



## Employment Related Background Check Policy

### I. PURPOSE

The Department of Finance and Administration (DFA) believes due to the sensitive nature of information its employees have access to, including confidential financial information and personal identifier information, hiring qualified individuals who meet strict ethical standards is essential to the services DFA provides to the citizens of New Mexico. Background checks serve as an important tool in ensuring DFA employees meet the highest ethical standards and have the demonstrated character and fitness necessary to meet the fiduciary responsibilities carried out by DFA. This policy aims to provide guidelines, processes, and procedures for conducting background checks on DFA employees and making employment decisions based on information uncovered through the background check process.

### II. APPLICABILITY and SCOPE

Per § 28-2-3, NMSA, DFA is prohibited from asking about a job applicant's criminal history until the applicant has been selected as a finalist. Therefore, prospective employees will be subject to background checks only after being notified they are a finalist for a position and/or an offer for a position is issued, whichever occurs earlier.

Current DFA employees may also be subject to background checks under the following circumstances:

1. Employees that are transferred, promoted, demoted, reclassified, or appointed to an interim position; and
2. Employees who are competing for vacancies through an external search process.

Positions requiring background checks will be indicated in the job posting. Notwithstanding the foregoing, the DFA Secretary reserves the right, in accordance with this policy, to order a background check for an existing employee not otherwise subject to this policy to effectuate the statutory mission and functions of DFA.

Depending on the position and responsibilities, background checks may include, but are not limited to, the following:

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*\*Updated on 12/16/2024*



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1. Credential verification
2. Criminal History and Identity Review;
3. Employment References;
4. Consumer Credit Reports;
5. Drug Testing;
6. Social Security Number Tracing; and
7. Motor Vehicle Driving History.

Per § 56-3-6, NMSA, relevant background check information shall be limited to the seven years prior to the application date or, in the case of a criminal conviction, seven years from the date of conviction or release from parole. Any criminal offenses that did not result in a conviction, offenses that have been pardoned, and/or offenses that have been expunged may not be relied upon for employment decisions.

**III. POLICY**

The DFA shall conduct background checks on all new applicants and existing employees applying for, being promoted to, demoted to, reclassified to, or appointed as interim to any position providing access to sensitive financial information, personal identifier information, or sensitive security information. The type of information that DFA can collect includes, but is not limited to, an individual's past employment, education, character, finances, reputation, etc.

DFA's Human Resources Bureau will ensure that all background checks are held in compliance with all federal and state laws, including the Fair Credit Reporting Act, Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964. DFA's Human Resource Bureau will be responsible for notifying any applicant or employee subject to a background check of negative results and providing an opportunity to dispute any inaccurate information before any adverse action is taken.

**IV. PROCEDURE:**

DFA's Human Resources Bureau may use a third-party vendor or another state resource to conduct background checks and verify the accuracy of information provided by applicants or employees during the screening process. For pre-employment checks, the background check process will occur after a conditional offer of employment has been

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approved and extended. All other background checks will occur after an employee is notified of their transfer, promotion, demotion, reclassification, or appointment to an interim position.

Before ordering a background check, the Human Resources Bureau will disclose to the applicant or employee that it plans to obtain a consumer or investigative consumer report and that the information received will be used solely for employment purposes. Additionally, the Human Resources Bureau will inform the applicant or employee of their right to request additional information on the nature of the report and how to obtain such information, including a summary of their rights under the Fair Credit Reporting Act.

A background check identifying potentially negative information will not automatically disqualify an applicant or employee. Determinations of a particular background's suitability for a position will be based on the following:

1. The contents of the background check report, including the severity and recency of offenses or activities;
2. The nature of the position and responsibilities required to perform the duties satisfactorily;
3. The provisions of this policy; and
4. Full compliance with any federal and state laws or regulations applicable to the position.

Upon identifying any negative background information, DFA's Human Resources Bureau will notify the applicant or employee of the negative information and give them three business days to dispute any inaccurate information.<sup>1</sup> After the notice period has run, the Human Resources Bureau will notify the hiring manager regarding the background check results. Thereafter, the hiring manager, any additional appropriate management staff, and the Director of Human Resources will assess the potential risks, liabilities, and applicability of the negative information to the job's requirements to determine if the individual can still meet the qualifications, requirements, or other job-related functions of the position.

## V. DISQUALIFICATION CRITERIA

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<sup>1</sup> Notice of Adverse Information should include a summary of his or her rights under the Fair Credit Reporting Act.



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The hiring manager, any appropriate management staff, and the Director of Human Resources shall review any negative information identified in an applicant or employee's background check for potential adverse action based on the following criteria:

1. **Criminal History Search:** A criminal conviction will not automatically prohibit an individual from accepting a position at DFA but will be reviewed on a case-by-case basis. In some cases, statutes dictate the types of offenses that disqualify applicants from performing certain job-related functions or accepting certain positions (i.e., inability to secure access to systems or secure a license or professional qualification required in the job description). Convictions for the following categories of crimes are generally considered role-related and, therefore, may be considered in making decisions:
  - a. Any felony conviction within the past seven years (serious crimes defined by statutory guidelines, punishable by more than 1-year incarceration);
  - b. Theft within the past seven years (any crime listed as burglary, embezzlement, forgery, fraud);
  - c. Serious motor vehicle offenses within the past seven years (driving under the influence of alcohol or drugs;Arrests that are not pending and did not result in conviction should not be considered. Arrests pending disposition that are job-related may be considered subject to state law.
2. **Motor Vehicle Reports:** This report can indicate that the applicant has a suspended or revoked license. Further, serious motor vehicle violations such as Driving While Intoxicated, Driving Under the Influence, Driving While Ability Impaired, or reckless driving may be relevant for all positions.
3. **Reference Interviews:** These checks can reveal information that indicates an applicant or employee is not an acceptable fit for the new position or job-related functions. In addition, the report should be carefully reviewed for any omissions or inaccuracies contained in the application or made during the interview process.

## VI. FINAL DECISION

The Human Resources Bureau will provide any applicant or employee with written notice of any adverse action taken based on information provided in a background check, with the name, address, and telephone number of the consumer reporting agency providing



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said information. Any notice shall identify the job-related duties potentially affected by the negative information. Additionally, any notice must include a statutorily required statement that the consumer reporting agency did not make the decision and does not know why the decision was made, with notice of the applicant or employee’s right to obtain the report and dispute the information.

**VII. REVIEW APPROVAL.** This Policy is effective upon the signature of the DFA Cabinet Secretary, below.

  
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 Wayne Propst, **Cabinet Secretary**

12/18/24  
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 Date