



Department of Defense INSTRUCTION

NUMBER 1402.05

September 11, 2015

Incorporating Change 1, Effective July 14, 2016

USD(P&R)

SUBJECT: Background Checks on Individuals in DoD Child Care Services Programs

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive 5124.02 (Reference (a)), this instruction reissues DoD Instruction (DoDI) 1402.5 (Reference (b)) and implements section 13041 of Title 42, United States Code (U.S.C.) (Reference (c)) to establish policy, assign responsibilities, and provide 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 sanctioned child care services programs.

2. **APPLICABILITY.** This instruction applies to OSD, 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 instruction as the "DoD Components").

3. **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 installation records check (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 part 731.101 of Title 5, Code of Federal Regulations (Reference (d)), subject to the conditions in part 731.103 of Reference (d). This authority may be further delegated to authorized management officials, in writing, in accordance with Volume 731 of DoD Instruction 1400.25 (Reference (e)).

(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 (Reference (f)).

(2) Military members are not subject to suitability adjudication under Volume 731 of Reference (e). Military members are subject to the background check requirements of DoD Instruction 5200.02 (Reference (g)) and Enclosure 3.

d. Suitability and fitness determinations for individuals subject to this instruction will follow the guidance of Volume 731 of Reference (e) for appropriated fund (APF) employees and Volume 1403 of Reference (e) for nonappropriated fund (NAF) employees. Suitability and fitness are to be applied for the child care worker population in accordance with Volume 731 of Reference (e) for APF employees in covered positions as defined by part 731 of Reference (d).

e. Individuals who have received a favorable interim suitability or fitness determination based on the FBI criminal history background check are permitted to work under line-of-sight supervision (LOSS) pursuant to subsection (b)(3) of section 13041 of Reference (c).

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. RELEASABILITY. **Cleared for public release**. This instruction is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. INFORMATION COLLECTIONS.

a. The background investigations referred to throughout this instruction do not require licensing with a report control symbol in accordance with paragraph 10 of Volume 1 of DoD Manual 8910.01 (Reference (m))

b. The background investigations referred to throughout this instruction have been assigned Office of Management and Budget Control Number 0704-0515 in accordance with the procedures in Volume 2 of Reference (m). The expiration date of this information collection is listed on the DoD Information Collections System at <https://eitsdext.osd.mil/sites/dodiic/Pages/default.aspx>.

8. SUMMARY OF CHANGE 1. This change updates the requirement as a result of the Office of Personnel Management new Federal Investigative Standards for Tier 1 positions designated as low risk, non-sensitive, which includes positions in the DoD Child Care Services programs. An Information Collections paragraph was added to this issuance in accordance with Volumes 1 and 2 of Reference (m). Administrative changes were also made to this issuance to update references for accuracy.

9. EFFECTIVE DATE. This instruction is effective September 11, 2015.

A handwritten signature in black ink, appearing to read "Brad Carson". The signature is stylized with large, bold letters and a long, sweeping underline.

Brad Carson
Acting Under Secretary of Defense
for Personnel and Readiness

Enclosures

1. References
2. Responsibilities
3. Procedures
4. Eligibility to Perform Duties under LOSS

Glossary

TABLE OF CONTENTS

ENCLOSURE 1: REFERENCES.....6

ENCLOSURE 2: RESPONSIBILITIES.....7

 ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS
 (ASD(M&RA))7

 DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL
 POLICY (DASD(CPP)).....7

 DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY COMMUNITY
 AND FAMILY POLICY (DASD(MC&FP))7

 DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY PERSONNEL
 POLICY (DASD(MPP)).....7

 DIRECTOR OF ADMINISTRATION, OFFICE OF THE DEPUTY CHIEF
 MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE.....7

 UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND
 LOGISTICS (USD(AT&L)).....8

 DoD COMPONENT HEADS.....8

ENCLOSURE 3: PROCEDURES.....9

 REQUIREMENTS FOR CRIMINAL HISTORY BACKGROUND CHECKS.....9

 TYPES OF BACKGROUND CHECKS10

 Criminal History Background Checks for DoD Civilian and Military Personnel Who Are
 Investigated at the NACI or a Higher Level Pursuant to DoD’s Personnel Security
 Program.....10

 Criminal History Background Checks for Civilian Employees (APF and NAF)11

 Criminal History Background Checks for FCC Providers and DoD Contractors11

 Criminal History Background Checks for Others.....11

 Timely Completion12

 CRITERIA FOR DISQUALIFICATION BASED ON RESULTS OF CRIMINAL
 HISTORY BACKGROUND CHECKS12

 Evaluation Authority.....12

 Criteria for Automatic Disqualification12

 SUITABILITY AND FITNESS DETERMINATIONS FOR INDIVIDUALS INVOLVED
 WITH THE PROVISION OF CHILD CARE SERVICES13

 Criteria for Presumptive Disqualification13

 Evaluation of Presumptively Disqualifying Information.....13

 Criteria for Disqualification Under LOSS14

 Disputes and Appeals.....14

 REVERIFICATION14

 SELF-REPORTING15

ENCLOSURE 4: ELIGIBILITY TO PERFORM DUTIES UNDER LOSS16

No Presumption of Right16
Preliminary Investigations Required.....16
Exception for Non-specified Volunteers16
Supervisor Requirements16
Video Surveillance.....16
Conspicuous Identification of Individuals Subject to LOSS17
Permissible Performance of Duties Without Supervision17

GLOSSARY18

PART I: ABBREVIATIONS AND ACRONYMS18
PART II: DEFINITIONS.....18

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- (b) DoD Instruction 1402.5, “Criminal History Background Checks on Individuals In Child Care Services,” January 19, 1993 (hereby cancelled)
- (c) Title 42, United States Code
- (d) Title 5, Code of Federal Regulations
- (e) DoD Instruction 1400.25, “DoD Civilian Personnel Management System,” date varies by volume
- (f) Deputy Assistant Secretary of Defense for Civilian Personnel and Policy Memorandum, “Responsibilities Under the Department of Defense Suitability and Fitness Adjudications for Civilian Employees Programs,” August 26, 2013
- (g) DoD Instruction 5200.02, “DoD Personnel Security Program (PSP),” March 21, 2014, as amended
- (h) Chapter 47 of Title 10, United States Code
- (i) Title 5, United States Code
- (j) DoD Instruction 6400.01, “Family Advocacy Program (FAP),” February 13, 2015
- (k) DoD Instruction 6060.02, “Child Development Programs (CDPs),” August 5, 2014
- (l) DoD Instruction 6060.4, “Department of Defense (DoD) Youth Programs (YPs),” August 23, 2004
- (m) DoD Manual 8910.01, “DoD Information Collections,” June 30, 2014

ENCLOSURE 2

RESPONSIBILITIES

1. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS (ASD(M&RA)). Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness:

a. Ensures the conduct of criminal history background checks complies with DoD policy and the Criminal Justice Information Services Division of the FBI's operational and security policies and procedures.

b. Monitors DoD Component compliance with this instruction, applicable laws, and subsequent guidance issued by the applicable investigative service provider.

2. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY (DASD(CPP)). Under the authority, direction, and control of the ASD(M&RA), the DASD(CPP) oversees development of DoD Component policies and procedures for the background check initiation, completion, adjudication, and suitability or fitness determination process for civilian employees in accordance with this instruction.

3. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY COMMUNITY AND FAMILY POLICY (DASD(MC&FP)). Under the authority, direction, and control of the ASD(M&RA), the DASD(MC&FP) oversees development of DoD Component policies and procedures related to the background check initiation, completion, adjudication, and fitness determination process for specified volunteers, family child care (FCC) providers and adults residing in their home, and others as identified in accordance with this instruction.

4. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR MILITARY PERSONNEL POLICY (DASD(MPP)). Under the authority, direction, and control of the ASD(M&RA), the DASD(MPP):

a. Implements this instruction for military personnel in accordance with Reference (g).

b. Institutes effective quality assurance and quality control systems for chaplains, support staff, specified volunteers, and contractors who provide support to religious programs and activities identified in paragraph 1e(5) of Enclosure 3 and in accordance with this instruction.

5. DIRECTOR OF ADMINISTRATION, OFFICE OF THE DEPUTY CHIEF MANAGEMENT OFFICER OF THE DEPARTMENT OF DEFENSE. Under the authority, direction, and control of the Deputy Chief Management Officer of the Department of Defense,

the Director of Administration ensures that the adjudication of background investigations of individuals who have regular contact with children under 18 years of age in DoD-sanctioned programs considers the criteria for presumptive and automatic disqualification as specified in this instruction.

6. UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS (USD(AT&L)). The USD(AT&L) establishes policies and procedures for the background check initiation, completion, adjudication, and fitness determination process for contractors in accordance with the requirements of this instruction.

7. DoD COMPONENT HEADS. The DoD Component heads:

a. Ensure Component compliance with the requirements of this instruction, applicable laws, and guidance for civilian employees.

b. Ensure compliance with suitability and fitness determination policies, requirements, and procedures for individuals in child care services in DoD programs as defined in References (c) and (e).

c. Ensure compliance with policies, requirements, and procedures for LOSS of individuals with a favorable interim suitability determination.

d. Provide support and resources as required to implement this instruction and any Component-specific policies, requirements, and procedures, and ensure implementation.

ENCLOSURE 3

PROCEDURES

1. REQUIREMENTS FOR CRIMINAL HISTORY BACKGROUND CHECKS

a. All criminal history background checks required by this instruction must be initiated, tracked and overseen by properly trained and vetted individuals who have been determined to be responsible for personnel security pursuant to Reference (g) or human resource functions pursuant to Volume 731 of Reference (e). Program managers, supervisors, and others not routinely performing personnel security and human resource functions are prohibited from managing the criminal history checks.

b. All employment applications completed by individuals subject to this instruction must comply with the requirements of section 13041(d) of Reference (c).

c. The DoD Component will ensure that only authorized investigative service providers are used.

d. When permitted by the host government, foreign government checks of individuals serving on DoD installations overseas must be requested directly by the employing Military Service or agency in accordance with Volume 1231 of Reference (e). As an alternative, DoD Components may request that overseas Military Service investigative elements obtain appropriate host-government checks and accept such checks if they are comparable to those required by section 13041 of Reference (c). Where it is not possible to obtain criminal history checks comparable to those required by section 13041 of Reference (c), foreign nationals will not be eligible for employment in child care services.

e. Individuals subject to criminal history background checks are:

(1) All personnel employed or performing duties in DoD Child and Youth or other sanctioned child care services program.

(2) Individuals providing in-home FCC.

(3) Personnel employed or performing duties in child and youth recreational and athletic programs (e.g., Morale, Welfare, and Recreation), including instructors and, when working in a facility when children and youth are present, custodial personnel.

(4) Individuals employed or performing duties in a Department of Defense Education Activity (DoDEA) school (whether or not directly involved with teaching), including but not limited to teachers, administrators, other professional staff, aides, bus drivers, janitors, cafeteria workers, nurses, and attendants.

(5) Chaplains, chaplains' assistants, religious program specialists, and other individuals employed or performing child care services duties for children under 18 years of age on a DoD installation or as part of a military-sanctioned program.

(6) Foster and respite child care providers on a DoD installation, program, or as part of a military-sanctioned activity.

(7) Health and mental health care personnel, employed or performing child care services duties on a DoD installation, in a DoD sanctioned program, or as part of a military-sanctioned activity, including but not limited to physicians, dentists, nurse practitioners, clinical social workers, physical therapists, speech-language pathologists, clinical support staff (including residents), registered nurses, licensed practical nurses, nursing assistants, play therapists, and technicians. Healthcare providers participating in TRICARE will be governed by TRICARE policy.

(8) Individuals employed or performing child care duties in social services, residential care, rehabilitation programs, detention, and correctional services on a DoD installation, program, or as part of a military-sanctioned activity.

(9) Any other individuals reasonably expected to have regular contact with children on a DoD installation, in a DoD sanctioned program, or as part of a military-sanctioned activity, including specified volunteers and any person 18 years of age or older residing in an FCC, foster, or respite care home.

f. The DoD Components will also determine any other classes of positions subject to criminal history background checks, taking care to ensure that all individuals who have regular contact with children when providing child care services are investigated and the requirement must pertain to the class as a whole.

g. Individuals designated in non-specified volunteer positions must always be under direct LOSS in accordance with Enclosure 4.

2. TYPES OF BACKGROUND CHECKS. Procedures for conducting a background check on individuals in paragraphs 1.e.(1)-(9) of this enclosure differ based on the employment status of the individual. Military members are subject to the background check requirements of Reference (g) and this enclosure. The FBI criminal history background checks for all categories of individuals must be fingerprint-based and fingerprints must be captured using an FBI-approved system. State criminal history repository (SCHR) checks may require hardcopy fingerprint submissions. State checks must include the State child abuse and neglect repository and the State sex offender registry. The Component must request a check of the State child abuse and neglect repository and the State sex offender registry if they are not automatically checked as part of the standard SCHR check.

a. Criminal History Background Checks for DoD Civilian and Military Personnel Who Are Investigated at the NACI or a Higher Level Pursuant to DoD's Personnel Security Program

(1) DoD civilian and military personnel required by Reference (g) to be investigated according to the requirements of the NACI or a higher level investigation and who have regular contact with children under 18 years of age in DoD-sanctioned programs will be investigated and adjudicated in accordance with the provisions of Reference (g).

(2) These personnel will also be subject to the additional requirements of the Child Care National Agency Check and Inquiries (CNACI) and the criteria for presumptive and automatic disqualification as specified in section 3 of this enclosure.

b. Criminal History Background Checks for Civilian Employees (APF and NAF)

(1) In accordance with section 13041 of Reference (c) and Volumes 731 and 1403 of Reference (e), complete a CNACI, which includes an FBI criminal history background check conducted through the Criminal Justice Information Services Division of the FBI and SCHR checks through State repositories of all States that an employee or prospective employee lists as current and former residences on an employment application. Results of an advanced FBI fingerprint check must be provided, before completion of the full CNACI, to determine employment under LOSS.

(2) Individuals with a prior DoD affiliation must also complete an IRC, which includes an installation law enforcement check, drug and alcohol records check, and a check of the Family Advocacy Program (FAP) records for a minimum of 2 years before the date of the application.

c. Criminal History Background Checks for FCC Providers and DoD Contractors

(1) In accordance with section 13041 of Reference (c), complete a CNACI, which includes an FBI criminal history background check conducted through the Criminal Justice Identification Services Division of the FBI and SCHR checks through State repositories of all States that a provider or contractor or prospective provider or contractor lists as current and former residences in an employment application. Results of an advanced FBI fingerprint check must be provided before completion of the full CNACI. Results for contractors may be used to determine employment under LOSS.

(2) Individuals with a prior DoD affiliation must also complete an IRC, including an installation law enforcement check, drug and alcohol records check, and a check of the FAP records for a minimum of 2 years before the date of the application.

d. Criminal History Background Checks for Others

(1) In accordance with section 13041 of Reference (c), only an FBI advanced fingerprint check is required for criminal history background checks for volunteers and persons 18 years of age or older residing in an FCC, foster, or respite care home.

(2) Individuals with a prior DoD affiliation must also complete an IRC to include: an installation law enforcement check, drug and alcohol records check, and a check of the FAP records for a minimum of 2 years before the date of the application.

e. Timely Completion. To ensure timely completion, the DoD Components will establish procedures to initiate or request criminal history background check results, follow up to ensure checks have been completed, and address situations where there is a delay in receiving results. In no event will an individual subject to this instruction be presumed to have a favorable background check merely because there has been a delay in receiving the results of the requisite background check. If no response from the State(s) is received within 60 days, determinations based upon the CNACI report may be made.

3. CRITERIA FOR DISQUALIFICATION BASED ON RESULTS OF CRIMINAL HISTORY BACKGROUND CHECKS. The ultimate decision to determine how to use information obtained from the criminal history background checks in selection for positions involving the care, treatment, supervision, or education of children must incorporate a common sense decision based upon all known facts.

a. Evaluation Authority. Adverse information is evaluated by the DoD Component who is qualified at the appropriate level of command in interpreting criminal history background checks.

(1) All information of record both favorable and unfavorable will be assessed in terms of its relevance, recentness, and seriousness. Likewise, positive mitigating factors should be considered. Final suitability decisions will be made by that commander or designee.

(2) Criteria that will result in disqualification of an applicant require careful screening of the data. A disqualifying event may be the basis for a non-selection, withdrawal of a tentative offer of employment, ineligibility for facility access, removal from a contract, a suitability action under part 731 of Reference (d), a probationary termination, an adverse action, or other appropriate action.

b. Criteria for Automatic Disqualification. No person, regardless of circumstances, will be approved to provide child care services pursuant to this instruction if the background check discloses:

(1) That the individual has been convicted in either a civilian or military court (to include any general, special or summary court-martial conviction) or received non-judicial punishment (under Article 15 of chapter 47 of Title 10, U.S.C., also known and referred to in this instruction as “the Uniform Code of Military Justice (UCMJ)” (Reference (h)) for any of the following:

(a) A sexual offense.

(b) Any criminal offense involving a child victim.

(c) A felony drug offense.

(2) That the individual has been held to be negligent in a civil adjudication or administrative proceeding concerning the death or serious injury to a child or dependent person entrusted to the individual's care.

4. SUITABILITY AND FITNESS DETERMINATIONS FOR INDIVIDUALS INVOLVED WITH THE PROVISION OF CHILD CARE SERVICES. Suitability and fitness determinations for individuals subject to this instruction will be made in accordance with Volume 731, Volume 1231, and Volume 1403 of Reference (e), and part 1201 of Title 5, U.S.C. (Reference (i)), as appropriate. The following may be the basis for non-selection, withdrawal of a tentative offer of employment, ineligibility for facility access, removal from a contract, a suitability action under Reference (e), a probationary termination, an adverse action, or other appropriate action.

a. Criteria for Presumptive Disqualification. Officials charged with making determinations pursuant to this instruction must include in the record a written justification for any favorable determination made where background check findings include any of the following presumptively disqualifying information:

(1) A FAP record indicating that the individual met criteria for child abuse or neglect or civil adjudication that the individual committed child abuse or neglect.

(2) Evidence of an act or acts by the individual that tend to indicate poor judgment, unreliability, or untrustworthiness in providing child care services.

(3) Evidence or documentation of the individual's past or present dependency on or addiction to any controlled or psychoactive substances, narcotics, cannabis, or other dangerous drug without evidence of rehabilitation.

(4) A conviction, including any general, special, or summary court-martial conviction, or non-judicial punishment under Article 15 of the UCMJ for:

(a) A crime of violence committed against an adult.

(b) Illegal or improper use, possession, or addiction to any controlled or psychoactive substances, narcotics, cannabis, or other dangerous drug.

(5) A civil adjudication that terminated the individual's parental rights to his or her child, except in cases where the birth parent places his or her child for adoption.

b. Evaluation of Presumptively Disqualifying Information. The DoD Components will establish and oversee procedures for the evaluation of presumptively disqualifying information for all categories of individuals in section 2 of this enclosure. Evaluation of presumptively disqualifying information for APF and NAF personnel must be in accordance with Volume 731 and Volume 1403 of Reference (e), respectively.

c. Criteria for Disqualification Under LOSS. If an investigation of an individual who is currently working under LOSS subsequently results in an unfavorable determination, the DoD Components will take action to protect children by reassigning or removing the individual from employment, contract, or volunteer status.

d. Disputes and Appeals. The DoD Components will establish and oversee procedures for the communication of determinations and the appeal of unfavorable determinations for all categories of individuals in section 2 of this enclosure. The procedures for civilian personnel are subject to Volume 731 of Reference (e) for APF employees and Volume 1403 of Reference (e) for NAF employees.

5. REVERIFICATION

a. All DoD civilian employees (both APF and NAF), military personnel, DoD contractors, and any other individual reasonably expected to have regular contact with children on a DoD installation, in a DoD program, or as part of a military or DoD-sanctioned activity, including specified volunteers, or any person 18 years of age or older residing in an FCC, foster, or respite care home, who continue to perform duties in the position for which their initial background check was conducted, must undergo a reverification every 5 years.

b. The reverification, conducted by the DoD, for employees, military personnel and DoD contractors will include a Child Care Special Agreement Check of the FBI fingerprint database and the SCHR that includes child abuse and neglect and sex offender registries for all States lived in the 5 years since the date of the last investigation or reverification, and an IRC of all affiliated installations for the 5 years since the date of the last IRC.

c. Reverification for specified volunteers and persons 18 years of age or older, residing in an FCC, foster, or respite care home will consist of a Child Care Special Agreement Check of the FBI fingerprint database and an IRC of all affiliated installations for the 5 years since the date of the last investigation or reverification. FCC providers must undergo the same reverification annually.

d. If the reverification results in an unfavorable determination, the DoD Components will take action to protect children by reassigning or removing the individual from employment, contract, or volunteer status.

e. If derogatory information surfaces within the 5 years before the reverification, the DoD Component will take action to protect children by reassigning or suspending from having contact with children, any individual, contractor, or volunteer until the case is resolved.

6. SELF-REPORTING

a. Individuals who have regular contact with children under 18 years of age in DoD-sanctioned programs who have a completed background check are required to immediately report subsequent automatic disqualification criteria under paragraph 3a of this enclosure and presumptive disqualification criteria under paragraphs 3b(1), (4), and (5) of this enclosure.

b. The DoD Components will establish procedures for:

(1) Informing individuals of the requirement to immediately report any incident or conviction that may invalidate their prior background check and make them ineligible to work or have contact with children.

(2) Responding to and evaluating reports made by such individuals, and taking appropriate action until the case has been resolved or closed.

ENCLOSURE 4

ELIGIBILITY TO PERFORM DUTIES UNDER LOSS

The DoD Components will establish Component-specific procedures, policies, and requirements, subject to the requirements of this enclosure, to permit applicants for whom a criminal history background check has been initiated but not yet completed, to perform duties under LOSS upon favorable findings of preliminary investigations.

a. No Presumption of Right. No individual will be permitted to perform duties under LOSS in a position subject to criminal history background check without authorizing policy or other written permission from a DoD Component head.

b. Preliminary Investigations Required. No individual will be permitted to perform duties under LOSS in a position subject to criminal history background check unless the following investigative elements have been reviewed and determined favorably:

(1) An IRC, including installation law enforcement records check, drug and alcohol records, and FAP records check for a minimum of 2 years before the date of the application if the individual has a preexisting DoD affiliation.

(2) Initial results from the advanced FBI fingerprint criminal history background check (not the full check)

c. Exception for Non-specified Volunteers. Due to the controlled, limited duration of an activity for these individuals, an advanced FBI fingerprint criminal history background check is not required. Non-specified volunteers will be permitted to perform duties and services under LOSS for the duration of the activity.

d. Supervisor Requirements. The supervisor must be a person who:

(1) Has undergone and successfully completed the required background check.

(2) Has complied, as required, with the periodic reverification requirement for a recurring criminal history background check.

(3) Has not previously exhibited reckless disregard for an obligation to supervise an employee, contractor, or volunteer.

e. Video Surveillance. The use of video surveillance equipment to provide temporary oversight for individuals whose required background checks have been initiated but not completed is acceptable provided it is continuously monitored by an individual who has undergone and successfully completed all required background checks. This provision will meet the intent of a flexible and reasonable alternative for “direct sight supervision.”

f. Conspicuous Identification of Individuals Subject to LOSS. Individuals permitted to perform duties solely under LOSS must be conspicuously marked by means of distinctive clothing, badges, wristbands, or other visible and apparent markings. The purpose of such markings must be communicated to staff, customers, parents, and guardians by conspicuous posting or printed information.

g. Permissible Performance of Duties Without Supervision. Individuals otherwise required to perform duties only under LOSS may perform duties without supervision if:

- (1) Interaction with a child occurs in the presence of the child's parent or guardian;
- (2) Interaction with children is in a medical facility, subject to supervisory policies of the facility, and in the presence of a mandated reporter of child abuse; or
- (3) Interaction is necessary to prevent death or serious harm to the child, and supervision is impractical or unfeasible (e.g., response to a medical emergency, emergency evacuation of a child from a hazardous location).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

APF	appropriated fund
ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
DASD(CPP)	Deputy Assistant Secretary of Defense for Civilian Personnel Policy
DASD(MC&FP)	Deputy Assistant Secretary of Defense for Military Community and Family Policy
DASD(MPP)	Deputy Assistant Secretary of Defense for Military Personnel Policy
DoDEA	Department of Defense Education Activity
DoDI	DoD Instruction
FAP	Family Advocacy Program
FBI	Federal Bureau of Investigation
FCC	family child care
IRC	installations records check
LOSS	line-of-sight supervision
NAF	nonappropriated fund
SCHR	state criminal history repository
UCMJ	Uniform Code of Military Justice
U.S.C.	United States Code
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

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

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 APFs and 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 Reference (c).

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 Reference (e).

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 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 programs, medical treatment facilities, 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 as defined in accordance with section 2105(c) of Reference (i). Includes foreign nationals in accordance with Volume 1231 of Reference (e), 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 DoDI 6400.01 (Reference (j)).

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 Reference (j). 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 section 552a of Reference (i).

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 DoDI 6060.2 (Reference (k)).

FCC provider. Defined in Reference (k).

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 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.

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. The company or agency authorized to perform background investigations on personnel on behalf of the agency.

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 instruction.

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 Enclosure 4 of this instruction, 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.

reverification. An updated criminal history background check conducted after the period of time prescribed by this instruction, in accordance with paragraph 5.b of Enclosure 3, to ensure the individual remains eligible to provide child care services.

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.

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:

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 paragraph 2d of Enclosure 3.

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 DoDI 6060.4 (Reference (1)).