



## STATE OF ARKANSAS

Department of Veterans Affairs  
501 Woodlane Drive Suite 230C  
Little Rock, Arkansas 72201  
(501) 683-1386 / FAX (501) 682-4833

**Asa Hutchinson**  
Governor

**Nathaniel (Nate) Todd**  
Director

### PERSONNEL

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#### **Criminal Background Check Policy**

1. **GENERAL:** The following policy and procedure provides guidance for implementing criminal background checks for applicants and current employees, in accordance with the Department of Finance and Administration (DFA) Anti-Fraud Policy, Act 2210 of 2005, and this general policy of the Arkansas Department of Veterans Affairs (ADVA). This information will be applicable to all divisions, offices, and commissions within ADVA.

The DFA Anti-Fraud Policy dated August 31, 2005, requires criminal background checks be performed on all applicants for designated financial positions that handle cash or negotiable assets. Further, it is the policy that applicants for designated information technology positions will be subject to criminal background checks. Act 2210 of 2005 requires criminal background checks on persons authorized to manufacture or produce driver's licenses or identification cards, including current and prospective employees. In addition, it is the policy of the department that current and prospective employees in designated management positions in ADVA will be subject to criminal background checks. Requests for criminal background checks will be submitted through the ADVA Human Resources Office. ADVA HR will coordinate the background checks which will be conducted by the Arkansas State Police prior to hiring an applicant under this policy beginning with vacancies announced on and after January 1, 2006 and for current employees, under Act 2210 of 2005 or those in designated management positions, on or before January 31, 2006.

As a criminal background check is a condition of employment for all positions, failure to comply will result in employment termination or disqualification.

ADVA Administrators will designate the positions in their office that will be subject to the background check requirements of this policy by December 22, 2005. Administrators will designate the positions from a list provided by ADVA Human Resources by Position Number, Title, Grade, Employee Name (or vacant), Personnel Number and Social Security Number. Administrators will be responsible for updating the list of designated positions annually or as needed and providing the revisions to ADVA Human Resources. Extra-help positions may be designated initially or as needed. (Reference Position Control Reports by office generated by ADVA Human Resources.)

Public notices of employment for positions that require criminal background checks are required. This will be part of the advertising process in ADVA. Effective January 1, 2006, vacant designated positions requiring a criminal background check will be noted on the Job Vacancy Requisition Report (JVRR) submitted to ADVA Human Resources.

2. DEFINITIONS: The following definitions will apply unless the text clearly indicates otherwise:
  - a. Applicant: A person applying for employment.
  - b. Criminal Background Check: A criminal history report produced by the Identification Bureau of the Arkansas State Police.
  - c. Designated Position:
    1. Management - A position that is determined by the ADVA Director or his designee(s) in which the current or prospective employee serves at the administrator level or higher; a position in which the current or prospective employee is in the chain of supervision over positions designated for background checks as follows.
    2. Driver's License/ID Card - A position that has the authority to manufacture or produce driver's licenses or identification cards, or has access to such ability.
    3. Financial - A position that handles cash and negotiable assets, including currency, checks, and other transferable assets that are readily converted to cash. This also includes any position that uses state credit cards, has the ability to make wire transfers, etc., in which funds can be accessed and/or utilized in an electronic format.
    4. Information Technology - A position that has authority or capability via computer access to make changes to financial data, approve, authenticate, or configure user security access or act in a capacity of information technology network, application, or system administrator.
  - d. Employee: A person currently employed by the Arkansas Department of Veterans Affairs.

- e. Hiring Official: A person authorized to make the hiring decision for the vacant position.

3. PROCEDURES:

- a. The State of Arkansas Employment Application notifies applicants that some jobs may require background checks prior to employment or as a condition of employment and failure to meet these requirements may cause the applicant to be rejected or terminated from that job. Applicants affirm this notification by their signature on the State of Arkansas Employment Application.
- b. All ADVA applicants for positions that are designated positions for criminal background checks are required to sign a consent form for a criminal background check. For prospective employees, the consent form will be provided at the time of interview by the hiring official. The applicant will be required to sign the consent form at that time in order to be considered for employment for the position (see Consent Form; for Applicants). For current employees who fall under designated positions, a date will be established by the ADVA Director for submission of the employee forms (see Check Form; for employees) on or before January 31, 2006.
- c. The hiring official will forward a copy of the signed consent form of the top applicant selected for the position to ADVA Human Resources, either by fax, email or messenger/mail. The hiring official will maintain all signed consent forms of applicants interviewed until the hiring process has been completed. ADVA Human Resources will submit an electronic request for a criminal background check to the Arkansas State Police.
- d. If the criminal background check reveals no record, ADVA Human Resources will provide the information to the hiring official. The applicant's signed consent form and the criminal background check results provided by ADVA Human Resources will be placed in the hire packet of the applicant for processing (see Response Form; Regarding Applicant's check).
- e. If the background check reveals a misdemeanor conviction of a criminal offense that is of a financial nature or any felony conviction, an applicant is disqualified for the designated position. ADVA Human Resources will notify the applicant of the right to challenge the results through the Arkansas State Police and at the appropriate time, the hiring official will be notified of the final results of the background check (see Response Form; Regarding Applicant's check). If the applicant does not challenge the results through the Arkansas State Police, the applicant will be disqualified from consideration for the position.

4. CURRENT EMPLOYEES AS APPLICANTS: A current ADVA employee applying for a designated position under this policy will be subject to the same requirements as any other applicant for the position. If the results of the background check

disqualify the current ADVA employee for the position, ADVA Human Resources will notify the applicant/employee of the right to challenge the results through the Arkansas State Police and at the appropriate time, the hiring official will be notified of the final results of the background check (see Response Form; Regarding Applicant's check).

5. NOTIFICATION AND CHALLENGE: If the background check reveals a financial misdemeanor conviction or a felony conviction, ADVA Human Resources will notify the applicant or employee, as designated by the applicant/employee on the consent form, by telephone, letter, or other, of the disqualification for employment due to results of their background check. If the applicant/employee believes that there is an error in information revealed in the background check, the applicant/employee will be given two (2) working days to provide a written, signed explanation of the applicant's/employee's disagreement with the background check to ADVA Human Resources. The applicant/employee will be provided a copy of the background check if he/she delivers the written explanation to ADVA Human Resources in person. The applicant/employee will be given an additional three (3) working days to resolve any background check disagreements with the Arkansas State Police. Following the three (3) working day period, ADVA Human Resources will obtain a new background check for the applicant/employee, at which time the results of the background check will be considered final and provided to the hiring official (see Response Form; Regarding Applicant's check).

6. REVIEW OF CURRENT EMPLOYEES AND PROSPECTIVE WITH CRIMINAL BACKGROUND CHECK HISTORY: At the time a current employee is subject to a criminal background check and the results reveal a financial misdemeanor conviction or any felony conviction which would disqualify the employee from their present position under this policy, ADVA Human Resources will notify the employee of the right to challenge the results through the Arkansas State Police. A current employee whose background check is subject to further review will be notified of the review and given the opportunity to present information concerning the conviction to the Director or his designee. Unless the conviction has been the subject of an official pardon, expungement, annulment, concealment, or similar official treatment, the Director or his designee may consider the following types of convictions for termination or disqualification:

- a. Any felony conviction; or
- b. Any misdemeanor involving theft, dishonesty, fraud or misrepresentation.

The Director or his designee will have the authority to waive a conviction, upon consideration of the following factors:

- a. The age of the employee at the time of the offense;
- b. The circumstances surrounding the offense, particularly any extenuating or mitigating matter;
- c. The length of time since the offense;

- d. Subsequent rehabilitative measures accomplished by the employee, including whether the employee was the recipient of parole or probation;
- e. The number of other convictions by the employee;
- f. Subsequent work history;
- g. Employment references;
- h. Character references; and
- i. Any other information authorized by the Director or designee.

Notwithstanding the above, any conviction of the following offenses, or its equivalent if convicted in some state or federal jurisdiction other than Arkansas, unless the subject of an official pardon, expungement, annulment, concealment, or similar official treatment, will result in termination for good cause from employment or disqualification of the applicant:

- a. Capital murder, as prohibited in A.C.A. § 5-10-101;
- b. Murder in the first degree and murder in the second degree, as prohibited in A.C.A. § 5-10-102 and 5-10-103;
- c. Kidnapping, as prohibited in A.C.A. § 5-11-102;
- d. Rape, as prohibited in A.C.A. § 5-14-103;
- e. Sexual assault in the first degree and second degree, as prohibited in A.C.A. § 5-14-124 and 5-14-125;
- f. Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree, as prohibited in A.C.A. § 5-27-203 and 5-27-204;
- g. Incest, as prohibited in A.C.A. § 5-26-202;
- h. Arson, as prohibited in A.C.A. § 5-38-301;
- i. Endangering the welfare of an incompetent person in the first degree, as prohibited in A.C.A. § 5-27-201;
- j. Adult abuse that constitutes a felony, as prohibited in A.C.A. § 5-28-103;

- k. Theft of public benefits, a Class B Felony, as prohibited in A.C.A. § 5-36-202 and 5-36-203;
- l. A felony due to theft, dishonesty, fraud, misrepresentation, possession or distribution of stolen property; and bribery.

At the appropriate time, the ADVA Director or his designee will review the results for determination and the employee, supervisor and administrator will be notified of the disposition (see Response Form; Regarding Employee's check). The ADVA Director's decision will be final.

7. VETERANS HOME EMPLOYEES AND PERSPECTIVE EMPLOYEES: Will follow the rules and regulations for conducting criminal record checks for employees of long term care facilities while requests will come from the Arkansas Department of Health and Human Services Request for Criminal Record Check form.
8. Forms and Attachments Prescribed:
  1. Form – Criminal Background Check Consent Form for Applicants
  2. Form – Criminal Background Check Form for Employees
  3. Form – Arkansas Department of Health and Human Services, Division of Medical Services, Office of Long Term Care – Request for Criminal Record Check
  4. Attachment – Rules and Regulations for Conducting Criminal Record Checks for Employees of Long Term Care Facilities

By:

Nathaniel (Nate) Todd  
Director

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