

**Indian Health Service Background Investigations of Individuals Applying for Positions  
Involving Regular Contact With or Control Over Indian Children and Supporting  
Regulations Contained in 42 U.S.C.**

**Background:**

This is a request for approval of an extension of collection information required by Section 408 of the Indian Child Protection and Family Violence Prevention Act (the "Act"), Public Law (Pub.L.) 101-630, 104 Stat. 4544, 25 U.S.C. 3201-3211, as amended by section 814 of S. 3031, the Native American Laws Technical Corrections Act of 2000.

**A. JUSTIFICATION**

**1. Circumstances making the collection necessary:**

25 U.S.C. 3207 requires the Indian Health Service (IHS) to compile a list of all authorized positions within the IHS where the duties and responsibilities of which involve regular contact with, or control over, Indian children; to conduct an investigation of the character of each individual who is employed, or is being considered for employment in a position having regular contact with, or control over, Indian children and; to prescribe by regulations the minimum standards of character that individual must meet to appointed to positions having regular contact with, or control over, Indian children. Section 3207(b) was amended by Section 814 of S. 3031, the Native American Laws Technical Corrections Act of 2000. Section 3207(b) requires that the regulations prescribing the minimum standards of character ensure that none of the individuals appointed to positions which involve regular contact with, or control over, Indian children, have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense, or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

In addition, 42 U.S.C. 13041 requires each agency of the Federal Government, and every facility operated by the Federal Government (or operated under contract with the Federal Government), that hires (or contracts for hire) individuals involved with the provision to children under age of 18 or child care services to assure that all existing and newly-hired employees undergo a criminal history background check. The background is to be initiated through the personnel program of the applicable Federal agency. This section requires employment applications for individuals who are seeking work for an agency of the Federal Government, or for a facility or program operated by (or through contract with) the Federal Government, in positions involved with the provision to children under the of 18 or child care services, to contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child.

The Notice of Proposed Rule-making (NPRM) to implement the above was published in the **Federal Register** (64 FR 14560-14565) on March 25, 1999. The OMB did not receive any comments in response to the NPRM. As a result of the technical amendments to the Act, the agency has revised the questions and is soliciting comments as explained in the preamble of the Interim Final Rule. Section 36.412(a) (2) requires the individual to identify a conviction or a plea to any of the covered offenses, whether a felony or misdemeanor conviction or plea, because the agency retains the discretion not to hire this individual to, or to remove this individual from a covered position if it determines that such an individual places Indian children at risk. Section 36.412(a) (2) has been modified to include the additional category of crimes “offenses against children” pursuant to the technical amendments to section 408 of the Act.

## **2. Information Users:**

In order to protect Indian children, the IHS prescribed by regulations that the minimum Standards of character have been met only after individuals in positions involving regular contact with or control over Indian children have been the subject of a satisfactory background investigation, and it has been determined that these individuals have not been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious or any of two or more misdemeanor offenses under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons or offenses committed against children.

The collection of information for the background investigation includes inquiries with the individual’s references and places of employment and education to help determine an individual’s trustworthiness and through a criminal history background check, which includes a fingerprint check through the Criminal Justice Information Services Division of the FBI, under procedures approved by the FBI, and inquiries to State and tribal law enforcement agencies for residence for the previous 5 years listed on the individual’s application.

To collect the information needed to determine whether a prospective or current employee has been arrested for or charged with a crime involving a child or, found guilty of, or entered a plea of nolo contendere or guilty to any felonious or misdemeanor offenses under Federal, State, or Tribal law involving crimes against person; or offenses committed against children the following “Agency Optional Questions” have been added as an addendum to item number 16 of the OPM Optional Form 306, “Declaration for Federal Employment” (see attachment 2)

- (1) Have you ever been arrested or charged with a crime involving a child? [If “Yes”, provide the date, explanation of the violation, disposition of the arrest and charge, place of occurrence, and the name and address of the police department or court involved.]
- (2) Have you ever been found guilty of, or entered a plea of nolo contendere (no contest) or guilty to any felonious or misdemeanor offense under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children? [If “Yes”, provide the date, explanation of the violation, disposition of the arrest or crime, place of occurrence, and the name and address of the police department or court involved.]

In addition, each applicant must sign under penalty of perjury, a statement verifying the truth of all of the information provided in the employment application and acknowledge that knowingly falsifying or concealing information is subject to fine or imprisonment or both and they must sign an informed consent authorizing a criminal record check.

The information collected is use to help to determine the character of each individual who is employed or is being considered for employment in a position that involves regular contact with or control over Indian children; and to employ only individuals who meet the minimum standards of character prescribed in the rule.

**3. Improved Information Technology:**

This form is available through electronic technology via the vacancy announcement for positions covered by Pub.L. 93-638.

**4. Duplication of Similar Information:**

The information collected is not duplicated by any other Federal entity and no similar Information is available to fulfill the required uses for this collection. The information collected is the minimum needed for the intended purpose.

**5. Small Businesses:**

Tribes and tribal organizations are considered small governmental jurisdictions or small Entities as defined under the Regulatory Flexibility Act. Tribes and tribal organizations

receiving funds under the authority of the Indian Self-Determination and Education Assistance Act, Pub.L. 93-638, as amended, must conduct an investigation of the character of each individual who is employed or is being considered for employment in a position that involves regular contact with or control over Indian children and employ individuals in position involving regular contact with or control over Indian children only if the individuals meet standards of character no less stringent than those prescribed under these regulations.

**6. Less Frequent Collection:**

If the collection is not conducted or is conducted less frequently, the Department would be unable to conduct the background investigations required by 25 U.S.C. 3207. There are no technical or legal obstacles to reducing burden.

**7. Special Circumstances:**

There are special circumstances that require exceptions to 5 CFR 1320.5(d) (2).

**8. Federal Register Notice/Outside Consultation:**

A 60-day Federal Register Notice was published in the Federal Register on September 24, 2008, Vol. 73, No. 186; pp. 55122 . There were no public comments.

**9. Payment/Gift to Respondents:**

The respondents will not receive any payment or gift for providing the information.

**10. Confidentiality:**

The information collected is subject to the Privacy Act of 1974 and may be disclosed in accordance with its provisions and Privacy Act notice OPM/GOVT-1 General Personnel Records.

**11. Sensitive Questions:**

The questions of a sensitive nature described in Item 2 above are required by 25 U.S.C. 3207 and 42 U.S.C. 13041. The information is needed to determine whether a prospective or current employee has been arrested for or charged with a crime involving a child or, found guilty of or entered a plea of nolo contendere or guilty to any felonies offense or two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against person; or offenses committed against children. Each applicant must sign under penalty of perjury, a statement verifying the truth of all of the information provided in the employment application and acknowledge that knowingly falsifying or concealing information is subject to fine or imprisonment or both and they must an informed consent authorizing a criminal record check. The information is

collected as part of the OPM Optional Form 306 and safeguarded in accordance with Privacy Act provisions.

**12. Burden Estimate (Total Hours and Wages):**

A. Burden hour estimate: The IHS will collect this information from each individual who applies for employment in a position that has been determined to involve regular contact with or control over Indian children. The information collected will be used to help determine that minimum standards of character are met by individuals seeking employment as described in the rule. The estimated burden hour for respondents is 15 minutes. The estimated number of respondents is 3000 annually. The estimated burden hour for the collection of this information for the Federal government is 500 hours annually. The collection time for the Federal government includes reviewing each response by the respondent.

**12A. Estimated Annualized Burden Hours:**

<b>Type of Respondent</b>	<b>Form Name</b>	<b>No. of Respondents</b>	<b>No. Responses per Respondent</b>	<b>Average Burden per Response (in hours)</b>	<b>Total Burden Hours</b>
Applicant	Addendum to OF 306	3000	1	15/60	750

B. Annualized cost to respondents: There is no cost burden to respondents other than their time to voluntarily complete the collection information requested.

<b>Type of Respondent</b>	<b>Form Name</b>	<b>Total Burden Hours</b>	<b>Hourly Wage</b>	<b>Total Respondent Cost</b>
Applicant	Addendum to OF 306	750	\$30.00	\$22500.00

**13. Capital Costs (Maintenance of Capital Costs):**

There are no direct costs to respondents other than time to voluntarily provide the information for consideration.

There are no capital or start-up costs to respondents for this information collection. Nor are there costs for the operation and maintenance, and purchase of services components for this information collection.

**14. Cost to Federal Government:**

The annual cost to the Federal Government for collection of this information is the time involved in the human resources staff to review the responses to the 2 questions on the form. The form is attached to an applicant's application for a position advertised as a position covered under P.L. 101-630 and P.L. 101-647. The staff time to review the form is approximately 1 minute. There are about 100 staff personnel that will review applications, including the form. Using an average salary of \$75,000 per year (GS-12), the breakdown of 1minute of time comes to \$35.93 per hour, \$ 0.60 per minute. There may be about 1000 applications per year that are applicable to review of this form. This cost on an annualized basis is \$ 600.00 per year.

<u>Item</u>	<u>Hours (minutes)</u>	<u>Cost</u>
Review/evaluate 1000 responses (\$0.60/minute)	1	\$ 600.00
Total annual cost to the government		\$ 600.00

**15. Program or Burden Changes:**

This collection results in a program change of 1000 additional respondents which changed the total burden hours to 750.

**16. Publication and Tabulation Dates:**

There is no intention to publish this information collection.

**17. Expiration Date:**

IHS is not seeking approval to not show expiration date.

**18. Certification Statement:**

There are no exceptions to the certification.

## **ATTACHMENTS**

### **IHS Background Investigations for Positions Involving Contact With or Control Over Indian Children**

#### **Attachment 1**

1. 25 U.S.C. 3207 Indian Child Protection and Family Violence Prevention – Character Investigations.
2. H.R. 5528, Section 814, Technical Amendments to the Indian Child Protection and Family Violence Prevention Act
3. 42 U.S.C. 13041 Child Care Worker Employee Background Checks – Requirement for background checks.

#### **Attachment 2**

Addendum to item number 16 of the OPM Optional Form 306, “Declaration for Federal Employment”

#### **Attachment 3**

Privacy Act systems notice: OPM-GOVT-1, General Personnel Records”

#### **Attachment 4**

Interim Final Rule with comment period published in Federal Register