

**BOARD OF TRUSTEES**  
**UNIVERSITY OF THE DISTRICT OF COLUMBIA**  
**UDC RESOLUTION 2014- \_\_\_\_\_**

**SUBJECT: Notice of Proposed Rulemaking- 8B DCMR Chapter 19, Background Checks**

**WHEREAS**, pursuant to D.C. Code §38-1202.01 (b) The Board of Trustees has the authority to adopt, prescribe, amend, repeal, and enforce bylaws, rules, and regulations it considers necessary for the governance and administration of the University; and

**WHEREAS**, the adoption of these proposed rules is a critically important measure for added protection of the entire University community, and for limiting legal exposure that may result from hiring unsuitable candidates; and

**WHEREAS**, the proposed rules establish uniformity regarding background checks and delineates parameters for conducting these checks for faculty, adjunct faculty, staff, volunteers, and applicable student employees; and

**WHEREAS**, the proposed rules identify several sensitive positions and work areas, such as those located within the Child Development Center and those who encounter or may have access to children ages 17 and under, and requires recurring background checks for persons working in those positions; and

**WHEREAS**, the proposed rules also define suitability and actions that may be taken against those deemed unsuitable as a result of the contents of their background check;

**THEREFORE BE IT RESOLVED** that the Board hereby approves the attached DCMR regulations; and

**BE IT FURTHER RESOLVED** that the Board of Trustees of the University of the District of Columbia hereby takes proposed rulemaking action to adopt Chapter 19 of the University Rules (Title 8B DCMR); and

**BE IT FURTHER RESOLVED** that the General Counsel is hereby directed to publish this Notice of Proposed Rulemaking in the D.C. Register as soon as is practicable for a comment period of not less than thirty (30) days, in accordance with the provisions of D.C. Official Code §2-505 (a).

Approved by Board of Trustees:

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Elaine Crider  
Chairperson, Board of Trustees

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Date



Office of Human Resources

May 20, 2014

Board of Trustees  
University of the District of Columbia

Dear Trustees:

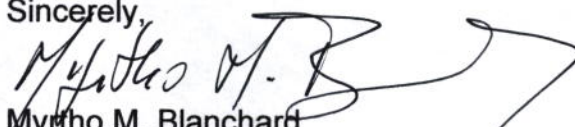
I am pleased to present a new policy that delineates rules for conducting background checks at the University. The adoption of these recommended rules is a critically important measure for added protection of the entire University community, and for limiting legal exposure that may result from hiring unsuitable candidates.

Human Resources started conducting background checks on new hires in 2008. This policy establishes University-wide rules regarding who is required to have a background check, when, and under what circumstances. The rules delineate parameters for conducting background checks for faculty, adjunct faculty, staff, volunteers, and for applicable student employees.

The policy also identifies several sensitive positions and work areas, such as those located within the Child Development Center and those who encounter or may have access to children and youth ages 17 and under (i.e. 4-H and Residence Life). The policy states the requirement for recurring background checks for anyone working in identified sensitive positions and areas. The policy also defines suitability and actions that may be taken against those deemed unsuitable as a result of the contents of their background check.

The Vision 2020 states "the University must improve itself to ensure that its programs and services are meeting the need...these programs and services must be of the highest quality and caliber possible". A key component of this improvement is hiring qualified candidates who are also suitable to work at UDC. On behalf of Human Resources, I submit the adoption of this new policy for your consideration. The policy creation is needed to further protect the University community, including legal exposure that may result from hiring unsuitable candidates.

Sincerely,



Myrtho M. Blanchard  
Vice President, Human Resources



## **Fiscal Impact Statement**

**TO:** The Board of Trustees

**FROM:** Office of the Chief Financial Officer (UDC) *Donald L. Friedman/PL*

**DATE:** May 15, 2014

**SUBJECT:** Pre-Employment and Background Checks

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### **Conclusion**

It is projected that there is sufficient funding available to conduct pre-employment and background checks on individuals whose work at the University of the District of Columbia (UDC) entails contact with children. Funding is available up to a maximum of \$2,000 per fiscal year.

### **Background**

In accordance with DCMR8B Chapter 4 and the Criminal Background Checks for the Protection of Children Act of 2004, two types of background checks are conducted by the University of the District of Columbia namely, pre-employment background checks and contingent background checks. Contingent background checks may occur during the tenure of an individual's employment at the institution, under specified conditions. Pre-employment & background checks are also conducted for individuals in paid and volunteer positions. These checks are conducted by UDC in order to ensure a safe environment for current and future students, faculty, staff and the community.

### **Financial Impact**

Pre-employment and background checks are conducted by the University as part of its employment process and as a means to ensure a safe environment. The cost associated with such checks is factored into the appropriation budget for Office of Human Resources and are estimated to cost a maximum of \$2,000 per fiscal year.



# DCMR8B

## BACKGROUND CHECKS

### 1900 APPLICABILITY

- 1900.~~21~~<sup>4</sup> Any individual initially appointed to the University and any individual reappointed after a break in service of 90 or more days shall adhere to the provisions of this chapter except for adjunct faculty appointments. Returning adjunct faculty members shall be subject to a background check after a break in service of thirteen (13) months or more.
- 1900.~~22~~ The provisions in the chapter shall be applicable to the selected candidate who will be offered employments in all any positions on all University campuses, including but not limited to, regular faculty, adjunct faculty, staff, and executive appointments. The provisions in the chapter shall also be applicable to all employees, student employees, and volunteers who encounter or have access to children or youth by virtue of their position. Hereafter, all persons subject to the provisions of the chapter are referred to as "employees" unless otherwise noted.
- 1900.~~43~~<sup>3</sup> Employees currently employed with the University in non-sensitive positions, as defined in this chapter, shall not be subject to the provisions of this chapter, if unless they move into a sensitive position as defined in section 1903. Employees currently employed with the University in sensitive positions, as defined in this chapter, shall be subject to periodic background checks in accordance with Section 1903.

### 1901 SUITABILITY POLICY

- 1901.1 It shall be the policy of the University to consider persons for employment who are suitable in efficiency, character, conduct, and reputation; and who have the knowledge and ability to perform the duties of the position sought. Pre-employment background checks and contingent background checks, which include criminal background checks (hereafter collectively "background checks"), shall be conducted as specified in this chapter for the purpose of ascertaining ~~selected~~ candidates' fitness and suitability in these areas.
- ~~1901.2 Employees in financial services positions must be particularly suitable in character, conduct and reputation, because they have access to money, financial accounts, and to systems that house financial, proprietary, or sensitive personal data. Any misconduct, illegal action, or inaction on their part could compromise the University and the University community. For~~

~~those reasons, these individuals shall be subject to a financial background check in accordance with applicable Federal and District laws and in addition to the background checks specified in this chapter. Financial services employees are University employees who have signatory and/or decision making authority in the areas of procurement and financial management, and/or all University employees who handle cash, checks, and other legal tender.~~

1901.23 Any individual subject to the provisions of this chapter, including those occupying sensitive positions, who refuses to consent to any applicable provisions of this chapter shall not be hired or shall have his or her employment terminated.

1901.34 Only the Vice President of Human Resources can authorize a person to commence employment prior to, and contingent upon, the completion of a background check. Examples of authorizations by the Vice President of Human Resources include, but are not limited to, faculty and adjunct faculty appointments due to an immediate operational need.

~~1901.5~~ Any employee authorized to commence employment in accordance with 1901.4 this section shall still be subject to a background check and all provisions of this chapter.

1901.64 Any employee who allows faculty, staff, students, and/or volunteers to work or serve in any capacity at the University without a background check and in violation of this policy or without written approval from the Vice President of Human Resources shall be subject to disciplinary action up to and including termination by the President or designee.

1901.755 No person who advocates the overthrow of the governments of the United States, the District of Columbia, or both by unconstitutional means shall be considered suitable for employment at the University.

## 1902 GENERAL PROVISIONS ON SUITABILITY

1902.1 Except as otherwise provided by law or regulation, any provisions negotiated between the University and a labor organization shall not take precedence over the provisions of this chapter.

1902.2 In securing information about individuals as part of background checks under this chapter, each individual shall be afforded the necessary rights and protections, including those described in Section 1907.

1902.3 (a) Except as otherwise noted in this chapter, Background background checks shall be initiated after ~~the hiring manager has properly notified the~~



University's Office of Human Resources has extended an offer to the ~~that a~~ final candidate ~~has been selected who will to~~ fill a vacancy. The offer shall be contingent upon successful completion of a background check in accordance with the provisions of this chapter. Except as otherwise specified in this chapter with regard to sensitive positions, to the extent practicable, the check should be completed before actual employment commences.

(b) Upon completing the background check, the University's Office of Human Resources shall complete a review of information received to determine whether a final job offer should be extended; or, if the person has commenced working in a non-sensitive position or in a sensitive position with the express approval of the Vice President of Human Resources pending the completion of the background check, whether he or she should be retained or whether employment should be terminated.

1902.4 Except as otherwise noted in this chapter, candidates ~~selected who will be offered an~~ offer appointment to a University positions, including full time and adjunct faculty positions, may receive offers of employment that are contingent upon successful completion of a background check. For the purposes of this chapter, any job offer made under these circumstances is conditional and non-binding on the University until completion of the background check process.

1902.5 The University reserves the right to take action against employees who are determined as not suitable for their current position, as described in Section 1907.

### **1903 SUITABILITY: SENSITIVE POSITIONS**

1903.1 ~~Selected~~ Candidates offered an ~~who are sought to be~~ appointmented to positions identified as sensitive shall be subject to a pre-employment background check, including a criminal background check.

1903.2 Employees in positions identified as sensitive shall be subject to background checks every three (3) years within 90 days of the anniversary of their appointment date.

1903.3 The following is a list of sensitive positions. The list is subject to change in accordance with operational needs.

- (a) 4H Programs (all positions)
- (b) Residence Life (all positions)
- (c) Athletics (all coaches, instructors, life guards, and trainers)
- (d) Child Development Center (all positions)

- (e) Counseling and Student Development (all positions)
- (f) TRIO and College Programs (all positions)
- (g) Office of Public Safety (all positions)
- (h) Cooperative Extension Services (all positions)
- (i) Speech and Hearing Clinic (all positions)
- (j) Jumpstart (all positions)
- (k) The Center for Nutrition, Diet and Health (all positions dealing with children and youth ages 17 and under)
- (l) Summer Bridge Program (all positions)
- (m) Extension Agents
- (n) Family Nurse Practitioner
- (o) Student Activities Specialist
- (p) Student Outreach Coordinator
- (q) Student Success Specialists
- (r) Recruitment Specialists

1903.4 Background checks for sensitive positions shall be completed after a contingent offer has been provided to the candidate and before an final offer letter is extended, and ~~Actual~~ employment shall not commence before the results of the background check for the sensitive position are received. Any exceptions to the required background check shall be granted only by the Vice President, Human Resources per in accordance with section 1901.34 of this chapter. If an exception is granted, the ~~selected~~ candidate's employment offer would be contingent upon successful completion of a background check.

#### 1904 SUITABILITY: NON-SENSITIVE POSITIONS

1904.1 ~~Selected~~ Candidates ~~who are~~ being appointed to positions not identified as sensitive per section 1903 shall be subject to a pre-employment background check, including a criminal background check.

1904.2 ~~Selected~~ Candidates being appointed to ~~for~~ non-sensitive positions may receive an offer of employment and commence employment while their background check is being completed. Offer letters for non-sensitive positions shall state that the selected candidate's employment offer is contingent upon successful completion of a background check.

#### 1905 SUITABILITY: FINANCIAL SERVICES EMPLOYEES



1905.1 Financial services employees are University employees who have financial management responsibility and/or oversight; financial decision making authority; work in the areas of procurement and/or contracting; and/or all employees who handle cash, checks, and other legal tender that is the property of the University.

1905.2 Employees in financial services positions must be particularly suitable in character, conduct and reputation, because they have access to money, financial accounts, and to systems that house financial, proprietary, or sensitive personal data.

~~1905.3~~ Any misconduct, illegal action, or inaction on their part could compromise the University and the University community. For those reasons, these individuals shall be required to consent to a financial background check in accordance with applicable Federal and District laws and in addition to the background checks specified in this chapter.

1905.43 The financial background check shall include credit information consistent with the guidelines set forth by the Fair Credit Reporting Act (FCRA), federal tax filings, and other financial information pertaining to the suitability for the position as allowable by law. ~~The laws include, but are not limited to, the Patriot Act, Sarbanes-Oxley, and FDIC requirements. The FCRA requires organizations to~~University shall obtain a candidate's written authorization before obtaining a credit report.

1905.4 Employees in positions associated with financial services shall be subject to background checks every five (5) years within 90 days of the anniversary of their appointment date.

#### ~~1905~~**1906 PRE-EMPLOYMENT BACKGROUND CHECKS**

~~1905~~1906.1 The University's Office of Human Resources shall retain a licensed, bonded, and insured vendor to conduct all background checks in accordance with all Federal, State, and Local laws and regulations.

~~1905~~1906.2 During the background check, information verified by the vendor may include, but is not limited to:

(a) Prior employment checks

(b) Possession of a college degree from an accredited school and in the appropriate professional field shall be verified, including semester hours or other measures of credit completed, periods of attendance, type of degree and date conferred, if the degree is required as a job-related qualification standard; or was substituted for experience in qualifying the person for the position;

(c) Possession of a professional or other type of license and/or certification if it is a prerequisite for employment; ~~and~~

(e)(d) Financial background information consistent with all laws for financial services personnel only; and

(d)(e) In addition to the pre-employment checks required in this subsection, every ~~selected~~ candidate who will be offered a position shall be subject to the completion of at least three (3) reference checks. The reference checks specified in this subsection shall be made with the ~~selected~~ candidate's former employer; except that personal references may be utilized instead of, or in addition to, checks with former employers as deemed necessary by the University's Office of Human Resources.

~~19051906.3~~ As of the effective date of this regulation, all positions sought to be filled at the University shall be subject to background checks. The vacancy announcements for all positions shall include a statement informing applicants of the background check requirement.

~~19051906.4~~ Unless otherwise provided by law, regulation, or this chapter, in filling a position subject to background check for any reason (i.e. promotion, demotion, reassignment, detail, interim, or other need), a check need not be conducted if the ~~selected~~ candidate who will be offered a non-sensitive position is already employed with the University. However, if the position being filled is a sensitive position, a background check must be completed ~~by the University~~ unless the employee being offered the sensitive position has a background check on file that was completed within ~~the past~~ three (3) years of the employment offer.

~~19051906.5~~ Unless otherwise provided pursuant to law or regulation, when a ~~selected~~ candidate is disqualified based on the results of the background check, the University's Office of Human Resources, at its discretion, may continue to rely on that determination with regard to subsequent applications for employment for a period of not more than three (3) years from the date of determination of disqualification, after which a new background check shall be required.

~~19051906.6~~ Upon expiration of the three (3) year period under subsection ~~19051906.5~~ of this section, a new background check shall be conducted and a re-determination made before the person may be appointed to any position.

~~19051906.7~~ The University may conduct an additional background check at anytime during one's employment or volunteer service for cause, including but not limited to notice of an arrest, charge, or conviction.



**~~1906 — BACKGROUND INVESTIGATIONS FOR FINANCIAL SERVICES PERSONNEL~~**

~~1906.1 — Background checks and financial investigations shall be conducted for employees and persons being considered for employment in positions associated with financial services as defined in 1901.2.~~

~~1906.2 — Employees in positions associated with financial services shall be subject to background checks every five (5) years within 90 days of the anniversary of their appointment date.~~

**1907 SUITABILITY ACTIONS AGAINST CANDIDATES IDENTIFIED FOR HIRE**

1907.1 The University's Office of Human Resources, in conjunction with the hiring manager, shall determine whether a person being considered for employment is or has been involved in any act that constitutes a reasonable basis for concluding that the person would not faithfully discharge the duties of the position for which he or she is being considered.

1907.2 The reasons which may be used in making a determination of disqualification of a ~~selected~~ candidate due to unsuitability may include, but shall not be limited to, the following:

- (a) Delinquency or misconduct in prior employment;
- (b) Criminal, dishonest, or other conduct of a nature that would cause discredit to the District government;
- (c) A false statement of any material fact, or engagement in deception or fraud in the examination or appointment process;
- (d) Illegal use of drugs; or
- (e) Any other legal disqualification for appointment.

1907.3 In making its determination of disqualification of a ~~selected~~ candidate due to unsuitability, the University's Office of Human Resources shall consider the following additional factors, to the extent that these factors are deemed pertinent to the individual case:

- (a) The kind of position for which the person is being considered or in which the person is employed, including its sensitivity;
- (b) The nature and seriousness of the conduct, occurrence, or information;



- (c) The circumstances surrounding the conduct or occurrence;
- (d) The recency of the conduct or information;
- (e) The age of the ~~selected~~ candidate at the time of the conduct or occurrence;
- (f) Contributing social or environmental conditions;
- (g) The absence or presence of rehabilitation or efforts toward rehabilitation; or
- (h) In the case of criminal conduct, its relevance or relationship to the duties of the position.

1907.4 Employees and ~~selected~~ candidates who are subject to background checks shall have the opportunity to address issues and/or concerns identified in the background check. Before taking a suitability disqualification action against a ~~selected~~ candidate under this chapter, the person shall be given an opportunity to explain the derogatory information found, in writing, within fifteen (15) days of the notification. The ~~selected~~ candidate shall provide information to explain any discrepancies, omissions, misinformation, or mitigating circumstances that may exist which are unknown to the University's Office of Human Resources.

1907.5 The University shall initiate suitability action against ~~selected~~ candidates pursuant to this section and chapter when:

- (a) The University makes a determination that the ~~selected~~ candidate provided a materially false statement; engaged in deception or fraud in his or her examination or appointment with the University; or engaged in the falsification of official personnel records;
- (b) Derogatory information about the ~~selected~~ candidate, of a nature that constitutes an immediate hazard to the University, to the ~~selected~~ candidate concerned, to other employees, to the University community, or to the detriment of the public health, safety, or welfare, is disclosed by a credible source or independently discovered by the University's Office of Human Resources;
- (c) Derogatory information about a ~~selected~~ candidate, of a nature that may impact the ~~selected~~ candidate's suitability to continue performing the duties of his or her position, is disclosed by a credible source or independently discovered by the University's Office of Human Resources; or
- (d) A determination is made to terminate the employment of an employee because:

- (1) The employee has failed a criminal background check in accordance with sections 1907.2 and 1907.3; or
- (2) As specified in D.C. Official Code § 4-1501.05a the employee has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket for an offense related to their employment or that may impose undue harm against the University; or has been found not guilty by reason of insanity for a sexual offense involving a minor.

1907.6 In the circumstances described in section 1907.5 of this section, the University's Office of Human Resources may:

- (a) Take disciplinary action including requiring that the employee be removed from University service;
- (b) In addition to requiring the employee's removal, cancel any reinstatement eligibility, as applicable; or
- (c) In addition to the actions in accordance with subsection 1906.6 (a) and (b) of this section, deny the employee examination for and appointment to a position with the University for a period of not more than three (3) years from the date of the determination of unsuitability.

1907.7 In the circumstance described in section 1907.5(d) of this section, the University's Office of Human Resources shall propose the administrative action to remove an employee who fails the criminal background check. The provisions in subsection 1907.6(b) and (c) of this section shall also apply to an employee terminated pursuant to section 1907.5(d) of this section.

1907.8 If a determination is made that a violation of suitability does not rise to the standard described in section 1907.5(a) of this section, the University's Office of Human Resources may require the employing department to take an adverse administrative action against the employee that is less than termination. Any adverse action issued in this context shall be in accordance with the relevant provisions of any applicable collective bargaining agreement.

1907.9 The University's Office of Human Resources shall ensure to the fullest extent possible that any suitability action taken against an employee pursuant to section 1907.5 of this section is based on information or documentation that is accurate, timely, relevant, and complete.

- 1907.10 If there is derogatory information reported on a current employee or applicable student employee, the Vice President of Human Resources (and Vice President of Student Affairs if applicable) shall make a final decision.

## **1908 SUITABILITY RECORDS**

- 1908.1 The University will ensure that all background checks are held in compliance with all federal and state statutes. The only information that will be collected shall pertain to the quality and quantity of work performed by the applicant, the applicant's attendance record, education, and other issues that can impact the workplace.
- 1908.2 The University of the District of Columbia shall use its best efforts to ensure that all information obtained from the reference and background check process will only be used as part of the employment process and kept strictly confidential. Only Office of Human Resources staff will have access to pre-employment and contingent background check results.
- 1908.3 Records and files created and maintained pursuant to background checks shall be subject to the following:
- (a) Information related to suitability investigations and suitability actions shall be kept in strict confidence in accordance with this section;
  - (b) Sources of information shall not be disclosed except as specifically authorized in this chapter;
  - (c) Reports of investigations conducted by a University's Office of Human Resources shall not be disclosed to the person investigated, nor may the information be discussed with him or her in a manner that would reveal or permit him or her to deduce the source of the information;
  - (d) The restrictions contained in section 1907.4 (c) of this section shall not apply to the following:
    - (1) Information of public record; and
    - (2) Information from University personnel records which could be obtained on request by the subject employee; and
  - (e) Other sources of information in reports of investigation may be disclosed to the subject of the investigation only if the University's Office of Human Resources obtains the information independently, such as by interviewing the subject, or by obtaining permission, in writing, from the sources named to use the information and to identify the source.



## 1999 DEFINITIONS

1999.1 When used in this chapter, the following terms have the meaning ascribed:

**Applicant** – a person who has filed a résumé or written or electronic (web-based) application for employment; or a person who has made an affirmative effort through written application, résumé, or a verbal request to serve in a volunteer position with the University.

**Arrest** – The taking of a person into custody, so that he or she may be held to answer for a criminal charge.

**Background check** – thorough inquiry into the past and present conduct and behavior of an applicant to determine his or her suitability for appointment or continuing employment with the University.

**Candidate** – the best qualified applicant selected by the hiring manager to be offered the opportunity to fill a vacant position with the University.

**Charge** – A formal accusation of an offense as a preliminary step to prosecution.

**Children** - persons ages twelve (12) and under

**Conviction** – A judgment on a verdict or a plea of guilty or nolo contendere, and/or a finding of guilt.

**Days** – calendar days, unless otherwise indicated.

**Employee** – for the purposes of this chapter all faculty members, adjunct faculty, and staff, as well as students who work in sensitive position, and who receives compensation for the performance of such service.

**Nolo Contendere** – For the purposes of this policy, the imposition of Probation Before Judgment (“PBJ”) shall be reported in the same manner as a conviction.

**Offense** – Conduct that is classified as a felony or a misdemeanor. For purposes of this policy, the term “offense” also includes any traffic offense that involves either the use of alcohol or drugs or for which incarceration is a potential penalty.

**Office of Human Resources (UDC)** – an individual or entity with the authority to administer all or part of personnel management programs.

**Probation Before Judgment** – For the purposes of this policy, the imposition of Probation Before Judgment (~~“PBJ”~~) shall be reported in the same manner as a conviction.

~~Selected candidate – the applicant selected by the hiring manager to be offered employment with the University.~~

**Sensitive position** – for the purposes of this chapter, tasks of an applicant, ~~selected candidate~~ who will be offered employment, employee, or volunteer that may require the provision of direct services that affect the health, safety, and welfare of children or youth.

**Suitability** – the quality or state of being acceptable for University employment with respect to the character, reputation, and fitness of the person under consideration.

**Volunteer** – for the purposes of this chapter, any person who performs work without any monetary or other financial compensation, in an area regularly staffed by employees in sensitive positions, or anyone who volunteers his or her services as a host of a child or youth participating in direct or indirect University programs involving children and/or youth.

**Youth** – persons between thirteen (13) and seventeen (17) years of age, inclusive.