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| http://usanetsp.usa.doj.gov/library/PublishingImages/doj_seal.gif | **United States Attorney’s Office** *Southern District of Alabama*  *Civil Rights Enforcement Unit* |

Pre-Employment Screenings Of Criminal Records:

What Every Employer Should Know

*Survey Form*

1. Introduction

*Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.), as amended, forbids employment practices that discriminate on the basis of race, color, religion, sex or national origin by private employers, labor organizations, employment agencies, state and local governments, governmental agencies, political subdivisions and the federal government. In addition to discriminatory terminations and refusals to hire, the Act forbids all other discriminatory practices with respect to terms or conditions of employment as well as retaliation for engaging in activities protected by the Act.*

*The Department of Justice shares enforcement authority under Title VII with the Equal Employment Opportunity Commission (“EEOC”). The Department has authority to seek to remedy employment discrimination by state and local governments, and their agencies and political subdivisions. Enforcement authority as to private employers belongs to the EEOC. The EEOC also has the primary enforcement responsibility with respect to the federal government.*

*On April 25, 2012, the EEOC issued its Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (hereinafter “Enforcement Guidance”), as amended, 42 U.S.C. § 2000e. See* [*http://www.eeoc.gov/laws/guidance/arrest\_conviction.cfm*](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)*. In light of employers’ increased access to criminal history information, case law analyzing Title VII requirements for criminal records exclusions, and other developments, the EEOC updated and consolidated prior policy statements about Title VII and the use of criminal records in employment decisions. The EEOC intends for this Enforcement Guidance to be used by employers considering the use of criminal records in their selection and retention processes; by individuals who suspect that they have been denied jobs or promotions, or have been discharged because of their criminal records; and by EEOC staff who are investigating discrimination charges involving the use of criminal records in employment decisions.*

1. **Instructions**

*The United States Attorney’s Office for the Southern District of Alabama has an interest in bringing awareness to our community regarding the Enforcement Guidance. In this regard, we are committed to assisting with any training needs. Obtaining feedback from employers is vital to this process.*

*We appreciate your time in completing this voluntary survey. It should only take a few minutes to respond, as it is in a simple “check box” ☐ format. Please see the footnotes for definitions corresponding to certain terms in the questions. Part VI offers you an opportunity to supplement your responses with narrative explanation.*

*If you have any questions and/or concerns regarding this survey, please contact Assistant United States Attorney Suntrease Williams-Maynard via email at* [*suntrease.williams-maynard@usdoj.gov*](mailto:suntrease.williams-maynard@usdoj.gov) *or via voice dial at (251) 415-7163.*

1. Organization Contact Information

Name of Organization

Name of Parent Company (if applicable)

Address (Line 1)

Address (Line 2)

Telephone Facsimile

Email Website

1. Preliminary Questions
2. **Please classify the nature of your organization.** (*Please check the most appropriate answer*)

☐ Privately owned

☐ Nonprofit

☐ Publicly owned

☐ Government sector (*please indicate which level of Government below)*

☐ Local Government

☐ State Government

☐ Other (*please specify)*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Please provide the approximate number of employees in your organization.** (*Please check the appropriate box*)

☐ 1-99

☐ 100 to 499

☐ 500 to 2,499

☐ more than 2,500

1. **Please indicate the nature of your industry.** (*Please check the appropriate box*)

☐ Manufacturing ☐ Transportation and/or Warehousing

☐ Health Care and/or Social Assistance ☐ Finance and/or Insurance

☐ Public Administration ☐ Retail Trade

☐ Professional, Scientific or Technical ☐ Religious, Grant Writing, or other Civic Org.

☐ Educational Services ☐ Hospitality and Food Services

☐ Arts, Recreation and/or Entertainment ☐ Utilities

☐ Construction ☐ Agriculture, Forestry, Fishing and/or Hunting

☐ Repair and/or Maintenance ☐ Real Estate

☐ Other (*please specify*): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Please describe how your organization advertises for job vacancies?** (*Please check all that apply*)

☐ Online job announcements

Newspaper

Word of mouth

☐ Other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **Does your organization maintain written job descriptions for positions within your organization?** (*Please check the appropriate box*)

☐ Yes, for all positions

☐ Yes, for select positions (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

☐ No

1. **Does your organization utilize any of the following employment services?** (*Please check all that apply*)

☐ Hiring agencies

Referral Service

Labor Finder

☐ Other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **Please describe your organization’s initial application intake process.** (*Please check all that apply*)

☐ Online application

Email submission

Resume

Hiring Company

Employment Service

☐ Other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **Who has the primary responsibility within your organization to make hiring decisions?** (*Please check the appropriate box*)

☐ Owner

Manager/Supervisor

Human Resources

☐ Other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **In general, when making a hiring decision about an applicant, which are the most critical factors influencing the final decision to hire a particular candidate over another?** (*Please check all that apply*)

☐ Previous work experience directly related to the job

Education directly related to the job

A good fit with the job and organization

Specific skills or expertise needed for the job (e.g., technical, communication)

☐ Performance during the interview (e.g., appearance, professional demeanor)

Favorable references

Favorable criminal background result

☐ Other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **Is your organization a single-unit organization[[1]](#footnote-1) or a multi-unit organization[[2]](#footnote-2)?**

☐ Single-unit organization ☐ Multi-unit organization

1. **Specific Inquiries Regarding Criminal Background Checks**
2. **State whether your organization has any written policies, practices, or procedures concerning obtaining background checks, specifically criminal records, of job applicants or current employees.** (*Please check the appropriate box. If your answer to this question is “YES”, please attach a copy of your organization’s written policy to this form).*

☐ Yes ☐ No

1. **Does your organization conduct criminal background checks on:** (*Please check the appropriate box. If your answer to this question is “none of its candidates for employment,” please proceed to Question #35 in Part VI*)

☐ All applicants

Select positions (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Current employees for promotional opportunities

☐ None of its candidates for employment

1. **At what stage of the hiring process does your organization initiate a criminal background check?** (*Please check the appropriate box*)

☐ After the completion of a job application but before a job interview

After the job interview but before a job offer

Varies by job level

After a contingent job offer

☐ Other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **What screening providers does your organization use for criminal background checks?** (*Please check the appropriate box*)

☐ Consumer Reporting Agency (CRA)

Registries (e.g., sex offender registries)

Courthouse

Law Enforcement and Correction Agency Records

State Criminal Record Repositories

☐ Other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **Does your organization do any of the following in regards to criminal background checks:** (*Please check the appropriate box for a-d*)
   1. **obtain written permission from the applicant to conduct a criminal background check?**

☐ Yes ☐ No

* 1. **advise the applicant that you might use the information obtained from the criminal background check for decisions about his/her employment?**

☐ Yes ☐ No

* 1. **request an investigative report on the applicant?**

☐ Yes ☐ No

* 1. **certify to the company from which you are getting the report that you complied with all of the Fair Credit Reporting Act[[3]](#footnote-3) (“FCRA”) requirements *and* won’t engage in discrimination against the applicant, or otherwise misuse the information in violation of federal or state equal opportunity laws or regulations?**

☐ Yes ☐ No

1. **In regard to an applicant’s criminal background, is your organization mostly concerned about:** (*Please check the appropriate box*)

☐ the past five years

the past ten years

the entire adult history

☐ other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **What is the primary reason your organization conducts criminal background checks on its applicants?** (*Please check all that apply*)

☐ to reduce legal liability for negligent hiring

to prevent/reduce workplace violence

to prevent/reduce theft, embezzlement or other criminal activity

to comply with applicable state laws for particular positions (e.g., daycare, law enforcement)

☐ other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **Does your organization automatically exclude an applicant from employment for having an arrest record?** (*Please check the appropriate box*)

☐ Yes, for all positions

☐ Yes, for select positions (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

☐ No

1. **Has your organization ever hired an individual with an arrest record?** (*Please check the appropriate box*)

☐ Yes ☐ No

1. **Has your organization ever hired an individual with a conviction record?** (*Please check the appropriate box*)

☐ Yes ☐ No

1. **Do any of your current employees have backgrounds reflecting a prior arrest?** (*Please check the appropriate box*)

☐ Yes ☐ No

1. **Do any of your current employees have backgrounds reflecting a prior conviction?** (*Please check the appropriate box*)

☐ Yes ☐ No

1. **When evaluating an applicant with a criminal record, is it your organization’s hiring practice or policy to consider the following:** (*Please check the appropriate box for a-c*)
   1. **the nature or gravity of the criminal offense or conduct before making a hiring decision?**

☐ Yes ☐ No

* 1. **the time that has passed since the offense or conduct and/or completion of the sentence?**

☐ Yes ☐ No

* 1. **the nature of the position sought in relation to the offense or conduct?**

☐ Yes ☐ No

1. **Does your organization allow applicants an opportunity to explain the results of their criminal background check that might have an adverse effect on an employment decision?** (*Please check the appropriate box*)

☐ Yes, after the criminal background check is conducted but before an employment decision is made

☐ Yes, after the decision to hire or not hire is made

☐ No, not at any time

1. **When your organization makes the decision to exclude an applicant with a criminal record, is the exclusion based on whether the person’s conduct underlying the arrest or conviction makes him or her unfit for the position in question?** (*Please check the appropriate box*)

☐ Yes ☐ No

1. **Before taking an adverse employment action based on an applicant’s criminal record, does your organization provide the applicant with any of the following:** (*Please check all that apply*)

☐ a notice that includes a copy of the consumer report your organization relied on in making your employment decision

☐ a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act.”

☐ other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

☐ nothing is provided

1. **After taking any adverse employment action based on an applicant’s criminal record, does your organization advise the applicant (orally, in writing or electronically) about any or all of the following:** (*Please check all that apply*)

☐ that he or she was rejected because of the information in the report

that he or she has a right to dispute the accuracy or completeness of the report

that he or she has a right to get an additional free report from the reporting company within 60 days

☐ other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

☐ nothing

1. **Does your organization provide the applicant with the name, address and phone number of the company that sold the report if an adverse employment decision was made?** (*Please check the appropriate box*)

☐ Yes ☐ No

1. **Does your organization maintain any personnel or employment records, including all application forms, regardless of whether the applicant was hired, and other records related to hiring?** (*Please check the appropriate box*. *If your answer to this question is “YES”, please proceed to question #30. If your answer to this question is “NO”, please proceed to question #31*).

☐ Yes ☐ No

1. **How long does your organization maintain any personnel records or employment records as specified in Question #29?** (*Please check the appropriate box*)

☐ 0-6 months

6 months-1 year

1 year-3 years

☐ other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **How does your organization go about disposing of any background reports obtained on an applicant?** (*Please check all that apply*)

☐ Shredding

Burning

Pulverizing

☐ Other (*please specify): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

1. **Does your organization keep information about applicants’ criminal records confidential?** (*Please check the appropriate box*)

☐ Yes ☐ No

1. **Does your organization train managers, hiring officials and decision makers about Title VII and its prohibitions on employment discrimination?** (*Please check the appropriate box*)

☐ Yes ☐ No

1. **Does your organization train managers, hiring officials and decision makers on how to implement policies and procedures that are consistent with Title VII?** (*Please check the appropriate box*)

☐ Yes ☐ No

##### VI. Future practices & Policies

1. **Does your organization intend to establish written policies or modify any of its existing policies as it relates to criminal background checks within the next three (3) months? If so, please briefly describe those intentions or plans below.**

##### VII. Contact Information

### Provide the name, address, telephone number, and facsimile number of a person in your organization whom we may contact for purposes of this compliance review. If an attorney represents you in this matter, please provide his/her name, address, telephone number, facsimile number and e-mail address.

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Name

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Address (Line 1)

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Address (Line 2)

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City, State Zip Phone Fax

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail Address

##### VIII. Verification

The verification below should be signed by an authorized representative of the entity identified in Part III.

I verify that the foregoing information and the information provided on the attached schedules is true and correct to the best of my knowledge, information, and belief.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (print) Signature Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title / Corporate Affiliation

**Please return the completed form and any attachments to:**

**U. S. Attorney’s Office**

**Southern District of Alabama**

**Civil Rights Enforcement Unit, Civil Division**

**63 South Royal Street, Suite 600**

**Mobile, AL 36602**

**Facsimile: 251.441.5051**

**Telephone: 251.441.5845**

1. A single-unit organization is an organization in which the location and the organization are one and the same. [↑](#footnote-ref-1)
2. A multi-unit organization is an organization that has more than one location. [↑](#footnote-ref-2)
3. The FCRA is enforced by the Federal Trade Commission (“FTC”). If you would like to know more information about the FCRA, visit the FTC’s website or contact the FTC at 1-877-FTC-HELP (1-877-832-4357); TTY: 1-866-653-4261. [↑](#footnote-ref-3)