

Background Check

Purpose

To manage and reduce TRS' exposure to risk, including fraud or theft, and to maintain a safe workplace by ensuring that all persons with access to TRS facilities and information resources are subject to an appropriate employment eligibility verification and criminal background check (CBC).

Applies To

- TRS employees
- applicants for employment
- non-TRS workers (contract workers, unpaid interns and volunteers as defined in the non-TRS-Worker policy) who are to have one or both of:
 - TRS user ID and password;
 - unlimited security badge access for any length of time, or restricted security badge access lasting more than 14 calendar days.

NOTE: Exceptions given for non-TRS workers are listed below in the Does Not Apply To section.

Does Not Apply To

- visitors (including plan participants or members, job interviewees, board-meeting attendees and participants, and the general public)
- delivery, pickup and vending service providers (e.g., FedEx, UPS, vending-machine services, and food delivery)
- employees of contracted administrators of TRS programs who provide services on behalf of TRS but do not have security badge access and will not be granted a TRS user ID and password
- state and other government employees on official business

NOTE: The above persons are still subject to the established procedures for security check-in for non-employees (e.g., TDL registration).

Definitions

Criminal background check (CBC): a Criminal History Record Information Check. This includes a fingerprint check conducted through the Texas Department of Public Safety (DPS) or another law enforcement agency to obtain a criminal history record information check with the Federal Bureau of Investigation (FBI).

Employment eligibility verification: a confirmation that the employee or contract worker is eligible to work in the United States and that must include:

- Social Security Number verification;
- verification of immigration status, including valid Form I-9 where applicable (Note: TRS expressly prohibits any contractor from employing any person on TRS premises who does not have valid authorization to work in the United States); and
- verification of employment eligibility through the U.S. Department of Homeland Security's E-Verify system (<http://www.uscis.gov/e-verify>) for all TRS employees and contract workers for whom an E-Verify check is allowed per E-Verify rules.

General Statement

TRS is authorized to conduct employment eligibility verification and criminal background checks on TRS employees, applicants for TRS employment, and non-TRS workers. These background checks may be required in order to continue employment at TRS or prior to receiving an offer for employment from TRS or beginning as a non-TRS worker.

TRS does not employ any person who does not have valid authorization to work in the United States and expressly prohibits any contractor from employing any person on TRS premises who does not have valid authorization to work in the United States.

Although individuals with a criminal history are not automatically barred from employment or contracting with TRS, TRS will consider the information when making a hiring decision, when allowing access to TRS resources and facilities, and when evaluating the use of a non-TRS worker's services.

The fact that an individual has been arrested is not proof that he or she engaged in criminal conduct. An individual's arrest record alone may not be used to take action against that individual, although TRS will consider whether the underlying conduct justifies an employment decision or other personnel action.

E-Verify Employment Eligibility

TRS will use the U.S Department of Homeland Security's E-Verify system to verify the employment eligibility of all individuals newly hired to TRS.

Conducting Criminal Background Checks on Employees and Applicants

TRS will conduct a CBC on final candidates, including internal candidates, selected to fill a position. A new CBC will not be required for a current employee who previously had a fingerprint check conducted by TRS after June 1, 2015. A former employee, former applicant, or Non-TRS worker is subject to a CBC in the same manner as other external candidates, unless they were previously fingerprinted by TRS and their information can be accessed through the DPS and FBI systems.

Information obtained through the CBC may affect a current employee's eligibility to obtain a new position, retain their current position, or both, depending on the relevance of the information obtained to the employment.

NOTE: From the time an individual is fingerprinted, DPS may take three weeks or more to complete an out-of-state CBC and report the results to TRS. If an out-of-state CBC is taking longer than three weeks, the Chief Organizational Excellence Officer (or designee) will consult with the hiring manager to determine an alternative solution.

To conduct a CBC on any other individual, the relevant chief officer or department director must consult with the Chief Organizational Excellence Officer (or designee). The Chief Organizational Excellence Officer (or designee) will review the information and make a recommendation to the Executive Director. The Executive Director must approve the additional CBC.

The Executive Director may require CBCs on any and all current employees at any time.

Conducting Background Checks on Non-TRS Workers

All contractors must verify the employment eligibility of all individuals assigned to perform work for TRS. Contractors must use the U.S Department of Homeland Security's E-Verify system to verify the employment eligibility, except when prohibited by E-Verify rules. Misrepresentation of employment eligibility may result in termination of the non-TRS worker's ability to perform work for TRS.

Non-TRS workers who will be issued a TRS user ID and password, a facilities access badge, or both, are required to have CBC as defined in this policy. For all other non-TRS workers, CBC may be required depending on the level of access to TRS resources and facilities that is required to perform the services. To evaluate the need for a CBC, contract sponsors must consult with the TRS contract worker coordinator prior to authorization of a non-TRS worker's access to information resources or TRS premises. Organizational Excellence will consider factors such as:

- duration of assignment, including time on premises;
- extent of access to information resources, facilities, TRS employees, and other TRS resources;
- nature of services provided; and
- other protections outlined in the contract.

When a CBC is required on a contract worker, TRS will conduct the CBC, subject to reimbursement of fees from the contractor in accordance with contract terms.

Any criminal history information will be handled in accordance with this policy.

NOTE: From the time an individual is fingerprinted, DPS may take three weeks or more to complete an out-of-state criminal CBC and report the results to TRS. If an out-of-state CBC is taking longer than three weeks, the Chief Organizational Excellence Officer (or designee) will consult with the contract sponsor to determine an alternative solution.

For unpaid interns and volunteers, TRS Organizational Excellence will conduct the CBCs and will determine if reimbursement for the CBC is appropriate.

The Executive Director may require a CBC on any non-TRS worker at any time.

Exceptions for Emergency Circumstances

An exception for emergency circumstances may be permitted when unforeseen events or circumstances arise that threaten or significantly impact TRS business operations or the health, safety, or welfare of TRS employees. In emergency circumstances, the Chief Organizational Excellence Officer may allow a short-term (not to exceed two business days) exception to this policy. The relevant chief officer (or designee) may authorize the work to begin and will notify the Chief Organizational Excellence Officer (or designee) as soon as possible. The Chief Organizational Excellence Officer (or designee), with executive director concurrence, must provide authorization for any additional extensions beyond two business days.

The chief officer seeking authorization of an exception to this policy must obtain written approval from the Chief Organizational Excellence Officer, with Executive Director concurrence.

International CBC Requirements

The following individuals require an international CBC:

- U.S. citizens who have continuously worked outside the United States for longer than six months within the last seven years must have a domestic CBC as well as a CBC conducted in the country or countries where the work was performed.
- Foreign nationals inside the United States must have a domestic CBC as well as a CBC conducted in their country of origin, unless they have resided continuously in the United States for the last seven years.
- Foreign nationals performing work for TRS while residing outside the United States must have a CBC performed in their country of origin and a CBC conducted in the country where the work is to be performed (if different).

For TRS employees, unpaid interns and volunteers, TRS Organizational Excellence will conduct the international CBC directly or through appropriate intermediaries.

For contract workers, international CBCs are the responsibility of the contractor. International CBC requirements include:

- checks for crimes and offenses comparable to misdemeanors and felonies in the United States at the national criminal register level (e.g., Ministry of Justice or Ministry of Interior), the district, city police, and court levels, or equivalent checks; and
- global terror and sanctions lists (e.g., FBI Most Wanted and Terrorist List, Office of Foreign Asset Control Lists, and Interpol Most Wanted List).

International CBCs must comply with criminal background check laws in the country or countries where the information is being sought. If a country prohibits or restricts access to CBC information, the contract worker under consideration may not be eligible for assignment with TRS. Final determinations of whether non-TRS workers are eligible for assignment with TRS will be made by the Executive Director.

Criminal Offenses That May Disqualify an Individual

TRS will determine on a case-by-case basis whether an individual's criminal history disqualifies him or her for employment by or assignment to TRS.

If a CBC reveals that an individual has a criminal history, the Chief Organizational Excellence Officer will consult with the Deputy Executive Director and Legal & Compliance to determine whether any arrest or conviction, or a pattern of arrests or convictions (or both), disqualifies the individual for employment or assignment to TRS. When appropriate, the relevant chief officer or department director will be consulted.

When determining whether the criminal history disqualifies the individual, TRS may consider the:

- nature and seriousness of the arrests or convictions and the related offense or offenses;
- relationship between the specific duties of the position and the nature and seriousness of the arrests or convictions and the related offenses;
- number of arrests or convictions of the individual;
- length of time that has passed since the arrests or convictions or their equivalents, such as indictments or charges;
- individual's effort at rehabilitation;
- individual's employment history; and
- accuracy and credibility of the information on the individual's employment application, if applicable.

Additional factors relevant to a particular situation may be considered in making a determination.

Pending Criminal Matters

TRS reserves the right to make an employment decision or to take corrective action, up to and including termination, prior to the final disposition of a criminal matter. TRS may exercise its discretion, in accordance with all relevant federal and state laws, in determining whether a conviction is final for the purpose of this policy.

At the discretion of the Executive Director, a current employee may be:

- temporarily reassigned to another area until the matter is resolved; or
- temporarily removed from the workplace, with or without pay.

TRS reserves the right to disqualify or discontinue the use of any non-TRS worker prior to the final disposition.

Self-Reporting Requirement for Employees, Unpaid Interns and Volunteers

Employees, unpaid interns, and volunteers are required to self-report to the Chief Organizational Excellence Officer within two business days after any arrests (including citation with release); indictments; adjudications of guilt; pleas of guilty or nolo contendere; assessments of probation,

pretrial diversions, or community supervision or deferred adjudications for any criminal offenses; or dismissals, acquittals, or similar final outcomes that do not involve pleas of guilty or nolo contendere. These individuals do not need to report a misdemeanor traffic violation unless the incident also involves a felony, driving under the influence, driving while intoxicated, or an offense punishable by confinement.

Questions about whether an offense is reportable should be directed to the Chief Organizational Excellence Officer.

Employees, unpaid interns and volunteers will self-report by completing form *PER11 - Criminal Offense Self-Reporting for Employees, Unpaid Interns, and Volunteers* and providing it to the Chief Organizational Excellence Officer. New hires will complete form *PER10 - Notice of Criminal Offense Self-Reporting Requirement for Employees, Unpaid Interns, and Volunteers* during new employee orientation.

For employees, failure to self-report may result in corrective action, up to and including termination of employment. For unpaid interns and volunteers, failure to report may result in their being barred from performing services for TRS.

TRS is an authorized user of the Criminal Justice (CJ) Rap Back Program of Texas. This electronic subscription and notification system provides TRS with new arrest or criminal activity on employees and non-TRS workers who have been fingerprinted through the TRS onboarding process. The notification system is active until records are inactivated. Inactivation occurs within 72 hours of termination of employment, end of a contract, or other authorized purposes.

Contractor Disclosure Requirement

In the event that an employee of a contractor or subcontractor assigned to TRS is arrested, convicted, or indicted of a criminal offense, the contractor shall inform the TRS Chief Organizational Excellence Officer as soon as possible as to all relevant facts and circumstances surrounding the charge or indictment. After full disclosure, TRS will determine if the charge or indictment should prevent the individual from continuing their TRS assignment. If the contractor decides to remove the contract worker from assignment at TRS before consulting with TRS, the contractor must still provide the TRS Chief Organizational Excellence Officer with the information as to the facts and circumstances surrounding the charge or indictment of the contractor's employee.

Disposition of Arrest or Indictment for Employees

An employee who has an arrest, citation, indictment, or charge that is subject to disclosure under this policy must notify the Chief Organizational Excellence Officer of the final disposition. This notification must occur within five business days after an acquittal, conviction, or plea of guilty or nolo contendere. The employee must provide Organizational Excellence with a certified copy of the final order or judgment, including any deferred adjudication or any judgment imposing sentence or probation. The Chief Organizational Excellence Officer will notify the Deputy Executive Director and Legal & Compliance of the final disposition as reported. When appropriate, the relevant chief officer or department director will be notified.

If the employee fails to provide Organizational Excellence with the required documentation of the final disposition, including conviction, of a criminal matter within five business days, the Chief Organizational Excellence Officer will consult with the Deputy Executive Director and Legal & Compliance to determine the action to be taken. When appropriate, the relevant chief officer or department director will be consulted. If the employee has been reassigned or removed from the workplace pending adjudication or disposition, the employee may be returned to their position, if appropriate under the circumstances, as determined by the Chief Organizational Excellence Officer in consultation with the relevant chief officer or department director.

Criminal Background Check Information Is Confidential

Criminal history information shall not be released or disclosed to others, unless authorized or required by law.

Corrective Action

Employees

Violation of this policy may be grounds for corrective action, up to and including termination of employment.

Non-TRS Workers

Violation of this policy may result in notification to the contractor that the contract worker may no longer provide services to TRS or in termination of an internship, as applicable.

This policy does not constitute a contract, a promise or guarantee of employment, or a guarantee of access to TRS premises or information resources, as applicable, and may be modified, superseded, or eliminated by TRS without notice to the employee.