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Date of ESU President's Approval: 30 September 2009

FSB 08022

Background Check Procedures

Date of First Reading: 21 April 2009

Date of Second Reading: 5 May 2009

Returned by Pres. Lane: 11 May 2009

Date of Second Reading: 15 September 2009

Senate Sponsor: Academic Affairs Committee
Dwight Moore, Chair of Academic Affairs

- I. **Purpose:** To establish the procedures for conducting background checks on potential employees
- II. **Previous Senate Action:** none
- III. **Rationale (optional):** This Faculty Senate Bill establishes the procedures for conducting background checks on potential employees. The Background Check Policy was approved by the President of ESU and subsequently by the Kansas Board of Regents. Given the lengthy process of changing the policy and with the understanding that the procedures can be changed without recourse to the Kansas Board of Regents, this bill would, when signed by the President of ESU, establish the procedures to be followed for conducting background checks.
- IV. **Guidance (optional):** This bill would be included in the collection of procedures that are established for the conducting of business at ESU.

FSB 08022

Background Check Procedures

The Office of Human Resources is ultimately responsible for appropriate background checks on candidates for employment and works with the hiring department to ensure verifications are performed and only appropriate job related criteria are considered in the hiring process.

1. The hiring department will submit Form A, *Request for Authorization to Fill Vacant Unclassified Position*, or the *Request to Fill a Classified Position*, and Position Description to Human Resources to initiate the hiring process.

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- 11 2. Human Resources will determine whether a criminal and other extended background checks
12 pursuant to law or University policy are required. The requirements will be identified in the
13 Position Description and advertisement for the position.
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- 15 3. The search committee will perform the initial screening process and make employment,
16 educational and reference checks. All other University employment processes will be followed,
17 including Equal Employment Opportunity responsibilities.
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- 19 4. Prior to on-campus interviews, the search committee will provide the candidate a consent to
20 perform a background check form that is obtained from Human Resources. The candidate may
21 return via post or in person the signed consent form prior to the end of the on-campus interview..
22 No background check or offer of employment shall be made prior to obtaining the signed
23 consent form. Completed forms will be remitted to the Office of Human Resources.
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- 25 5. After completion of the initial screening process, reference checks, and interviews the search
26 committee will forward its recommendations to the hiring authority.
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- 28 6. The hiring authority will select one finalist to make the offer for employment. Criminal and
29 any other required background checks will be performed on the finalist. An offer of employment
30 will be made in coordination with the Office of Human Resources and shall include notice of
31 their contingency on successful completion of background checks.
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- 33 7. Unless otherwise required by law or University policy, criminal and other extended
34 background checks will not be made on candidates who are not extended an offer of
35 employment.
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- 37 8. Employment may not begin until the University has received the results of the background
38 check and approved the candidate for hire.
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- 40 9. Background Check Clearance Decisions
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- 42 a. Classified positions: Human Resources shall be responsible for conducting the criminal
43 background, sex offender check, and other checks required to be performed by Human
44 Resources. The Director of Human Resources, or designee, shall provide a determination on the
45 successfulness of the background check. University legal counsel may be consulted to determine
46 the candidate's appropriateness for employment. The hiring authority will be notified of the
47 decision.
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- 49 b. Unclassified positions: Human Resources shall be responsible for conducting the criminal
50 background, sex offender check, and other checks required to be performed by Human
51 Resources. Results of background checks will be discussed among the Director, or designee, of
52 Human Resources and the Vice President of the hiring unit, or President, as appropriate.
53 University legal counsel may be consulted to determine the candidate's appropriateness for
54 employment.
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56 10. Legally required communications related to background checks, such as notice of preadverse
57 and adverse decision letters, will be sent to candidates from the Office of Human Resources.

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59 Determining the requirement to perform background checks:

60 1. Human Resources will make the determination based on a direct relationship to position duties
61 of whether a particular position requires a background check and the nature and scope of such
62 verification in conformity with University policy and legal requirements.

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64 2. All limited term positions of more than six months will be contingent upon a successful
65 criminal history check facilitated by the Office of Human Resources.

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67 a. Certain positions, including but not limited to, temporary positions, student hourly positions,
68 and limited term positions of less than six months are not subject to background checks, unless
69 the position duties require background verifications.

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71 b. International candidates: For candidates subject to this policy, if the candidate is living in the
72 U.S. at the time of the employment process, or has been in the U.S. for more than 30 days during
73 the last seven years, an U.S. background check will be performed in accordance with University
74 policy. If the candidate has not yet immigrated to the U.S. and has not been in the U.S. in the last
75 seven years, no U.S. background check is required.

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77 3. Extended verifications shall be made as required by law or University policy for specific
78 positions, including but not limited to those required for commercial driver's licenses.

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80 4. Credit history checks will be performed for candidates for senior administrators of the
81 university and for positions with extensive authority for committing financial resources and/or
82 direct access to cash, checks, property disbursements, or receipts, as determined by Human
83 Resources.

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85 Relevance of Information in Hiring Process:

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87 1. Criminal history information may be considered in the decision to hire an employee if it bears
88 on the candidate's trustworthiness, or the safety or well-being of the University's other
89 employees, students or university community. (K.S.A. 22-4710) ESU policy does not
90 automatically exclude from consideration for employment all individuals with criminal
91 convictions. As part of the determination to continue with the hire, the following factors will be
92 considered:

93 A. nature and seriousness of the offense,

94 B. the number of offenses,

95 C. relationship between the convictions and the position for which applied, and

96 D. accuracy of the information.

97 Final candidates will also be allowed to provide information regarding their criminal history
98 including but not limited to rehabilitation, character references, whether the individual is
99 currently subject to any punishment for the offense, whether the circumstances of the offense
100 arose out of an employment situation, length of time that has passed, and other mitigating

101 information. Candidates who provide false information forfeit their right to further consideration
102 or employment.

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104 2. Background information will be used only for the purpose of evaluating candidates for
105 employment in designated positions and shall in no way be used to discriminate on the basis of
106 age, race, color, religion, gender, marital status, national origin, handicap or disability, status as a
107 Vietnam Era Veteran, sexual orientation, or any other factors which cannot lawfully be
108 considered, to the extent specified by applicable federal and state laws.

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110 3. Other background information may be considered in the decision to hire if it directly relates to
111 the job duties of the position. Employment, education, and licensure requirements must be set
112 forth in the position description and job announcement to be considered.

113
114 4. Background credit check information may be considered for senior administrators of the
115 university and positions with extensive authority for committing financial resources and/or direct
116 access to cash, checks, property disbursements, or receipts, as determined by Human Resources.

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118 Fair Credit Reporting Act

119 1. Background credit check information may only be obtained and considered in conformity with
120 the Fair Credit Reporting Act.

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122 2. Initial notice of background checks shall be provided to candidates in connection with position
123 advertisements and application.

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125 3. The candidate will be provided with a Notification letter approved by Human Resources,
126 which lets the candidate know a background check will be conducted and any offer of
127 employment is conditioned on successful completion of such check. This letter will be provided
128 at the time the disclosure form is signed and should be accompanied by the "Summary of
129 Consumer Rights." A signed consent and disclosure form, approved by Human Resources,
130 giving permission for procurement of a background check shall be obtained from the candidate
131 prior to requesting a consumer credit report.

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133 4. If the candidate requests in writing clarification of the information to be required under the
134 background check, Human Resources will provide an accurate disclosure of the information
135 received within five date of receipt of the request or procurement of the background check
136 whichever is later.

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138 5. Results of background checks will be discussed among the Director, or designee of Human
139 Resources and the Vice President of the hiring unit or President, as appropriate. ~~Based on any~~
140 ~~pertinent information in a background check, a pre-adverse action letter must be sent to the~~
141 ~~candidate with signature required upon receipt.~~ If information from a background check may be
142 considered in an adverse employment action, a pre-adverse action letter must be sent to the
143 candidate with signature required upon receipt. The letter must contain a copy of the background
144 report and a copy of the "Summary of Consumer Rights". The pre-adverse letter will include
145 name, address, and telephone number of the reporting agency that furnished the report, a
146 statement that the consumer reporting agency did not make a decision to take an adverse action,

147 the consumer's right to a free credit report within 60 days, and the right to dispute the accuracy
148 of the report. The candidate has the option of responding to the pre-adverse letter and providing
149 additional information to the Office of Human Resources within three business days of receipt of
150 the pre-adverse letter. Within seven business days from receipt of the candidate's response, a
151 hiring decision will be made. If a negative hiring decision is made, the candidate will be notified
152 via an adverse action letter.

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154 6. Notice of any adverse action must not be included in the pre-adverse action letter and must be
155 transmitted in a separate communication.

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157 Background Check Records

158 1. The Director of Human Resources, or designee, is the custodian of background check records.

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160 2. Criminal history record information will not be made part of the candidate or employee's file
161 or communicated to any unauthorized person.

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163 3. Background check information will be held securely and confidentially, and not be made part
164 of the candidate or employee's file or communicated to any unauthorized person.

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166 4. The hiring authority is authorized to review background check information to the extent
167 required to make a hiring decision for the candidate relative to the position in question. All
168 background check information will be destroyed by Human Resources in conformity with
169 applicable laws and regulations.

Provide comments about this bill to your department's senator or to President Carol Russell at
crussell@emporia.edu.