

# Code of Federal Regulations

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## 25 Part 63 – Indian Child Protection and Family Violence Prevention Subpart A – Purpose, Policy, and Definitions

### § 63.1 Purpose.

The purpose of these regulations is to prescribe minimum standards of character and suitability for employment for individuals whose duties and responsibilities allow them regular contact with or control over Indian children, and to establish the method for distribution of funds to support tribally operated programs to protect Indian children and reduce the incidents of family violence in Indian country as authorized by the Indian Child Protection and Family Violence Prevention Act of 1990, Pub. L. 101-630, 104 Stat. 4544, 25 U.S.C. 3201 3211.

### § 63.2 Policy.

In enacting the Indian Child Protection and Family Violence Prevention Act, the Congress recognized there is no resource more vital to the continued existence and integrity of Indian tribes than their children and that the United States has a direct interest, as trustee, in protecting Indian children who are members of, or are eligible for membership in, an Indian tribe. The minimum standards of character and suitability of employment for individuals ensure that Indian children are protected, and the Indian child protection and family violence prevention programs will emphasize the unique values of Indian culture and community involvement in the prevention and treatment of child abuse, child neglect and family violence.

### § 63.3 Definitions.

**BUREAU** means the Bureau of Indian Affairs of the Department of the Interior;

**CHILD** means an individual who is not married, and has not attained 18 years of age.

**CHILD ABUSE** includes but is not limited to any case in which a child is dead, or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, or soft tissue swelling, and this condition is not justifiably explained or may not be the product of an accidental occurrence; and any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution.

**CHILD NEGLECT** includes but is not limited to, negligent treatment or maltreatment of a child by a person, including a person responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened.

**CRIMES AGAINST PERSONS** are defined by local law. Adjudicating officers must contact local law enforcement agencies to determine if the crime for which an applicant or employee was found guilty (or entered a plea of nolo contendere or guilty) is defined as a crime against persons.

**FAMILY VIOLENCE** means any act, or threatened act, of violence, including any forceful detention of an individual, which results, or threatens to result, in physical or mental injury, and is committed by an individual against another individual to whom such person is, or was, related by blood or marriage or otherwise legally related, or with whom such person is, or was, residing, or with whom such person has, or had, intimate or continuous social contact and household access.

**INDIAN** means any individual who is a member of an Indian tribe.

**INDIAN CHILD** means any unmarried person who is under age eighteen and is either a member of an Indian tribe or eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

INDIAN COUNTRY means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof; and,

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Unless otherwise indicated, the term "Indian country" is used instead of "Indian reservation" for consistency.

INDIAN RESERVATION means any Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, or lands held by incorporated Native groups, regional corporations, or village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

INDIAN TRIBE means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

INTER-TRIBAL CONSORTIUM means a partnership between an Indian tribe or tribal organization of an Indian tribe, and one or more Indian tribes or tribal organizations of one or more Indian tribes.

LOCAL CHILD PROTECTIVE SERVICES AGENCY is an agency of the Federal Government, state, or Indian tribe that has the primary responsibility for child protection on any Indian reservation, or within any community in Indian country.

LOCAL LAW ENFORCEMENT AGENCY is that Federal, tribal, or state law enforcement agency that has primary responsibility for the investigation of an instance of alleged child abuse within the involved Indian jurisdiction.

MUST is used in place of shall and indicates a mandatory or imperative act or requirement.

PERSON RESPONSIBLE FOR A CHILD'S WELFARE is any person who has legal or other recognized duty for the care and safety of a child, and may include any employee or volunteer of a children's residential facility, and any person providing out-of-home care, education, or services to children.

RELATED ASSISTANCE means the counseling and self-help services for abusers, victims, and dependents in family violence situations; referrals for appropriate health-care services (including alcohol and drug abuse treatment); and may include food, clothing, child care, transportation, and emergency services for victims of family violence and their dependents.

SECRETARY means the Secretary of the Interior.

SERVICE means the Indian Health Service of the Department of Health and Human Services.

SHELTER means the temporary refuge and related assistance in compliance with applicable Federal and tribal laws and regulations governing the provision, on a regular basis, of shelter, safe homes, meals, and related assistance to victims of family violence or their dependents.

TRIBAL ORGANIZATION means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, That in any case where a contract is let, a grant is awarded, or funding agreement is made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe must be a prerequisite to the letting or making of such contract, grant, or funding agreement.

#### **§ 63.4 Information collection.**

The information collection requirement contained in § 63.15, § 63.33 and § 63.34 will be approved by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).

**§ § 63.5 - 63.9 [Reserved]**

**25 Part 63 – Indian Child Protection and Family Violence Prevention  
Subpart B – Minimum Standards of Character and Suitability for Employment**

**§ 63.10 Purpose.**

The purpose of this part is to establish:

(a) Procedures for determining suitability for employment and efficiency of service as mandated by the Indian Child Protection and Family Violence Prevention Act; and

(b) Minimum standards of character to ensure that individuals having regular contact with or control over Indian children have not been convicted of certain types of crimes or acted in a manner that placed others at risk or raised questions about their trustworthiness.

**§ 63.11 What is a determination of suitability for employment and efficiency of service?**

(a) DETERMINATIONS OF SUITABILITY MEASURE THE FITNESS OR ELIGIBILITY of an applicant, volunteer, or employee for a particular position. Suitability for employment does not evaluate an applicant's education, skills, knowledge, experience, etc. Rather, it requires that the employer investigate the background of each applicant, volunteer, and employee to:

(1) Determine the degree of risk the applicant, volunteer, or employee brings to the position; and

(2) Certify that the applicant's, volunteer's, or employee's past conduct would not interfere with his/her performance of duties, nor would it create an immediate or long-term risk for any Indian child.

(b) EFFICIENCY OF SERVICE is the employer's verification that the applicant or employee is able to perform the duties and responsibilities of the position, and his/her presence on the job will not inhibit other employees or the agency from performing their functions.

**§ 63.12 What are minimum standards of character?**

Minimum standards of character are established by an employer and refer to identifiable character traits and past conduct. An employer may use character traits and past conduct to determine whether an applicant, volunteer, or employee can effectively perform the duties of a particular position without risk of harm to others. Minimum standards of character ensure that no applicant, volunteer, or employee will be placed in a position with 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.

**§ 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 contact 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 may 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.

**§ 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.

(b) The employer may deny the employee any on-the-job contact with children until the charge is resolved.

(c) The employer may detail or reassign the employee to other duties that do not involve contact with children.

(d) The employer may place the employee on administrative leave until the court has disposed of the charge.

**§ 63.21 Are there other factors that may disqualify an applicant, volunteer or employee from placement in a position which involves regular contact with or control over Indian children?**

Yes.

(a) An applicant, volunteer, or employee may be disqualified from consideration or continuing employment if it is found that:

(1) The individual's misconduct or negligence interfered with or affected a current or prior employer's performance of duties and responsibilities.

(2) The individual's criminal or dishonest conduct affected the individual's performance or the performance of others.

(3) The individual made an intentional false statement, deception or fraud on an examination or in obtaining employment.

(4) The individual has refused to furnish testimony or cooperate with an investigation.

(5) The individual's alcohol or substance abuse is of a nature and duration that suggests the individual could not perform the duties of the position or would directly threaten the property or safety of others.

(6) The individual has illegally used narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation.

(7) The individual knowingly and willfully engaged in an act or activities designed to disrupt government programs.

(b) An individual must be disqualified for Federal employment if any statutory or regulatory provision would prevent his/her lawful employment.

**§ 63.22 Can an employer certify an individual with a prior conviction or substantiated misconduct as suitable for employment?**

(a) The BUREAU OF INDIAN AFFAIRS must use Federal adjudicative standards which allow the BIA to certify that an individual is suitable for employment in a position that does not involve regular contact with or control over Indian children. The adjudicating officer must determine that the individual's prior conduct will not interfere with the performance of duties and will not create a potential for risk to the safety and well-being of Indian children.

(b) INDIAN TRIBES AND TRIBAL ORGANIZATIONS must identify those positions which permit contact with or control over Indian children and establish standards to determine suitability for employment. Those standards should then be used to determine whether an individual is suitable for employment in a position that permits contact with or control over Indian children. If not, the individual may only be placed in a position that does not permit contact with or control over Indian children.

**§ 63.23 What rights does an applicant, volunteer or employee have during this process?**

(a) The applicant, volunteer, or employee must be provided an opportunity to explain, deny, or refute unfavorable and incorrect information gathered in an investigation, before the adjudication is final. The applicant, volunteer, or employee should receive a written summary of all derogatory information and be informed of the process for explaining, denying, or refuting unfavorable information.

(b) Employers and adjudicating officials must not release the actual background investigative report to an applicant, volunteer, or employee. However, they may issue a written summary of the derogatory information.

(c) The applicant, volunteer, or employee who is the subject of a background investigation may obtain a copy of the reports from the originating (Federal, state, or other tribal) agency and challenge the accuracy and completeness of any information maintained by that agency.

(d) The results of an investigation cannot be used for any purpose other than to determine suitability for employment in a position that involves regular contact with or control over Indian children.

(e) Investigative reports contain information of a highly personal nature and should be maintained confidentially and secured in locked files. Investigative reports should be seen only by those officials who in performing their official duties need to know the information contained in the report.

**§ 63.24 What protections must employers provide to applicants, volunteers and employees?**

(a) Indian tribes and tribal organizations must comply with the privacy requirements of any Federal, state, or other tribal agency providing background investigations. Indian tribes and tribal organizations must establish and comply with personnel policies that safeguard information derived from background investigations.

(b) The Bureau of Indian Affairs must comply with all policies, procedures, criteria, and guidance contained in the Bureau of Indian Affairs Manual or other appropriate guidelines.

(c) Federal agencies exercising authority under this part by delegation from OPM must comply with OPM policies, procedures, criteria, and guidance.

**§ § 63.25-63.29 [Reserved]**

PART 63 – INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION

1. The authority citation for 25 CFR part 63 continues to read as follows:

**Authority:** 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 200, 3201 *et seq.*; 42 U.S.C. 13041.

**§ 63.19 [Amended]**

2. In § 63.19, paragraph (a), in the first sentence, the word “may” is changed to “must.”

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**Kevin Gover,**

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