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APPENDIX A TO PART 86—CRIMINAL HISTORY BACKGROUND CHECK PROCEDURES

APPENDIX B TO PART 86—CRITERIA FOR CRIMINAL HISTORY BACKGROUND CHECK DISQUALIFICATIONS

APPENDIX C TO PART 86—STATE INFORMATION

AUTHORITY: 42 U.S.C. 13041.

SOURCE: 58 FR 52010, Oct. 6, 1993, unless otherwise noted.

§ 86.1 Purpose.

This part: (a) Implements Public Law 101-647, section 231 and Public Law 102-190, section 1094.

(b) Requires procedures for existing and newly hired individuals and includes a review of personnel and security records to include a Federal Bureau of Investigation (FBI) fingerprint check and State Criminal History Repositories (SCHR) checks of residences listed on employment or certification applications.

(c) Establishes policy, assigns responsibilities, and prescribes procedures for criminal history background checks for all existing and newly hired individuals involved in the provision of child care services as Federal employees, contractors, or in Federal facilities to children under the age of 18. The checks are required of all individuals in the Department of Defense involved in providing child care services defined in Public Law 101-647, and for policy reasons, those categories of individuals not expressly governed by the statute.

(d) Allows the Department to provisionally hire such individuals before the completion of a background check. However, at all times while children are in the care of that individual, the child care provider must be within sight and under the supervision of a staff person whose background check has been successfully completed. Healthcare personnel shall comply with guidance provided in the Memorandum from the Assistant Secretary of Defense for Health Affairs (ASD(HA))¹, April 20, 1992.

¹Copies may be obtained from OASD(HA) Room 3E346, The Pentagon, Washington, DC 220301-1200.

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(e) Includes all individuals providing child care services to children in accordance with 32 CFR part 310, Federal Personnel Manual (FPM),² 32 CFR part 154, DoD Directive 6400.1,³ DoD Instruction 6060.2,⁴ DoD Instruction 6400.2,⁵ DoD Directive 1400.13,⁶ 32 CFR part 68, DoD Directive 6025.11,⁷ DoD Directive 1015.1,⁸ and 32 CFR part 212.

§ 86.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as “the DoD Components”).

§ 86.3 Definitions.

Terms used in this part are defined as follows.

(a) *Appropriated Fund (APF) Employees.* Personnel hired by DoD Components with appropriated funds as defined in the FPM, Chapter 731. This includes temporary employees, 18 years old or older, who work with children.

(b) *Care provider.* As defined in Public Law 101-647, section 231 and Public Law 102-190, section 1094. Providers included are current and prospective individuals hired with APF and nonappropriated funds (NAF) 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. Care providers are individuals working within programs that include alphabetically: Child Development Programs, DoD Dependents Schools, DoD-Operated or -Sponsored Activities, DoD Section 6 School Arrangements, Foster

²Copies may be obtained from a Federal Depository Library, or a Federal Agency Personnel Office.

³Copies may be obtained from the National Technical Information Service, 5285 Port Royal, Springfield, VA 22161.

⁴See footnote 3 to § 86.1(e).

⁵See footnote 3 to § 86.1(e).

⁶See footnote 3 to § 86.1(e).

⁷See footnote 3 to § 86.1(e).

⁸See footnote 3 to § 86.1(e).

Care, Private Organizations on DoD Installations, and Youth Programs. Background checks are required for all civilian and military providers (except military health care providers) involved in child care services who have regular contact with children.

(c) *Child*. An unmarried person, whether natural child, adopted child, foster child, stepchild, or ward, who is a family member of a military member or DoD civilian or their spouse, and who is under the age of 18 years; or is incapable of self support because of a mental or physical incapacity and for whom treatment is authorized in a medical facility of the Military Services, as defined in DoD Directive 6400.1.

(d) *Child abuse and/or neglect*. The physical injury, sexual maltreatment, emotional maltreatment, deprivation of necessities, or other maltreatment of a child. The term encompasses both acts and omissions on the part of a responsible person, as defined in DoD Directive 6400.1.

(e) *Child care services*. DoD personnel and contractors who are involved in any of the following: "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 Public Law 101-647, section 231.

(f) *Child Development Center (CDC)*. An installation facility or part of a facility used for child care operated under the oversight of Component's Child Development Programs (CDPs) and as defined in DoD Instruction 6060.2.

(g) *Child Development Programs (CDPs)*. Programs for dependents of DoD personnel provided in CDCs, family child care (FCC) homes, and alternative child care options. The care provided is on a full-day, part-day, or hourly basis. Care is designed to protect the health and safety of children and promote their physical, social, emotional, and intellectual development, as defined in DoD Instruction 6060.2.

(h) *Child sexual abuse*. Employment, use, persuasion, inducement, entice-

ment, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) or the rape, molestation, prostitution, or any other such form of sexual exploitation of children, or incest with children. All sexual activity between an offender and a child, when the offender is in a position of power over the child, is considered sexual maltreatment, as defined in DoD Instruction 6400.2.

(i) *Criminal history background check*. An investigation based on fingerprints and other identifying information obtained by a law enforcement officer conducted through the Federal Bureau of Investigation-Identification Division (FBI-ID) and SCHR of all States that an employee or prospective employee list as current and former residences on an employment application initiated through the personnel programs of the applicable Federal Agencies, as defined in Public Law 101-647 or through the personnel program of a given government contractor.

(j) *Defense Clearance and Investigations Index (DCII)*. The central DoD record of investigative files and adjudicative actions such as clearances and access determinations, revocations, and denials concerning military, civilian, and contract personnel.

(k) *DoD Dependents Schools (DoDDS)*. Schools operated by the Department of Defense for minor dependents of military members or DoD civilians assigned to duty in foreign countries, as defined in DoD Directive 1400.13.

(l) *DoD-operated or -sponsored activity*. A contracted entity authorized by appropriate DoD officials to perform child care, education, treatment, or supervisory functions on DoD-controlled property. Examples include but are not limited to CDPs, FCC Programs, Medical Treatment Facilities, DoDDS, DoD Section 6 Schools, and Youth Programs.

(m) *DoD Section 6 Schools*. The educational arrangements made for the provision of education to eligible dependent children by the Department of Defense under Public Law 81-874, section 6, as defined in 32 CFR part 68, in the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island,

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Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(n) *Family Child Care (FCC)*. Quarters-based child care provided in Government-owned or -leased quarters, in which care is provided on a regular basis for compensation, usually for more than 10 hours a week per child, to one or more (up to six) children, including the provider's own children under 8 years of age, as defined in DoD Instruction 6060.2

(o) *Foreign National Employees Overseas*. Non-U.S. citizens hired by the Department of Defense for employment on an overseas installation.

(p) *Foster care*. A voluntary or court-mandated program that provides 24-hour care and supportive services in a family home or group facility for children who cannot be properly cared for by their own family.

(q) *Government-contracted care providers*. An individual or a group of individuals hired under a Government contract to provide instruction, child care services, healthcare, or youth services. FCC providers are not considered contracted Government employees for this part.

(r) *Healthcare personnel*. Personnel involved in the delivery of healthcare to children under the age of 18 on a frequent and regular basis. See ASD(HA) memorandum dated April 20, 1992.

(1) *Medical and dental care staff*. Physicians, dentists, nurse practitioners, clinical social workers, clinical psychologists, physicians' assistants, physical therapists, and speech pathologists.

(2) *Clinical support staff*. Clinical providers not granted defined clinical privileges to include residents, registered nurses, licensed practical nurses, nursing assistants, play therapists, and technicians, and defined in DoD Directive 6025.11.

(s) *Installation Records Check (IRC)*. An investigation conducted through the records of all installations of an individual's identified residences for the preceding 2 years before the date of the application. This record check shall include, at a minimum, police (base and/or military police, security office, or criminal investigators or local law enforcement) local files check, Drug and

Alcohol Program, Family Housing, Medical Treatment Facility for Family Advocacy Program to include Service Central Registry records and mental health records, and any other record checks as appropriate, to the extent permitted by law.

(t) *National Agency Check (NAC)*. As defined in 32 CFR part 154.

(u) *National Agency Check and Inquiries (NACI)*. As defined in the FPM, Chapters 731 and 736.

(v) *Nonappropriated Fund Instrumentalities (NAFI) Employees*. Personnel hired by the DoD Components, compensated from NAFI funds as defined in DoD Directive 1015.1. This includes temporary employees, 18 years old or older, who work with children.

(w) *Private Organizations on DoD Installations*. A nongovernmental entity authorized by the Department of Defense to perform child care services, education, or supervisory functions with children on DoD-controlled property, as defined in 32 CFR part 212. Examples include religious groups and associations, such as scouts.

(x) *Respite care*. Provides short-term child care and supportive services in a family home or group facility for children to relieve stress, prevent child abuse, and promote family unity for a parent, foster parent, guardian, or family member.

(y) *Regular contact*. Responsible for a child or with access to children on a frequent basis as defined by the Component.

(z) *Specified volunteer position*. A position, designated by the DoD Component Head or designee, such as installation commander, requiring an installation record check because of the nature of the volunteer work in child care services.

(aa) *State Criminal History Repository (SCHR)*. The State's central record of investigative files. State information, including addresses, phone numbers, costs and remarks, is listed in appendix C to this part.

(bb) *Supervision*. Refers to having temporary responsibility for children in child care services, and temporary or permanent authority to exercise direction and control by an individual over an individual whose required

background checks have been initiated but not completed.

(cc) *Temporary employees.* This category includes nonstatus appointments to a competitive service position for a specified period, not to exceed a year. This includes summer hires, student interns, and NAFI flexible category employees.

(dd) *Volunteer activities.* Activities where individuals offer assistance on an unpaid basis in child and youth programs or other activities on DoD installations. Examples include sports programs, religious programs, scouting programs, and preschools sponsored by private parent cooperatives or other associations conducted on the installation.

(ee) *Volunteers.* Individuals who offer program assistance on an unpaid basis.

(ff) *Youth programs.* DoD-sponsored activities, events, services, opportunities, information, and individual assistance responsive to the recreational, developmental, social, psychological, and cultural needs of eligible children and youth. Includes before and after school programs as well as holiday and summer camps.

§ 86.4 Policy.

It is Department of Defense policy to:

(a) Establish a standardized and comprehensive process for screening applicants for positions involving child care services on DoD installations and in DoD activities.

(b) Provide fair, impartial, and equitable treatment before an individual may be deemed suitable to serve as an employee, a certified care provider, a specified volunteer position, or as an individual employed under contract in activities covered by this part, 32 CFR part 310, Federal Personnel Manual (FPM), 32 CFR part 154, DoD Directive 6400.1, DoD Instruction 6060.2, DoD Instruction 6400.2, DoD Directive 1400.13, 32 CFR part 68, DoD Directive 6025.11, DoD Directive 1015.1, and 32 CFR part 212 by conducting a thorough review of all appropriate records as described in this part.

(c) Protect children by denying or removing from employment, contract, or volunteer status any applicant or current employee who is determined unsuitable to provide child care services

because derogatory information is contained in a suitability investigation.

(d) Ensure that an individual is advised of proposed disciplinary action, decertification, or refusal to hire by the hiring authority or designee if disqualifying derogatory information is contained in a suitability investigation. The individual is given the opportunity to challenge the accuracy and completeness of reported information.

(e) Foster cooperation among the DoD Components, other Federal Agencies, State and county agencies, and other civilian authorities in conducting criminal history background checks.

§ 86.5 Responsibilities.

(a) The *Assistant Secretary of Defense for Personnel and Readiness* shall: (1) Develop policy for conducting criminal history background checks on individuals seeking positions involving child care services.

(2) Monitor compliance with this part.

(3) Coordinate oversight of criminal history background checks as specified under this part.

(b) The *Heads of the DoD Components* shall: (1) Develop procedures to ensure compliance with the requirements of this part, in accordance with appendix A to this part.

(2) Provide oversight of process and procedures to conduct criminal history background checks to include assignment of proponentcy.

(3) Provide technical support and resources as required.

(4) Coordinate participation of specific organizations within the DoD Component involved in the conduct of the checks.

(5) Ensure that applicants and employees are made aware of their rights under 32 CFR part 310 including the right to challenge accuracy of records.

(6) Maintain the records of all individuals hired, certified, or employed under contract for positions that involve child care services for 2 years following termination of their service.

(7) Establish a mechanism to evaluate all adverse information resulting from criminal history background checks, using the criteria in appendix