



U.S. DEPARTMENT OF EDUCATION

Contractor Vetting Security Requirements

Department of Education Contractor Vetting Security Requirements 11/1/19 (Updated 1/19/21)

I. Purpose

- (1) This Contractor Vetting Security Requirements document establishes the U.S. Department of Education (ED)'s personnel security screening requirements for Contractor Employees who will require access to proprietary or sensitive ED information, including, but not limited to "Controlled Unclassified Information" as defined in 32 CFR Part 2002, ED information technology (IT) systems, ED facilities or space, and/or perform duties in a school or location where children are present. All references to the "Contractor" or "Contractor Employee" include all individuals that will perform work under an ED contract including individuals employed by the Contractor, team member, subcontractor, consultant and/or independent Contractor.
- (2) The Contractor shall comply with all requirements in this Contractor Vetting Security Requirements document.
- (3) ED possesses all rights and privileges in all material to which the Contractor has access to as a result of an ED contract.
- (4) Duplication or unauthorized disclosure of information contained in ED sensitive data, including, but not limited to "Controlled Unclassified Information" as defined in 32 CFR Part 2002, ED IT information systems or ED privilege information to which the Contractor or Contractor Employee may have access as a result of an ED Contract is prohibited by Public Law and is subject to criminal penalties.
- (5) The Contractor or Contractor Employee must promptly notify the ED COR or ED Personnel Security Office if any Personally Identifiable Information (PII) or ED sensitive data has or is reasonably believed to have been compromised.

II. Contractor Personnel

- (1) The type of security investigation required to commence work on an ED contract will be governed by the position risk and sensitivity level of the Contractor position and what information and/or access to facilities that ED will make available to the Contractor. Contractor personnel that will not require access to classified information will fall under the following categories in accordance with 5 CFR Part 731:
 - (a) High Risk/Public Trust. Adverse impact on the efficiency of the service: Potential for exceptionally serious impact involving duties especially critical to the agency or a program mission with broad scope of policy or program authority.
 - (b) Moderate Risk/Public Trust. Adverse impact on the efficiency of the service: Potential for moderate to serious impact involving duties of considerable importance to the agency or program mission with significant program responsibilities and delivery of customer services to the public.
 - (c) Low Risk/Non-Sensitive. Adverse impact on the efficiency of the service: Potential for impact involving duties of limited relation to the agency mission with program responsibilities that affect the efficiency of the service.

- (2) All ED Contractor and Subcontractor employees must undergo personnel security screenings if, during the performance of the contract, they will be required to:
 - (a) Obtain a PIV ID for authorized unescorted access to ED facilities/space and/or access to ED IT systems.
 - (b) Access ED information, such as Privacy Act-protected, Personally Identifiable Information (PII), proprietary, or “Controlled Unclassified Information” as defined in 32 CFR Part 2002 or other sensitive ED IT information systems, ED information, ED facilities or space, and/or perform duties in a school or location where children are present.

III. ED Procedures and Requirements

- (1) The Government will be responsible for conducting the background investigation and the cost of the investigation unless otherwise specified by ED.
- (2) All investigations will be conducted in accordance with applicable Executive Orders, these Contractor Vetting Security Requirements, and Homeland Security Presidential 12 (HSPD-12), and Federal Information Processing Standards Publication 201(FIPS 201) as amended.
- (3) The Contractor will not be permitted to commence performance under an ED Contract until a sufficient number of its personnel, as determined by the COR, have received the requisite security approval determined by ED Office of Personnel Security office.
- (4) During the life of an ED contract, the Contractor shall ensure that no Contractor Employee commences performance prior to receipt of written notice of pre-employment waiver from the Contracting Officer or COR.
- (5) The Contractor shall update personnel information as individuals are added or deleted from the contract and provide such list to the COR so that the ED Security office is promptly notified.
- (6) ED will provide the Contractor with the appropriate security forms and instructions for completing the security requirements including accessing the e-QIP electronic questionnaire.
- (7) The COR will notify the Contractor of any Contractor Employees who are found ineligible to work for or on behalf of ED on an ED contract.
- (8) All ED Contractor Employees are investigated commensurate with their position risk/sensitivity, in accordance with OPM’s position risk/sensitivity designation guidance.
- (9) ED affords fair, impartial, and equitable treatment to all Contractor Employees through the consistent application of fitness standards, criteria, and procedures.
- (10) ED reserves the right to restrict Contractor Employees’ access to ED facilities/space, ED information, and ED IT systems or resources, or in schools or locations where children are present.

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- (11) Any decision of ED's regarding a Contractor Employee's fitness is not considered an employment action.
- (12) ED utilizes reciprocal recognition of fitness determinations for Contractor Employees in accordance with Executive Order 13488 or as amended and Security Executive Agent Directive 7 (SEAD 7). ED will maintain position risk level designation and other relevant documentation pertaining to a Contractor Employee's security status.
- (13) The COR will maintain position risk level designation and other relevant documentation pertaining to a Contractor Employee's status.

IV. Contractor Employee Pre-Employment Review and Pre-Employment Waiver Requirements

- (1) Background investigations must be conducted and favorably adjudicated for each Contractor Employee prior to commencing work on an ED contract. However, ED may grant a pre-employment waiver after a risk assessment of the applicable pre-employment checks and the completion of all pre-employment requirements. Once approval of the pre-employment waiver and HSPD-12 requirements has been granted by the ED Office of Security, a (PIV) ID may be issued. The extent of the pre-employment investigation will vary depending upon the risk level associated with each contractor position and whether the contractor position is long or short term. A pre-employment waiver will be disapproved if it develops derogatory information that cannot be resolved in the Contractor Employee's favor and has an adverse impact on the efficiency and integrity of ED.
- (2) When a pre-employment waiver is disapproved as the pre-employment investigation results so justify, PIV IDs will be suspended or revoked and access to ED IT systems, or access to ED information and facilities will be denied.
 - (a) All Contractor Employees who require unescorted access to ED facilities/space, access to ED Information, access to ED IT systems, or must perform duties in a school or in a location where children are present, must undergo a favorable pre-employment review, and must be issued a pre-employment waiver approval before:
 - (1) They are authorized to bypass significant technical and operational security controls of general support IT systems, or major applications; or
 - (2) They are authorized to access applications where controls such as separation of duties, least privilege, and individual accountability cannot adequately protect the application or the information in it.

(3) Long-Term Contractor Employees

Long-Term Contractor Employees, defined as Contractor Employees having access to ED facilities/space, ED Information, ED IT systems for 30 days or longer, and/or are required to perform duties at a school or a location where children are present, require the following:

Low/Moderate Risk Contractor Positions

- (1) Contractor Employees that are in Long-Term Contractor Positions must undergo the requisite background investigation. The minimum of which shall be a Tier 1 investigation (Low Risk) or Tier 2 (Moderate Risk) investigation.
- (2) The pre-employment waiver requirements for Contractor Employees in this category include: the initiation and scheduling of the appropriate investigation; a favorable review of the electronic security questionnaire (e-QIP); favorable FBI fingerprint results; favorable review of the Declaration of Federal Employment (OF-306); favorable review of the National Student Loan Data Base system (NSLDS) check; the Cyber Security Training Certificate; and the Fair Credit Release Form.

High Risk/Public Trust Contractor Positions

- (1) In addition to the pre-employment waiver requirements above, Contractor Employees in this category must undergo the requisite background investigation, the minimum of which shall be a Tier 4 (High Risk) investigation.
- (2) The pre-employment waiver requirements for Contractor Employees in this category include: the initiation and scheduling of the appropriate investigation; a favorable review of the electronic security questionnaire (e-QIP); favorable FBI fingerprint results; favorable review of the OF-306; favorable review of the NSLDS check; Cyber Security Training Certificate; Fair Credit Release form; favorable review of the credit report; and favorable review of OPM/Defense Counter-Intelligence Security Agency (DCSA) preliminary checks.

(4) Short-Term Contractor Employees

A Short-Term Contractor Employee is defined as having access to ED facilities/space, ED Information or school or location where children are present, for fewer than 30 days.

(1) Contractor Employees who will have physical access to ED controlled facilities/space, ED information, or ED IT systems (excluding any actual log-on access to ED IT systems), for less than 30 days (e.g., a one or two week project), or have infrequent access (e.g., three times a month), do not require an investigation, provided they have favorable fingerprint results of a FBI National History Check (NCHC), a signed Non-Disclosure Agreement on record with the Principal Office and have escorted access at all times.

V. Escort Procedures

Unescorted Access

- (1) Contractor Employees are not required to have escorted access, and may serve as an escort if authorized by the Principal Office, provided they have a valid PIV ID.

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- (2) Contractor Employee escorts may be subject to appropriate sanctions, including revocation of escort privileges, in accordance with applicable law and ED regulations for any knowing, willful, or negligent act that results in an individual being escorted, obtaining unauthorized access to ED information, ED IT systems, and/or to ED facilities/space or location or school where children are present.

Escorted Access

- (1) Contractor Employees who do not have a valid PIV ID must be escorted while in ED facilities/space. Escorts are required to maintain line of sight of the escorted Contractor Employee and of all work they are performing for the Department at all times.
- (2) Contractor Employees who have a required escort may be subject to additional personnel screening, such as magnetometer and search of personal belongings, upon entry to or exit from ED facilities/space.
- (3) Contractor Employee escorted access cannot be used to circumvent the personnel security requirements. For example, a Contractor Employee who has not undergone the personnel security screening cannot attend meetings if ED Information is going to be discussed at the meeting. A Contractor Employee who will require ongoing access to ED Information, ED IT Systems, ED facilities/space, or to schools or locations where children are present cannot be escorted on a daily basis instead of undergoing the personnel security screening process.

VI. Contractor shall:

- (1) Comply with the COR and Principal Office processing requirements for personnel security screening and granting access privileges.
- (2) Prior to submitting an exception waiver request to ED for approval, ensure that all non-U.S. citizen Contractor Employees are lawful permanent residents of the United States or have the appropriate work authorization documents required by the U.S. Department of Homeland Security, Bureau of Immigration and Appeals, to work in the U. S.
- (3) Ensure that a Contractor Employee is not placed in a higher risk position than the individual is approved for, unless approved by the Contracting Officer, Contracting Officer Representative and the Office of Personnel Security Director;
- (4) Notify a Contractor Employee (when contacted by the COR) that a determination has been made that the individual is ineligible to render services on an ED contract;
- (5) Report to the COR any information (i.e., personal conduct, criminal conduct, financial difficulties, etc.) that would raise concerns regarding fitness, warrant a follow up security screening or raise a concern about whether a Contractor Employee's continued employment would promote the efficiency of the service or violate the public trust;
- (6) Protect sensitive or Privacy Act-protected information including but not limited to "Controlled Unclassified Information" as defined in 32 CFR Part 2002 from unauthorized use or misuse by its Contractor Employees and prevent access to others, who are not authorized and does not have a need to know such information;

(7) Report to the COR, within two business days, any instance in change of physical access requirements for a Contractor Employee within an ED facility/space. Report to the COR within two business days any removal of a Contractor Employee from a contract; or within one business day if removed for cause;

(8) Return a PIV ID to the COR within seven business days of the Contractor Employee's departure. Report to COR of any job activities that a Contractor Employee has brought to their attention that they believe could result in a change in the Contractor Employee's position or the need for increased security access; and

Contractors shall ensure Contractor Employees:

- (a) Respond to initial requests and additional requests for information during the screening and adjudication process, within the time frame established;
- (b) Report to their supervisor and/or project manager any job activities that they believe could result in a change in their position or the need for increased security access; and
- (c) Self-report to their supervisor any personal misconduct, criminal misconduct, or other information that may warrant a follow-up security screening or investigation.

VII. Background Investigations

(1) Background investigations are conducted by DCSA (as of October 1, 2019) on behalf of ED in accordance with 5 C.F.R. § 731.104 and HSPD-12 requirements. The investigation's scope is determined by the risk/sensitivity level of the position, which is further determined by the position designation process.

(2) Reinvestigations

Contractor Employees occupying Moderate and High-Risk public trust level positions must undergo a reinvestigation every five years for the duration of their contract at ED, or if there is a break in service to a federal contract service of 24 months or more. For Low Risk (T1) Contractor Employees, if a break in service of two years or more exists prior to reinstatement/reactivation, the individual will be required to submit a new package for a T1 investigation. Low Risk positions do not require periodic reinvestigations. Any position designated as a public trust or national security position requires a periodic reinvestigation. In addition, all positions are subject to re-evaluation if new adverse information is disclosed by the individual or discovered that could affect the individual's suitability for employment and/or access to unclassified sensitive information.

VIII. Reciprocity

(1) Accepting Prior Determinations

ED will only grant reciprocal recognition of a prior favorable fitness determination or adjudication when:

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- (a) The prior favorable fitness determination or adjudication was based on criteria equivalent to suitability standards established by OPM;
- (b) The individual has had no continuous (not cumulative) break in federal contract/service employment of 24 months or more since the favorable determination was made;
- (c) The favorably adjudicated investigation meets the minimum position risk/sensitivity designation level requirements and has been verified and approved by OPS; and
- (d) The investigation must have been completed within the last five years.

(2) Denying Reciprocal Recognition of Prior Determinations.

ED may deny reciprocal recognition of a prior favorable fitness determination or adjudication when:

- (a) The new position requires a higher level of investigation than previously conducted for that individual;
- (b) There is a continuous (not cumulative) break in service of 24 months or more since the previous investigation;
- (c) During the course of the security approval process, the OPS obtains new information (such as responses to questions raised during interviews or information obtained during reference checks) that calls into question the individual's fitness based on character or conduct;
- (d) A favorable investigation and fitness determination or adjudication cannot be verified; or
- (e) The previous investigation was not completed within the last five years.

IX. Residency Requirement

- (1) The Residency Requirement ensures an adequate background investigation can be completed. This requirement applies to both U.S. citizens and non-U.S. Citizens.
- (2) Immediately prior to gaining unescorted access to ED facilities/space, access to ED information, or access to ED IT systems, and/or performing duties in a school or location where children are present, the Contractor Employees must have:
 - (a) Resided in the U.S. for three out of the last five years (not necessarily consecutive);
 - (b) Worked for the U.S. in a foreign country as either an employee or contractor in a federal or military capacity for three out of the last five years;
 - (c) Been a dependent of a federal or military employee or contractor in a foreign country for three out of the last five years;
 - (d) Studied abroad at a U.S. affiliated college or university; or

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- (e) Completed a current and adequate background investigation (commensurate with the position risk/sensitivity levels) for a federal or Contractor Employee position, barring any break in federal employment or federal sponsorship.

(3) Waiver of Residency Requirement

Only the ED Director of the Office of Security, Facilities and Logistics (OSFLS), or designee, can approve Residency Requirement waivers. The approval must be obtained prior to the proposed Contractor Employee beginning work or providing any service to ED.

X. Citizenship

- (1) Only U.S citizens will be eligible for employment on contracts requiring a Moderate Risk/Public Trust, a High Risk/Public Trust, or a National Security designation.
- (2) Permanent Resident Aliens may be eligible for employment on contracts requiring Low Risk access in accordance with the following provision;
 - (a) Permanent Resident Aliens shall not be authorized to access ED facilities/space, ED Information, ED IT Systems or schools or locations where children are located, unless a waiver has been granted by the Office of the Chief Information Officer/Information Assurance Services (IAS) and Director, OPS.
- (3) Any non-U.S. citizen working in the U.S. and assigned to an ED contract must have been admitted legally to the U.S. or have acceptable Department of Homeland Security Credentials to prove immigrant status or employment authorization as listed on the Form I-9, Employment Eligibility Verification.
- (4) ED will adjudicate all non-U.S. citizen background investigations according to the standards found in Title 5 CFR Part 731 and OPM issued supplemental guidance.

(5) Citizenship Exception Request

- (a) The PO may request an exception to the U.S. Citizenship requirement for a non-U.S. citizen to fulfill a Contractor position designated as a Low Risk, Moderate Risk/Public Trust, a High Risk/Public Trust, or a National Security position. Such request must be supported with justification and submitted to the CISO/IAS for approval.
- (b) Upon an approved recommendation from the CISO/IAS, the request will be submitted to the OSFLS/OPS for further consideration. The following will be required for review:
 - (1) Copy of the initial exception request;
 - (2) Recommendation/Approval from the CISO/IAS;
 - (3) All required security forms specified by ED (i.e. PO Request for Security Office Action, SF 85P, FBI fingerprint results, Fair Credit Release, credit report, OF 306, NSLDS check, citizenship verification documents, cyber certificate, etc.); and
 - (4) Evidence of satisfactory completion of any necessary background check.

- (c) Any non-U.S. citizen working in the U.S. and assigned to an ED contract must have been admitted legally to the U.S. or have acceptable Department of Homeland Security Credentials to prove immigrant status or employment authorization as listed on the Form I-9, Employment Eligibility Verification.

XI. Dual Citizenship

U.S. Citizen Contractor Employees who hold dual citizenship with a foreign country may be granted clearance; however, OPS will consider how the Contractor Employee has obtained or exercised his/her dual citizenship status in making a security approval.

XII. Homeland Security Presidential Directive-12 (HSPD-12) and Federal Information Processing Standards (FIPS 201-2) Pre-Employment Requirements

- (1) Contractor Employees who require access to ED facilities/space, access to ED Information, or access to ED IT systems, or who perform duties in schools or in a location where children are present, shall be subject to the requirements outlined in HSPD-12, FIPS 201- 2¹ and the HSPD-12 pre-employment requirements for PIV ID issuance.
- (2) Contractor Employees must present two valid forms of identification, in original form, prior to commencement of work on an ED contract and PIV issuance.
- (3) Contractor Employees must appear in person at least once before an ED official or an ED OPS authorized official of a trusted contract company, who is responsible for checking the identification documents. This identity proofing must be completed at a time prior to commencement of work under the covered contract and prior to PIV issuance and must be documented by ED or ED's designated official.
- (4) During identity proofing, the Contractor Employee shall be required to provide two forms of identity source documents in original form. The identity source documents shall be bound to that applicant and shall be neither expired nor cancelled. If the two identity source documents bear different names, evidence of a formal name change shall be provided. A list of approved identity documents can be found in FIPS 201-2 (Section 2.7 PIV Identity Proofing and Registration Requirements).

XIII. National Student Loan Database System (NSLDS) Check.

All Contractor Employees are required to be in good standing regarding any federal subsidized or unsubsidized student loans. Failure to demonstrate that any such loan repayment is in good standing will result in denial of the pre-employment waiver.

¹ Per the Federal Information Security Modernization Act of 2014 [FISMA], waivers to Federal Information Processing Standards are not allowed.

XIV. Adjudications

Background investigations conducted on Contractor Employees that require access to ED Information or ED IT systems or school or location where children are present must be adjudicated according to the OPM's suitability criteria published at 5 CFR Part 731.202, and OPM issued supplemental guidance.

(1) For Unescorted Access to ED Facilities/Space:

Background investigations conducted on Contractor Employees that only require unescorted access to ED facilities/space, and no access to ED Information, ED IT systems or schools or locations where children are present, must be adjudicated using the basic fitness determination criteria stated in OPM's memorandum to the Heads of Departments and Agencies entitled "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12", dated July 31, 2008.

(2) Reporting Final Adjudication:

The final adjudication determination of each background investigation will be reported to OPM/DCSA within 90 days of the date of the completed investigation, as required by 5 CFR 731.203 and 5 CFR 1400.

(3) ED affords fair, impartial, and equitable treatment to all Contractor Employees through the consistent application of fitness standards, criteria, and procedures as specified in applicable laws, regulations, directives and Executive Orders.

(4) Nondiscrimination in Adjudication:

ED does not discriminate on the basis of race, color, religion, national origin, sex, gender identity, age, disability, genetic information, status as a parent, sexual orientation, marital status, or political affiliation in granting access security approvals for Contractor Employees.

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