nature, if relevant.
8. Ensure that university hiring decisions based on criminal history reports are consistent with the Policy and this Procedure by maintaining pooled data, stripped of identifying information, regarding application of the Policy and this Procedure and annually report on such data.

The Vice President for Administration has the following duties with respect to all other covered positions:

1. In consultation with the relevant department or unit, determines which positions are sensitive positions (see Appendix A).
2. In consultation with the relevant department or unit, determine which additional background checks will be conducted for each covered position.
3. Ensures that any offer letters include language regarding conditional nature, if relevant.
4. Review background information regarding final candidates when referred by the DBCO.
5. In consultation with the relevant department or unit, decide when an offer of employment should not be extended on the basis of criminal history reports.
6. Ensure that final candidate are informed of the university's intent not to hire and given an opportunity to respond.
7. In consultation with the relevant Dean or Vice President, review any response made by the final candidate (item 4 above) and makes a final decision as to whether an offer will be made.

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The DBCO

1. Ensures that candidates are provided or given access to the disclosure and consent forms in a timely fashion.
2. Ensures that candidates are directed to provide disclosure and consent forms only to the DBCO.
3. Collects and performs initial review of disclosure and consent forms and criminal history reports.
4. Refers background check information to the Provost or Vice President for Administration, as and if provided under this procedure.
5. Acts as liaison to agents and external entities involved in background checks.

Hiring Manager or Chair of Search and Selection Committee

1. Directs candidates to the DBCO with any questions regarding employee background checks.
2. Ensures that reference checks are conducted for all final candidates (or a broader pool of candidates, if desired) and resulting information reviewed.
3. If relevant, ensures that any additional background checks – other than criminal history checks – are conducted for all final candidates (or a broader pool of candidates, if desired) in a timely fashion; that is, credentials confirmed (for example) in advance of a letter of intent or offer letter being provided.

H. Exclusions. The Employee Background Checks Policy provides limited exceptions for promotions and transfers, and authorizes the Provost to designate certain restricted positions as excluded from the background checks requirements. These positions are:

- adjunct and other part-time, non-tenure eligible faculty positions;
- graduate research fellows, teaching assistants, resident assistants, and other temporary student workers; and
- volunteer positions.

No sensitive position may be excluded from the criminal background check requirement, regardless of whether it would otherwise be excluded as a restricted position.

These exclusions do not prohibit a department or hiring unit from performing all or some of the background checks described in this procedure; a department that employees volunteers in positions involving considerable responsibility (although not constituting sensitive positions) may elect to run checks on such individuals.

I. Confidentiality and Records. Information will be collected, processed and retained confidentially, in accordance with the Employee Background Checks Policy and applicable law. All records will be destroyed at the earliest date permitted by applicable law, in accordance with the Library of Virginia Records Retention and Disposition Schedule (Series 002349, requiring destruction of criminal history records upon a position being filled).

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V. AUTHORITY AND AMENDMENT

This procedure was approved by the Provost. This procedure will be reviewed annually to ensure it remains relevant, usable, and in compliance with university policy and relevant law.

VI. RELATED POLICIES AND PROCEDURES

Employee Background Checks Policy

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APPENDIX A

SENSITIVE POSITIONS

Sensitive positions are defined by the Virginia Code as those “directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures.” (Virginia Code 2.2.-1201.1) The university reviews the job duties of each university positions to identify and designate sensitive positions. The following are examples of job characteristics of sensitive positions:

- Provide direct services, programs, and activities to students in residence halls, medical and counseling centers, and similar areas;
- Access to "select agents and toxins," or "controlled substances" as defined under state and federal law;
- Public safety enforcement support;
- Regular driving of university vehicles or requiring proof of a valid driver’s license;
- Direct access to, or control over, cash, checks, or credit card account information, or have responsibility for creating, collecting or accounting for material levels of accounts receivable;
- Responsibility for the execution or approval of significant financial transactions;
- Unsupervised access to university, employee, or student property, including housekeeping positions with access to offices or residence halls, such as by possession of a master key; or
- Significant inventory control responsibilities, including the receipt and release of inventory.