

MANAGEMENT DIRECTIVE

Commonwealth of Pennsylvania Governor's Office

Subject:

Employment-Related Verification
and Background Checks

Number:

515.15 Amended

Date:

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By Direction of:

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Contact Agency:

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This directive establishes policy, responsibilities, and procedures for agencies to conduct employment-related verification and background checks. This revision includes updates to ensure compliance with Equal Employment Opportunity Commission (EEOC) Enforcement Guidance 915.002, the *Fair Credit Reporting Act*, and commonwealth implementation of the federal E-Verify Program. Marginal dots are excluded due to major changes.

- 1. PURPOSE.** To establish policy, responsibilities, and procedures for employment-related verification and background checks.
- 2. SCOPE.** Applies to all departments, boards, commissions, offices, and councils (hereinafter referred to as "agencies") under the Governor's jurisdiction for human resources management.
- 3. OBJECTIVES.** To ensure that all agencies conduct necessary employment-related verification and background checks in accordance with all applicable federal and state laws and regulations, as well as all commonwealth policies; to promote a safe work environment and to assist agencies in making prudent employment decisions based upon comprehensive job-related information; and to assist agencies in hiring qualified candidates who are authorized to work, while ensuring access to employment for former offenders and promoting the commonwealth as an equal opportunity employer.

4. DEFINITIONS.

- a. **Candidate.** An applicant who meets the minimum qualifications and eligibility criteria for a position, and who receives consideration for employment by the hiring agency.
- b. **Consumer Reporting Agency.** A company that collects information from various sources and provides consumer reporting information on individual consumers for a variety of uses in accordance with the federal *Fair Credit Reporting Act* (FCRA).
- c. **Consumer Reporting Information.** 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 purposes, including internal employment action. This information can include, but is not limited to, criminal history checks, credit checks, education verification, employment history verification, and use of social media.
- d. **E-Verify.** An internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) with the Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA), which compares information from an employee's Form I-9, Employment Eligibility Verification, to data from DHS and SSA records to verify employment eligibility.
- e. **Final Candidate.** A candidate still under consideration for hire following the interview process, who is subject to successful verification and background screening in accordance with this policy.
- f. **Official Personnel Folder (OPF).** The hard copy or electronic (e-OPF) repository of employee information, which includes permanent employee information and temporary employee information that documents the employment work record.
- g. **Senior Level Positions.** Positions requiring special approval prior to appointment in accordance with *Management Directive 515.16, Appointment to Senior Level Positions*.

5. POLICY.

- a. **General.**
 - (1) In order to promote a qualified workforce and to ensure a safe and secure work environment, agencies are to verify a candidate's identification, licensure, education, employment eligibility, state tax compliance, prior employment and prior military service, as well as conduct appropriate criminal and credit background checks as applicable on final candidates selected for initial commonwealth employment, reemployment,

and promotion/demotion/reassignment as set forth in this directive.

- (2) Prior to selecting a final candidate for employment, the agency is to ensure that all appropriate and required pre-employment verification and background checks have been completed and are in accordance with applicable laws and commonwealth policies.
- (3) Information received as a result of pre-employment verification and background checks should be maintained in accordance with *Management Directive 505.18, Maintenance, Access, and Release of Employee Information*. Pre-employment verification and background check information received on candidates who are not selected for employment should be maintained for three years and then purged.

b. Criminal History.

- (1) Agencies may collect criminal history information during the application process if the position being filled has responsibilities that include the safeguarding or security of people or property, law enforcement, or contact with vulnerable populations; or, if a criminal conviction would make an applicant ineligible under law. For all other positions, criminal history information should only be collected from final candidates after the initial interview as part of a criminal history record check.
- (2) Agencies must ensure that criminal history information disclosed by a candidate or obtained through a criminal history record check is thoroughly reviewed to determine whether the criminal history includes criminal convictions that are related to the duties of the position for which a candidate is being considered (job relatedness). If federal or state law precludes the hiring of individuals with certain criminal convictions, agencies shall continue to comply with the law.

Note: Although arrests may appear in a criminal history report, an arrest that did not result in conviction should not be considered a "criminal history record" for purposes of commonwealth policy.

- (3) The review for job relatedness should include consideration of the following: the nature and severity of the criminal offense; the length of time that has passed since the occurrence of the offense and conviction, as well as the completion of any sentence (including payment of fines and costs as well as completion of parole/probation); and the relationship between the criminal offense and the job at issue, including an analysis of:
 - (a) the nature of the job duties;

- (b) the essential functions of the job;
 - (c) the circumstances under which the job is performed;
and
 - (d) the environment in which the job is performed.
- (4) If, after the review, the agency determines the candidate's criminal record makes the candidate unsuitable for the position, the candidate should be informed of the determination and given an opportunity to respond to the concerns. Any response provided by the candidate should be taken into consideration as to whether the response dispels the agency's concerns regarding the criminal record. If the candidate does not respond to the agency, the agency should make its employment decision with the information at hand.
- (5) If a candidate with a criminal record or pending criminal charges is being considered for employment, approval from the Office of Administration (OA), Office for Human Resources and Management (HRM) must be obtained prior to final selection unless an agency has been granted decentralized approval authority by OA.
- (6) On a recurring basis, OA will coordinate a criminal conviction and arrest cross-match of all commonwealth employees using criminal history information provided by the Pennsylvania State Police (PSP) and the Pennsylvania Justice Network (JNET). OA will provide the resulting data to agencies to review and take appropriate action in accordance with commonwealth policy.

c. Consumer Reporting Information.

- (1) Agencies that review consumer reporting information on candidates for employment must ensure that these checks are necessary to determine a candidate's qualifications for the position and that any employment decision based on information from a consumer report is job-related.
- (2) Agencies must also ensure that any employment-related consumer reporting checks comply with the requirements of state and federal law, including the federal *Fair Credit Reporting Act* (FCRA), 15 U.S.C. § 1681 et seq. The FCRA sets forth certain requirements that employers must meet **before** obtaining consumer reports on candidates and, once met, [certain additional requirements that must be met](#) **before** taking any adverse employment action, including a decision to not hire a candidate, based in whole or in part on a consumer report.

d. State Tax Compliance.

- (1) Prior to appointing a final candidate for initial employment or re-employment with the commonwealth, agencies must verify that the candidate is compliant with all state tax obligations, as confirmed by the Department of Revenue. While this is not a bar from employment, the Department of Revenue has the authority to pursue wage garnishment for those individuals who do not take the steps to pay any outstanding tax liability.
- (2) On a recurring basis, OA and the Department of Revenue will coordinate a tax clearance cross-match of all commonwealth employees to ensure continued compliance with state tax obligations.

e. Verification of Employment Eligibility under IRCA.

- (1) The *Immigration Reform and Control Act of 1986* (IRCA), 8 U.S.C. §§ 1324a-1324b, makes it unlawful to hire, recruit, or refer for a fee unauthorized aliens. For the commonwealth to meet IRCA requirements, appointing agencies must verify each employee's identity and authorization to work in the U.S. for salaried and wage, classified and unclassified service positions, and for full or part-time employment.
- (2) The commonwealth uses the online federal E-Verify system to verify employment eligibility for all new hires, rehires, and returns from furlough in agencies supported by the Human Resources Service Center (HRSC).

f. Employment and Education Verification.

- (1) Employment history verification should include companies worked for, job titles held, and dates of employment to confirm the experience necessary to qualify the candidate for the position.
- (2) Education verification should ensure that the candidate has achieved the educational requirements necessary for the position.

6. RESPONSIBILITIES.

a. Agency Heads shall:

- (1) Ensure that necessary procedures and safeguards are implemented in accordance with this directive.
- (2) If they have been granted such authority by OA, review and approve/deny requests to appoint candidates with criminal records in accordance with an approved decentralized approval plan.

- b. Human Resources (HR) Staff Supporting the Appointing Authority** shall:
- (1) Ensure that candidate screening, interview, selection, employment-related verification, and background checks are completed in accordance with all applicable federal and state laws and regulations, as well as all commonwealth policies.
 - (2) Ensure that all information collected during the employment-related verification and background process is secured, maintained, and purged in accordance with all applicable federal and state laws and regulations, as well as all commonwealth policies.
 - (3) Implement necessary special requirements and/or conditions of employment above and beyond those stipulated on an enterprise basis by the Executive Board, where appropriate, and ensure that employment-related verification and background check processes are in place to ensure compliance with such requirements/conditions.
 - (4) Ensure that the Form I-9 is completed timely and maintained for all employees, as required.
- c. OA, Human Resources and Management** shall:
- (1) Review and approve/deny requests to appoint candidates with criminal records for agencies where decentralized approval has not been granted.
 - (2) Notify agencies of employee criminal history data and arrests.
- d. OA, Secretary of Administration** shall review and approve/deny agency decentralized approval plans to appoint candidates with criminal records.
- e. OA, Integrated Enterprise Systems (IES)** shall securely transmit employee data to the Department of Revenue and PSP, Records and Identification Division to support employment-related verification and background check processes.
- f. Department of Revenue** shall:
- (1) Provide an intranet site for State Tax Compliance checks.
 - (2) Notify employees who are found to be out of compliance during the recurring tax clearance cross-match.
- g. PSP, Records and Identification Division**, shall provide criminal history data to OA and the State Civil Service Commission (SCSC).

- h. HRSC shall:**
 - (1) Transmit Form I-9 information to E-Verify.
 - (2) Monitor the timely completion of I-9 Forms and notify HR staff supporting the appointing authority when non-compliant issues are identified.
 - (3) Notify HR staff supporting the appointment authority when a tentative non-confirmation of eligibility to work in the U.S. is received to resolve the issue.
 - (4) Audit E-Verify results to ensure that the process is completed in accordance with the Memorandum of Understanding.
- i. Office of Inspector General (OIG) shall conduct comprehensive background checks on final candidates for the following senior level positions:**
 - (1) All professional positions within an agency executive office, including agency heads, deputy secretaries, executive and special assistants.
 - (2) All Governor's Office staff (including Office of General Counsel).
 - (3) Agency Policy Press and Legislative Director positions.
 - (4) Other positions upon request.

7. PROCEDURES.

- a.** When assessing potential candidates for a vacancy, HR staff supporting the appointing authority should evaluate work experience, education, and training in accordance with standard hiring procedures in order to remove non-qualified applicants from consideration. In cases where a position necessitates special requirements, such as professional licenses or certifications, or where state or federal law, or commonwealth policy, prohibits the appointment of individuals with specific criminal backgrounds, HR staff supporting the appointing authority may screen for these special requirements or criminal history prior to the interview and selection process.

- b.** Following the interview process and prior to final selection, agencies will secure from final candidates the following information (applies to all final candidates for initial employment or re-employment to an agency covered by this policy; for final candidates who are transferring between covered agencies or changing positions within an agency, HR staff supporting the appointing authority should screen for suitability unless they are satisfied that they possess sufficient information to assess the candidate without further verification):
- (1)** References, for the purpose of employment and education verification.
 - (a)** Interviewing officials must obtain from a candidate as many references as necessary in order to secure two or more contacts who are able to verify the candidate's work experience and educational background as directly relates to the position. In order to cultivate diverse sources of information, officials should request a mixture of current/previous supervisors, colleagues, or other individuals who may be able to provide relevant information on the candidate's suitability for employment.
 - (b)** Members of a candidate's family cannot be used as references.
 - (c)** Appointing agencies should attempt to verify information presented by a candidate in application materials or during the interview process. Where minimum job requirements warrant, additional information should be requested from references. Further, questions seeking evaluative information relating to a candidate's attendance or work performance may be asked.
 - (2)** Employment verifications are done to confirm that the employment information provided by candidates on an application, resume, and/or during the interview is accurate. Employment history should include the entity worked for, job titles held, the dates of employment, and whatever information is necessary to confirm the candidate possesses the requisite experience necessary for the position.
 - (3)** Education verifications are done to confirm the educational achievement that was used to determine eligibility for the position.
 - (4)** If required for the position, professional licensure verifications are done to confirm all professional licenses, titles, and certification from a primary source for verification of credentials, such as the licensing entity, and review any discipline referenced by the source.

- (5)** Criminal history information and pending criminal charges, including evaluative information, for the purpose of reviewing for job relatedness in accordance with paragraph 5.b.(3) of this directive.

 - (a)** HR staff supporting the appointing authority should, at a minimum, obtain a PSP background check for purposes of identifying criminal convictions and pending criminal charges in Pennsylvania. Appointing authorities should utilize other background check resources, such as Federal Bureau of Investigation (FBI), OIG, or court records, when warranted.
 - (b)** Unless otherwise required, appointing authorities should be instructed not to consider convictions for summary offenses, minor traffic violations, offenses adjudicated in juvenile court or under a youth offender law, and convictions which have been annulled, expunged, pardoned, or otherwise erased from the official record (such as through successful completion of an Accelerated Rehabilitative Disposition or other diversionary program) as part of the hiring decision.
 - (c)** If an appointing authority becomes aware of pending criminal charges or criminal convictions, the candidate should be asked to provide an explanation and be given an opportunity to provide evaluative information on these charges/convictions. If the candidate challenges the accuracy of the criminal information, the appointing agency should make an effort to determine the validity of the information at the source.
 - (d)** Appointing agencies should confirm whether or not the candidate served and completed all conditions of an imposed sentence, including but not limited to the payment of fines/costs/fees and completion of probation or parole. If the candidate is currently on probation or parole, the probation or parole officer must be contacted.
- c.** When evaluating candidates who are current or former commonwealth employees, HR staff supporting the appointing authority should review OPFs.

 - (1)** Access e-OPF documents, SAP HR and Payroll module master data, or legacy employment history information from the Integrated Personnel Payroll System (IPPS) can be requested by contacting the HRSC. For current employees, approval must be obtained from the HR staff supporting the candidate's current agency prior to requesting e-OPF access from the HRSC.

- (2) With regard to former employees, hard copy OPF documents that were archived prior to e-OPF implementation may be requested from the State Records Center.
- d. When warranted by job duties, HR staff supporting the appointing authority should review a final candidate's consumer reporting information in accordance with paragraph 5.c.(1) of this directive.
 - (1) Consumer reporting information is to be held in strict confidence and maintained in a manner that is secure against unauthorized third-party access, in accordance with *Management Directive 505.18, Maintenance, Access, and Release of Employee Information*.
 - (2) Prior to taking an adverse action against a candidate based, in whole or in part, on information contained in a consumer report, the appointing agency will provide to the candidate a copy of the credit report, as well as a Pre-Adverse Action Notice letter and [a written description of the candidate's rights](#) in accordance with FCRA.
 - (3) Following the completion of procedure 7.d.(2), if the appointing authority still intends to take an adverse action, it will provide to the candidate an Adverse Action Notice letter in accordance with FCRA.
- e. When conducting employment verification and background checks on final candidates for bureau director or equivalent positions, appointing agencies:
 - (1) Must review a PSP criminal history report and check both the [PSP Megan's Law website](#) and the [U.S. Department of Justice National Sex Offender Public Website](#). In cases where a final candidate has resided out of state, additional sources may be used (e.g., court records).
 - (2) Must receive proof of educational achievement, such as transcripts or a diploma(s), to confirm the educational achievement that was used to determine eligibility for the position.
 - (3) May use additional resources, such as the Federal PACER service or consumer reporting agency products such as LexisNexis to gather additional job-related information.

- f. Following the satisfactory completion of all required verification and background checks, the appointing agency should initiate established appointment procedures. Prior to authorizing the extension of a formal job offer to a final candidate, HR staff supporting the appointing authority will:
- (1) Confirm all professional licenses, titles and certifications from a primary source for verification of credentials, such as the licensing entity, and review any discipline referenced by the source.
 - (2) Review the candidate's state tax filings via the Department of Revenue, in accordance with paragraph 5.d.(1).
 - (3) Obtain senior level approval in accordance with *Management Directive 515.16, Appointment to Senior Level Positions*, when filling a senior level position.
 - (4) Obtain specific approval to appoint an individual with a criminal record, either via an OA-approved agency process or from OA, HRM via the electronic OA Approval to Appoint intranet application, if a candidate has disclosed or an agency has confirmed any criminal history.
 - (5) Confirm that complement authorization has been granted, in accordance with *Management Directive 505.2, Salaried Complement Management and Control*, and *Management Directive 505.20, Wage Complement Management and Control*.
 - (6) Solicit and review supplementary employment requests in accordance with *Management Directive 515.18, Supplementary Employment*.
 - (7) Confirm that all collective bargaining, classified service, or equal opportunity requirements have been met, and that the final selection is in accordance with all applicable federal and state laws and regulations, as well as all commonwealth policies.
- g. If concerns remain about a final candidate for a classified service position following the completion of employment-related verification and background checks, the appointing agency should:
- (1) **For Serious Concerns.** Formally petition SCSC to remove the candidate's name from the pertinent certification of eligible or eligible list. [Form SCSC-5275, Request for Removal of Eligible](#), should be used for this purpose. Examples of serious concerns may include the following: confirmation cannot be obtained on required educational background, work experience, or professional license; the nature and severity of a criminal conviction and underlying offense is such that it would make the candidate unsuitable for employment in this job; or the

candidate was previously terminated from a commonwealth position for cause directly related to the job.

- (2) For Less Serious Concerns.** Pass over the candidate consistent with provisions of the *Civil Service Act* and veterans' preference.
- h.** If concerns remain about a final candidate for an unclassified service position following the completion of employment-related verification and background checks, the appointing agency should contact OA, Bureau of Talent Acquisition for further direction or additional candidates.
- i.** After a final candidate is appointed, any suspicion or belief that false, material information was submitted on, or in connection with, an application for employment should be investigated by the appointing agency. Once the investigation is completed, the agency should take appropriate action, which may include disciplinary action up to and including termination, as well as referral to appropriate authorities for purposes of criminal prosecution. If an agency finds evidence that an individual falsified an official SCSC document, the agency should notify SCSC.
- j.** If the decision not to hire a candidate is based in whole or in part on criminal history record information, the appointing agency should provide written notification to the candidate in accordance with the *Criminal History Record Information Act, 18 Pa. C.S. § 9125*.
- k.** Once a final candidate is appointed, the appointing agency must verify the employee's eligibility to work in the U.S. by way of the following:

 - (1)** All new hires, rehires, and returns from furlough must complete Section 1 of [Form I-9, Employment Eligibility Verification](#) (Form I-9) no later than the first day of employment. The Form I-9 process cannot start until after the candidate has been offered the job and has accepted the job offer.
 - (2)** Appointing agencies must fully complete Section 2 of [Form I-9](#) within three business days from the employee's first day of work for pay. For example, if the employee's first day of work is on Monday, Section 2 must be completed by Thursday of that week. The HRSC will contact HR staff supporting the appointing authority if the I-9 is not completed within three business days.
 - (3)** Employees must present the appointing agency with documentation establishing their identity and employment eligibility, in accordance with the acceptable document list on [Form I-9](#).
 - (4)** Appointing agencies must physically examine the documentation presented by the employee and log required information, including document identification numbers and

issuing authority (such as county, state, or federal department) in the appropriate spaces on [Form I-9](#), Section 2.

- (5) Once Form I-9 is completed by the agency, the agency will forward the I-9 form to the HRSC, and the HRSC will transmit the information to DHS through E-Verify to verify whether the employee is eligible for employment. For those situations where employment is not authorized, the HRSC will initiate the tentative non-confirmation process and will work directly with the HR staff supporting the appointing authority to resolve the situation.
- (6) If, at any point, an employee is unable to present a required document (or documents), the employee can present an acceptable receipt in lieu of a document from the List of Acceptable Documents. The types of acceptable receipts are described on the [Form I-9](#) in the Section 2 instructions. Other receipts, including receipts showing that a person has applied for an initial grant of employment authorization or for renewal of employment authorization, are not acceptable.
- (7) Employees who are unable to meet acceptable documentation requirements must be separated from employment.
- (8) Documents which contain expiration dates for aliens lawfully admitted and authorized by USCIS to work in the U.S. must be re-verified prior to expiration. Re-verification only applies if one or more List A or List C documents presented in Section 2 expire. For re-verification, an employee must present unexpired documents from either List A or List C showing he or she is still authorized to work.
 - (a) Documents provided by U.S. citizens, noncitizen nationals, or permanent residents who presented a Permanent Residence Card (Form I-551) should not be re-verified.
 - (b) List B documents should not be re-verified.

Note: The HRSC will monitor the expiration dates of documents that need to be re-verified and will contact the HR staff supporting the appointing authority to initiate the re-verification process.
- (9) An agency is not required to re-verify an employee's employment eligibility if the employee is continuing employment. Continuing employment includes, but is not limited to, situations where:
 - (a) The employee takes paid or unpaid leave approved by the agency.

- (b) The employee is promoted, demoted, or receives a pay raise.
 - (c) The employee is on strike or otherwise off the job in a labor dispute.
 - (d) The employee is reinstated by a court, arbitrator, or other administrative body.
 - (e) The employee transfers internally or between agencies. The losing agency shall transfer the employee's [Form I-9](#) to the gaining agency via the OPF.
 - (f) The employee continues employment with a successor agency, provided that the successor agency obtains and maintains [Form I-9](#).
- (10) Agencies must retain an employee's completed Form I-9 for as long as the employee works for the commonwealth. Once employment is terminated, [Form I-9](#) must be retained in the employee's OPF by appointing agencies, consistent with *Management Directive 505.18, Maintenance, Access, and Release of Employee Information*, for three years after the date of hire or one year after the date the individual's employment is terminated, whichever is later.
- (11) Individuals transferring from agencies, commissions, and legislative or judicial entities not under the Governor's jurisdiction must complete Section 1 and the appointing agencies must complete Section 2 of [Form I-9](#) ONLY if there is not a completed form in the OPF. Once completed, the form must be retained in the OPF.
- (12) [Form I-9](#) must be completed for Board members who receive statutory salary or payment on a per diem basis. [Form I-9](#) is not required for Board members who receive reimbursement for expenses only (e.g., travel and subsistence).
- (13) [Form I-9](#) must be completed for all persons hired on or after November 6, 1986, and who continue to be employed. If there is no Form I-9 in the OPF for an employee hired on or after November 6, 1986, a form must be completed and placed in the OPF. However, the I-9 should not be forwarded to the HRSC for e-Verification because the employee was hired prior to the date the E-Verify Memorandum of Understanding was signed by the commonwealth.

This directive replaces, in its entirety, *Management Directive 515.15*, dated September 6, 2017.