

Character Investigations and Minimum Standards Requirement

Objectives:

1. Participants will better understand the background and minimum standards requirements for employment with Indian tribes that are contract or grant recipients under the Indian Self Determination Act (P.L.638) or the Tribally Controlled Schools Act of 1988.
2. Participants will be able to develop, interpret and/or implement policies and procedures in background checks for potential employees.
3. Participants will learn the history and reasoning behind the Indian Child Protection and Family Violence Prevention Act of 1990 that mandates background checks.

Activities:

1. Discuss why these policies were developed. Was there a specific reason or behavior of personnel?
2. Discuss how these policies are implemented within your agency. Does your agency follow each policy? How can they better implement the background checks and minimum standards requirement? Does your Child Protection Team mandate that members have a background check and abide by minimum standards? Why? Why not?

Discussion Questions:

1. Discuss the current policies and procedures in place regarding background checks and minimum standards? Is compliance with these policies effective within your system? What can be done to further implement these policies?

Character Investigations and Minimum Standards Requirement

Indian tribes that are contract or grant recipients under the Indian Self-Determination and Education Assistance Act (P.L.638) or the Tribally Controlled Schools Act of 1988 are subject to investigation and minimum standards requirements.

Minimum Standards

Minimum standards of character are established by an employer and refer to identifiable character traits and past conduct. Minimum standards of character SHALL ensure that NO applicant, volunteer, or employee be placed in a position whose responsibilities and duties allow regular contact with or control over Indian children if he/she has been found guilty of or entered a plea of nolo contendere or guilty to any offense under federal, state or tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons.

Background Investigations/Checks

Indian tribes and tribal organizations are required to conduct an investigation of character of each individual who is employed or is being considered for employment or is a volunteer, by such tribe or tribal organization in positions whose duties and responsibilities allow them regular contact with or control over Indian children.

Many tribal law enforcement programs have arrangements with the state, FBI, or BIA to conduct criminal background checks on potential employees. Accessing a system to conduct criminal background checks is a common activity of most local law enforcement programs. Tribal personnel and hiring supervisors should have a protocol in place to request the required background checks from their local law enforcement agency.

Employment Application Criteria

Employment applications must:

- Ask if the individual has ever been arrested for or charged with:
 - A crime involving a child or found guilty of or entered a pleas of nolo contendere or guilty to any offense under federal, state or tribal law involving crimes of violence;
 - An offense involving a child;
 - A sex offense, more specifically sexual assault, molestation, exploitation, contact or prostitution;
 - A drug felony; or
 - Crimes against persons.
- Request a description of the disposition of any arrest or charge;
- State that the application is signed under penalty of perjury;

- Obtain the signature of the individual confirming he/she was notified of the employer's obligation to require a record check as a condition of employment;
- Request criminal records from tribal and state law enforcement and courts;
- Confirm military service and discharge;
- Verify validity of driver's license and driving record for persons whose duties require a commercial driver's license or include transporting children;
- Verify at least five years of employment and interview past employers and supervisors;
- Interview at least three references;
- Verify residence and level of education/training;
- Request a National Criminal History Check from the FBI – the BIA will process criminal history background checks for tribal contract and grant schools, social services, law enforcement, mental and health services, child care programs, Head Start programs, and other programs employing persons who have regular contact with or control over Indian children.

Administrative Procedures

Federal Employees

This section establishes guidelines for processing the required background investigations covered by Executive Order (E.O.) 10450, Security Requirements for Government Employment. E.O.10450 requires that each civilian employed in any department or agency of the government shall be made subject to investigation. The scope of the investigation will be consistent with the degree of risk the employee would have on the position occupied. However, in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation.

Procedures

Requesting background investigations, determining suitability for employment and meeting minimum standards of character and efficiency of service, as mandated by E.O.10450, and Public Laws 101-630 and 101-647:

- All vacancy announcements will clearly state the investigative requirements.
- Prospective employees will be informed that the appointment is subject to satisfactory completion of the pre-employment investigation inquiries as well as the post-employment investigation.
- An unfavorable report as a result of the pre-employment inquiry shall be grounds for non-selection, and an unfavorable report as a result of the post-employment investigations shall be grounds for separation from employment.

- Selecting officials shall conduct telephone reference inquiries (only on the applicant tentatively selected) prior to making a final commitment. The inquiries shall include three former employers and personal references or enough other alternative checks to cover the last seven years (e.g., high school/college teachers/counselors, etc.). Document the results and record the date of the telephone checks and the name and title of the person interviewed. The name and title of the person conducting the interview shall also be documented. If the applicant's reference checks are found to be inconclusive, then the applicant is required to provide additional references.
- Certify that the individual's past conduct would not interfere with his/her performance of duties, nor would it create an immediate or long-term risk for any child.
- Applicants who have been tentatively selected for positions and employees must submit a security package consisting of the following:
 - A Standard Form 85P, Questionnaire for Public Trust Positions,
 - Standard Form 85P-S, Supplemental Questionnaire for Selected Positions,
 - Standard Form 86, Questionnaire for Sensitive Positions (National Security),
 - Standard Form 87, Fingerprint Chart,
 - Optional Form 612, Optional Application for Federal Employment or resume,
 - Optional Form 306, Declaration for Federal Employment, and,
 - Employer/Personal Reference Inquirer Form.
- All positions with regular contact with or control over children have been designated as Public Trust (i.e., all positions in the Office of Indian Education Programs, Social Services, Facilities Management, etc.).
- All employees' occupying Public Trust positions with regular contact or control over children shall be subject to periodic reinvestigation every five (5) years. The reinvestigation will occur for each succeeding five-year period during the tenure of an employee who is in a position dealing with children. A criminal history check will meet the requirements of the investigation.
- The designated employee who will request the background investigation from the Office of Personnel Management (OPM) must review the security package and code the case papers. The SF-85P must have "BIA Eagle" on the top of the form.
- Those designated employees responsible for the scheduling of the required investigations have been/will be trained in the proper procedures for coding the case papers.
- The complete security forms *must show no gaps* in dates. Further, forms must cover the last seven years of the applicant's/employees life in which the investigation will cover.

- The complete background investigations will be sent from OPM to the designated security officer as indicated on the security forms. The security officer will review the result of the background investigation, apply the suitability standard and make the suitability determination.
- Applicants and/or employees MUST be provided an opportunity to deny, explain, or refute derogatory information developed in the background investigation. This response may be accomplished either in person or in writing. If an unfavorable determination is rendered, the servicing personnel office will notify the applicant or employee in compliance with due process procedures.
- The designated security officer shall issue a written notification to the designated personnel officer that the applicant/employee has met the investigative requirements for the position (either sensitive or non-sensitive).
- When determined suitable for a Public Trust position, the designated security officer or supervisor shall provide a briefing to the applicants and/or employees on the topic of “standards of conduct required for federal employment and their responsibilities.”