

**SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
Department of Veterans Affairs Acquisition Regulation (VAAR)
Clause 852.237-73, Crime Control Act – Requirement for Background Checks
2900-xxxx**

A. Justification.

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

As a result of VAAR proposed rule RIN 2900-AQ20, posted to the Federal Register on September 7, 2018 (citation 83 FR 45374,) this is a request from the Department of Veterans Affairs (VA) to OMB for approval of a new Information Collection (IC). Under the Crime Control Act of 1990 (34 U.S.C. 20351), 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 the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal history background check.

New VAAR clause 852.237–73, Crime Control Act—Requirement for Background Checks, is required in all solicitations, contracts, and orders that involve providing child care services to children under the age of 18, including social services, health and mental health care, child- (day) care, education (whether or not directly involved in teaching), and rehabilitative programs covered under the statute.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The contract clause requires the contractor to perform the background checks on behalf of DVA to assure the safety of children under the age of 18 that are recipients of services under a DVA program. It is intended to assure their safety by avoiding hiring individuals with a history of criminal acts and especially acts of child abuse.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

In accordance with the statute, the investigations will be based on a set of the employee's fingerprints obtained by a law enforcement officer and on other identifying information, and will be conducted through the Identification Division of the Federal Bureau of

Investigation, through the State criminal history repositories, and through DVA personnel programs.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The investigations will be researching existing data records as described in 3 above. There will no duplication of investigations already completed.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden

Small businesses will be affected in the same way as large businesses in order to comply with the statute and safeguard the children being served.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

The IC requires the collection of the information for each prospective hire under the contract. To collect the information less frequently would mean that some potential employees would be hired without having background checks. This would not only be a failure to comply with the statute, but would expose the DVA to loss of public confidence and to great liability for any harm that would come to the children from the hiring of a person with a criminal background.

7. Explain any special circumstances that would cause an information collection to be conducted more often than quarterly or require respondents to prepare written responses to a collection of information in fewer than 30 days after receipt of it; submit more than an original and two copies of any document; retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years; in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study and require the use of a statistical data classification that has not been reviewed and approved by OMB.

No periodic reporting will be required. While under the statute the person being considered for the position will be given an opportunity to review and challenge the accuracy and completeness of the report, the statute does not specify a limit on the length of time for the person to reply.

Responses from the law enforcement organizations will mostly be electronically submitted. Where there are written responses, no more than an original and two copies will be required. The records will be retained in accordance with the practices of the law enforcement organizations. This IC does not involve a statistical survey.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Notice regarding this information collection requirement was posted to the Federal Register with proposed rule RIN 2900-AQ20 on September 7, 2018 (83 FR 45374) with comment period closing date of November 6, 2018.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No gifts will be provided, but payment of fees to the law enforcement organizations may be required.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The statute requires the Federal agency or federal contractor seeking a criminal history record check first to obtain the signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer's obligation to require a record check as a condition of employment and the employee's right to obtain a copy of the criminal history report made available to the employing Federal agency and the right to challenge the accuracy and completeness of any information contained in the report.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The information being collected is highly sensitive and deals with sexual behavior of individuals being checked. This is the express requirement of the statute. The information will only be used to determine if the prospective employee is suitable for this type of work involving children and that he or she poses no threat to the children.

The employee is notified that the background check will be made and is given a copy of any report and an opportunity to challenge its accuracy and completeness.

12. A) Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

No. of Respondents	X No. of Responses	= Annual Responses	X No. of Minutes	÷ 60	= Annual Burden Hours
500	20	10,000	60		10,000

B) Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.

Estimated annualized cost: \$497,000 (10,000 hours at \$49.70 per hour.) The Bureau of Labor Statistics (BLS) gathers information on full-time wage and salary workers. According to the latest (May 2017) available BLS data, the mean hourly wage is \$24.34 on BLS wage code – “11-3011 Administrative Services Managers.” This information was taken from the following website: https://www.bls.gov/oes/current/oes_nat.htm#11-0000.

13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There are no capital start-up costs or operation and maintenance costs associated with this IC.

14. Provide estimates of annualized cost to the Federal Government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

No. of contracts (est.)	500
No of checks per contract (est.)	20
Hourly burden per instance (est.)	1
Annual hourly burden	10,000

Estimated annualized cost: \$551,800 (10,000 hours at \$55.18 per hour, estimated salary rate, including benefits, based on the likelihood that an individual at a level similar to an average GS-13, Step 5, VA contracting officer would provide this information). (Based on the OPM Salary Table, 2017-GS at <https://www.opm.gov/policy-data->

[oversight/pay-leave/salaries-wages/salary-tables/17Tables/html/GS.aspx](https://www.gsa.gov/oversight/pay-leave/salaries-wages/salary-tables/17Tables/html/GS.aspx), with a base hourly rate of \$40.50 + \$14.68 Total Civilian Position Fringe Benefits rate of 36.25%.)

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

This is a new collection with no history to date.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

There are no plans to publish any data from this IC.

17. If seeking approval to not display the expiration date for OMS approval of the information collection, explain the reasons that display would be inappropriate.

VA is not seeking approval to omit the expiration date for OMB approval.

18. Explain each exception to the certification statement identified in Item 19 "Certification for paperwork Reduction Act."

This submission does not contain any exceptions to the certification statements.

B. Collection of Information Employing Statistical Methods: Statistical methods will not be employed.

42 U.S. Code § 13041 - Requirement for background checks

(a) In general

(1) 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 the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal history background check. All existing staff shall receive such checks not later than May 29, 1991. Except as provided in subsection (b)(3) of this section, no additional staff shall be hired without a check having been completed.

(2) For the purposes of this section, the term “child care services” means 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.

(b) Criminal history check

(1) A background check required by subsection (a) of this section shall be—

(A) based on a set of the employee’s fingerprints obtained by a law enforcement officer and on other identifying information;

(B) conducted through the Identification Division of the Federal Bureau of Investigation and through the State criminal history repositories of all States that an employee or prospective employee lists as current and former residences in an employment application; and

(C) initiated through the personnel programs of the applicable Federal agencies.

(2) The results of the background check shall be communicated to the employing agency.

(3) An agency or facility described in subsection (a)(1) of this section may hire a staff person provisionally prior to the completion of a background check if, at all times prior to receipt of the background check during which children are in the care of the person, the person is within the sight and under the supervision of a staff person with respect to whom a background check has been completed.

(c) Applicable criminal histories

Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be ground for denying employment or for dismissal of an employee in any of the positions listed in subsection (a)(2) of this section. In the case of an incident in which an individual has been charged with one of those offenses, when the charge has not yet been disposed of, an employer may suspend an employee from having any contact with children while on the job until the case is resolved. Conviction of a crime other than a sex crime may be considered if it bears on an individual’s fitness to have responsibility for the safety and well-being of children.

(d) Employment applications

(1) 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 any of the positions listed in subsection (a)(1) of this section, shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description of the disposition of the arrest or charge. An application shall state that it is being signed under penalty of perjury, with the applicable Federal punishment for perjury stated on the application.

(2) A Federal agency seeking a criminal history record check shall first obtain the signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer’s obligation to require a record check as a condition of employment and the

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employee's right to obtain a copy of the criminal history report made available to the employing Federal agency and the right to challenge the accuracy and completeness of any information contained in the report.

(e) Encouragement of voluntary criminal history checks for others who may have contact with children

Federal agencies and facilities are encouraged to submit identifying information for criminal history checks on volunteers working in any of the positions listed in subsection (a) of this section and on adult household members in places where child care or foster care services are being provided in a home.

(Pub. L. 101-647, title II, § 231, Nov. 29, 1990, 104 Stat. 4808; Pub. L. 102-190, div. A, title X, § 1094(a), Dec. 5, 1991, 105 Stat. 1488.)