

SJSU Research Foundation Background Checks Policy

Human Resources

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1.0 Purpose

In accordance and in alignment with the California State University's Background Check Policy Memorandum (HR 2015-08) dated June 26, 2015, and as revised and updated on December 7, 2016, the *Background Checks Policy* provides directives and guidance in the definition, implementation, and administration of the background check program at the Research Foundation. This policy sets forth the San José State University Research Foundation's ("Research Foundation") commitment to protecting the health, well-being, and safety of its employees, students, volunteers, and guests.

2.0 Responsibility

The director of Human Resources or designee is directly responsible for implementing, overseeing, updating, and maintaining strict compliance with all facets of this policy and process.

3.0 Scope

This policy applies to all benefited employees at the Research Foundation, including new and re-hired employees and any current employees transferring into positions classified as "sensitive." This policy also applies to student assistants, volunteers, consultants, independent contractors and employees of outside entities whose assignments require them to work directly with children or in any other sensitive positions.

4.0 Definitions

This table provides definitions for special terms, acronyms, and abbreviations used in this policy.

Term, Acronym, or Abbreviation	Description
Benefited Positions	Positions for which company paid or company subsidized benefits, beyond mandatory benefits, are offered, including but not limited to health, dental, vision, and retirement.
Current Employees	Includes all benefited employees, full and part time; all student assistants; and all other temporary, casual employees, full and part time.
Sensitive Positions	Positions designated by this policy as requiring heightened scrutiny of individuals holding the position, based on potential for harm to children, concerns for the safety and security of people, animals, or property, or heightened risk of financial

	loss to the CSU or individuals in the university community. Please refer to Attachment A for a current listing of sensitive positions.
Live Scan	Live Scan is an automated process available through the California Department of Justice (CDOJ) that digitally scans and compares fingerprints to the state criminal records database of the CDOJ and/or the federal criminal records data base of the National Crime Information Center (NCIC).

5.0 Policy

Background checks are required for all persons hired or re-hired into regular, benefited positions. The Research Foundation will ensure that all background checks are conducted in compliance with applicable federal and state statutes, and that the confidentiality of all background check information is maintained to the extent permitted by law. The types of background checks to be conducted are set forth in this policy and are based on the nature of the position. These checks include employment verification, education verification, and reference checks. If job-related, additional checks including credit report history, motor vehicle records and licensing, Live Scan (fingerprinting), sex offender registry checks as well as professional licensing and credential verification. Job postings shall state specific requirement for the posted positions.

The Research Foundation recognizes the need to balance its responsibility for conducting background checks with the need to protect individual privacy. Federal and state law, as well as SJSU policy takes into account the individual's right to privacy, and restricts the use of information obtained through background checks. The Research Foundation is responsible for maintaining the confidentiality of the background check results and ensuring that results are properly retained and destroyed as appropriate. Background check information will not be used to discriminate against any individual on the basis of race, religion, ancestry, color, sex, sexual orientation, gender identity, age, physical disability, mental disability, veteran status, marital status, pregnancy, medical condition, genetic information, and/or national origin.

5.1 New or Re-hired Employees

All offers of employment from the Research Foundation are conditioned upon successful completion of the applicable level of background check assigned to the new hire or re-hire, based on the position they are being offered.

A former employee who is re-hired after a break in service of twelve (12) or more months and who has not had a background check within the past 12 months will be subject to background check requirements appropriate to their new position.

Student Assistants, Volunteers, and Consultants

The Research Foundation will conduct a background check, including a Live Scan criminal records check and sexual offender registry check for **student assistants, volunteers, and consultants** who perform work involving direct contact with minor children as part of normal business operations, including events operated by the CSU or on CSU property, a CSU auxiliary, or by an outside entity.

5.2 Department Transfers, Reassignments, and Position Changes

Current employees who are reclassified, reassigned, or transferred into a position of a “sensitive” nature, that is, a position in which a background check is required by federal or state law or a position designated as requiring heightened scrutiny of individuals based on the potential for harm, will be subject to the requirements of the applicable level of background check. All current employee position moves, including reclassifications and promotions, are conditional upon successful completion of the applicable level of background check assigned to that position.

Current student assistants must undergo background checks **only if** they will be moved into a “sensitive” position or one that includes direct contact with minor children, as noted above.

Current volunteers and consultants must undergo background checks **only if** they will be asked to perform in a position identified as “sensitive” or one that includes direct contact with minor children, as noted above.

5.3 Exemptions

The following classifications and categories are exempt from background checks.

- Newly hired student assistants, *unless* they are being hired into a “sensitive” position that requires a background check, as outlined above;
- Non-benefited current employees of the Research Foundation, unless they are offered, and accept, a benefited appointment;
- Current benefited employees of the Research Foundation, *unless* they move into a “sensitive” position that requires a background check, as outlined above;
- Employees rehired by the Research Foundation who have had a background check performed in the previous 12 months;
- Employees re-appointed to the same position within 12 months.

6.0 Related Policy Information

6.1 Types of Background Checks

6.1.1 Required for All New or Re-Hired Employees

Employment Verification – The Research Foundation will verify all prior employment within the past five (5) years.

Education Verification – The Research Foundation will verify all educational requirements as appropriate to the position, which may include the high school diploma or General Education Development (GED) certificate, and all post-secondary degrees. Official transcripts may be required.

Reference Checks – The Research Foundation will contact current and former employers with a standardized inquiry to verify the applicant’s work history and skills. An inquiry may be sent to the applicant’s current employer if the applicant specifically consents, or if an offer is made on such condition.

Live Scan – If the position being hired into is a “sensitive” position, in addition to the background check steps noted, a Live Scan check through the University Police Department (UPD) will also be required. Live Scan is an automated process available through the California Department of Justice (CDOJ) that digitally scans and compares

fingerprints to the state criminal records database of the CDOJ and/or the federal criminal records data base of the National Crime Information Center (NCIC).

Criminal Records Checks – The Research Foundation will perform a criminal records check. The Research Foundation shall not subscribe to subsequent criminal records updates on applicants or employees, except as required by law.

6.1.2 Additional Checks That May Be Required If Appropriate

Credit Report History Check – If determined to be job-related (as defined by CA Labor Code § 1024.5), the Research Foundation will review the candidate's credit report, pursuant to credit check regulations. Review of the applicant's credit report will comply with the requirements of the Consumer Credit Reporting Agencies Act (CCRAA).

Motor Vehicle Records and Licensing Check – The Research Foundation will verify that applicants have a valid California or other State driver's license for employees who drive as a part of their Research Foundation duties. The license must be appropriate to the vehicle operated (automobile, commercial vehicle, machinery or equipment).

For positions that require employees to routinely transport students, faculty and/or staff, the Research Foundation may require the applicants to authorize the Department of Motor Vehicles to provide a copy of their past driving record and to authorize the Research Foundation to obtain periodic updates. Research Foundation will require the applicants to participate in and successfully pass the CSU Driver Training course.

State and National Sexual Offender Registry Check – The Research Foundation will check to ensure that applicants applying for positions that involve regular or direct contact with minors are **not listed on any state and federal sexual offender registries**. The Research Foundation may access records from the Megan's Law website (<http://www.meganslaw.ca.gov/>) to conduct a California state sexual offender registry check. For a national sexual offender registry search, the Research Foundation may access the U.S. Department of Justice's website (www.nsopr.gov) and the Federal Bureau of Investigation's website (www.fbi.gov/scams-safety/registry)

Professional Licensing, Certification, and Credential Verification – If required for the position the Research Foundation will verify the applicant's professional licenses, certifications, and credentials to ensure that they are current and valid. The Research Foundation will also check for any disciplinary action(s) that have been taken against the applicant by the licensing board or other appropriate source.

6.2 Sensitive Positions

Sensitive positions are designated by the Research Foundation with additional guidance from the CSU. Sensitive positions are those positions requiring heightened scrutiny of individuals holding the position based on potential for harm to children, concerns for the safety and security of the people, animals, or property, or heightened risk of financial loss to the Research Foundation or to individuals in the university community.

The executive director of the Research Foundation is ultimately responsible for approving the Research Foundation positions to be categorized as sensitive. Positions are categorized based on duties and responsibilities as described in the job descriptions. **Examples of sensitive positions are listed in Attachment A.** Please note that the list is illustrative and is not exhaustive. The executive director may determine that additional positions beyond those listed should be categorized as sensitive. The executive director will also determine

the appropriate background check requirement(s) for any additional positions categorized as “sensitive.”

6.3 Administration of Background Checks

The following sections describe Research Foundation processes for administering background checks.

6.3.1 Application for Employment

- a) The Research Foundation reviews the information provided by the applicant in their completed application for employment to determine that it is accurate and does not disqualify the applicant from employment.
- b) In their completed application, the applicant certifies, by his or her signature, that the information provided in the official employment application is true and correct. Misrepresentation, falsification, or omission of facts provided to the Research Foundation may be considered cause for rescinding an offer of employment, termination of employment, and/or denial of consideration for future employment.

6.3.2 Pre-Start Completion of Background Checks, including Criminal Records Checks

The appropriate level of background check will be initiated immediately following the formal offer of employment. The offer of employment clearly states that the appointment is strictly conditional upon successful completion of the appropriate level of background check(s), including Live Scan criminal records check, and may be rescinded if the background check reveals disqualifying information and/or it is discovered that the candidate knowingly withheld or falsified information.

All background checks will be completed before an appointment is finalized and the candidate begins work. This also includes current employees transferring or being assigned to a new position. In either case, candidates are not authorized to start work in the new position until the results of the criminal records check are received and reviewed.

6.3.3 Communication of Background Checks

Job descriptions for new positions, or for positions which require background checks due to their “sensitive” nature, will reference the background check requirements in the qualifications.

All advertisements, notices, postings, and formal offers of employment for positions that require background check will also state the following:

All offers of employment with the SJSU Research Foundation are strictly conditioned upon the prospective new or rehired employee successfully completing a background check (including, as appropriate, a Live Scan criminal records check). Failure to satisfactorily complete appropriate background checks will affect the application status of the new prospective employee or continued employment of current Research Foundation employees who apply for the position.

6.3.4 Notice and Information Pursuant to Information Practices Act (IPA)

Pursuant to the California IPA (Civil Code, § 1798 et seq.), the Research Foundation will give notice to the applicants and appropriate employees in sensitive positions of its intention to obtain background check information. The notice will inform the

applicants of their right to request a copy of any information obtained from the background check. An applicant or current employee who refuses to sign the request for information to conduct the background check will be eliminated from further consideration for that position.

6.3.5 Notice and Information Pursuant to Fair Credit Reporting Act (FCRA) and Investigative Consumer Reporting Agencies Act (ICRA)

The Research Foundation will utilize the services of a third party agency to conduct background checks in this subject, and as such, is subject to the Federal Fair Credit Reporting Act (FCRA) and the California Investigative Consumer Reporting Agencies Act (ICRA). Pursuant to the Federal FCRA (15 U.S.C. § 1581 et seq.) and the California ICRA (CA Civil Code § 1760 et seq.) the applicant or the current employee is entitled to receive a copy of the investigative consumer report within three (3) business days of the date it was received by the Research Foundation.

6.4 Guidelines for Conducting Criminal Records Checks

The cost of the criminal records checks will be borne by the Research Foundation and the appropriate grant or award, and not by the applicant or employee.

As noted, the normal background check will include a criminal records check. The applicant may also be asked to submit to a Live Scan check if the applicant will be filling a sensitive level position.

The Live Scan records search will be conducted through the University Police Department (UPD) if possible, or by any other agency duly appointed to capture and administer this information. This level of scrutiny goes through the Department of Justice, which captures information even when the applicant lived out of state.

The Research Foundation will not consider a conviction that occurred more than seven (7) years before the assessment. An employer may only consider felony and misdemeanor convictions, active arrests or pending criminal cases (where the candidate is the subject of a current warrant for arrest or is awaiting trial on criminal charges). A conviction includes a plea, verdict, or finding of guilt, regardless of whether a sentence was imposed by the court, unless otherwise excepted by law.

6.5 Post Offer Completion of Background Checks

6.5.1 Confidentiality

The Research Foundation will maintain the confidentiality of criminal record check results, unless otherwise required by law. The criminal records check results are confidential. Only the appropriate HR personnel, the background check coordinator, and decision maker(s) will be notified of the specific results of the criminal records check. The hiring department and current department of the applicant or employee (if applicable) will not be notified of the specific results of the criminal records check. The criminal records check results will be kept by the designated custodian of records in a location that is secure and separate from the employee's official personnel file.

6.5.2 Non-Criminal Background Checks or Criminal Background Checks (Live Scan)

An offer will be finalized once the background check has been successfully completed. The offer may be rescinded if the non-criminal or criminal background checks reveal disqualifying information and/or it is discovered that the candidate knowingly withheld or falsified information.

All Live Scan criminal records checks results must be received by Research Foundation Human Resources before an appointment is finalized and the candidate, including one who is a current employee, actually begins work in the new position.

7.0 Required Forms

This table contains a list of forms and special tools referenced in this document.

Form	Description of Use
AccurateBackground Forms	Online forms that applicant fills in, provided by third party vendor, AccurateBackground.
Live Scan Forms	Documents used by applicant to initiative Live Scan process.

8.0 References and Related Information

The California State University Background Checks policy, including revisions, can be accessed at the following link: <http://www.calstate.edu/hradm/pdf2015/hr2015-08.pdf>

9.0 Record Retention

All documents and records are maintained in accordance with SJSU Research Foundation *Record Retention* requirements

Record	Retention
<i>Background Checks Policy</i>	This document is effective until further revised or updated. Outdated or revised documents will be maintained in accordance with Research Foundation Record Retention requirements. The Research Foundation will maintain the signed original and electronic copies of the approved policy and all updates and replacements.

Attachment A – Sensitive Positions

Key Duties and Responsibilities	Examples of Occupations or Positions	Examples of Functions or Tasks
Responsible for the care, safety, and security of people (including children and minors), animals	<ul style="list-style-type: none"> ▪ Childcare services personnel. Sexual offender registry check required for those who perform work involving regular or direct contact with minor children. ▪ Coaches ▪ Camp and Clinic Staff ▪ Counseling Services ▪ Healthcare Services ▪ Public Safety Services ▪ Recreation related Services ▪ Healthcare Professionals 	<ul style="list-style-type: none"> ▪ Provides services for and/or directly works with children and minors ▪ Provides student and employee psychological counseling services ▪ Provides health care and related services ▪ Provides services for and works with animals
Authority to commit financial resources of the Research Foundation through contracts greater than \$10,000.	<ul style="list-style-type: none"> ▪ Contracts and Procurement Managers and Staff ▪ Buyers ▪ Controllers ▪ Financial Managers ▪ Administrative Managers 	<ul style="list-style-type: none"> ▪ Approves bids and RFP's ▪ Approves vendors or products ▪ Approves payments ▪ Ability to commit funds and services for programs and projects
Access to, or (on a regular basis) control of amounts greater than \$10,000 in cash, checks, credit cards, as well as credit card account information.	<ul style="list-style-type: none"> ▪ Business and Accounting Managers and Staff ▪ Procurement ▪ Collections ▪ Cashiers 	<ul style="list-style-type: none"> ▪ Transfers, withdraws, and deposits money ▪ Uses a company-issued credit card to purchase items ▪ Handling of and receipt of funds
Possession of building master or sub-master keys for building access, or unsupervised access to Research Foundation property	<ul style="list-style-type: none"> ▪ Building Engineers ▪ Facilities personnel ▪ Custodians ▪ Locksmiths ▪ Maintenance personnel ▪ Other employees who have access to master or sub-master keys for building access 	<ul style="list-style-type: none"> ▪ Enters workspaces for maintenance or repair of equipment ▪ Works in residences and other facilities for ongoing maintenance ▪ Maintains building security ▪ Enters facilities for installation and/or cleaning
Access to controlled or hazardous substances	<ul style="list-style-type: none"> ▪ Pharmaceutical Personnel ▪ Healthcare Professionals ▪ Custodians ▪ Employees with access to hazardous chemicals or controlled substances 	<ul style="list-style-type: none"> ▪ Dispenses prescription medication ▪ Maintains drug formulary ▪ Duties requiring access to controlled substances ▪ Uses hazardous chemicals

Key Duties and Responsibilities	Key Duties and Responsibilities	Examples of Functions or Tasks
<p>Access to and responsibility for detailed personal identifiable information about employees, students, faculty, staff, or alumni as defined in CSU Information Security Standards</p>	<ul style="list-style-type: none"> ▪ Auditors ▪ HR and Payroll Managers and staff ▪ Information Technology (IT) personnel ▪ Information Systems personnel ▪ Programmers ▪ Healthcare staff ▪ Registrars ▪ Employees with access to Level 1 data through campus data centers/systems 	<ul style="list-style-type: none"> ▪ Works with Level 1 data as defined under CSU Information Security Standards. <p>Link: http://www.calstate.edu/icsuam/sections/8000/8030.0.shtml</p> <ul style="list-style-type: none"> ▪ Work requiring access to patient files in a healthcare facility ▪ Systems maintenance
<p>Control over campus business processes, either through functional roles or system security access</p>	<ul style="list-style-type: none"> ▪ IT Management ▪ HR management ▪ Information Officers ▪ Information Security ▪ Business and Finance Management 	<p>Control over and ability to modify employee, student, or financial databases</p>
<p>Responsibilities that require the employee to possess a license, degree, credential or other certification in order to meet minimum job qualifications and/or to qualify for continued employment in a particular occupation or position</p>	<ul style="list-style-type: none"> ▪ Athletic Trainers ▪ Attorneys ▪ Counselors ▪ Diving/Water Safety ▪ Engineers ▪ Healthcare professionals ▪ Heavy Equipment ▪ Operators ▪ Pest Control ▪ Police Officers 	<ul style="list-style-type: none"> ▪ Counsels employees or Students ▪ Designs or builds facilities and offices ▪ Provides legal advice ▪ Renders medical services ▪ Renders safety services
<p>Responsibilities that require the employee to possess a license, degree, credential or other certification in order to meet minimum job qualifications and/or to qualify for continued employment in a particular occupation or position.</p> <p>Appropriate professional licensing, certification, and/or credential verification is required</p>	<ul style="list-style-type: none"> ▪ Athletic Trainers ▪ Attorneys ▪ Counselors ▪ Diving/Water Safety Professionals ▪ Engineers ▪ Healthcare professionals ▪ Heavy Equipment Operators ▪ Pest Control ▪ Police Officers 	<ul style="list-style-type: none"> ▪ Counsels employees or Students ▪ Designs or builds facilities and offices ▪ Provides legal advice ▪ Renders medical services ▪ Renders safety services