

# County of Sonoma



## Guidelines for Conducting Background Checks

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## I. INTRODUCTION

The County of Sonoma (“the County”) is committed to providing equal opportunity in employment, in accessing programs and services, and in contracting opportunities. Therefore, it is the policy of the County of Sonoma that no person shall be subject to illegal discrimination, harassment or retaliation with regard to any aspect of recruitment or employment with the County.

It is in the interest of the County to provide a safe environment for its employees, clients, residents and the public, minimize unnecessary exposure to liability, and select qualified applicants for job openings. A thorough background check is a critical component in the defense of a negligent hire lawsuit. In addition, background checks help a department to ensure applicants have the qualifications and credentials they say they have, and may also reveal information not revealed in the testing and selection process, thus providing a fuller picture of the applicant’s job qualifications.

The following guidelines relate to standard (non-statutory) background check processes. Departments also need to be familiar with the statutory background requirements that are specific to their operations, such as public safety, public recreation, education, childcare, healthcare, etc.

### **Purpose:**

These guidelines are to provide assistance to departmental staff with guidance and procedures for:

- Understanding federal and state laws and EEOC guidelines related to use of background investigations for employment purposes.
- Determining the appropriate background check components for a specific position.
- Requesting background checks through the consumer reporting agency/third party investigator.
- Providing applicants with the required notifications and authorizations.
- Using the information received from background investigations appropriately.

### **Who is Subject to Pre-Employment Background Checks?**

In June 1997, the Board adopted Resolution 97-0856 implementing background checks as part of the hiring process for all initial appointments to regular full or part-time County, Community Development Commission, and Sonoma County Water Agency employment, and for some extra-help and personal service contracts. In May 1998, the Board approved the expansion of background checks to sensitive jobs performed by extra-help, volunteers, paid and unpaid interns, camp hosts, work experience personnel, and/or personnel from service providers assigned to the County. Background investigations for extra-help, volunteer, intern, or other non-regular jobs should be consistent with the screening for regular positions performing the same duties. Below is a summary of the background requirements for each “employment” type:

- **Applicants for Regular Employment:** Background checks are required for initial appointment to a regularly allocated full or part-time County position, including limited term and time limited allocations. Extra-help employees being considered for appointment to a regular position may not be required to complete a new background if a background check was completed within the past twelve months and included all of the components required for the regular position.
- **Applicants for Extra-Help Employment:** Background investigations may be required based on the requirements of the position, and should be consistent with the background investigation conducted for regular positions performing the same duties. In the case of seasonal employees that return to work for the County several years in a row, updates may be conducted after each “break”, depending on the nature of the job.

- **Temporary Service Firm Employees:** These employees are screened by the temporary service firm under contract with the County. If a temporary service firm employee is being considered for extra-help status, background checks should be conducted consistent with other initial hires into extra-help employment.
- **Independent Contractors at County Facilities:** A background check may be required prior to award of the contract, depending on the facility and/or the nature and purpose of the contractor's assignment.
- **Employees Applying for Promotion/Transfer or Reassignment:** Employees being considered for promotion/transfer or reassignment should not automatically go through the background check process. A background check may be required to ensure minimum requirements of the position are met, to meet legal requirements, and/or if deemed necessary by the appointing authority based on the position requirements. A background check is appropriate when employees are moving into a position where services performed involve children, dependent elders, handling money or significant fiduciary responsibility, entry into private premises, handling of or access to highly confidential materials, or for positions within the criminal justice system.

Hiring managers from other county departments may review existing background reports that are appropriate for the position they are filling, as detailed on the HRIS position requirements record. It is the responsibility of the hiring manager to determine and request access to only those components of the background that are required for their position. Hiring managers from the following separate legal entities: Community Development Commission, Fairgrounds, Northern Sonoma County Air Pollution Control District, Retirement, and Water Agency must provide a copy of the signed authorization form used for reference checks in order to review background check results obtained by another county department/agency. Hiring managers of all other external agencies, including the Sonoma County Agricultural Preservation and Open Space District (SCAPOS), Sonoma County Law Library, the Sonoma County Transportation Authority (SCTA), the North Coast Railroad Authority (NCRA), the Sonoma-Marín Area Rail Transit (SMART) are not entitled to review background investigation results.

Departments are encouraged to consult the County's Pre-Employment/Pre-Placement Screening Policy and their Recruitment Analyst prior to conducting a background check on a current County employee.

- **Volunteers/Interns:** Background investigations for volunteers and interns should be consistent with those conducted on regular positions performing similar duties. Under the FCRA, background investigations for volunteers/ interns must comply with FCRA authorization and notice requirements outlined in these guidelines.

## Who is Responsible for Conducting the Background Check?

Human Resources recommends that each department head designate specific employees/positions with the responsibility for the background investigation process, and that management or supervisory job classes and/or trained investigative staff be used whenever feasible. It is also recommended that each department designate a senior ranking manager to oversee the background investigation process to ensure compliance with legal requirements and consistency in the conduct of background investigations.

## II. LEGAL CONSIDERATIONS

Federal and state laws regulate the information (consumer investigative reports) that employers may obtain on prospective employees. This means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for employment.

The consumer reporting agency contracted to provide these reports to the County is obligated to provide information that is legally compliant; however, the appointing authority is ultimately responsible for ensuring

compliance with the following requirements. Please note that not all restrictions/limits apply to positions which have specific background requirements under state law, including peace officers, residential care facility employees, certain park employees, etc. It is important that departments be familiar with special requirements that may apply to their specific occupational areas.

- Federal Law: The federal Fair Credit Reporting Act (FCRA) applies only to consumer reports prepared by third parties. As defined by the FCRA, consumer reports are reports prepared by a consumer reporting agency that bear on an applicant's or employee's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, when such information is used or expected to be used or collected in whole or in part for "employment purposes."

The FCRA:

- Restricts disclosure of most negative credit information to seven years.
  - Requires disclosure and written consent on a separate document when requesting a "consumer report" for employment purposes.
  - Requires applicants be provided copies of investigative consumer reports upon request.
  - Requires the employer to certify to the consumer reporting agency that it will comply with the FCRA.
  - Requires applicants be notified and provided copies of reports and the name, address and phone number of the agency that furnished the report, when information received may result in adverse action, and again if adverse action is taken. Applicants must also be given a written description of their rights if adverse action is in fact taken, including the right to dispute the accuracy and completeness of the report.
- California Law is broader in scope than the FCRA, and applies to both third parties **and employers who obtain information directly**. An investigative consumer report under the California Investigative Consumer Credit Reporting Agencies Act is defined as a consumer report in which information on a consumer's character, general reputation, personal characteristics or mode of living is obtained through any means. In addition to the requirements under the FCRA, California law (the California Investigative Consumer Reporting Agencies Act ("ICRAA"), the California Consumer Credit Reporting Agencies Act ("CCRAA"), and Government Code Section 12952) also:
    - Restrict employment related credit inquiries to applicants for specific types of positions that can demonstrate a statutory basis for requiring the information. (Please see "Attachment C— Statutory Basis for Credit Checks" for definitions of the position types for which a credit check is allowed under California law.)
    - Prohibit employers from inquiring or obtaining criminal conviction information until the applicant has been given a conditional job offer.
    - Prohibits employers from automatically disqualifying an applicant based solely on the basis that they have criminal convictions. Use of criminal history must be job related (i.e. sufficiently related to an essential function of the job) and consistent with business necessity. When reviewing criminal history, employers must consider:
      - The nature and gravity of the offense or conduct;
      - The time that has passed since the conviction or conduct and completion of the sentence; and
      - If there is a nexus between the conviction and the essential functions of the job being sought.
    - Provides applicants with the right to challenge/appeal a decision to rescind a job offer based on criminal convictions both through the County's Equal Employment Opportunity Policy and Complaint Procedure and through the Department of Fair Employment and Housing.
    - Limits criminal history checks to seven years; limits bankruptcies to the past ten years.

- Excludes arrests or detentions which did not result in conviction, unless the matter is currently pending and has not been adjudicated.
- Excludes convictions for which the record has been judicially dismissed, ordered sealed, expunged, or statutorily eradicated.
- Excludes misdemeanor convictions for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed, and certain misdemeanor marijuana convictions that are more than two years old.
- Excludes information or records concerning a referral to, or participation in, any pretrial or post trial diversion program.
- Requires producing a copy to the applicant of any public record that was obtained directly by the employer for purposes of the investigative consumer report within seven days of receipt of the information, unless the applicant has checked the waiver box. If the employer uses a consumer reporting agency, requires producing a copy of the report(s) provided by the agency upon request.
- Requires employers to certify to the consumer reporting agency that they have made all of the required disclosures and will comply with the obligation to provide a copy of the report if requested and inform the applicant if adverse action is taken based on the report.
- Requires the employer to provide a copy of the report to the applicant before taking any adverse employment action, regardless of whether the applicant has checked the box requesting the same.

### **III. CONSUMER REPORTING AGENCY**

The County contracts with a consumer reporting agency or third party background investigation service to provide “investigative consumer reports”. Please see the vendor’s instructions on the Recruitment & Classification SharePoint Site for details on requesting initial set-up, accessing the vendor’s website to request background checks, accessing required notices and forms, accessing report copies, and generating pre-adverse action and adverse action notices and required attachments. The use of a consumer reporting agency to conduct certain background checks on behalf of the County is not intended to preclude employment verification, reference checks, follow-up, or additional checks conducted by County employees, or a comparable investigation conducted by County employees such as those conducted by the Sheriff or District Attorney Offices.

### **IV. BACKGROUND AUTHORIZATION AND NOTIFICATION REQUIREMENTS**

All job announcements include standard language informing applicants that a background investigation will be required. In addition to this general notice, separate disclosures and notifications are required at specific stages of the background process. The consumer reporting agency conducting checks on behalf of the County will provide the applicant with appropriate notifications and obtain required authorizations to conduct background checks on behalf of the County. If background checks are conducted in-house, or if the applicant does not have access to email, all required applicant notifications and authorizations must be obtained directly from the website of the consumer reporting agency under contract with the County.

#### **Required Department Procedures:**

Departments must comply with applicant disclosure, notice, and authorization requirements as detailed in the section below, and in accordance with applicable law, including any prospective changes in the law. In addition to the legal requirements to provide specific notifications and obtain applicant authorization prior to conducting background checks, departments must have processes in place to:

- Insure that applicants are given sufficient time to thoroughly review the notifications and authorization forms before they are asked to sign anything.
- Protect confidential data provided by the applicant, including Social Security Number and date of birth by keeping documents in a secure, locked drawer with limited access.

- Insure that individuals involved in the hiring decision do not have access to applicant's date of birth.
- Insure that inquiries into criminal convictions are not conducted until a conditional job offer has been provided and accepted by the applicant.

Recommended procedures to minimize exposure to legal challenges or complaints regarding the hiring process:

If using a consumer reporting agency and the applicant has provided email contact information:

1. When finalist(s) identified, department designee contacts applicant(s) to let them know that background checks are being requested through the consumer reporting agency, and that criminal conviction history will only be requested if a conditional offer has been made. Applicant is advised to watch for an email from the consumer reporting agency, and to respond in a timely manner to requests for required authorizations.
2. Department designee submits request for pre-offer background checks to consumer reporting agency. After request has been made, the consumer reporting agency will email the applicant to obtain the required authorizations directly. Consumer reporting agency runs all pre-offer background checks and provides initial report to requestor.
3. After all pre-offer checks are completed, if decision is made to hire, Department contacts applicant to discuss conditional offer (see suggested talking points on the Recruitment & Classification SharePoint Site), then provides applicant with a written conditional offer, contingent upon successful completion of post-offer criminal conviction history checks and any medical screening requirements.

If background checks are conducted in-house, or if the applicant has not provided email contact information:

1. At the selection interview, provide applicants with required forms and notices, as detailed below.
2. Instruct applicants to take the forms home to review. Do not obtain confidential information or signatures at the selection interview.
3. When finalist(s) identified, department designee (not involved in hiring decision) contacts applicant(s) to obtain required authorizations.
4. Department designee submits request for pre-offer background checks to consumer reporting agency and/or conducts pre-offer background investigation.
5. After all pre-offer checks are completed, if decision is made to hire, Department contacts applicant to discuss conditional offer (see suggested talking points on the Recruitment & Classification SharePoint Site), then provides applicant with written conditional offer, contingent upon successful completion of post-offer background checks and any medical screening requirements and, after offer is accepted by applicant, proceeds with post-offer checks.

#### **Background Notification and Authorization Forms:**

- Applicant Notification of Background Investigation: This notice must be provided to all applicants prior to requesting a background investigation.
- Fair Credit Reporting Act (FCRA) Summary of Rights: This notice must be provided to all applicants prior to requesting a background investigation.
- California Credit Report Disclosure: If it is determined that a credit check will be requested as part of the background investigation, applicants must be given a separate written disclosure that specifies the "statutory basis" for requesting the report. The descriptions of position types that meet the "statutory basis" for requesting pre-employment credit checks is included in Attachment C.

Contact your Recruitment Analyst if you are uncertain if a credit check should be conducted for a given position.

- **Background Authorization:** When a background check is requested through the consumer reporting agency, applicants will receive an email from the agency requesting that they complete this form to authorize the background investigation. The authorization form informs the applicant of their right to receive a copy of any reports obtained by the consumer reporting agency. A box to request copies of these reports is included on the Applicant Certification and Authorization form. If this box is checked, the consumer reporting agency preparing the reports for the County will provide copies directly to the applicant. When County employees are used in lieu of or in addition to using a consumer reporting agency to conduct the investigation, any information obtained, verbally or in writing, which is a matter of “public record” must be provided to the applicant within seven days, unless the applicant can be shown to have waived the right to receive this information. The ICRAA defines public records as “records documenting an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment”.

### **What if an applicant refuses, fails to sign, or substantively modifies a required authorization?**

If an applicant refuses or fails to sign any required authorization or substantively modifies it, the applicant has effectively withdrawn his or her application from further consideration and should not be considered for appointment to the vacancy. The applicant may be referred to future vacancies, but would need to sign the required authorization and releases to be considered for appointment.

### **V. WHAT SHOULD THE BACKGROUND INVESTIGATION INCLUDE?**

In addition to reference checks, which should always be conducted (see Guidelines for Conducting Reference Checks), the type of checks that should be included in the background investigation is dependent on the nature, purpose, contacts, and authority of the position or volunteer/intern assignment, as well as any legal or statutory requirements. In determining an appropriate level of screening, it is important to evaluate the risks associated with the position’s assignment in the organization. For example, positions in which the employee regularly or occasionally provides unsupervised (e.g. one on one) service to vulnerable clients should include a more thorough screening process than a position with limited public contact and that receives a high level of supervision.

Prior to initiating the process to fill a vacant position, departments should determine the appropriate level of screening required by reviewing the “Requirements” tab on the position record (IDPS) in the HRMS. Background investigations of prospective volunteers/interns should be consistent with those conducted for applicants of regular positions that will be performing similar duties. Departments are ***encouraged*** to consult with their Recruitment Analyst if they have any questions about the types of reports to request.

A brief description of the background check services offered by the County’s consumer reporting agency, including which checks must be conducted “pre” and “post” offer, is included in Attachment B.

### **Recommended Background Check Components**

To ensure consistency in the screening of applicants for similar positions and to provide general guidelines for departments, Human Resources has identified typical components to include in the background check based on broad occupational categories.

- **General:** The general background request is used for most positions (clerical, technical, maintenance, accounting, management, etc.), and includes a pre-offer Social Security Number Trace & Address History (SSN Trace) and Government Watch List search and, if a conditional offer is made after completing all pre-offer checks a post-offer County Criminal Convictions Records check and National Criminal Database search. County Criminal Convictions checks will include all locations where the applicant has worked, lived, or been educated, as well as all legal names used in the last seven years (10 years if required by statute). Locations are determined from information reported in the SSN Trace as well as information provided by the applicant on the application and resume (if provided).

- **Client Services:** In addition to the General level background check identified above, background checks for applicants of positions in the healthcare or client services field including counselors, dietitians, EMTs, home care providers, social workers, mental health counselors, nutritionists, nurses, occupational therapists, physicians, physician assistants, physical therapists, psychiatrists, psychologists, etc. should also include a pre-offer Medical Sanctions Screening. If the position will have unsupervised contact with vulnerable client populations, including the young, elderly, mentally ill, etc., a post-offer National Sex Offender Search should also be requested. Please note that use of information found in the Megan's Law database to make employment decisions is prohibited. If a sex offender search is required, departments should utilize the consumer reporting agency service.
- **Executive:** In addition to the General level background check identified above, background checks for applicants of agency/department head positions or their next level reports, and "financially sensitive" positions involved in the handling of money or exercising financial discretion over the spending of large amounts of money should also include pre-offer County and Federal Civil Litigation Records searches.

In addition to the standard requests outlined above, based on the actual position requirements additional checks may be requested using the "a la carte" options. The determination to include specific components as part of the background investigation must be based on the actual position requirements. For example, you would not request a "Motor Vehicle Report" if an applicant will not drive on County business, or an "Education Verification" for a position where college education is not a factor in the hiring decision. For a complete description of all available background check services, and to determine which checks must be conducted post offer, see Attachment B.

Departments are encouraged to contact their Recruitment Analyst if they have any questions about the timing or relevance of a background check component for their position.

## VI. CONSIDERING THE BACKGROUND INVESTIGATION RESULTS

Balancing the need to exercise due diligence in identifying the most appropriate hire with the need to assure legally defensible hiring practices that promote a diverse workforce can sometimes be challenging. Information obtained during the background investigation is invaluable in determining if there is a history of activity that is incompatible with the responsibilities and requirements of the position. However, denying employment based on conviction or credit history that is not directly related to the responsibilities of the position may be considered discriminatory. This is why it is critical to consider all the information gathered during the selection process in relation to the responsibilities and requirements of the position when making the hiring decision.

Upon receipt of the background investigation results, the appointing authority will evaluate whether a sufficient job-related connection exists between any "red flags" and the specific duties and responsibilities of the position. If the department is considering taking adverse action, they must contact Human Resources prior to sending out the pre-adverse action notice.

## VII. APPLICANT NOTIFICATIONS OF BACKGROUND CHECK RESULTS

When a consumer reporting agency is used, or when public records are obtained directly by County employees, the consumer report and/or copies of public records and the notices listed below must be promptly provided to the applicant, as detailed below:

### Background Checks Conducted Prior to a Conditional Job Offer (Pre-Offer Checks)

**Pre-Adverse Action Notice:** When negative information which could potentially be a factor in the hiring decision is received from pre-offer background investigation reports, the applicant must be promptly provided with a "Pre-adverse Action Notice", a copy of the background report or public records, and "A Summary of Your Rights under the Fair Credit Reporting Act". The notice and cover

letter should inform applicants that they have five business days in which to contact the consumer reporting agency to dispute any information included on the report.

**Falsification of Application:** If information included in the background report shows the applicant falsified their application, and the applicant does not dispute the information included in the pre-adverse action notice, notify your Recruitment Analyst, and Human Resources will notify the applicant that they are being eliminated from consideration for falsifying the application.

If the applicant does not dispute the information included with the pre-adverse action notice and did not falsify their application, you need to decide whether or not to hire the applicant.

**Adverse Action Notice:** If the decision is made not to hire the individual and information from the background reports received from the consumer reporting agency influenced the decision in any way, you must send the applicant a notification that they have not been selected and include the Adverse Action Notice, copy of background report, and "A Summary of Rights Under the Fair Credit Reporting Act".

**Not Selected:** If the decision is made not to hire the individual and information from the consumer reporting agency was in no way a factor in the decision making process, send the applicant a notification that they have not been selected, and that the decision was not based on information received in the background reports. Templates for notifying applicants that they were not selected are available in NeoGov or through your Recruitment Analyst.

**Job Offer:** If the decision is made to hire the individual, no further notices regarding the pre-offer background process are required and you may continue with the next phase of the selection process, which is typically a conditional job offer, contingent upon successful completion of the criminal conviction checks and any medical screening required. Please see Verbal Conditional Offer Talking Points, Offer Letter Guidelines, and Conditional Offer Letter Templates on the [Recruitment & Classification SharePoint Site](#).

#### Background Checks Conducted After a Conditional Job Offer (Post-Offer Checks)

**Preliminary Decision Notice:** When information included on post-offer criminal conviction background reports could potentially result in a decision to rescind the conditional job offer, consult with your Recruitment Analyst to complete an assessment of the nexus to the duties and responsibilities of the position. If a sufficient nexus to the position exists, Human Resources will provide the applicant with the "Preliminary Decision to Rescind Job Offer" notice which informs the applicant of the disqualifying conviction(s) that are the basis for the preliminary decision, an explanation of the applicant's right to respond before the decision becomes final, and the deadline by which to respond (5 business days from date of Notice). If the applicant responds in writing that he/she disputes the accuracy of the conviction history report and that the applicant is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice. The applicant response may include submission of evidence challenging the accuracy of the conviction history report, evidence of rehabilitation or mitigating circumstances, or both.

Human Resources will facilitate the review and consideration of any information submitted by the applicant before a final decision is made.

**Final Decision Notice:** If the final decision is to rescind the job offer because of the applicant's conviction history, Human Resources will provide the applicant with a Final Decision to Rescind Job Offer Notice which includes the applicant's right to challenge the decision under the County's Equal Employment Opportunity Policy and Complaint Procedure, and the applicant's right to file a complaint with the Department of Fair Employment and Housing.

**Job Offer:** If the decision is made to hire the individual, no further notices regarding the post-offer background process are required and you may continue with the next phase of the selection process, which is either an official job offer or, if medical clearance was not given, the interactive

process. Please see Offer Letter Guidelines and Offer Letter Templates on the [Recruitment & Classification SharePoint Site](#).

## VIII. WHEN TO CALL HUMAN RESOURCES

It is critical that background investigations, including reference checks, are conducted in accordance with federal and state laws, and the EEOC's guidelines. Background investigations and reference checks must be conducted consistently within the organization, and the results must be considered appropriately when making the hiring decision. Departments are encouraged to review these guidelines and procedures, and to consult with their Recruitment Analyst if needed.

Your Recruitment Analyst is available to assist with any aspect of the background investigation process, including:

- Determining the appropriate background check components for a specific position, including the use of credit checks.
- Determining if it is legal to request criminal history beyond the seven year limit set by state and federal laws.
- Using information received from the background investigation appropriately.
- Providing appropriate notices and authorizations to the applicant.
- Determining the nexus of any adverse information to the duties and responsibilities of the position.
- Notifying applicants that they are being disqualified from consideration due to falsification of information contained on the application.
- Responding to applicant concerns or challenges regarding any portion of the background investigation process.
- Resolving issues with the consumer reporting agency under contract with the County.

## IX. RECORDKEEPING

**Access:** Access to information obtained during the background process is to be restricted to the department head and managers or supervisors directly involved in the hiring decision.

Applicants and employees have the right to review and receive copies of most, but not all of the information obtained during the background process:

- Applicants and employees are **not** entitled to receive copies of references, ratings, or test materials utilized in the selection process.
- Applicants and employees [are entitled](#) to copies, if requested, of any document they signed related to obtaining or holding employment (application, background release forms, conditional job offer letters, etc.).
- Applicants and employees are entitled to receive, if requested, copies of any investigative consumer reports (credit report, criminal history check, DMV report, etc.) that are obtained during the background investigation process.

**Retention:** Background investigation reports, other public records checks, and references should be retained in accordance with the County's [Common Accounting and Administrative Records Retention Schedule \(CAAR\)](#).

## Attachment A – Background Investigation Process Steps

1. Department determines appropriate level of background screening, based on the position responsibilities and background check guidelines. The requirements for each position are included on the position's "Requirements" tab (IDPS) in the HRMS.
2. Human Resources includes standard language on job bulletins that a background investigation may be required.
3. Human Resources recruits and screens job applicants and provides hiring department with a list of eligible applicants.
4. Hiring department conducts selection interviews with eligible applicants.
5. Hiring department identifies finalist(s) to advance in the selection process.
6. Hiring manager, supervisor, or department designee begins calling at least three job references to confirm what is stated in the applicant's employment application packet and further assess the applicant's competitive suitability for employment. Steps 6 and 7 may be done concurrently.
7. Department designee submits request to the consumer reporting agency and/or begins any in-house checks of public records necessary to complete pre-offer background checks that have been determined appropriate in Step 1. Checks that inquire into conviction history or which may include conviction history must be held until after a conditional job offer has been made.
8. The consumer reporting agency emails department designee when pre-offer background checks are complete and, if applicant has elected to receive a copy of report(s), provides applicant with a copy. Note: If the department accesses information from public records directly as part of the background investigation, the department must mail or otherwise provide a copy of these records to the applicant within seven (7) days after initial receipt, unless the applicant is shown to have waived his/her right to a copy.
9. The department evaluates the consumer report(s) or other public records obtained during the pre-offer background process to determine if any background issues exist that may influence the hiring decision.
  - a) If no negative information that could influence hiring decision is included on consumer reports or other public records checks, go to Step 11.
  - b) If negative information included on pre-offer consumer report(s) or other public record checks may be a factor in the hiring decision, the department must consult with their Recruitment Analyst prior to taking adverse action. If the decision to take adverse action is made as a result of the conversation with Human Resources, the department sends the applicant the Pre-Adverse Action Notice with required attachments, providing the applicant with 5 business days to contact the consumer reporting agency and correct any errors.
10. After Pre-Adverse Action Notice response period has passed, department considers new or corrected information, if any.
  - a) If decision is made that issues identified on consumer reports or other public records do not exclude applicant from consideration for hire, go to Step 11.
  - b) If decision is made not to hire, and information from consumer reports or other public records is a factor, department sends applicant an Adverse Action Notice with required attachments, including copies of consumer report(s) or other public records and starts process again at Step 5.
11. Department reviews all information obtained during the pre-offer selection process, including interview notes, reference checks, etc. and makes hiring decision.
  - a) If, based on all information acquired through the pre-offer selection process the decision is to move forward with hiring the applicant, go to Step 12.

- b) If decision is made not to hire and information on pre-offer consumer report(s) is in no way a factor in the decision, department sends applicant notice of non-selection and starts process again at Step 5.
12. Department contacts applicant and discusses terms of conditional offer, emphasizing benefits of working with County and negotiating salary, etc. (see conditional offer talking points on the [Recruitment & Classification SharePoint Site](#). After verbal discussion, department provides applicant with written conditional offer, contingent on successful completion of the criminal conviction checks and any required medical screening.
  13. Department designee submits request to the consumer reporting agency and/or begins any in-house checks of public records necessary to complete **post-offer** background checks that have been determined appropriate in Step 1.
  14. Department reviews post-offer criminal conviction background report.
    - a) If no issues identified go to Step 18.
    - b) If, based on information included on the criminal convictions report the Department is considering rescinding the conditional job offer, go to Step 15.
  15. Department consults with their Recruitment Analyst and completes assessment of criminal convictions to determine if any conviction is potentially disqualifying, based on nature and duties of position.
    - a) If based on this assessment the decision is made to proceed with hire, go to Step 18.
    - b) If based on this assessment the preliminary decision is to rescind the job offer due to criminal conviction history, go to Step 16.
  16. Human Resources notifies applicant of the preliminary decision to disqualify, providing 5 working days from date of notice to respond before the decision becomes final. If the applicant responds in writing within 5 working days that he/she disputes the accuracy of the conviction history report and is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.
  17. Department consults with their Recruitment Analyst, considers additional information submitted by the applicant, if any, and makes a final decision.
    - a) If the final decision is to proceed with hiring the individual, go to Step 18.
    - b) If the final decision is to rescind the job offer solely or in part because of the applicant's criminal conviction history, Human Resources will notify the applicant in writing of the final decision to withdraw the conditional offer. The notification will inform the applicant of the conviction(s) for which they were disqualified and their rights to appeal the decision.
  18. Department confirms medical clearance and provides formal job offer to applicant. If restrictions are identified, department engages in interactive process in accordance with the Disability and Reasonable Accommodation Policy.

## Attachment B – Description of Background Check Services

**PRE-OFFER** - The following checks, when appropriate, are conducted before a conditional job offer is made:

- **Bankruptcy Search:** Search of federal bankruptcy courts for all chapters of the federal bankruptcy code. Searches can be conducted where the individual has lived or worked in the past seven years, or on a nationwide basis.
  - *This check may be considered for executive and high level positions with responsibility for county finances.*
- **County Civil Litigation Report:** Civil litigation searches at the applicable county courts where the applicant has lived, worked, or was educated in the past seven years. Case types include complaints involving fraud, embezzlement, contract disputes, etc. Results do not include cases involving domestic issues (divorce, paternity, child custody) unless domestic violence is involved. Locations are determined from information reported in the SSN Trace as well as information provided on the application and resume.
  - *This check should be considered for executive and high level positions with responsibility for County finances and/or which require a high degree of public confidence. This might include department/agency heads and their direct reports, or managers with a substantial degree of autonomy in making financial, contractual, or policy decisions.*
- **Consent Based Social Security Verification:** This check verifies whether a name and Social Security Number (SSN) combination match the data in SSA's (Social Security Administration) records. A separate consent from the applicant will be required for this check.
  - *This check will be initiated by the consumer reporting agency if the "Social Security Trace and Address History" finds no record of the individual, or if discrepancies are identified.*
- **Consumer Credit Report:** Credit reports for employment purposes are prohibited in California, with eight exceptions for particular occupational positions. The eight occupational exceptions or "statutory basis" for credit checks are defined in Attachment C. The Credit Report includes a copy of the individual's credit report, which provides a snapshot of financial history, including information regarding delinquent accounts, accounts sent to collection, maximum credit limits available, court judgments, bankruptcies, and liens. It may also provide a list of recent inquiries made about an individual's credit.
  - *Credit checks may only be requested if the position meets one of the Attachment C definitions AND the need for an individual's credit history is determined to be job-related and consistent with business necessity.*
- **Driving Record:** Results report the current status of an individual's license, including traffic violations, failures to appear, and unpaid fines. This report should be requested pre-offer, however the pre-offer background report will only indicate the applicant's license status (active or inactive). If you submit a request for post-offer criminal convictions checks for the candidate, the full report, including any driving related convictions, will automatically be included with the post-offer report.
  - *This report should be requested for all positions which require driving on County business.*
- **Education Verification – Highest Degree:** Verification of degree obtained or highest level of education reported by applicant, including current enrollment. Results include verification of degree and major, date of award, and any claims of distinction or honors. Inconsistencies are highlighted.
  - *This verification should be requested when a specified level of education is required for the position, or when the applicant's stated level of education is a factor in the hiring decision.*
- **Federal Civil Litigation Search:** Civil litigation search at the applicable federal courts in those jurisdictions reported in the SSN trace for the previous seven to 10 years. Results may include valuable information regarding an individual's character, problems with previous employers or business associates, financial concerns, or a pattern of litigious behavior. The types of civil cases

heard in federal court include:

- Cases that deal with the constitutionality of a law;
  - Cases involving the laws and treaties of the U.S., such as with respect to securities law; employment; patents and copyright law; class actions involving of very large dollar amounts; violations of civil rights; and disputes between citizens of different states, when the amount in controversy exceeds \$75,000);
  - Cases involving ambassadors and public ministers;
  - Disputes between two or more states (diversity cases means when cases between citizens of different states and amount in controversy exceeds \$75K);
  - Admiralty law;
  - Cases involving violations of the habeas corpus law.
- *This check should be considered for executive and high level positions with responsibility for County finances and/or which require a high degree of public confidence. This might include department/agency heads and their direct reports, and managers with a substantial degree of autonomy in making financial, contractual, or policy decisions.*
- **Government Watch List:** Search of combinations of databases such as the Office of Foreign Assets Control (OFAC) Specially Designated Nationals (SDN) List, Bank of England Consolidated List, European Union Consolidated List, FBI Most Wanted Lists, and other international fraud and Politically Exposed Persons (PEP) databases.
    - *This search should be included in backgrounds for all positions for which conducting a criminal background check is job-related for the position in question and consistent with business necessity.*
  - **Medical Sanction Screening:** consists of verifying individual names and other identifying information against information obtained from over 55 federal and 46 state healthcare datasets. The information reported exceeds the U. S. Government minimum requirements for sanction screening as set forth in the DHHS-OIG's Compliance Program Guidance and is in compliance with Sections 1128, 1156 and 1892 of the Social Security Act. For a complete list of sources, please contact the consumer reporting agency.
    - *This search should be requested for applicants of positions in the healthcare field including counselors, dietitians, EMTs, home care providers, medical social workers, mental health counselors, nutritionists, nurses, occupational therapists, physicians, physician assistants, physical therapists, psychiatrists, psychologists, etc.*
  - **Professional License/Certificate Verification:** Search of applicable licensing or issuing body for confirmation of current status and disciplinary history of claimed or located license or membership.
    - *This report should be conducted when a professional license is required for the position, or when the applicant's stated possession of a professional license is relevant to the hiring decision.*
  - **Social Security Trace and Address History:** Confirmation of address history and social security number provided by applicant and the identification of jurisdictions for court searches. Results may provide additional names, jurisdictions, and other personal identifiers not disclosed by the applicant.
    - *This search is a required component of all background checks.*
  - **Tax Lien & Judgment Record:** Appropriate county level searches for paid and unpaid tax liens and judgments records in those jurisdictions reported in the SSN trace for the previous seven years. The recommended best practice is to consider all jurisdictions where the individual has lived and worked, or was educated in, for the past seven years.
    - *This search should be considered for executive and high level positions with responsibility for County finances and/or which require a high degree of public confidence. This might include department/agency heads and their direct reports, and managers with a substantial degree of autonomy in making financial, contractual, or policy decisions.*

**POST-OFFER** - In accordance with Government Code Section 12952, the following checks, when appropriate, may be conducted only after a conditional job offer has been accepted by the applicant:

- **County Criminal Conviction Records (Felony & Misdemeanor) – 7 Years:** Felony and misdemeanor searches for criminal convictions and pending prosecutions, through the respective county courts where the individual has lived, worked, or was educated in the past seven years. Locations are determined from information reported in the SSN Trace as well as information provided on the application and resume.
  - *This search should be included in backgrounds for all positions for which conducting a criminal background check is job-related for the position in question and consistent with business necessity.*
- **County Criminal Conviction Records (Felony & Misdemeanor) – 10 Years:** Post-offer felony and misdemeanor searches for criminal convictions and pending prosecutions, through the respective county courts where the individual has lived, worked, or was educated in the past ten years. California prohibits conducting this check until after a conditional job offer has been made. Locations are determined from information reported in the SSN Trace as well as information provided on the application and resume.
  - *This search must be requested for all positions for which obtaining criminal history beyond seven years is required by statute.*
- **Federal Criminal Records Search:** Felony and misdemeanor searches for criminal convictions and pending prosecutions, through the respective federal courts in those jurisdictions reported in the SSN trace for the previous seven to 10 years. Federal courts do not share or consolidate their information with each other or with the county courts. The types of criminal cases heard in federal court include:
  - Cases involving the laws and treaties of the U.S., such as RICO statutes, terrorism, bank robbery, international drug trafficking, mail fraud, crimes committed on federal property, human trafficking, espionage, and hate crimes;
  - Cases involving ambassadors and public ministers;
  - Admiralty law.

*This search should be included in backgrounds for all positions for which conducting a criminal background check is job-related for the position in question and consistent with business necessity.*
- **National Criminal Database Search:** Search of multi-jurisdictional database compiled from state and county criminal record databases. Sources include court records, incarceration records, prison/inmate records, probation/parole/release information, arrest data, and wants and warrants. This search should be considered a supplemental search and should not be considered as a replacement for a County-level inquiry.
  - *This search should be considered for executive and high level positions with responsibility for County finances and/or which require a high degree of public confidence. This might include department/agency heads and their direct reports, and managers with a substantial degree of autonomy in making financial, contractual, or policy decisions.*
- **National Sex Offender Search:** This is a national search of all registered adult sex offenders. Registration may be required for those convicted of crimes including criminal sexual misconduct in the first or second degree, criminal sexual misconduct with minors, or kidnapping.
  - *Under California Penal Code 290.4, this information may only be used to protect persons at risk. This search should be requested for applicants of positions that have unsupervised contact with vulnerable client populations, including the young, elderly, ill, etc.*
  - *Please note that employers are prohibited from using information obtained through a search of the Megan's Law database as a basis for employment decisions. If a sex offender search is appropriate for the position, please request the National Sex Offender search through the County's consumer reporting agency.*

## Attachment C - Statutory Basis for Credit Checks

[California Labor Code Section 1024.5](#) limits employment related credit checks to applicants of positions which meet specific criteria. Credit checks should only be requested when the position falls under the statutory basis defined below **AND** you can clearly demonstrate how the individual's credit history is a factor in the applicant's ability to perform the job duties. If you have any question as to whether a credit check is appropriate, please discuss with your Recruitment Analyst.

If it is determined that a credit check is appropriate for the position, applicants must be given a California Credit Report Disclosure which specifies the Statutory Basis for requesting the report.

### Statutory Basis Definitions:

- Sworn peace officers or other law enforcement positions.
- Positions within the State Department of Justice
- "Managerial" positions - For purposes of this law, a managerial position is defined as a position which meets the "Executive Exemption" test under the Fair Labor Standards Act (FLSA). This includes any position: (a) Whose duties and responsibilities involve the management of the enterprise or of a customarily recognized department or subdivision thereof; **and** (b) Who customarily and regularly directs the work of two or more other employees therein; **and** (c) Who has the authority to hire or fire other employees or whose recommendations influence the hiring, firing, advancement, or any other change of status of other employees; **and** (d) Who customarily and regularly exercises discretion and independent judgment; **and** (e) Who is primarily engaged in duties which meet the test of the exemption.
- Positions for which the information contained in the report is required by law to be disclosed or obtained.
- Positions that involve regular access to **all three of** the following types of information of any one person: (A) Bank or credit card account information; (B) Social Security Number; and (C) Date of birth.
- Positions in which the employee would be any of the following: (1) A named signatory on the employer's bank or credit card account; (2) Authorized to transfer money on the employer's behalf; **or** (3) Authorized to enter into financial transactions on the employer's behalf. Future issuance of a CalCard for general use within established procedures and limits does not, in and of itself, justify the use of a credit check for employment purposes.
- Positions that involve regular access to more than \$10,000 in cash during the workday.
- Positions that involve access to confidential or proprietary information that derives independent economic value, actual or potential, from not being generally known, such as "trade secrets".