

## Process steps

<b>Title:</b>	Weigh Tests and Final Fitness Determinations on Non-Institution ODHS OHA Employees
<b>Related to:</b>	ODHS OHA-060-010, ODHS OHA 060-010-01
<b>Effective date:</b>	03/07/2022

## Purpose

This document provides a step-by-step explanation for the process of conducting weigh tests and fitness determinations on background checks by the Background Check Unit (BCU) for ODHS and OHA employees who are not working in or applying for position in ODHS|OHA institutions (see Definitions) and acting on the results of the final outcome. This procedure is predicated by and used in conjunction with ODHS|OHA-060-010-01, Background Checks on Non-Institution ODHS|OHA Employees.

## Definitions

The following terms are used in this document:

- a. "BCU HR Team" means a member of the BCU tasked with evaluating a criminal records check and abuse check when either or both are considered, and other criteria as may be required to provide a fitness determination.
- b. "Fitness determination" means the evaluation of a criminal records check and abuse check when either or both are considered, and the decision whether a subject individual (SI) is fit to hold a position. Fitness determination includes:
  - A. The decision regarding SI disclosures, an Oregon criminal records check, and preliminary review (a preliminary fitness determination); or,
  - B. The decision regarding SI disclosures, completed criminal and abuse records check when either or both are considered including the gathering of other information as necessary, and a final fitness determination by the BCU HR Team.
- c. "Institution" means a state-operated or ODHS|OHA-contracted secure residential treatment facility, a residential training home within the Stabilization and Crisis Unit (SACU), or the Oregon State Hospital (OSH).
- d. "Interview Coordinator" means the point of contact for employment candidates during the interview process. The interview coordinator does not need to be in management service. This person cannot be the hiring manager or a participant on the interview panel.
- e. "Qualified Entity Designee (QED)" means a person trained and certified to submit the selected candidate's background check to BCU through its online background check portal, the Oregon Criminal History & Abuse Records Database System (ORCHARDS). The individual must be a QED for background check purposes. The individual shall not be the hiring manager or a participant on the interview panel.
- f. "Subject Individual (SI)" means an individual regarding whom the authorized agency, districts and qualified entities may conduct a background check and from whom ODHS|OHA may

require fingerprints for the purpose of conducting a national criminal records check pursuant to ORS 181A.190, 181A.195, 181A.200, 181A.215, 267.237, 409.027, 413.036 and any required enabling legislation or executive order. Any individual going through a background check is considered an SI.

- g. "Weighing test" means a process carried out by the Background Check Unit in which available information is considered to make a fitness determination.

## Process steps

1. This process is applicable if the background check process described in ODHS|OHA-060-010-01 Background Checks on Non-Institution ODHS|OHA Employees identifies:
  - a. Potentially disqualifying convictions or conditions and an SI would have access to or use of federal tax information (FTI), a weighing test is required as detailed in step 2 of this process.
  - b. Potentially disqualifying convictions or conditions in situations and an SI would not have access to FTI, a weighing test is required as detailed in step 3 of this process.
2. When a weighing test is required for an SI that would have access to FTI, the final fitness determination proceeds as follows:
  - a. The [BCU HR Team](#) reviews the criminal records checks, driving record (if required), and abuse check (if required), and researches any other available relevant information to make a complete and thorough weighing test regarding the SI pursuant to OAR 407-007-0060. This may include requesting documents and information from the SI directly.
  - b. The [BCU HR Team](#) completes a weighing test considering the factors listed in OAR 407-007-0060.
  - c. The [BCU HR Team](#) considers the following:
    - A. Whether any of the SI's potentially disqualifying convictions or conditions involve any access to FTI, confidential information, personally identifiable information, money, any type of financial information, fraud, forgery, or identification theft. Greater weight will be placed on such potentially disqualifying convictions and conditions when performing the weighing test.
    - B. The circumstances surrounding these potentially disqualifying convictions or conditions, including when they occurred, the nature of the crime, the age of the SI at the time of the crime, and the outcome of the court process.
    - C. The relevancy of the potentially disqualifying convictions or conditions to the SI's proposed position, and the access to FTI in the position.
  - d. The [BCU HR Team](#) proceeds to step 4.
3. When a weighing test is required for an SI that will not have access to FTI, the final fitness determination proceeds as follows:
  - a. The [BCU HR Team](#) reviews the criminal records checks, driving record (if required), and abuse check (if required), and researches any other available relevant information to make a complete and thorough weighing test regarding the SI pursuant to OAR 407-007-0060. This may include requesting documents and information from the SI directly.
  - b. The [BCU HR Team](#) completes a weighing test, considering the factors listed in OAR 407-007-0060.
4. When the weighing test outlined in step three or step four is complete, the [BCU HR Team](#) enters the outcome into ORCHARDS. There are four possible outcomes:
  - a. A fitness determination of Approved.

- A. This creates a clearance letter in ORCHARDS and an email notification is automatically sent to the QED.
  - B. The QED forwards a copy of the clearance letter to the Hiring Manager and the SI.
  - C. If the SI would have the ability to access or use federal tax information (FTI). Prior to granting access or use, the I-9 and E-Verify shall be completed and the E-Verify result authorizes employment.
  - D. HR works with the hiring manager if E-Verify discrepancies are found.
  - E. An SI who would have the ability to access or use FTI shall have a new background check completed every 5 years.
- b. A fitness determination of Restricted Approval.
- A. [BCU HR Team](#) determines that if a certain restriction is put in place, the SI would not pose a threat to vulnerable individuals or ODHS|OHA.
  - B. This creates a letter of restricted approval (with the specific restriction) in ORCHARDS and an email notification is automatically sent to the QED.
  - C. The QED forwards a copy of the restricted approval letter to the hiring manager.
  - D. [BCU HR Team](#) sends a restricted approval letter to the SI with specific confidential information.
  - E. Because a restricted approval is considered an adverse outcome, the SI receives confidential details about the potentially disqualifying convictions or conditions at issue, and information about appeal rights.
  - F. If the SI would have the ability to access or use federal tax information (FTI), prior to granting access or use, the I-9 and E-Verify shall be completed and the E-Verify result authorizes employment.
  - G. HR works with the hiring manager if E-Verify discrepancies are found.
  - H. An SI who would have the ability to access or use FTI shall have a new background check completed every 5 years.
- c. A fitness determination of Denial.
- A. [BCU HR Team](#) determines that the SI poses a threat to vulnerable individuals or ODHS|OHA.
  - B. This creates a letter of Not Approved in ORCHARDS and an email notification is automatically sent to the QED.
  - C. The QED forwards a copy of the Not Approved letter to the hiring manager.
  - D. [BCU HR Team](#) sends a denial letter to the SI.
  - E. Because a denial is considered an adverse outcome, the SI receives confidential details about the potentially disqualifying convictions or conditions at issue, and information about appeal rights.
  - F. The SI is no longer eligible for the position. The QED ensures the immediate removal of the candidate from the position.
- d. An incomplete fitness determination.
- A. The background check is closed without a final fitness determination due to one of the following:
    - i. The job offer is rescinded for a reason other than the background check.
    - ii. The SI decides to decline the offer after starting the background check.
    - iii. The SI does not provide BCU with requested information needed to complete the background check.

- B. The SI is no longer eligible for the position. The QED ensures immediate removal of the candidate from the position.

## References

[ORS 181A.190](#)

[ORS 181A.195](#)

[ORS 181A.200](#)

[ORS 181A.215](#)

[ORS 267.237](#)

[ORS 409.027](#)

[ORS 413.036](#)

[OAR 407-007-0000 to 407-007-0100](#)

[OAR 407-007-0400 to 407-007-0460](#)

[OAR 943-007-0001 to 943-007-0501](#)

## Forms referenced

BCU Background Check Checklist (available in ORCHARDS, Help Section)

## Related policies

ODHS|OHS-060-010 Background checks

ODHS|OHA-060-010-01, Background Checks on Non-Institution ODHS|OHA Employees

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