



THE DEPUTY SECRETARY OF VETERANS AFFAIRS
WASHINGTON

May 9, 2005

The Honorable Joshua B. Bolten
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Mr. Bolten:

The Department of Veterans Affairs (VA) has reviewed the Federal Register Notice of April 8, 2005. This Notice requests comments to be sent to the Office of Management and Budget (OMB) on the draft department and agency implementation guidance on Homeland Security Presidential Directive 12 (HSPD-12).

VA fully supports the President's decision to establish a Federal standard for secure and reliable forms of identification and credentials for access to federally controlled facilities and information systems. However, VA does not agree with the requirement that a National Agency Check (NAC) investigation be conducted for all Federal employees and contractors prior to gaining access to Federal buildings and electronic access to information systems. VA's position, comments, and suggestion for how VA may comply with this guidance is outlined on the enclosed fact sheet.

If you have questions concerning these comments, please have a member of your staff contact Thomas J. Hogan, Deputy Assistant Secretary for Human Resources and Labor Relations, at (202) 273-4920.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gordon H. Mansfield".

Gordon H. Mansfield

Enclosure

Department of Veterans Affairs (VA)
Comments on
Federal Register: April 8, 2005 (Vol. 70, No. 67)
OMB's Draft Implementation Guidance
For Federal Departments and Agencies (Draft Guidance) Relating To
Homeland Security Presidential Guidance 12 (HSPD 12)

VA fully supports the President's decision to establish a Federal standard for secure and reliable forms of identification and to issue secure and reliable credentials for access to federally controlled facilities and logical access to federally controlled information systems.

However, VA does not agree with the Federal Information Processing Standard (FIPS) 201's requirement that a completed National Agency Check (NAC) be completed prior to an employee or contractor receiving a credential or access to federally controlled facilities and logical access to federally controlled information systems. The Office of Personnel Management (OPM), which provides oversight to this process, estimates that the average completion time for a NAC is 50 days. It should be noted that OPM's estimate of 50 days is based on their current workload and does not include impact from further demands on OPM's infrastructure caused by FIPS 201, which will cause an increase in the number of NACs requested and subsequent increase in the average completion time.

This NAC requirement would cripple VA's ability to meet its mission. The imposition of the requirement of a completed NAC prior to issuing credentials may not have a significant impact on other agencies and departments ability to recruit, but it does on VA because of the highly competitive health care work force VA targets.

Some Federal agencies are the sole source for specific occupations. For example, an applicant can only be an Air Traffic Controller by applying to the Federal Aviation Administration; an applicant who wishes to be a Federal Bureau of Investigation (FBI) Agent can only apply to the FBI; an individual wishing a career in the Foreign Service can only apply to the Department of State. Such applicants are motivated to comply with any pre-employment requirement, however onerous or time-consuming.

However, other agencies must recruit in highly competitive employment markets for highly qualified applicants with superb experience and education. These quality applicants have options in pursuing their specific vocation with a range of employers, including those in the private sector who do not require the NACs and who are able to offer employment in a more timely manner. The NAC requirement will have an adverse impact on these agencies in terms of their ability to hire top quality applicants.

The NAC requirement will have a particularly significant adverse impact on VA, which provides health care for approximately 5 million patients per year. VA recruits physicians, nurses, pharmacists, dentists and other health care providers who are crucial to its ability to perform its mission. VA currently employs approximately 123,040 direct patient care professionals. Turnover rate in these occupations required active recruitment for 13,494 employees in 2003. Recruitment for health care professionals is already extremely difficult because of the very competitive health care employment market. In addition, VA is required to apply a rigorous screening and credentialing process prior to appointing these employees. This process, which thoroughly vets identities and professional backgrounds, includes original source verification of education, training, licensure, certification, previous experience, clinical privileges, professional references, malpractice history, and adverse actions or criminal violations. It also includes direct contact with State Licensing Boards and data bases such as the National Practitioners Data Base, Health Integrity Protection Data Bank, Federation of State Medical Boards, and the Health and Human Services Office of Office of Inspector General's List of Excluded Individuals and Entities.

Requiring applicants to receive a completed NAC before entering on duty or using computer systems will result in many more job declinations, loss of applicants accepting more immediate job offers from employers who do not require completion of these lengthy investigations prior to employment, and unreasonable disruption to the quality and availability of patient care to veterans. These highly trained health care providers with portable skills will not wait the 50 day estimated time frame for completion of a NAC to begin employment with VA or any other Federal agency. This is particularly true in this highly competitive market, where one individual often has multiple job offers from attractive reputable private medical establishments that do not require the time consuming pre-appointment investigation. This will result in unreasonable disruption to the quality and availability of patient care to veterans. Furthermore, the NAC is duplicative of the existing screening and credentialing process.

Furthermore, VA is associated with 107 of the Nation's 126 medical schools and over 1,200 educational institutions. In FY 2003, over 87,000 students, of which 30,000 are physician residents, received episodic clinical training in VA facilities. Application of the NAC requirement imposed by FIPS 201 would be impossible for these students. The rotation schedule governing the appointment of trainees to VA facilities is established by the academic requirements of the training program and the sponsoring education affiliate. Adequate lead time to initiate NACs prior to the individual trainee's assignment to VA training is not provided.

The OMB Draft Guidance and its related documents apply to contractors as well as to employees. Nevertheless, it does not address the specific issues relating to contractors. Instead both categories are treated equally, as if the concerns and employment conditions relating to the different groups are one and the same. This is not the case. VA, like many agencies, relies on contractors to accomplish special

projects and even some day-to-day activities. The requirement of the advance NAC will have an adverse impact on the Federal government's ability to attract contractors in this competitive marketplace, where the private sector also seeks contractor services, but with much less complication and difficulty. In addition, VA believes the requirement of the NAC will be too great a burden on small businesses and thus, a discouragement for them to seek Federal contracts. Both the Draft Guidance and FIPS 201 neglect this issue. Each should address issues specifically relating to the contractor community in greater detail.

Finally, the Presidential Directive was limited to the establishment of a government-wide standard for secure and reliable forms of identification (ID). The NAC, on the other hand, addresses backgrounds and trustworthiness. It is, therefore, VA's position that the requirement of a NAC goes beyond the scope of HSPD 12. As a result, requiring agencies to complete NACs on prospective employees prior to access promulgates this mistake.

However, in an effort to conform to FIPS 201, VA is proposing the following two recommendations. First, as an alternative to the current requirements of FIPS 201, VA believes that Personal Identity Verification (PIV) Identity Proofing and Registration Requirements (Part 1, Paragraph 2.2) should be changed to provide that agencies be required to conduct an OPM Special Agreement Check (SAC) (fingerprint only) immediately and before issuing credentials. The credentials could be issued for a period of up to one year while the National Agency Check with Inquiries (NACI) is being conducted. This is consistent with FIPS 201, Part 2. Paragraph 5.3.1 PIV Card Issuance, which says that "An employee or contractor may be issued PIV Card and logical credentials while a National Agency Check with Written Inquires (NACI) or other OPM or National Security community investigation required for Federal employment is pending." Such an approach will minimize the possibility that an agency might encounter a security risk, while at the same time not paralyzing employment efforts in this highly competitive labor market.

Secondly, while Executive Order (E.O.) 10450 and OPM regulations at 5 CFR Parts 731 and 732 provide that all Federal appointments are subject to background investigation, they also authorize OPM to grant exemptions to the investigative requirements. OPM has, by regulation, 5 CFR 732.202(b)(i) and (ii), exempted the following positions from the investigative requirements of E.O. 10450: (a) Positions that are intermittent, seasonal, per diem, or temporary, not to exceed an aggregate of 180 days in either a single continuous appointment or series of appointments; and (b) Positions filled by aliens outside the United States.

In addition, OPM is authorized to exempt certain positions from the investigative requirements of E.O. 10450 at the request of the head of a Federal agency, provided

the employing agency conducts such checks as it deems appropriate to ensure that the employment or retention of individuals in these positions is clearly consistent with the interests of national security.

VA previously requested and received permission from OPM to exempt certain low risk, non-sensitive positions from the investigative requirements of EO 10450. Included in the exempt category are contract and without compensation health care practitioners who work for 6 months (180 days) or less; medical consultants who are appointed for one year or less and not to be reappointed; medical consultants who are appointed for more than one year or reappointed after a year with no break in service, but work less than 30 days per calendar year; purchase and hire employees appointed for six months or less; and all employees appointed in either a single continuous appointment or series of appointments that do not exceed an aggregate of 180 days. Physicians appointed as medical residents are exempt from this requirement provided they do not exceed one year of continuous service at a VA facility, regardless of the duration of the residency program. VA expects to continue these exemptions. The SAC requirement would be applied to all of these excepted individuals prior to their employment.

These recommendations are based in part on the President's message in HSPD 12, paragraph 7, which states, "Nothing in this directive alters, or impedes the ability to carry out, the authorities of the Federal departments and agencies to perform their responsibilities under law..."

The OMB Draft Guidance provides agencies with guidance in implementing the HSPD 12 and FIPS 201. VA supports these guidelines, provided the modifications, as recommended, are made.