

§ 63.13

under Federal, state, or tribal law involving crimes of violence, sexual assault, sexual molestation, sexual exploitation, sexual contact or prostitution, or crimes against persons.

§ 63.13 What does the Indian Child Protection and Family Violence Prevention Act require of the Bureau of Indian Affairs and Indian tribes or tribal organizations receiving funds under the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act?

(a) The *Bureau of Indian Affairs* must compile a list of all authorized positions which involve regular contact with or control over Indian children; investigate the character of each individual who is employed, or is being considered for employment; and, prescribe minimum standards of character which each individual must meet to be appointed to such positions.

(b) All *Indian tribes or tribal organizations* receiving funds under the authority of the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 must conduct a background investigation for individuals whose duties and responsibilities would allow them regular contact with or control over Indian children, and employ only individuals who meet standards of character that are no less stringent than those prescribed for the Bureau of Indian Affairs.

§ 63.14 What positions require a background investigation and determination of suitability for employment or retention?

All positions that allow an applicant, employee, or volunteer regular contact with or control over Indian children are subject to a background investigation and determination of suitability for employment.

§ 63.15 What questions should an employer ask?

Employment applications must:

(a) Ask whether the applicant, volunteer, or employee has been arrested or convicted of a crime involving a child, violence, sexual assault, sexual molestation, sexual exploitation, sexual con-

25 CFR Ch. I (4-1-06 Edition)

tact or prostitution, or crimes against persons;

(b) Ask the disposition of the arrest or charge;

(c) Require that an applicant, volunteer or employee sign, under penalty of perjury, a statement verifying the truth of all information provided in the employment application; and

(d) Inform the applicant, volunteer or employee that a criminal history record check is a condition of employment and require the applicant, volunteer or employee to consent, in writing, to a record check.

§ 63.16 Who conducts the background investigation and prepares the determination of suitability for employment?

(a) The *Bureau of Indian Affairs* must use the United States Office of Personnel Management (OPM) to conduct background investigations for Federal employees. The BIA must designate qualified security personnel to adjudicate the results of background investigations.

(b) *Indian tribes and tribal organizations* may conduct their own background investigations, contract with private firms, or request the OPM to conduct an investigation. The investigation should cover the past five years of the individual's employment, education, etc.

§ 63.17 How does an employer determine suitability for employment and efficiency of service?

(a) *Adjudication* is the process employers use to determine suitability for employment and efficiency of service. The adjudication process protects the interests of the employer and the rights of applicants and employees. Adjudication requires uniform evaluation to ensure fair and consistent judgment.

(b) Each case is judged on its own merits. All available information, both favorable and unfavorable, must be considered and assessed in terms of accuracy, completeness, relevance, seriousness, overall significance, and how similar cases have been handled in the past.

(c) An *adjudicating official* conducts the adjudication. Each Federal agency, Indian tribe, or tribal organization must appoint an adjudicating official,

who must first have been the subject of a favorable background investigation.

(1) Indian tribes and tribal organizations must ensure that persons charged with the responsibility for adjudicating employee background investigations are well-qualified and trained.

(2) Indian tribes and tribal organizations should also ensure that individuals who are not trained to adjudicate these types of investigations are supervised by someone who is experienced and receive the training necessary to perform the task.

(d) Each adjudicating official must be thoroughly familiar with all laws, regulations, and criteria involved in making a determination for suitability.

(e) The adjudicating official must review the background investigation to determine the character, reputation, and trustworthiness of the individual. At a minimum, the adjudicating official must:

(1) Review each security investigation form and employment application and compare the information provided;

(2) Review the results of written record searches requested from local law enforcement agencies, former employers, former supervisors, employment references, and schools; and

(3) Review the results of the fingerprint charts maintained by the Federal Bureau of Investigation or other law enforcement information maintained by other agencies.

(f) Relevancy is a key objective in evaluating investigative data. The adjudicating official must consider prior conduct in light of:

(1) The nature and seriousness of the conduct in question;

(2) The recency and circumstances surrounding the conduct in question;

(3) The age of the individual at the time of the incident;

(4) Societal conditions that may have contributed to the nature of the conduct;

(5) The probability that the individual will continue the type of behavior in question; and,

(6) The individual's commitment to rehabilitation and a change in the behavior in question.

§ 63.18 Are the requirements for Bureau of Indian Affairs adjudication different from the requirements for Indian tribes and tribal organizations?

Yes.

(a) In addition to the minimum requirements for background investigations found in § 63.12, *Bureau of Indian Affairs'* adjudicating officials must review the OPM National Agency Check and Inquiries which includes a search of the OPM Security/Suitability Investigations Index (SII) and the Defense Clearance and Investigations Index (DCII), and any additional standards which may be established by the BIA.

(b) *All* Bureau of Indian Affairs employees who have regular contact with or control over Indian children must be reinvestigated every five years during their employment in that or any other position which allows regular contact with or control over Indian children.

(c) *Indian tribes and tribal organizations* may adopt these additional requirements but are not mandated to do so by law.

§ 63.19 When should an employer deny employment or dismiss an employee?

(a) An employer must deny employment or dismiss an employee when an individual has been found guilty of or entered a plea of guilty or nolo contendere to any Federal, state or tribal offense involving a crime of violence, sexual assault, sexual molestation, child exploitation, sexual contact, prostitution, or crimes against persons.

(b) An employer may deny employment or dismiss an employee when an individual has been convicted of an offense involving a child victim, a sex crime, or a drug felony.

[61 FR 32274, June 21, 1996, as amended at 64 FR 66771, Nov. 30, 1999]

§ 63.20 What should an employer do if an individual has been charged with an offense but the charge is pending or no disposition has been made by a court?

(a) The employer may deny the applicant employment until the charge has been resolved.