

request for care. Patients with abnormal screening results shall receive appropriate medical referrals.

(ii) Each DoD medical facility should periodically offer mass hypertension screening to encourage beneficiaries to monitor their blood pressure regularly.

(iii) Occupational health clinics shall make hypertension screening readily available to civilian employees, and shall encourage employees to use this service.

(iv) Public information campaigns emphasizing the dangers of hypertension and the importance of periodic hypertension screening and dietary regulation shall be conducted.

PART 86—BACKGROUND CHECKS ON INDIVIDUALS IN DOD CHILD CARE SERVICES PROGRAMS

Secs.

86.1 Purpose.

86.2 Applicability.

86.3 Definitions.

86.4 Policy.

86.5 Responsibilities.

86.6 Procedures.

AUTHORITY: 5 U.S.C. 2105, 10 U.S.C. chapter 47, and 42 U.S.C. 13041.

SOURCE: 80 FR 55756, Sept. 17, 2015, unless otherwise noted.

§ 86.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures to conduct criminal history checks on individuals involved in the provision of child care services for children under the age of 18 in DoD programs.

§ 86.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this part as the “DoD Components”).

§ 86.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part.

Adjudication. The evaluation of pertinent data in a background investigation, as well as any other available information that is relevant and reliable, to determine whether an individual is suitable for work.

Adult. An individual 18 years of age or older regarded in the eyes of the law as being able to manage his or her own affairs.

Applicant. A person upon whom a criminal history background check is, will be, or has been conducted, including individuals who have been selected or are being considered for a position subject to a criminal history background check, and individuals undergoing a recurring criminal history background check. Includes current employees.

Child. A person under 18 years of age.

Care provider. Current or prospective individuals hired with appropriated funds (APF) and nonappropriated funds (NAFs) for education, treatment or healthcare, child care or youth activities; individuals employed under contract who work with children; and those who are certified for care. Individuals working within programs that include: Child Development Programs, DoD dependents schools, DoD-operated or -sponsored activities, foster care, private organizations on DoD installations, and youth programs.

Child care services. Care or services provided to children under the age of 18 in settings including child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services, as defined in 42 U.S.C. 13041.

Class. With regard to the designation of positions, a categorical descriptor identifying employee, contractor, provider, or volunteer positions by group rather than by individual position or title (e.g., “doctors” or “individuals supervising children in a school”).

Contractor. Any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly with DoD or a DoD Component to furnish supplies, services, or both including construction. Foreign governments or representatives of foreign governments that are engaged in selling to DoD or a DoD Component are defense contractors when acting in that context. A subcontractor is any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Covered position. Defined in volume 731 of DoD Instruction 1400.25, “DoD Civilian Personnel Management System” (available at <http://www.dtic.mil/whs/directives/corres/pdf/140025v731.pdf>).

Criminal history background checks. A review of records, investigative reports, and other investigative elements to generate criminal history background findings to be used to make fitness or suitability determinations.

Derogatory information. Information that may reasonably justify an unfavorable personnel suitability or fitness determination because of the nexus between the issue or conduct and the core duties of the position.

DoD affiliation. A prior or current association, relationship, or involvement with the DoD or any elements of DoD, including the Military Departments.

DoD-sanctioned programs. Any program, facility, or service funded, or operated by the DoD, a Military Department or Service, or any agency, unit, or subdivision thereof. Examples include, but are not limited to, chapel programs, child development centers, family child care (FCC) programs, medical treatment facilities, Department of Defense Education Activity (DoDEA) schools, recreation and youth programs. These do not include programs operated by other State or Federal government agencies or private organizations without the official sanction of a DoD entity.

Duties. Those activities performed as an employee, contractor, provider, or volunteer that involve interaction with children, including any work performed in a child development program or DoDEA school.

Employee. An individual, paid from funds appropriated by the Congress of the United States, or an individual employed by a NAF instrumentality in accordance with 5 U.S.C. 2105(c). Includes foreign nationals in accordance with Volume 1231 of DoD Instruction 1400.25, “DoD Civilian Personnel Management System” (available at <http://www.dtic.mil/whs/directives/corres/pdf/1400.25-V1231.pdf>), Military Service members working during their off-duty hours, and non-status, non-continuing temporary positions with specified employment periods not to exceed 1 year such as summer hires, student interns, and seasonal hires.

FAP. Defined in DoD Directive 6400.1, “Family Advocacy Program (FAP)” (available at <http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf>).

FAP records check. A review of FAP records maintained on an individual, including records maintained by the installation office and records in the Service Child and Spouse Abuse Central Registry in accordance with DoD Directive 6400.1. If the individual is the spouse or dependent of a Service member, this may entail review of records maintained on the sponsoring Service member. Installation and Service Central Registry checks are limited to identifying pending and met criteria incidents of maltreatment and do not include information related to incidents that did not meet criteria or any information contained in the clinical case record that is protected by section 1320d-6 or 5 U.S.C. 552a.

Federal Bureau of Investigation (FBI) criminal history background check. An FBI identification record—often referred to as a criminal history record or a “rapsheet”—is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service. The process of responding to an identification record request is generally known as a criminal history background check.

FCC. Defined in DoD Instruction 6060.2, “Child Development Programs (CDPs)” (available at <http://www.dtic.mil/whs/directives/corres/pdf/606002p.pdf>).

FCC provider. Defined in DoD Instruction 6060.2.

FCC adult family members. Any adult, 18 years of age or older, who resides in the home of an FCC provider for 30 or more consecutive days.

Fitness. The reference to a person's level of character and conduct determined necessary for an individual to perform work for, or on behalf of, a Federal Agency as an employee in the excepted service (other than in a position subject to suitability) or as a contractor employee.

Fitness determination. A decision, based on review of criminal history background check findings, that an individual is fit to perform duties in a position subject to criminal history background check. Fitness determinations will be "favorable," meaning that the individual is fit to perform the duties, or "unfavorable," meaning that the individual is not.

Foreign nationals. Individuals who are not citizens of the United States.

Foster care providers. A voluntary or court-mandated program that provides 24-hour care and supportive services in a family home or group facility, within government-owned or -leased quarters, for children and youth who cannot be properly cared for by their own family.

Healthcare personnel. Military, civilian, or contract staff involved in the delivery of healthcare services.

Host-government check. A criminal history background check conducted on foreign nationals in accordance with U.S. and host country treaties or agreements.

Interim suitability or fitness determination. Part of the pre-screening process in the identification and resolution of suitability or fitness issues, which occurs prior to the initiation of the required investigation. It involves the review of applications and other employment related documents. A favorable interim suitability or fitness determination is a status granted on a temporary basis, which permits individuals to work under line-of-sight supervision (LOSS) after the return of the advance FBI fingerprint check, pending completion of full investigative requirements and a final suitability determination.

Investigative elements. The records, reports, or other individual elements

that comprise the whole of information collected during a criminal history background check and used to make a fitness or suitability determination.

Installations records check (IRC). A query of records maintained on an individual by programs and entities at the military installation where the individual lives, is assigned, or works, including military law enforcement and installation security records, drug and alcohol records, and FAP records for a minimum of 2 years before the date of the application.

Investigative service provider (ISP). The company or agency authorized to perform background investigations on personnel on behalf of the agency.

Line of Sight Supervision (LOSS). Continuous visual observation and supervision of an individual whose background check has not yet cleared, and has a favorable interim suitability or fitness determination, while engaged in child interactive duties, or in the presence of children in a DoD-sanctioned program or activity. The person providing supervision must have undergone a background check and received a final favorable suitability or fitness determination and be current on all periodic reinvestigations as required by this part.

Met criteria. Reported incident of alleged maltreatment found to meet DoD incident determination criteria for child abuse or domestic abuse and entry into the Service FAP central registry of child abuse and domestic abuse reports.

Position. An employee, contractor, provider, or volunteer role or function.

Preliminary investigations. Those investigative elements of a criminal history background check, including those specified in § 86.6(f), which must be favorably completed and reviewed before an individual may be permitted to perform duties under LOSS.

Providers. Individuals involved in child care services who have regular contact with children or may be alone with children in the performance of their duties. Includes FCC providers and individuals with overall management responsibility for child and youth programs.

Regular contact with children. Recurring and more than incidental contact

with or access to children in the performance of their duties on a DoD installation, program, or as part of a DoD-sanctioned activity.

Reinvestigation. A criminal history background check conducted after the period of time prescribed by this part to ensure the individual remains eligible to provide child care services. Reinvestigation includes the same checks conducted for the initial investigation as outlined in § 86.6(b).

Respite care providers. Individuals who provide short-term care and supportive services in a family home or group facility within government-owned or -leased quarters.

State criminal history repository (SCHR). A repository of criminal information that lists past state convictions, current offender information, and criminal identification information (fingerprints, photographs, and other information or descriptions) that identify a person as having been the subject of a criminal arrest or prosecution. Checks of the SCHR may include the State child abuse and neglect repository and the State sex offender registry.

Suitability determination. A decision that a person is or is not suitable for a covered position within the DoD.

Supervisor. The person supervising individuals who are permitted to perform duties only under LOSS, who is not necessarily the same as an employee's supervisor for employment purposes (e.g., ratings, assignment of duties).

Volunteer. There are two types of volunteers:

(1) *Specified volunteers.* Individuals who could have extensive or frequent contact with children over a period of time. They include, but are not limited to, positions involving extensive interaction alone, extended travel, or overnight activities with children or youth. Coaches and long-term instructors are among those who fall in this category. Specified volunteers are designated by the DoD Component head. Background checks are required in accordance with § 86.6(b)(4).

(2) *Non-specified volunteers.* Individuals who provide services that are shorter in duration than is required to perform a criminal history background check (e.g., one-day class trip, class

party). Because non-specified volunteers do not receive the same level of background checks as specified volunteers, non-specified volunteers must always be in line of sight of a staff member with a complete background check.

Youth program. Defined in DoD Instruction 6060.4, "Department of Defense (DoD) Youth Programs (YPs)" (available at <http://www.dtic.mil/whs/directives/corres/pdf/606004p.pdf>).

§ 86.4 Policy.

It is DoD policy that:

(a) Individuals who have regular contact with children under 18 years of age in DoD-sanctioned child care services programs will undergo a criminal history background check in order to protect the health, safety and well-being of children in such programs.

(b) All individuals who have regular contact with children under 18 years of age in DoD-sanctioned child care services programs and who also have a current or prior DoD affiliation must also undergo an IRC.

(c) DoD Component heads are delegated the authority to make suitability determinations and take subsequent actions in cases involving applicants and appointees to covered positions as defined by 5 CFR 731.101, subject to the conditions in 5 CFR 731.103. This authority may be further delegated to authorized management officials, in writing, in accordance with volume 731 of DoD Instruction 1400.25.

(1) The DoD Consolidated Adjudications Facility is responsible for making favorable suitability determinations for civilian personnel in accordance with Deputy Assistant Secretary of Defense for Civilian Personnel and Policy Memorandum, "Responsibilities Under the Department of Defense Suitability and Fitness Adjudications for Civilians Employees Programs," August 26, 2013.

(2) Military members are not subject to suitability adjudication under Volume 731 of DoD Instruction 1400.25, "DoD Civilian Personnel Management System" (available at <http://www.dtic.mil/whs/directives/corres/pdf/140025v731.pdf>). Military members subject to the background check requirements of DoD Instruction 5200.02, "Personnel Security Program" (available at <http://>