

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**TWO TRIBES IN OKLAHOMA AND
THEIR HEALTH PROGRAMS DID NOT
MEET ALL FEDERAL AND TRIBAL
REQUIREMENTS FOR BACKGROUND
INVESTIGATIONS ON INDIVIDUALS
IN CONTACT WITH INDIAN
CHILDREN**

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Inspector General

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Report in Brief

Date: January 2024

Report No. A-01-20-01505

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

The Indian Child Protection and Family Violence Prevention Act (ICPFVPA) established requirements for Federal Bureau of Investigation (FBI) fingerprint background investigations for individuals in contact with Indian children. From 2018 to 2022, we completed three health and safety audits of five Tribes and their health programs. We found that all five Tribes and their health programs did not comply with Federal requirements to perform FBI fingerprint background investigations for all employees in contact with Indian children. This lack of compliance placed the children served by these programs at an increased risk of harm. In this audit, we evaluated the background investigation process for individuals who had contact with Indian children at the Choctaw Nation and Cherokee Nation health programs.

Our objective was to determine whether two Tribes in Oklahoma and their health programs complied with Federal and Tribal requirements for performing background investigations on individuals in contact with Indian children.

How OIG Did This Audit

We reviewed the background investigation process and documentation at two Tribal health programs for 111 employees, 68 contractors, 26 temporary employees and 10 volunteers in contact with Indian children for the period October 1, 2018, through December 31, 2019.

Two Tribes in Oklahoma and Their Health Programs Did Not Meet All Federal and Tribal Requirements for Background Investigations on Individuals in Contact With Indian Children

What OIG Found

The two Tribes and their health programs varied in their level of compliance with Federal and Tribal requirements for performing background investigations. The Choctaw Nation did not conduct required FBI fingerprint background investigations on any individuals and sometimes did not make inquiries about an applicant's criminal history to State and Tribal law enforcement for the previous 5 years of residency. The Cherokee Nation sometimes did not conduct required FBI fingerprint investigations primarily for volunteers.

Indian Health Service (IHS) officials stated that they did not provide training for background investigations to the area's Tribes prior to our audit period. Because the two Tribes and their health programs did not always collect the required criminal history results, they could not always compare complete criminal history results to the minimum standards of character for individuals in contact with Indian children. As a result, Indian children faced an increased risk of harm.

What OIG Recommends and Auditee Comments

We recommend that the two Tribes: (1) identify and perform background investigations required by the ICPFVPA on individuals in contact with Indian children who were not properly screened, and (2) implement policies and procedures to ensure that the Tribes conduct required background investigations and assess results. We recommend that IHS update the Single Audit Compliance Supplement to include audit procedures related to ICPFVPA background investigation requirements and develop national training on those requirements. We also recommend that IHS develop procedures to provide documentation that HHS employees assigned to Tribes met all background investigation requirements.

In written comments on our draft report, the two Tribes concurred with our recommendations and described actions taken to address them. However, we revised the title for the final report based on the Tribes' comments. IHS concurred with our recommendations to update the Compliance Supplement and develop national training. IHS did not concur with two recommendations related to sharing background investigation results on HHS employees assigned to Tribes. After considering IHS's comments, we revised these two recommendations.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Indian Health Service's (IHS's) mission is to partner with American Indians and Alaska Natives to elevate their physical, mental, social, and spiritual health to the highest level possible.¹ The goal of the IHS is to ensure that comprehensive, culturally acceptable personal and public health services are available and accessible to all American Indian and Alaska Native people. Congress has expressed concerns about safeguards for Indian children and passed the Indian Child Protection and Family Violence Prevention Act (ICPFVPA), which established requirements, including Federal Bureau of Investigation (FBI) fingerprint background investigations and criminal history results to determine minimum standards of character, for IHS and Tribal individuals in contact with Indian children.²

From 2018 to 2022, we completed three health and safety audits of five Tribes and their health programs.^{3, 4} We found that all five Tribes did not comply with Federal requirements to perform FBI fingerprint background investigations for all employees in contact with Indian children. This lack of compliance placed the children served by these programs at an increased risk of harm. In this audit, we evaluate the background investigation process for individuals who had contact with Indian children at the Choctaw Nation and Cherokee Nation Tribal health programs in Oklahoma.⁵

OBJECTIVE

Our objective was to determine whether two Tribes in Oklahoma and their health programs complied with Federal and Tribal requirements for performing background investigations on individuals in contact with Indian children.

¹ IHS's mission is available online at <https://www.ihs.gov/newsroom/factsheets/quicklook/>. Accessed on Sept. 27, 2023.

² In this report, "in contact with Indian children" refers to individuals with duties and responsibilities that involve regular contact with or control over Indian children.

³ See Appendix B for related Office of Inspector General (OIG) reports.

⁴ In this report, "Tribes and their health programs" refers to multiple Tribal government entities within a Tribal organization that are involved in background investigations and the hiring of applicants, including the Tribal government, human resources department, Tribal law enforcement, and health program. Tribes and their health programs receive Indian Self-Determination and Education Assistance Act (ISDEAA) funds from IHS to administer their health services.

⁵ We selected the two Tribal health programs for this audit based on a number of factors, including location, program size, and the population served.

BACKGROUND

Department of Health and Human Services' Partnership With American Indians and Alaska Natives To Promote the Protection of Indian Children

The mission of IHS, which is within the Department of Health and Human Services (HHS), is to partner with American Indians and Alaska Natives to raise their physical, mental, social, and spiritual health to the highest level. IHS's role is to "provide health promotion and disease prevention services to Indians" to "ensure the highest possible health status for Indians and . . . to provide all resources necessary to effect that policy" (25 U.S.C. §§ 1621b(a) and 1602(1)). IHS provides a comprehensive health service delivery system for approximately 2.6 million American Indians and Alaska Natives who belong to 574 federally recognized Tribes in 37 States.

In 1975, Congress recognized the importance of Tribal decision making in Tribal affairs and the Nation-to-Nation relationship between the United States and Tribes through the passage of the Indian Self-Determination and Education Assistance Act (ISDEAA). Under Title V of ISDEAA, federally recognized Tribes can compact with IHS to assume full funding and control over programs, functions, services, or activities that IHS would otherwise provide Indians because of their status as Indians.^{6, 7} ISDEAA gives IHS limited authority to oversee Tribal health programs.

In 1990, after a review of the problem of child abuse on Indian reservations, Congress passed the ICPFVPA (25 U.S.C. § 3201(a)(1)). The ICPFVPA required IHS to promulgate minimum standards of character for individuals in IHS and Tribal health programs who are in contact with Indian children.⁸

The ICPFVPA and IHS's implementing regulations require Tribes that receive ISDEAA funds from IHS to investigate the character of each individual in contact with Indian children (42 CFR

⁶ The ISDEAA agreements are often referred to as "P.L. 638 compacts," and Tribes that are parties to these compacts are referred to as "P.L. 638 Tribes" and "Tribal health programs."

⁷ The Choctaw Nation and Cherokee Nation are Title V Tribal health programs. Under Title V, IHS and the Tribe sign a multiyear funding agreement for Tribal health services by an agreement known as a self-governance compact. The agreement remains in effect for so long as permitted by Federal law or terminated by mutual written agreement, retrocession, or reassumption. Retrocession means the return by a self-governance Tribe to the Secretary of Programs, Services, Functions and Activities (PSFAs) that are included in a compact or funding agreement, for any reason, before the expiration of the term of the compact or funding agreement (42 CFR § 137.245). Reassumption means rescission by the Secretary without consent of the self-governance Tribe of PSFAs and associated funding in a compact or funding agreement and resuming responsibility to provide such PSFAs (42 CFR § 137.255).

⁸ Federal regulations and Tribal policies define character standards relative to specific disqualifying felonies and misdemeanors. Disqualifying offenses for each applicable regulation are described in the Federal and Tribal Requirements section of this report.

§ 136.404(b)). According to the implementing regulations, “individuals” refers to persons with duties and responsibilities that involve regular contact with or control of Indian children, which include Tribal employees, HHS employees, contractors, volunteers, and those being considered for these roles in contact with Indian children (42 CFR § 136.403).⁹ An investigation of character must include a criminal history background investigation, which includes an FBI fingerprint background investigation (42 CFR § 136.406(b)). Tribes may obtain FBI fingerprint background investigations through one of four FBI-approved procedures: State identification bureaus, FBI-approved channelers, the Department of Justice Tribal Access Program, or by submitting hardcopy fingerprint cards to the FBI.¹⁰ An FBI fingerprint background investigation accesses criminal history records voluntarily provided by Federal, State, and local jurisdictions. It provides positive identification and eliminates the false positives and false negatives associated with name-based investigations, and it provides additional criminal record history that may not be maintained by the State where a Tribe is located.¹¹

Additionally, Tribes must make inquiries of an applicant’s criminal history to State and Tribal law enforcement for the previous 5 years of residency listed on an individual’s employment application (42 CFR § 136.406(b)).

A Tribe must compare the results of these criminal history verifications to IHS’s minimum character standards (42 CFR § 136.406(c)). The Tribe may determine its own standards of character; however, these standards must be no less stringent than IHS’s minimum character standards (42 CFR § 136.408(c)). Tribes may not place individuals who do not meet IHS’s minimum standards in a position that is in contact with Indian children (42 CFR § 136.404(b)).

Indian Health Service

IHS is organized into 12 Area Offices that provide service, support, and guidance to Tribes in their respective regions. The strategic goals of IHS include: (1) ensuring that comprehensive and culturally appropriate personal and public health services are available and accessible to all American Indian and Alaska Native people, (2) promoting excellence and quality through

⁹ HHS has several types of employees who provide services to Tribal health programs, including Commissioned Corps Officers (CCOs) and Intergovernmental Personnel Act staff (IPAs). HHS may assign these employees to tribally operated health facilities. Although these are HHS employees, the Choctaw Nation and Cherokee Nation categorized these individuals as contractors.

¹⁰ An FBI-approved channeler is a contractor that serves as the conduit for submitting fingerprints to the FBI and receiving FBI criminal history record information on behalf of, and for forwarding to, an authorized recipient.

¹¹ False positives can occur when a name check identifies a criminal history record for an individual with a similar name and biographic identifiers. False negatives can occur when a name check fails to identify the criminal history record of an individual who provides inaccurate biographic information either at the time of arrest or when applying for a job, such as a false name and/or date of birth, or a false negative can occur due to misspellings or other such errors.

innovation of the Indian health system into an optimally performing organization, and (3) strengthening IHS program management and operations.

Congress declared that it is the policy of the Nation, in fulfillment of its special trust relationship to Indians, to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy (25 U.S.C. § 1602(1)).¹² The HHS Secretary, acting through IHS, must provide health promotion and disease prevention services to Indians to achieve the health status objectives set forth in law (25 U.S.C. § 1621b (a)), and IHS will “provide health promotion and disease prevention services to Indians” to “ensure the highest possible health status for Indians and . . . to provide all resources necessary to effect that policy” (25 U.S.C. §§ 1621b and 1602).

IHS partners with Tribes, as sovereign nations, to achieve their health care objectives. IHS accomplishes its goals by: (1) negotiating periodic agreements with Tribes for health services to be rendered, (2) providing funding for the Tribal health programs, and (3) providing training and technical assistance to Tribes. ISDEAA did not specifically authorize IHS to make site visits to Title V Tribal health programs. IHS may disallow costs based on its reviews of Tribal annual single audits conducted under the Single Audit Act (42 CFR § 137.169).¹³ These audits generally focus on financial rather than programmatic issues.

The Single Audit Act and Compliance Supplement

The Single Audit Act and its amendments establish requirements for States, the District of Columbia, local governments, U.S. territories, Tribal governments, institutions of higher education, and nonprofit organizations that receive Federal awards to undergo single audits annually when the expenditures of those awards meet a certain dollar threshold. These audits are critical for helping to identify deficiencies in the award recipient’s compliance with applicable provisions of laws, regulations, contracts, or grant agreements and in its financial management and internal control systems. Single audits are performed by independent auditors and encompass both financial and compliance components.

The Single Audit Act authorizes the Director of Office of Management and Budget (OMB) to develop Governmentwide guidelines and policy on performing audits to comply with the Single Audit Act. As part of this role, each year OMB, after consultation with Federal agencies, issues a

¹² This concept is incorporated in the *Indian Health Manual*: IHS aims to elevate “the health status of the Indian and Alaska Native to the highest possible level” (*Indian Health Manual*, part 1, chapter 3, §§ 1–3.4 (A)).

¹³ The Single Audit Act is codified, as amended, at 31 U.S.C. §§ 7501-06, and implementing OMB guidance is incorporated in 2 CFR part 200. Non-Federal entities (States, U.S. territory and Tribal governments, local governments, or nonprofit organizations) that expend \$750,000 or more in Federal awards in a fiscal year are required to undergo a single audit (unless a specific exception applies), which is an audit of an entity’s financial statements and Federal awards, or a program-specific audit, for the fiscal year (31 U.S.C. § 7502 and 2 CFR § 200.501).

Compliance Supplement, which is a tool designed to help consolidate applicable legal requirements for numerous programs into one central place. Auditors rely on the Compliance Supplement to help them understand the audit objectives and procedures that Federal program officials have identified as necessary to determine whether the entity is materially compliant with applicable provisions of laws, regulations, contracts, or grant agreements.

The Compliance Supplement identifies procedures for auditors to perform when conducting Single Audits of Indian Tribes and Tribal organizations. One set of procedures apply only to Tribes that receive primary- and secondary-school funding from the Department of Interior under ISDEAA or the Tribally Controlled Schools Act. These procedures suggest that auditors obtain and review a Tribe's policies and procedures for the performance of background investigations and perform tests of select security and personnel files of employees occupying positions that have contact with Indian children.¹⁴ The tests include assessing whether fingerprint charts were compared to information maintained by FBI or other law enforcement information maintained by other agencies. The Compliance Supplement does not contain similar procedures for performing background investigations at Tribes that receive ISDEAA funds from IHS. As such, IHS is unable to leverage annual Single Audits as a monitoring tool to assess Tribes' compliance with background check requirements.

Health Programs Operated by the Two Tribes

The two Tribal health programs are funded under Title V of ISDEAA. Each Tribe approves and executes a self-governance compact with IHS that allows the Tribe to assume full funding and control over the programs, functions, services, or activities that IHS would otherwise provide for Indians because of their status as Indians. The compacts remain in effect until terminated by one of the parties. IHS and the compacting Tribe determine the term of a Title V Tribal health program funding agreement that stays in effect until it is superseded by a subsequent funding agreement, or a program funded under them is withdrawn or retroceded. The ISDEAA statute and regulations are silent about authorized site visits by IHS to compacting Tribes.

The Choctaw Nation is a Tribe in Oklahoma and, by population, the third largest federally recognized Tribe in the United States. It operates a hospital, 8 outlying health centers, and 2 residential treatment centers that serve a Tribal population of approximately 71,950 members, including 22,587 children. Choctaw Nation used an external contractor to perform background investigations for its applicants to work in its health program. In addition to the health

¹⁴ This information is contained in the 2022 Compliance Supplement, pp. 676 and 677, which can be viewed at: https://www.whitehouse.gov/wp-content/uploads/2022/05/2022-Compliance-Supplement_PDF_Rev_05.11.22.pdf. Accessed on May 31, 2023.

program, the Tribe operates on Tribal land a child care program, a Head Start program, and a Native American boarding school.¹⁵

The Cherokee Nation is a Tribe in Oklahoma and, by population, the largest federally recognized Tribe in the United States. It operates a hospital and 9 outpatient health centers that serve a Tribal population of approximately 289,252 members, including 46,424 children. During our audit, background investigations were conducted by the Tribe's human resources department and its Tribal law enforcement. In addition to the health program, the Tribe operates a child care program and a Head Start program.

The IHS Oklahoma Area Office provides services to the two Tribal health programs we audited. Each of the two Tribal health programs operates multiple health facilities, including a hospital, to provide a comprehensive array of medical and behavioral health services. The Title V compacts and funding agreements with IHS outline the scope of health services each program provides. Each health program receives its primary funding through an annual funding agreement with IHS and supplemental revenue from third-party payers—such as Medicaid, Medicare, and private insurance companies—for providing care to eligible members of the Tribal community.

Department of Health and Human Services Employees Assigned to Tribal Health Programs

The United States Public Health Service Commissioned Corps is one of the Nation's uniformed services—a branch committed to the service of health. Commissioned Corps Officers (CCOs) advance the Nation's public health by serving in agencies across the Government as physicians, nurses, dentists, scientists, engineers, and other professionals to fight disease, conduct research, and care for patients in underserved communities. For the period of our audit, 554 (approximately 31 percent) of the total number of CCOs (1,774) assigned to IHS provided services at Tribal health programs across the Nation.¹⁶ Although assigned to duties at Tribal health programs, CCOs remain Federal employees. The Commissioned Corps stated that it initiates the background check for new hires; however, when the CCO receives placement with a specific Federal agency such as IHS, the agency's Operating Division (in this case IHS) assumes responsibility to coordinate the periodic reinvestigation for these individuals.

The Intergovernmental Personnel Act authorizes the head of a Federal agency, under certain conditions and restrictions, to arrange for the temporary assignment of an employee of the agency to one of several types of non-Federal entities, including a tribally operated health program. Under Office of Personnel Management (OPM) regulations, before an Intergovernmental Personnel Act staff (IPA) assignment can be made, the Federal agency, the

¹⁵ Head Start programs promote school readiness to children and focus on family well-being. Prior to employment, each prospective Head Start applicant must receive an FBI fingerprint background check.

¹⁶ For the period of this audit, 1,220 of the 1,774 CCOs assigned to IHS provided services at IHS operated health programs.

non-Federal entity, and the employee must enter into a written agreement that records the obligations and responsibilities of the parties (5 CFR § 334.106.5).¹⁷ A Federal employee who is assigned to a non-Federal entity remains a Federal employee. IHS stated that it has responsibility for coordinating the background investigation and reinvestigations for IPAs placed in Tribal health programs.

Upon completion of the initial background investigation and reinvestigation, the Federal agency would receive access to a Certificate of Investigation (COI) with a child care designation that the background investigation has been completed and a final security and suitability determination had been made. The child care designation identifies that the background investigation results for the individual meets the required character standards in the ICPFVPA allowing for individuals to be in contact with Indian children.

Related Office of Inspector General Work

In August 2020, we issued an Early Alert memorandum to IHS with our preliminary findings indicating a vulnerability in that two of three health programs at Tribes in New England were not meeting Federal or Tribal requirements to perform FBI fingerprint background investigations for individuals in contact with Indian children.¹⁸ Subsequently, in September 2020, IHS issued a letter to Tribal leaders of the federally recognized Tribes that notified the leaders of the vulnerability identified in the Early Alert and called for each Tribe's immediate attention and response. The letter informed the Tribes of the Federal requirements and the Tribes' responsibility for conducting satisfactory background investigations on individuals in contact with Indian children.¹⁹ In addition, the letter directed each IHS Area Office to initiate meetings with all Tribes to: (1) inform them of the Federal legal requirements to conduct the background investigations and (2) identify technical assistance or resources that IHS might be able to provide to Tribes on the background investigation requirements. Furthermore, the letter requested that IHS Area Directors identify best practices for protecting the safety and

¹⁷ In 2008, Cherokee Nation assumed operation of the Hastings Hospital located on their reservation from IHS. At the time of transition, several IHS staff continued their employment at the hospital but chose to remain Federal employees. IHS negotiated an Intergovernmental Personnel Act agreement with the Tribe to document this work arrangement for these individuals.

¹⁸ When the Early Alert was issued in August 2020, we reported that one Tribe maintained that it was currently meeting the Federal background investigation requirements, but we were unable to confirm this at the time the Early Alert was issued. After the issuance of the Early Alert, we identified that this same Tribe was not performing background investigations according to Federal requirements; thus, all three Tribes were not meeting Federal background investigation requirements.

¹⁹ A satisfactory background investigation requires the collection of information about an applicant's previous 5 years of residency from the applicant, completion of an FBI fingerprint background check, and inquiries to State and Tribal law enforcement about the previous 5 years of residency. The results of the investigation must be compared to the minimum standards of character as defined in the Act to determine whether an individual meets these requirements.

security of Indian children and collect and share this information with all participants in the IHS health system. (Appendix D contains the Early Alert memorandum, and Appendix E contains the IHS response and the Tribal Leader letter.)

In November 2022, we issued a final report to the three Tribes and IHS with our findings that all three Tribes did not conduct required FBI fingerprint background investigations on any of the individuals in contact with Indian children.²⁰

We also noted that, unlike the authorizing legislation for many HHS programs serving children, the ICPFVPA does not require periodic rescreening of individuals who have contact with Indian children. For example, the Child Care and Development Block Grant Act of 2014 reauthorized the Child Care and Development Fund program and made changes to strengthen the health, safety, and quality of child care by requiring the performance of comprehensive background investigations for child care staff members and prospective employees every 5 years. According to Commissioned Corps and IHS, HHS employees (CCOs and IPAs) assigned to Tribal health programs require periodic rescreening coordinated by the Federal Operating Division of the employee. For example, CCOs may be rescreened every 10 years from their initial background investigation.

Because Tribes are not required to periodically rescreen the backgrounds of employees, contractors, and volunteers working with Indian children, Indian children receiving care at Tribal health programs experience a higher risk of harm, compared to children served by other HHS programs with a rescreening requirement.

HOW WE CONDUCTED THIS AUDIT

We reviewed the background investigation process and documentation at two Tribal health programs for individuals the Tribes determined were in contact with Indian children for the period October 1, 2018, through December 31, 2019 (audit period). Our audit covered the compliance with Federal and Tribal requirements for screening individuals in contact with Indian children. Specifically:

- The Choctaw Nation assumes that all individuals working in its health program are in contact with Indian children. During our audit period, there were 1,550 employees, 58 contractors, and 26 temporary employees in positions that had contact with Indian children. We selected a random sample of 30 employees, then reviewed all 58 contractors, and 26 temporary employees.²¹

²⁰ *Three Tribes in New England and Their Health Programs Did Not Conduct Required Background Investigations on Individuals in Contact With Indian Children* ([A-01-20-01504](#)) November 2022.

²¹ For the Choctaw Nation, the 58 contractors included 32 contractors hired through an agency, and 26 HHS employees (CCOs). The Choctaw Nation categorized HHS employees as contractors.

- The Cherokee Nation assigns a Youth Sensitive security designation to track individuals working in its health program who are in contact with Indian children. During our audit period, there were 1,853 individuals designated as Youth Sensitive, consisting of 1,489 employees, 238 volunteers, and 126 contractors. We selected a stratified random sample of 100 individuals in contact with Indian children consisting of 80 employees, 10 contractors, and 10 volunteers.²² In addition, we became aware of one individual employed by the Cherokee Nation who was arrested for a violent crime during our fieldwork. We decided to review this individual separately.

We tested compliance with Federal and Tribal requirements for screening these individuals. Specifically, we reviewed documentation to determine whether the Tribes and their health programs: (1) conducted fingerprint FBI criminal history background investigations, (2) collected information about the applicants' previous 5 years of residency, (3) made inquiries to State and Tribal law enforcement agencies about the applicants' previous 5 years of residency, (4) compared the criminal history results against the minimum standards of character, and (5) reviewed available criminal history reports to determine whether individuals met the required minimum standards of character. In addition, we interviewed IHS staff and reviewed documentation to identify training and technical assistance provided to the Tribes pertaining to the background investigation process for individuals in contact with Indian children served by the Tribal health programs.

We have addressed this report to the two Tribes and IHS. In addition to the Tribes' roles and responsibilities to safeguard Indian children in their care, IHS has a fundamental role in ensuring the health and safety of Indian children. Specifically:

- IHS's mission to promote the health of all American Indians and Alaska Natives to the highest level includes training and technical assistance for Tribes relating to health and safety issues, such as the Federal requirement of an FBI fingerprint background investigation for individuals in contact with Indian children;
- Congress required IHS to promulgate the character standards for individuals in contact with Indian children; and
- IHS represents the unique, primary funding and communications conduit between the Federal Government and Tribes for health services.

We conducted this performance audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on

²² For the Cherokee Nation, the 10 contractors included 3 contractors hired through an agency and 7 HHS employees (4 CCOs and 3 IPAs). The Cherokee Nation categorized HHS employees as contractors.

our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains our audit scope and methodology, Appendices F and G contain our statistical sampling methodologies, and Appendix H contains our sample results and estimates.

FINDINGS

The two Tribes and their health programs did not comply with Federal and Tribal requirements for performing background investigations on all individuals in contact with Indian children.²³

We reviewed the background investigation documentation for 30 employees, 32 contractors hired through an agency, and 26 temporary employees working for the Choctaw Nation in its health program.²⁴ We found that the Choctaw Nation did not:

- collect information about the previous 5 years of residency for 6 of the 30 employees, 12 of the 32 contractors, and 3 of the 26 temporary employees;
- conduct State and Tribal law enforcement background investigations for 8 of the 30 employees, 12 of the 32 contractors, and 2 of the 26 temporary employees; and
- conduct FBI fingerprint background investigations using FBI-approved procedures for any of the 30 employees, 32 contractors, and 26 temporary employees.

In addition, we reviewed background investigation documentation for 26 HHS employees (CCOs) assigned to work at the Tribal health program and found that the Choctaw Nation did not ensure that the individuals had the required background investigations. We found that HHS could not provide evidence that the required background investigations were completed for 4 of the 26 HHS employees, and 2 additional HHS employees did not have the required child care investigation.

Choctaw Nation officials said that, prior to our audit period, they were unaware of the requirements to perform FBI fingerprint background investigations for individuals providing services in the Tribal health program as required by the ICPFVPA.

²³ Individuals include employees, temporary employees, contractors, and volunteers in contact with Indian children.

²⁴ The 58 contractors described in “How We Conducted This Audit” consist of 32 contractors hired by the Tribe through an agency, and 26 HHS employees (CCOs) assigned by IHS to provide services at the Tribal health program. The Tribe is required to ensure that the 32 contractors hired through an agency had met background investigation requirements of the Act. HHS is responsible for the investigation and reinvestigation of HHS employees (CCOs).

We reviewed the background investigations for 80 employees, 3 contractors hired through an agency, and 10 volunteers working for the Cherokee Nation in its health program.²⁵ We found that the Cherokee Nation did not:

- collect information about the previous 5 years of residency for all 3 contractors;
- conduct State and Tribal law enforcement background investigations for all 3 contractors; and
- conduct FBI fingerprint background investigations using FBI-approved procedures for 6 of the 80 employees, all 3 contractors, and all 10 volunteers.

In addition, we reviewed background investigation documentation for seven HHS employees (four CCOs and three IPAs) assigned to work at the Tribal health program and found that the Cherokee Nation did not ensure that the individuals had the required background investigations. We found that HHS could not provide evidence of a COI that the required background investigation was completed for one of the seven HHS employees and that a second HHS employee did not have the required child care investigation.

The Cherokee Nation officials indicated that the Tribe did not have policies to address the timing of background investigations relative to the start of employment and resubmission of fingerprints to FBI when the fingerprints are determined unreadable to comply with the requirements of the ICPFVPA. The Tribe did not have policies to review or conduct background investigations for contractors because it relied on the contracting agencies to conduct the background investigations. In addition, the Tribe stated that it relied on the Federal Government to perform background investigations on Federal employees to ensure compliance with requirements of the ICPFVPA. Finally, the Cherokee Nation did not perform FBI fingerprint background investigations on volunteers because its officials misinterpreted the ICPFVPA's requirements and stated that it was a common misinterpretation among Tribes that they were not required to perform FBI fingerprint background investigations on volunteers.

IHS officials from the Oklahoma Area Office stated that prior to the start of our audit period, they did not provide training on the background investigation requirements to the area's Tribes. IHS also did not have policies and procedures for communicating the results of background investigations to Tribes for Federal employees assigned to Tribal health programs. In addition, IHS did not include prescriptive tests and provisions in the Single Audit Compliance

²⁵ The 10 contractors described in "How We Conducted This Audit" consist of 3 contractors hired by the Tribe through an agency and 7 HHS employees (4 CCOs and 3 IPAs) assigned by IHS to provide services at the Tribal health program. The Tribe was required to ensure that the three contractors hired through an agency had met background investigation requirements of the Act. HHS was responsible for the investigation and reinvestigation of HHS employees (four CCOs and three IPAs).

Supplement that would enable it to monitor Tribes' compliance with the background investigation requirements of the ICPFVPA.

Because the two Tribes and their health programs did not collect the necessary information about some individuals' previous 5 years of residency and did not conduct some of the required criminal history investigations, they could not always compare complete criminal history results to the minimum standards of character for individuals in contact with Indian children. As a result, Indian children faced an increased risk of harm.

THE TWO TRIBES AND THEIR HEALTH PROGRAMS DID NOT MEET ALL FEDERAL AND TRIBAL REQUIREMENTS FOR BACKGROUND INVESTIGATIONS FOR INDIVIDUALS IN CONTACT WITH INDIAN CHILDREN

Federal and Tribal Requirements

All Indian Tribes or Tribal organizations that receive funds under the authority of ISDEAA must identify those positions in contact with Indian children, investigate the character of each individual who is employed or is being considered for employment in a position in contact with Indian children, and employ only individuals who meet standards of character that are no less stringent than those prescribed by regulations in this subpart (42 CFR § 136.404 (b)).²⁶ The minimum standards of character are a benchmark of moral, ethical, and emotional strengths established by character traits and past conduct to ensure that the individual is competent to complete their job without harm to Indian children. To protect Indian children, IHS has established minimum standards of character so that no individuals who have been found guilty of, or entered a plea of no contest or guilty to, any felonious offense or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children are placed in positions in contact with Indian children (42 CFR § 136.405).

The minimum standards of character are considered met only after the individual has been the subject of a satisfactory background investigation consisting of the following (42 CFR § 136.406):²⁷

²⁶ Individuals means persons with duties and responsibilities that involve regular contact with or control over Indian children (42 CFR § 136.403).

²⁷ A satisfactory background investigation requires the collection of information about the previous 5 years of residency and the completion of a criminal history background investigation. The results of the investigation must be compared against the minimum standards of character as defined in the Act to determine whether an individual meets these requirements.

- a criminal history background investigation, which includes a fingerprint submission through FBI's Criminal Justice Information Services Division, under procedures approved by FBI, and inquiries to State and Tribal law enforcement agencies for the previous 5 years of residency listed on an individual's application; and
- a determination as to whether an individual has been found guilty of, or entered a plea of no contest or guilty to, any felonious offenses or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes or violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

Tribes or Tribal organizations may, but are not required to, apply additional criteria to determine whether an individual is suitable for a position involving duties and responsibilities that involve contact with Indian children. Any additional suitability criteria established by Tribes or Tribal organizations beyond the minimum standards of character are determined by each Tribe or Tribal organization in accordance with its personnel policies and procedures (42 CFR § 136.408 (c)).

As of October 2019, IHS must use the Defense Counterintelligence and Security Agency to conduct background investigations for HHS employees.²⁸ IHS must designate qualified security personnel to adjudicate the results of the background investigation. Indian Tribes and Tribal organizations may conduct their own background investigations, contract with private firms, or may request that a Federal or State agency conduct the investigation (42 CFR § 136.410).

The policies and procedures of Cherokee Nation require more stringent character standards for individuals in contact with Indian children than those prescribed in the ICPFVPA. In addition to the character standards identified in the ICPFVPA, applicants for positions with Cherokee Nation must meet additional standards of the 1990 Crime Control Act. The 1990 Crime Control Act requires the following:

- Employment applications must contain a question asking whether the individual has ever been arrested for, or charged with, a crime involving a child and, if so, requiring an explanation of the disposition of the arrest or charge. The application must state that it is being signed under penalty of perjury with the applicable Federal punishment for perjury stated on the application.
- Each applicant must receive an FBI fingerprint background investigation.

²⁸ Prior to October 2019, IHS used OPM to conduct background investigations on HHS employees assigned to Tribal health facilities.

- Any conviction for a sex crime, an offense involving a child victim, or a drug felony may be grounds for denying employment or for the dismissal of an employee.

These standards require Cherokee Nation to obtain supplemental information about an applicant's criminal background and disqualifying offenses in addition to those specified in the ICPFVPA. (See Appendix C for Tribe-specific policies and procedures related to background investigations.)

The Choctaw Nation Did Not Meet All Federal and Tribal Requirements for Conducting Background Investigations

The Choctaw Nation and its health program did not comply with Federal and Tribal requirements for performing background investigations on all individuals in contact with Indian children. Specifically, we reviewed the employment documentation for 30 selected employees, 32 contractors hired through an agency, and 26 temporary employees and found that the Choctaw Nation and its health program did not:

- collect information about previous 5 years of residency for 6 of the 30 employees, 12 of the 32 contractors, and 3 of the 26 temporary employees;
- conduct State and Tribal law enforcement background investigations for 8 of the 30 employees, 12 of the 32 contractors, and 2 of the 26 temporary employees; and
- conduct FBI fingerprint background investigations using FBI-approved procedures for any of the 30 employees, 32 contractors, and 26 temporary employees.

In addition, we reviewed the background investigation documentation for 26 HHS employees (CCOs) assigned to work at the Tribal health program and we found that the Choctaw Nation did not ensure that these individuals had the required background investigations.^{29, 30} The Choctaw Nation did not have evidence that the required background investigations were completed by HHS. We requested background investigation results for the 26 HHS employees from the Public Health Service Commissioned Corps and IHS to verify that background investigations were completed. We found that HHS could not provide evidence of a COI that the required background investigations were completed for four HHS employees, and for two additional HHS employees, HHS did not have evidence of the child care screening designation to satisfy the requirements of the ICPFVPA and the Tribe's policies.

²⁹ The 26 HHS employees (CCOs) and 32 contractors hired through an agency comprise the 58 contractors of the Choctaw Nation health program.

³⁰ The Choctaw Nation obtained information about previous 5 years of residency and conducted State and Tribal law enforcement inquiries for 7 of the 26 IHS employees; however, it did not obtain information about previous 5 years of residency and conduct State and Tribal law enforcement inquiries for 19 of the IHS employees.

The Choctaw Nation and its health program did not conduct the required FBI fingerprint background investigations and sometimes did not make inquiries of an applicant's criminal history to State and Tribal law enforcement for the previous 5 years of residency. Tribal personnel indicated that this occurred because they were unaware of the background investigation requirements for individuals in contact with Indian children prior to our audit period. In addition, the Tribe did not follow its own Tribal policies to review background investigation results from contracting agencies. Further, the Tribe did not have policies and procedure for performing background investigations on temporary employees.

Based on our analysis of the random sample of 30 employees, all the contractors and all the temporary employees, and statements from Tribal officials that it did not conduct FBI background investigations, we concluded that the Choctaw Nation did not perform the required FBI background investigation on any of the 1,634 individuals working for the health program in positions that had contact with Indian children. Because the Choctaw Nation and its health programs did not collect the necessary information about some individuals' previous 5 years of residency or conduct some of the required criminal history inquiries and investigations and perform FBI fingerprint background investigations, they could not compare complete criminal history results to the minimum standards of character for all individuals in contact with Indian children. As a result, Indian children faced an increased risk of harm.

Since the issuance of our Early Alert, Choctaw Nation officials indicated that once they became aware of the Tribe's noncompliance with FBI fingerprinting requirements, they implemented the process of fingerprinting all health program associates regardless of whether they came in contact with Indian children.

The Cherokee Nation Did Not Meet All Federal and Tribal Requirements for Conducting Background Investigations

The Cherokee Nation and its health program did not comply with Federal and Tribal requirements for performing background investigations on some individuals in contact with Indian children. Specifically, we reviewed the employment documentation for 80 employees, 3 contractors hired through an agency, and 10 volunteers and found that the Cherokee Nation and its health program did not:

- collect information about previous 5 years of residency for all 3 contractors;
- conduct State and Tribal law enforcement background investigations for all 3 contractors; and
- conduct FBI fingerprint background investigations using FBI-approved procedures for 6 of the 80 employees, all 3 contractors, and all 10 volunteers.

The Cherokee Nation did not ensure that seven HHS employees (four CCOs and three IPAs) assigned through agreements with the Tribe to serve at its health program had undergone the required background investigations. The Cherokee Nation did not have evidence that the required background investigations were completed by HHS for all seven individuals. We requested background investigation results for the four CCOs from the Public Health Service Commissioned Corps and IHS and the three IPAs from IHS to verify that background investigations were completed. We found that HHS could not provide evidence of a COI that the required background investigations were completed for one of the four CCOs, and one of the three IPAs did not have a child care designation screening to satisfy the requirements of the ICPFVPA and the Tribe's policies. The Cherokee Nation informed us that the IPA was placed in a Youth Sensitive position in 2008 that would have required a child care designation. However, IHS informed us that its position description for the IPA did not require a child care designation and was different than the Tribe's position description.

Although the Cherokee Nation and its Tribal health program conducted the required background investigation for most of its employees, five employees were not properly screened because the Cherokee Nation did not have policies that specifically required background investigations be completed prior to the start of employment. In another instance, the Cherokee Nation accepted a name-based search for an employee with unreadable fingerprints because the Tribe did not have a policy about resubmitting legible fingerprints when FBI cannot read the prints originally submitted. The Tribe did not review the background investigations for contractors hired through an agency because its policies did not specifically require this, and the Tribe relied on the contracting agencies to conduct the background investigations. In addition, the Tribe relied on the Federal Government to perform background investigations on HHS employees to ensure compliance with requirements of the ICPFVPA. The Cherokee Nation did not perform FBI fingerprint background investigations for volunteers because the Tribal officials believed that, under the ICPFVPA, FBI fingerprints were not required for volunteers.

Based on our sample results, we estimated that the Cherokee Nation and its health programs did not perform the required FBI background investigation for approximately 387 of 1,853 individuals in contact with Indian children. Therefore, the Cherokee Nation could not compare complete criminal history results to the minimum standards of character for these individuals working for its health program in positions that had contact with Indian children. As a result, Indian children faced an increased risk of harm.

In addition to our sample selections, we reviewed the background investigation of a Cherokee Nation employee arrested for a violent crime that occurred after our audit commenced. Based on our review, we determined that the individual did not have any disqualifying offenses

according to the requirements of the ICPFVPA prior to being hired.³¹

In response to our Early Alert, the Cherokee Nation indicated that it implemented policies to perform FBI fingerprint background investigations for volunteers. During our audit, the Cherokee Nation revised its policies to request and review criminal background investigations from the contractors' staffing agencies. In addition, the Cherokee Nation performed FBI fingerprint background investigations on three sampled employees missing fingerprints who were still employed by the Tribe and provided us with this documentation.

IHS Could Improve Its Monitoring of Tribes' Compliance With Background Investigation Requirements for Individuals in Contact With Indian Children

Prior to the issuance of our Early Alert in August 2020, the IHS Oklahoma Area Office did not provide training to Tribes about the background investigation requirements of the ICPFVPA. In September 2020, the IHS Oklahoma Area Office, in conjunction with the FBI and the Office of Inspector General (OIG), offered training to 43 Tribes within the service area on the Federal background investigation requirements and procedures for conducting FBI fingerprint investigations.

However, there are additional steps that IHS can take to improve Tribes' compliance with background investigation requirements. For example, IHS could develop policies and procedures for communicating to Tribes the results of background investigations performed for HHS employees assigned to Tribal health programs. In addition, IHS could establish specific audit procedures in the Single Audit Compliance Supplement that auditors would perform to test compliance with background investigations for Tribal health programs.³² Establishing specific audit procedures would be comparable to actions the Department of Interior has taken to use single audits as a monitoring tool to oversee its funding and assess Tribe compliance with background investigation requirements. The resulting feedback would provide information that IHS could use on an annual basis to monitor compliance of Tribal health programs with the background investigation requirements of the ICPFVPA that would allow IHS to determine whether additional training and guidance for Tribes is needed.

³¹ The arrest for the violent crime occurred after the individual was hired and the background investigation was completed. A pretrial hearing was scheduled in February 2023. According to Cherokee Nation, this individual is no longer employed or working in its Tribal health program.

³² Those tests and provisions could include steps to obtain and review Tribes' policies and procedures for the performance of background investigations. For individuals occupying positions that have regular contact or control over Indian children, those tests and provisions could verify that the Tribes: (1) collected information about the applicants' previous 5 years of residency, (2) conducted FBI fingerprint background investigations, (3) conducted inquiries to State and Tribal law enforcement agencies about the applicants' previous 5 years of residency, and (4) assessed criminal history results to verify that applicants meet the required minimum character standards.

RECOMMENDATIONS

We recommend that the Choctaw Nation:

- perform background investigations, as required by the ICPFVPA, on all employees and temporary employees who currently have contact with Indian children and determine whether these individuals meet the required minimum character standards;
- request and review agency contractor background investigations that comply with the ICPFVPA, including documentation that confirms HHS employees met all background investigation requirements of the ICPFVPA, or perform background investigations on these individuals that comply with the ICPFVPA; and
- develop and implement policies and procedures that ensure that the Tribe follows the requirements of the ICPFVPA to:
 - collect information about the applicants' previous 5 years of residency,
 - conduct FBI fingerprint background investigations using FBI-approved procedures for all individuals in contact with Indian children,
 - conduct inquiries to State and Tribal law enforcement agencies about the applicants' previous 5 years of residency, and
 - assess criminal history results to verify that applicants meet the required minimum character standards.

We recommend that the Cherokee Nation:

- perform background investigations, as required by the ICPFVPA, on the employees and volunteers we identified as not having complete background investigations who currently have contact with Indian children and determine whether these individuals meet the required minimum character standards;
- identify employees and volunteers outside our sample who lack evidence that a background investigation was performed, as required by the ICPFVPA, and who currently have contact with Indian children and perform the required background investigation and determine whether these individuals meet the required minimum character standards; and
- request and review agency contractor background investigations that comply with the ICPFVPA, including documentation that confirms HHS employees met all background

investigation requirements of the ICPFVPA, or perform background investigations on these individuals that comply with the ICPFVPA; and

- develop and implement policies and procedures to ensure that:
 - all individuals, including contractors and volunteers, in contact with Indian children are fingerprinted prior to starting employment,
 - illegible fingerprints are retaken and resubmitted to FBI until a background investigation is completed in accordance with the requirements of the ICPFVPA,
 - background investigations of contractors, including HHS employees, are reviewed or performed as required by the ICPFVPA and Tribal policies, and
 - criminal history results are assessed to verify that applicants meet the required minimum character standards.

We recommend that the Indian Health Service:

- enhance Single Audit Compliance Supplement, part 4: “Agency Program Requirements,” for Tribes receiving ISDEAA funds from IHS by:
 - establishing special tests and audit procedures in the annual Single Audit Compliance Supplement for all its ISDEAA programs to ensure that the ICPFVPA’s requirements are tested during a review of a Tribal health program as part of the single audit, and
 - reviewing the results of those special tests and audit procedures in the annual single audits for Tribal health programs to help assess whether Tribes are complying with ICPFVPA requirements to conduct background investigations and meet minimum standards of character;
- develop and offer a nationwide training seminar to Tribes on background investigation requirements of the ICPFVPA;
- provide Tribes with documentation that confirms that current HHS employees assigned to Tribal health programs met all background investigation requirements of the ICPFVPA;³³ and

³³ Examples of documentation could include a letter of assurance to the Tribe or a statement in the written agreement with the Tribe.

- develop policies and procedures to communicate to Tribes that HHS employees assigned to Tribal health programs met the background investigation requirements of the ICPFVPA and inform Tribes that Federal background investigation criminal history results may not cover more stringent character standards that Tribes may adopt as allowed by the ICPFVPA.

AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the two Tribes concurred with our recommendations to conduct background investigations on individuals who currently have contact with Indian children, and they described the policies and procedures they implemented for performing background investigations, as required by the ICPFVPA, for individuals in contact with Indian children. However, both Tribes expressed a concern that the draft report title did not accurately represent the results of the audit.

IHS concurred with our recommendations to update the Single Audit Compliance Supplement, develop and offer national training on background investigation requirements, and inform Tribes that background investigation criminal history results may not cover more stringent character standards that Tribes may adopt (second part of last recommendation). However, it did not concur with our recommendation for providing background investigation results to Tribes for HHS employees assigned to Tribal health programs and the first part of our last recommendation related to developing policies and procedures for communicating background investigation and reinvestigation results to Tribes.

CHOCTAW NATION COMMENTS

In written comments on our draft report, the Choctaw Nation concurred with our recommendations. The Choctaw Nation said that it performs FBI fingerprint background investigations on all new hires, existing employees, and temporary employees that work at its health program. Further, the Choctaw Nation stated that it now requires that all contractors, including HHS employees, have an FBI fingerprint background check. In addition, the Choctaw Nation stated that a third-party company conducts a more thorough background investigation on all employees, contractors (including HHS employees), and temporary employees that includes queries to the National Criminal and National Sex Offender databases to ensure the safety of Indian children.

The Choctaw Nation also stated that it has implemented policies and procedures to collect applicants' prior 5-year residency, conduct FBI fingerprint background investigations using FBI-approved procedures, conduct inquiries to State and Tribal law enforcement about the applicants' 5-year residency, and assess criminal history results to verify that applicants meet the minimum character standards of the ICPFVPA for individuals in contact with Indian children. In addition, the Choctaw Nation stated that it implemented more stringent standards than what

the ICPFVPA requires by including rescreening of employees working at the Tribal health program every 2 years to ensure the safety of Indian children.

The Choctaw Nation's comments are included in their entirety as Appendix I.

CHEROKEE NATION COMMENTS

In written comments on our draft report, the Cherokee Nation concurred with our recommendations. The Cherokee Nation stated that it has performed complete background investigations on all individuals identified as having incomplete background investigations and verified that all individuals still in contact with Indian children meet or exceed the minimum character standards of the ICPFVPA.

The Cherokee Nation stated that it had updated its internal practices to require the collection of background investigation documentation for all contractors to comply with the standards of the ICPFVPA. In addition, Cherokee Nation stated that it had developed policies or updated its internal practices to require that it: (1) take fingerprints prior to the first day of orientation for individuals in contact with Indian children; (2) recollect illegible fingerprints and resubmit to the FBI until fingerprints are considered legible and a complete FBI background investigation may be performed; (3) collect background investigation documentation for contractors according to the same guidelines it used for volunteers, as these guidelines comply with the standards of the ICPFVPA and implementing regulations; and (4) ensure that criminal history results are assessed to verify that applicants meet the required minimum character standards.

The Cherokee Nation's comments are included in their entirety as Appendix J.

INDIAN HEALTH SERVICE COMMENTS

In written comments on our draft report, IHS concurred with the recommendations to enhance the Single Audit Compliance Supplement and develop and offer a nationwide training seminar to Tribes on background investigation requirements of the ICPFVPA. IHS stated that the 2023 Compliance Supplement included updates that specifically address special tests and provisions with a subsection on character investigations that outlines compliance requirements, audit objectives, and suggested audit procedures to test for compliance with background investigation requirements. IHS stated that as part of the single audit review process it checks whether Tribes are complying the requirements identified in the Compliance Supplement and will develop a plan by March 31, 2024, to offer periodic training seminars to Tribes receiving ISDEAA funds.

IHS did not concur with the recommendation to share background investigation results (COI with child care designation) of HHS employees placed in Tribal health programs because of concerns that sharing detailed Federal employee information on the COI conflicts with the Privacy Act of 1974. In addition, IHS stated the issues stemmed from a lack of tracking and

accountability with the Tribes and lack of communication between the Tribe and IHS about the positions. IHS also indicated that it had implemented a new template to alleviate communication issues with Tribes about IPAs assigned to Tribal health programs. Finally, IHS did not concur with the first part of our last recommendation related to developing policies and procedures to communicate background investigation results to Tribes for HHS employees working at Tribal health programs because of concerns about Privacy Act conflicts. However, IHS concurred with the second part of this recommendation and stated that it will include information in the training it is developing about how background investigation criminal history results may not cover more stringent character standards that Tribes may adopt as allowed by the ICPFVPA.

IHS also provided written technical comments, which we addressed as appropriate. IHS's comments, excluding the technical comments, are included as Appendix K.

OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing the Tribes' comments on our draft report, we revised the title for this final report to better characterize the results of the audit. After reviewing IHS comments on our draft report, we revised our recommendation for IHS to share specific background investigation results (COI with child care designation) for HHS employees placed in Tribal health programs. We agree with IHS that it cannot broadly share COIs with Tribes for HHS employees placed in Tribal health programs. However, we maintain that IHS should provide Tribes with documentation that confirms that current HHS employees assigned to Tribal health programs met all background investigation requirements of the ICPFVPA and revised our recommendation accordingly. In addition, we modified our last recommendation for IHS to develop policies and procedures to remove "communicate background investigation and reinvestigation results (COI with child care designation if required)" and replaced it with a recommendation to communicate to Tribes that HHS employees assigned to Tribal health programs met the background investigation requirements of the ICPFVPA. We commend IHS for implementing a new template to improve communication with Tribes regarding the position description of IPAs assigned to Tribal health programs.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed the background investigation process and documentation at two Tribal health programs for individuals the Tribes determined were in contact with Indian children for the period October 1, 2018, through December 31, 2019 (audit period). Our audit covered the compliance with Federal and Tribal requirements for screening Individuals in contact with Indian children. Specifically:

- The Choctaw Nation assumes that all individuals working in its health program have contact with Indian children. During our audit period, there were 1,550 employees, 58 contractors, and 26 temporary employees in positions that have contact with Indian children. We selected a random sample of 30 employees and then reviewed all 58 contractors and 26 temporary employees.
- The Cherokee Nation assigns a Youth Sensitive security designation to track individuals working in its health program who are in contact with Indian children. During our audit period, a total of 1,853 individuals were designated as Youth Sensitive, consisting of 1,489 employees, 238 volunteers, and 126 contractors. We selected a stratified random sample of 100 individuals in contact with Indian children consisting of 80 employees, 10 contractors, and 10 volunteers. In addition, we became aware of one individual employed by the Cherokee Nation who was arrested for a violent crime during our fieldwork. We decided to review this individual separately.

We did not assess the overall internal control structure of the two Tribes. Rather, we limited our review of internal controls to those related to our audit objective. We assessed all components (control environment, risk assessment, control activities, information and communication, and monitoring) of Tribes' internal control systems relative to the background investigations conducted on individuals in contact with Indian children. This included assessing the Tribes' policies and procedures related to the hiring and background investigation process for individuals working at the Tribal health programs.

We conducted our fieldwork from November 2019 through June 2023.³⁴

³⁴ The audit team experienced delays in conducting fieldwork due to the COVID-19 pandemic.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements and each Tribe's policies and procedures for conducting background investigations for individuals in contact with Indian children;
- researched demographics and selected Tribes to audit based on a number of factors, including location, program size, and population served;
- interviewed staff for each Tribe to gain an understanding of the internal controls involved in the hiring and background investigation processes for individuals working at their Tribal health programs;
- interviewed FBI personnel and contract agencies to gain an understanding of background investigation process requirements and actual practices;
- interviewed IHS Area Office and headquarters staff regarding training and technical assistance provided to the two Tribes;
- interviewed personnel from Commissioned Corps, Office of National Security, Defense Counterintelligence Security Agency, and IHS to gain an understanding of the background investigation process for HHS employees assigned to Tribal health programs and reviewed evidence to determine whether these investigations occurred;
- reviewed select position descriptions at each Tribal health program to determine whether they included responsibilities that involved contact with children;
- created a sampling frame of 1,550 employees in contact with Indian children based on data provided by Choctaw Nation;
- selected for review for the Choctaw Nation a random sample of 30 employees;
- selected for review for the Choctaw Nation all 58 contractors (32 contractors hired through an agency and 26 HHS employees (CCOs)), and all 26 temporary employees;
- created a sampling frame of 1,853 individuals designated as Youth Sensitive based on data provided by Cherokee Nation;

- selected for review for the Cherokee Nation a stratified random sample of 100 individuals consisting of 80 employees, 10 contractors, and 10 volunteers;³⁵
- reviewed available background investigation documentation provided by the Tribes and HHS for individuals in contact with Indian children for each Tribal health program to evaluate compliance with Federal and Tribal requirements that included:
 - performance of FBI fingerprint criminal history background investigations,
 - collection of information about the applicants' previous 5 years of residency,
 - inquiries made to State and Tribal law enforcement agencies about the applicants' previous 5 years of residency,
 - comparison of the criminal history results against the minimum standards of character, and
 - review of available criminal history reports to determine whether individuals met the required minimum standards of character;
- reviewed background investigation documentation for a Cherokee Nation employee who was not selected in our sample and was arrested for a violent crime;
- reviewed the 2022 Single Audit Supplemental Guidance to determine whether it included special tests and provisions for IHS to assess Tribal health programs' compliance for background investigation requirements in the ICPFVPA;
- estimated the total number of individuals in the sampling frame for the Cherokee Nation for whom background investigations were not complete; and
- presented the results of our audit to the Tribal officials for each health program and to IHS staff.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

³⁵ For the Cherokee Nation, the 10 contractors included 3 contractors hired through an agency and 7 HHS employees (4 CCOs and 3 IPAs). The Cherokee Nation categorized HHS employees as contractors.

APPENDIX B: RELATED OIG REPORTS

Report Title	Report Number	Date Issued
<i>Three Tribes in New England and Their Health Programs Did Not Conduct Required Background Investigations on Individuals in Contact With Indian Children</i>	<u>A-01-20-01504</u>	11/4/2022
<i>Penobscot Indian Nation Did Not Meet All Federal and Tribal Health and Safety Requirements</i>	<u>A-01-17-01502</u>	11/28/2018
<i>The Passamaquoddy Tribe’s Pleasant Point Health Center Did Not Always Meet Federal and Tribal Health and Safety Requirements</i>	<u>A-01-17-01500</u>	7/30/2018

APPENDIX C: TRIBAL POLICIES AND PROCEDURES

Choctaw Nation Policies and Procedures

Choctaw Nation Health Services Administration does not distinguish between employees who will or will not have contact with or control over children. All potential employees are evaluated as if their job duties will put them in contact with or control over children.

Choctaw Nation identifies several levels of background investigation for employees. The Choctaw Nation Health Service employees were classified as Level 1, which required a national criminal history search.

The Tribe's contract entity will provide human resources with a background screening that is acceptable to the hiring entity of the Choctaw Nation of Oklahoma.

The Cherokee Nation Policies and Procedures

The Cherokee Nation determines background investigations based on an individual's position responsibility.

In accordance with the laws listed below, Cherokee Nation is required to investigate the character of employees and potential employees who have regular contact with or control over Indian children or who are in law enforcement.

Per Employment Policy II-D, #1, applicable laws specific to child care positions:

- a. Indian Child Protection and Family Violence Prevention Act as amended (25 U.S.C.A. § 3201-3211);
- b. 25 CFR § 63 (Implementation of Indian Child Protection and Family Violence Prevention Act); and
- c. Crime Control Act, subchapter V, Child Care Worker Employee Background Checks (42 U.S.C.A. § 13041).

All volunteer personnel who will be working in an area with contact or control over Indian children should undergo the same type of background investigation as a staff member in a Youth Sensitive position would be required to undergo.



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



August 28, 2020

TO: Rear Admiral Michael D. Weahkee
Director
Indian Health Service

FROM: /Christi A. Grimm/
Principal Deputy Inspector General

SUBJECT: Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children (A-01-20-01500)

This memorandum follows up on the Office of Inspector General's recent teleconference with your staff during which we provided information about a significant vulnerability we identified during our audit of Tribal health programs.¹ Specifically, we found that Tribal health programs that received Indian Self-Determination and Education Assistance Act (ISDEAA) funds from the Indian Health Service (IHS) were not conducting required Federal Bureau of Investigation (FBI) fingerprint background checks for all employees, contractors, and volunteers who have regular contact with Indian children. This creates an increased risk that an individual with a disqualifying criminal history in a different State could be hired into a position with regular contact with Indian children.

This vulnerability warrants IHS's immediate attention because it may compromise the safety and well-being of Indian children who receive treatment at Tribal health programs funded by IHS. We will follow up to verify how IHS will work with Tribes to address this vulnerability.

BACKGROUND

In 2018, we completed two health and safety audits of Tribal health programs that included an assessment of Federal and Tribal compliance with preemployment screening requirements.² We

¹ In this report, "Tribal health programs" refer to health facilities that receive Indian Self-Determination and Education Assistance Act funds from IHS.

² *The Passamaquoddy Tribe's Pleasant Point Health Center Did Not Always Meet Federal and Tribal Health and Safety Requirements* (A-01-17-01500; available at <https://oig.hhs.gov/oas/reports/region1/11701500.pdf>) and *The Penobscot Indian Nation Did Not Meet All Federal and Tribal Health and Safety Requirements* (A-01-17-01502; available at <https://oig.hhs.gov/oas/reports/region1/11701502.pdf>).

found that the Passamaquoddy Tribe's Pleasant Point³ Health Center and the Penobscot Indian Nation's Health Center did not comply with Federal requirements to perform FBI fingerprint background checks for employees in contact with Indian children. This placed the children served by these programs at an increased risk for harm and abuse. Because Tribes through ISDEAA agreements administer more than half of the IHS's resources, we have recently focused our work on Tribal programs.⁴

We are currently conducting two audits⁵ of Tribal health programs' compliance with the Indian Child Protection and Family Violence Prevention Act (the Act) character-investigation requirements⁶ on background screening processes and character standards for the hiring of individuals who have contact with, or control over, Indian children. The first audit focuses on three Tribal health programs in New England, each of which is typically the sole health facility on a Tribe's reservation. The second audit, which is not part of this Early Alert, focuses on Tribal health programs in the Midwest, where typically a Tribe operates a hospital and multiple health facilities on a Tribe's reservation; in total, the 2 Tribes operate 2 hospitals and 20 health centers.⁷

In total, this Early Alert highlights the activities of four Tribes that operate five Tribal health programs. For these audits, we interviewed the health programs' staff members and Government officials, and are reviewing documentation to verify that the Tribal health programs have conducted required background checks on employees, contractors, and volunteers in contact with Indian children in accordance with Federal and Tribal requirements.

In 1990, the Congress after careful review of the problem of child abuse on Indian reservations and the special and historical relationship of the Federal Government with Indian people found that: (1) multiple incidents of sexual abuse of children on Indian reservations have been perpetrated by persons employed or funded by the Federal Government; (2) incidents of abuse of children on Indian reservations have been grossly underreported; (3) Federal Government investigations of the background of Federal employees who care for, or teach, Indian children were often deficient; (4) funds spent by the United States on Indian reservations or otherwise

³ In the United States, the Passamaquoddy Tribe resides on two separate reservations in Maine: Indian Township and Pleasant Point. Each reservation has its own distinct Tribal Government. Each Tribal Government separately contracts with IHS under Title I of the ISDEAA to operate a health program located on its reservation. In our prior audit, we reviewed the Passamaquoddy Pleasant Point Health Center; our current audit reviews the Passamaquoddy at Indian Township Health Center.

⁴ IHS, *Justification of Estimates for Appropriations Committees for Fiscal Year 2021*, CJ-184 (Feb. 5, 2020). We selected programs on the basis of a number of factors including location and service population.

⁵ These are audits of the background verification processes at: (1) three Tribal health programs in New England, including the Passamaquoddy Tribe at Indian Township, Narragansett Indian Tribe, and Houlton Band of Maliseet Indians (A-01-20-01504); and (2) two Tribes in Oklahoma that operate various Tribal health programs, including the Cherokee Nation and the Choctaw Nation (A-01-20-01505).

⁶ Section 408 of the Act, P.L. 101-630 (enacted Nov. 28, 1990) (codified at 25 U.S.C. § 3207) and IHS's implementing regulation codified at 42 CFR part 136, subpart K.

⁷ We have not determined yet if the vulnerabilities we identified in the New England Tribal health programs exist at the Oklahoma Tribal health programs because we are at the early stages of this audit.

spent for the benefit of Indians who are victims of child abuse or family violence are inadequate to meet the growing needs for mental health treatment and counseling for victims of child abuse or family violence and their families; and (5) there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children and the United States has a direct interest, as trustee, in protecting Indian children who are members of, or who are eligible for membership in, an Indian Tribe. On the basis of these findings, Congress passed the Act.⁸ The Act and IHS's implementing regulations require Tribes that receive ISDEAA funds from IHS to conduct a character investigation of each individual in a position that involves regular contact with, or control over, Indian children.⁹ Individuals include contractors, volunteers, and employees, and those being considered for those roles.¹⁰ A character investigation must include, among other things, a criminal history background check, which includes an FBI fingerprint check.¹¹ A Tribe may determine its own standards of character; however, these standards must be no less stringent than IHS's minimum standards.¹² Tribes may not allow individuals who do not meet IHS's minimum standards to be in a position that involves regular contact with, or control over, Indian children.

An FBI fingerprint background check accesses criminal history records across Federal, State, and local jurisdictions. It provides positive identification and eliminates the false positives and false negatives associated with name-based checks,¹³ and it provides the benefit of obtaining additional criminal record history that may not be maintained by the State where the Tribe's reservation is located.¹⁴ The Act does not require employees, contractors, and volunteers in contact with Indian children to be screened periodically after the initial character investigation.

TRIBAL HEALTH PROGRAM PREEMPLOYMENT SCREENING

As part of our current audit focusing on Tribal health programs in New England, we reviewed the preemployment screening processes at health programs run by the Narragansett Indian Tribe in Rhode Island, the Passamaquoddy Tribe at Indian Township in Maine, and the Houlton Band of Maliseet Indians in Maine. Each of these Tribal health programs provides onsite medical and behavioral health services. These programs receive funding through ISDEAA agreements with IHS and may enroll in the Medicaid and Medicare programs. The 3 Tribes' health programs collectively provide health care for approximately 2,000 Tribal members.

⁸ 25 U.S.C. § 3201(a)(1).

⁹ 42 CFR § 136.404(b).

¹⁰ 42 CFR § 136.403.

¹¹ 42 CFR § 136.406(b).

¹² 42 CFR § 136.408(c).

¹³ False positives can occur when a person with a common name is associated with another person's records. False negatives can occur when a search misses a record because of errors in the record or in the information used to initiate the search. Using a fingerprint-based check ensures a prohibited individual will not be licensed or employed.

¹⁴ <https://www.fbi.gov/file-repository/steps-for-success.pdf/view>.

PRELIMINARY FINDINGS

Tribal Health Programs Did Not Conduct Required Background Checks for Staff Working With Indian Children

We found that two¹⁵ of the three health programs in our ongoing audit of Tribal health programs in New England did not perform FBI fingerprint background checks of employees in contact with Indian children.¹⁶ Rather, the two Tribal health programs performed background check verifications using only their respective State’s criminal and entitlement databases.¹⁷ These State background checks do not require fingerprinting. For instance, we identified an employee who worked with Indian children at the audited program despite having a felony conviction in another State. The program hired this individual because the Tribe had conducted a background check only in the State in which the program was located. Because the Tribe did not know about the felony conviction, it hired a person who did not meet the Tribe’s character standards. This incident placed Indian children at an increased risk for abuse. In addition, our previous audits of two other health programs found that those programs did not comply with Federal requirements to perform FBI fingerprint background checks for individuals in contact with, or having control over, Indian children.¹⁸

Over the course of our two previous audits of Tribal health programs¹⁹ and this audit (covering three Tribal health programs in New England), four of the five Tribal health programs that we reviewed did not comply with FBI fingerprint background check requirements for employees in contact with Indian children.

Our current and prior audits also found that Tribal health programs did not always perform FBI fingerprint background checks for contractors or volunteers.²⁰ For example, one Tribe did not

¹⁵ Noncompliant health programs in this audit were the Passamaquoddy Tribe at Indian Township Health Center and the Maliseet Health and Wellness Center operated by the Houlton Band of Maliseet Indians.

¹⁶ Although the Narragansett Indian Tribe’s officials informed us that they conduct FBI fingerprint background checks, we were unable to obtain evidence from the FBI that the Tribe had conducted such background checks. Through our ongoing audit, we will confirm whether the Tribe actually conducted FBI fingerprint background checks for individuals in contact with Indian children.

¹⁷ Entitlement databases are State maintained databases of records in programs such as Medicaid and the State’s child welfare information system.

¹⁸ Our two previous audits involved a broad review of health and safety requirements for the health program, including background verification of individuals in contact with Indian children. In each of these prior audits, the Tribe was the auditee, and issues were reported directly to the Tribal leadership. In our current audits, our focus is on the single issue of background verifications at a number of Tribal health programs with IHS as the auditee since it is the agency that provides information and technical assistance on funding requirements to Tribes receiving IHS funding.

¹⁹ *The Passamaquoddy Tribe’s Pleasant Point Health Center Did Not Always Meet Federal and Tribal Health and Safety Requirements* (A-01-17-01500) and *The Penobscot Indian Nation Did Not Meet All Federal and Tribal Health and Safety Requirements* (A-01-17-01502).

²⁰ Tribal health programs rely on contractors and volunteers because of their remote locations and the difficulties of recruiting staff.

perform background checks for health care providers retained through a contracted employment agency and instead relied on statements from the employment agency that it had conducted background checks of the contractors. In another case, the Tribe performed the same background check process for its contractors that it used for its employees, but this was a State background check, not the required FBI fingerprint background check.

The Tribes did not perform required FBI fingerprint background checks of all employees, contractors, and volunteers who had contact with Indian children because they were either unaware of or misinterpreted the Act's requirements. For example, although one Tribe had written policies and procedures stating that it would comply with the Act, the staff misinterpreted the requirements and performed background checks using a State criminal database instead of the FBI fingerprint background checks on employees in contact with Indian children as required.

When a Tribe performs background checks using State databases only, it increases the risk that it would allow an individual whose criminal history from another State does not meet the minimum standards of character to have contact with Indian children. As a result, Indian children face an increased risk of harm and abuse.

CONCLUDING OBSERVATIONS

We are committed to working with IHS to ensure the health and safety of children at Tribal health programs. This memorandum documents that we have alerted your office to a serious safety and health vulnerability present at a number of Tribal health programs that we have reviewed. The lack of required FBI fingerprint background checks of employees, contractors, and volunteers poses substantial risks to the children receiving care at these programs.

As soon as possible, but no later than 30 days of the date of this memorandum, please provide a written response apprising us of your planned actions to help Tribes comply with the Act's requirements for FBI fingerprint background checks for their employees, contractors, and volunteers in contact with Indian children. The information in this alert is preliminary, and our audit is continuing. We will issue a draft report at the conclusion of the audit and include IHS's comments and actions taken in response to this Early Alert.

Please send any correspondence to Amy Frontz, Deputy Inspector General for Audit Services, through email at Amy.Frontz@oig.hhs.gov. Should you have any questions, please do not hesitate to call me at 202-619-3148, or your staff may contact Amy Frontz at the email address above or by telephone at 202-619-1156. Please refer to report number (A-01-20-01500) in all correspondence.

cc: Athena Elliott, IHS Chief Compliance Officer



DEC 21 2020

TO: Inspector General

FROM: Director

SUBJECT: IHS Response to OIG Early Alert: *Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children (A-01-20-01500)*, dated August 28, 2020

Thank you for your August 28, 2020-dated memorandum in follow-up to the Office of Inspector General's (OIG) teleconference with Indian Health Service (IHS) staff, which identified a significant vulnerability during the OIG's audit of Tribal health programs. Specifically, the OIG found that Tribal health programs that received Indian Self-Determination and Education Assistance Act (ISDEAA) funds from the IHS were not conducting required Federal Bureau of Investigation (FBI) fingerprint background checks for all employees, contractors, and volunteers with regular contact with American Indian and Alaska Native (AI/AN) children. The OIG advised that this vulnerability creates an increased risk that an individual with a disqualifying criminal history in a different state could be hired into a position with regular contact with AI/AN children. The OIG believes this vulnerability warrants the IHS's immediate attention because it may compromise the safety and well-being of AI/AN children who receive treatment at Tribal health programs funded by the IHS. The OIG requested a written response from the IHS within 30 days to apprise the OIG of planned actions by the IHS to help Tribes and Tribal organizations comply with ISDEAA requirements for FBI fingerprint background checks for their employees, contractors, and volunteers in contact with AI/AN children. The information in this memorandum describes the IHS's response to the OIG Early Alert.

The IHS took immediate action after receiving the OIG Early Alert. By letter dated September 25, 2020, I informed Tribal Leaders of the findings of the OIG Early Alert and described the objectives of the ongoing OIG audit detailing this vulnerability (see Enclosure). On September 25, 2020, I instructed IHS Area Directors to meet with the leadership of Tribes and Tribal organizations in their respective Area that operate IHS programs, functions, services, or activities under the ISDEAA to inform them of the Federal legal requirement to conduct the background checks. Each Area Director was directed, within 30 days, to provide a report to me on the Tribal meetings held in their respective Area on this important topic and suggest technical assistance or resources that the IHS might be able to provide to Tribes and Tribal organizations regarding these important legal requirements. In addition, I asked Area Directors to identify Tribal programs that have exceeded minimum standards and have developed best practices that protect the safety and security of our AI/AN children. My commitment is to share this information throughout the IHS health system.

Area Directors promptly responded to my directive to hold meetings with Tribes and Tribal organizations in their respective Areas. As further requested by the OIG in November 2020, the IHS will share with the OIG, details of the meetings, including the specific information distributed by each Area Director within their regions. Collaborations with law enforcement, including with the OIG, have been encouraged for all IHS Areas. Specific accomplishments of those collaborations will be reported separately in the IHS response to information requested by the OIG in November 2020.

The IHS appreciates our ongoing collaboration and partnership with the OIG. Compliance with requirements that directly impact patient safety is essential for all programs funded by the IHS. Should you require any additional information, please directly contact Ms. Athena Elliott, Chief Compliance Officer and OIG Liaison, IHS, by e-mail at athena.elliott@ihs.gov.



RADM Michael D. Weahkee, MBA, MHSA
Assistant Surgeon General, U.S. Public Health Service

Enclosure: September 25, 2020-dated Letter to Tribal Leaders



SEP 25 2020

Indian Health Service
Rockville, MD 20857

Dear Tribal Leader:

I am writing to you to share an "Early Alert" issued by the Department of Health and Human Services Office of Inspector General (OIG) on August 28, 2020, and posted to the OIG Web site on September 2, 2020. This Early Alert, provided as an enclosure to this letter, identifies a vulnerability that compromises the safety and well-being of American Indian and Alaska Native (AI/AN) children who receive treatment at Tribal health programs operated under Indian Self-Determination and Education Assistance Act (ISDEAA) agreements with the Indian Health Service (IHS). **It warrants your immediate attention and response.**

The OIG is currently conducting two audits of Tribal health programs' compliance with the Indian Child Protection and Family Violence Prevention Act background investigation requirements for hiring individuals whose duties and responsibilities involve regular contact with, or control over, AI/AN children. Federal law requires Tribes and Tribal organizations that contract with the IHS under the ISDEAA to conduct an investigation of the character of each individual who is employed or is being considered for employment in a position that involves regular contact with, or control over AI/AN children under the age of eighteen. 25 U.S.C. § 3207(c); 34 U.S.C. § 20351. Tribes and Tribal organizations can employ only individuals who meet standards of character that are no less stringent than those prescribed by the regulations outlined at 42 C.F.R. § 136.404, and only after an individual has been the subject of a satisfactory background investigation as described in 42 C.F.R. § 136.406, which includes a review of:

- a) The individual's trustworthiness, through inquiries into the individual's references and places of employment and education;
- b) A criminal history background check, which includes a Federal Bureau of Investigation (FBI) fingerprint check, and inquiries to State and Tribal law enforcement agencies for the previous five years of residence listed on an individual's application;
- c) A determination as to whether the individual has been found guilty of or entered a plea of nolo contendere or guilty to any felonious offense or any two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; crimes against persons; or offenses committed against children.

In accordance with Federal law, a Tribe or Tribal organization may establish higher standards of character; however, the standards must be no less stringent than those prescribed by the regulations outlined in 42 C.F.R. § 136.404. Tribes and Tribal organizations may conduct their own background investigations, contract with private firms, or may request that a Federal or State agency conduct investigations. However, FBI fingerprint checks are required and may only be received or evaluated by governmental agencies, including Tribes or Tribal organizations, and may not be disseminated to private entities. Finally, Tribes and Tribal organizations can provisionally hire individuals prior to the completion of a satisfactory

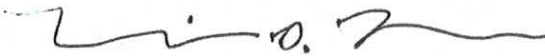
background investigation only if, at all times prior to receipt of the satisfactory background investigation and when AI/AN children are in the care of the individual, the individual is within sight and under the supervision of someone on staff that has a completed satisfactory background investigation.

The first audit focuses on three Tribal health programs in New England. The second audit, which is not part of this Early Alert, will focus on Tribal health programs in the Midwest. During the course of both past and ongoing audits, the OIG found that tribally operated health programs operated under ISDEAA agreements were not conducting required FBI fingerprint checks for all employees, contractors, and volunteers who have regular contact with AI/AN children. This creates an increased risk that an individual with a disqualifying criminal history in a different state could be hired into a position with regular contact with AI/AN children. All Tribes and Tribal organizations are expected to be fully aware of and comply with the Indian Child Protection and Family Violence Prevention Act's requirements. It is the Tribe and Tribal organization's responsibility to comply with all Federal laws relevant to their ISDEAA agreements.

I have instructed each IHS Area Director to initiate meetings with all Tribes and Tribal organizations in their respective Area that operate IHS programs, functions, services, or activities under the ISDEAA, to inform them of the Federal legal requirement to conduct the background checks. Each Area Director has been directed, within 30 days, to provide a report to me on the Tribal meetings held in their respective Area on this important topic and suggest technical assistance or resources that the IHS might be able to provide to Tribes and Tribal organizations regarding this important legal requirement. In addition, I have asked Area Directors to identify Tribal programs that have exceeded minimum standards and have developed best practices that protect the safety and security of our AI/AN children. We will collect and share this information throughout the IHS health system.

The IHS is committed to patient safety and has taken aggressive action to better protect patients, especially AI/AN children. We will continue to work with Tribes and Tribal organizations to make the safety of AI/AN children a priority and to help Tribes and Tribal organizations to understand the important requirements of the Indian Child Protection and Family Violence Prevention Act.

Sincerely,



RADM Michael D. Weahkee, MBA, MHSA
Assistant Surgeon General, U.S. Public Health Service
Director

Enclosure: OIG Memorandum Report – Early Alert: *“Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children”* (A-01-20-01500)

APPENDIX F: STATISTICAL SAMPLING METHODOLOGY FOR THE CHOCTAW NATION

SAMPLING FRAME

The sampling frame consisted of an Excel spreadsheet containing 1,550 lines of data, for which each line represents an employee who worked at the Choctaw Tribal health program and whom the Tribe identified as having contact with Indian children during the audit period.

SAMPLE UNIT

The sample unit was an employee.

SAMPLE DESIGN AND SAMPLE SIZE

We used a discovery (random) sample of 30 sample items.

SOURCE OF RANDOM NUMBERS

The source of the random numbers was the OIG, Office of Audit Services (OIG/OAS) statistical software.

METHOD OF SELECTING SAMPLE UNITS

We sorted the sampling frame alphabetically by employee's last name and then alphabetically by the employee's first name. We then sequentially numbered each employee from 1 to 1,550 and considered this number to be our unique identifier. After generating the random numbers, we selected the corresponding employees from the sampling frame for review.

DISCOVERY SAMPLING METHODOLOGY

Because all 30 items in the discovery sample did not meet Federal and Tribal background investigation requirements, we have audit evidence to support the conclusion that the Choctaw Nation did not perform satisfactory background investigations on the employees in contact with Indian children in the sampling frame.

APPENDIX G: STATISTICAL SAMPLING METHODOLOGY FOR THE CHEROKEE NATION

SAMPLING FRAME

The sampling frame consisted of three Excel spreadsheets that totaled 1,853 lines of data, for which each line represents an individual who worked at the Cherokee Tribal Health Program and whom the Tribe identified as having contact with Indian children during the audit period.³⁶

SAMPLE UNIT

The sample unit was an individual.

SAMPLE DESIGN AND SAMPLE SIZE

We used a stratified random sample with the strata and sample sizes defined in Table 1.

Table 1: Strata and Sample Sizes

Stratum	Staffing Type	Number of Frame Units	Sample Size
1	Employee	1,489	80
2	Contractor	126	10
3	Volunteer	238	10
Total		1,853	100

SOURCE OF RANDOM NUMBERS

The source of the random numbers was the OIG/OAS statistical software.

METHOD OF SELECTING SAMPLE UNITS

We sorted the sample items for each stratum in the following manner:

- **Employees**—The Excel spreadsheet was sorted by the security designation of YS (Youth Sensitive), and then sorted alphabetically by employee’s full name (last name, first name).
- **Contractors**—The Excel spreadsheet was sorted by the security designation of YS (Youth Sensitive), then sorted alphabetically by the contractor’s last name and then sorted alphabetically by the contractor’s first name.

³⁶ The Tribe assigns these individuals a Youth Sensitive security designation to track which individuals have contact with Indian children.

- **Volunteers**—The Excel spreadsheet was sorted by the security designation of YS (Youth Sensitive), then sorted alphabetically by the volunteer’s full name (last name, first name).

We then sequentially numbered each individual in each stratum and considered this number to be our unique identifier. After generating the random numbers for each of these strata, we selected the corresponding individuals in the sampling frame for review.

ESTIMATION METHODOLOGY

We used the OIG/OAS statistical software to estimate the number of individuals in the sampling frame who worked at the Cherokee Tribal Health program who did not have complete background investigations. We calculated a point estimate and a two-sided 90-percent confidence interval (Appendix H).

APPENDIX H: SAMPLE RESULTS AND ESTIMATES FOR THE CHEROKEE NATION

Table 2: Sample Detail and Results

Stratum	Staffing Type	Number of Frame Units	Sample Size	Individuals in the Sample Lacking Complete Background Investigations
1	Employees	1,489	80	6
2	Contractors	126	10	3
3	Volunteers	238	10	10
Total		1,853	100	19

Table 3: Estimated Number of Individuals in Sampling Frame Lacking Complete Background Investigations in the Sampling Frame
(Limits Calculated at the 90-Percent Confidence Level)

Point Estimate	387
Lower Estimate	311
Upper Estimate	464



Choctaw Nation of Oklahoma

P.O. Box 1210 • Durant, OK 74702-1210 • (580) 924-8280

Gary Batton
Chief

Jack Austin, Jr.
Assistant Chief

September 12, 2023

Report Number: A-01-20-01505

Juliet T. Hodgkins
Principal Deputy Inspector General
330 Independence Avenue, SW
Washington, DC 20201

Dear Principal Inspector General Hodgkins:

The Choctaw Nation of Oklahoma (the "Nation") has received and reviewed the Draft Officer of Inspector (OIG) Report entitled: "Two Tribes in Oklahoma and Their Health Programs Did Not Conduct Required Background Investigations On All Individuals In Contact With Children (Choctaw Nation)" dated August 17, 2023. We find the title of the OIG Report to be confusing and misleading. The title suggests that the Nation did no background investigations on any employees working at Choctaw Nation Health facilities. The findings in the audit show that although the Nation did not perform FBI fingerprint background investigations, the Nation did perform extensive state and tribal law enforcement background investigations on a majority of Nation employees and contractors within the sample. We respectfully request that the title of the report be amended to say: "Two Tribes in Oklahoma And Their Health Programs Did Not Meet All Requirements of the Indian Child Protection and Family Violence Prevention Act."

The Nation concurs with the recommendation that background investigations be conducted, as required by the Indian Child Protection and Family Violence Prevention Act (ICPFVPA), on all employees and temporary employees who currently have contact with Indian Children and determine whether these individuals meet the required minimum character standards. The Nation performs FBI fingerprint background checks on all new hires; existing employees, and temporary employees that work at a Choctaw Nation Health Services Authority (CNHSA) facility. The Nation utilizes an existing Memorandum of Understanding (MOU) with the FBI (executed in 2018) to conduct FBI fingerprint backgrounds checks in accordance with standards set by the FBI. The Nation also conducts a more thorough background investigation for all CNHSA employees performed by a third-party company. This third-party company performs a multi-layered background investigation for Health employees that include: a Social Security Number Identity check, a National Criminal Search, a National Sex Offender Search, a county criminal search, a state criminal search, a tribal criminal search, and an Office of Inspector General (OIG) Exclusions List Search. This third-party company then conducts the Fraud and Control Information System Level 3 Search (FACIS® Level 3). The FACIS Level 3 is a database search of records containing adverse actions against individuals and

entities sanctioned in the healthcare field. FACIS Level 3 is considered a top background search for the medical field and contains the minimum standards outlined in the OIG Compliance Program Guidance.

The Nation concurs with the recommendation that the Nation request and review background investigations performed on contractors by outside agencies, including investigations on HHS employees, or that the Nation perform background investigations on contractors, including federal employees, to ensure compliance with the ICPFVPA. The Nation now requires all those labeled as “contractors” (this includes private contractors and federal employees such as HHS employees and Commission Corp employees) to have an FBI fingerprint background check. The Nation also requires that contractors get the same background investigation conducted by the third-party company that CNHSA employees get, including the FACIS Level 3 background search. Sadly, the Nation believed and relied on HHS to conduct background investigations on all federal employees, including IHS and Commission Corps employees, sent to work at CNHSA facilities. The findings of this audit revealed that HHS did not perform the required background investigations before sending employees to CNHSA facilities. The Nation now ensures that the above background investigations are conducted on all contractors, including federal employees, to ensure the safety of Indian children.

The Nation concurs with the recommendation to develop and implement policies and procedures that ensure that the Nation complies with the ICPFVPA. The Nation has updated internal policies and procedures that ensure the Nation will not only meet but exceed ICPFVPA requirements. The Nation has implemented the following policies and procedures:


1. Collect information about the applicants’ prior 5-year residency. The Nation has implemented policies and procedures that require all applications for CNHSA to have a complete five-year residency history included within the application. Any application without a complete five-year residency history will be sent back to the applicant to amend or will not be considered.
2. Conduct FBI fingerprint background investigations using FBI-approved procedures for all individuals in contact with Indian children. The Nation has implemented policies and procedures that require all those working at CNHSA facilities to have FBI fingerprint background investigations, including contractors and federal employees. The Nation has implemented more stringent standards than what is required by ICPFVPA. The Nation treats all employees working in CNHSA facilities as if they have “regular” contact with children, regardless of an employee’s actual duties. The Nation has also implemented more stringent standards than HHS for the rescreening of employees working at CNHSA facilities. The OIG report showed that ICPFVPA does not require rescreens of employees working at tribal health facilities and that HHS did not initiate rescreens of employees working on the reservation. The Nation rescreens

employees working at CNHSA facilities every two years to ensure the safety of Indian children.

3. Conduct inquiries to state and Tribal law enforcement agencies about the applicants' previous 5 years of residency. The Nation has implemented policies and procedures that require a more thorough background investigation, separate from the FBI fingerprint background investigation. This background investigation is conducted by a third-party company that uses an applicant's social security number and his or her five-year residency history to conduct an extensive background investigation. This background investigation includes a National Criminal Search, a National Sex Offender Search, a county criminal search, a state criminal search, a tribal criminal search, and an OIG Exclusions List Search. This background investigation includes a Fraud and Control Information System (FACIS®) Level 3 Search searches for any adverse actions against individuals and entities sanctioned in the healthcare field. This background investigation meets the minimum standards of the OIG Compliance Program Guidance.
4. Assess criminal history results to verify that applicants meet the required minimum character standards. The Nation then uses the results of the background investigations to ensure the minimum character standards are met as well as many other job requirements prior to any employee starting work at a CNHSA facility.

The Nation concurs with all recommendations in the Draft OIG Report. The Nation has already taken actions that not only meet but exceed the requirements of the ICFVPA. Please feel free to contact me with any questions.

Sincerely,



Gary Batton, Chief
Choctaw Nation of Oklahoma

APPENDIX J: CHEROKEE NATION COMMENTS



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CHEROKEE NATION®

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Chuck Hoskin Jr.
Principal Chief
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Bryan Warner
Deputy Principal Chief
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September 12, 2023

Ms. Juliet T. Hodgkins
Principal Deputy Inspector General
Office of the Inspector General/Office of Audit Services – Region 1
U.S. Department of Health and Human Services
JFK Federal Building, Rm 2425
Boston, MA 02203
Attn: Timothy Sullivan, Senior Auditor

Re: Cherokee Nation's Response to Draft Report; Report No. A-01-20-01505

Dear Principal Deputy Inspector General Hodgkins:

The Cherokee Nation appreciates the opportunity to provide official comments pertaining to your report, dated August 17, 2023, that analyzed whether approximately four years ago the Cherokee Nation fully complied with federal and tribal requirements for performing background investigations on individuals in contact with Native American children. I note with appreciation that your report commented that the Cherokee Nation required more stringent character standards for individuals in contact with Indian children than those prescribed in the Indian Child Protection and Family Violence Prevention Act. Also, I applaud the Office of the Inspector General for the U.S. Department of Health and Human Services for continuing to focus on how to better protect Native American children following the troubling findings by a Presidential Task Force that institutional and systemic breakdowns at the Indian Health Service had failed to prevent and stop after detection the sexual assault of children by a predatory pediatrician.¹

Cherokee Nation Health Services is the largest tribally operated health care system in the United States. It is a growing and multifaceted health care system serving more than 460,000 tribal citizens, especially the more than 141,000 tribal citizens living within the Cherokee Nation Reservation. Our Health Services for children include, among others, pediatric care, dental care,

¹ During its investigation, the Presidential Task Force found fundamental and longstanding deficiencies at the Indian Health Service that included: Employees not understanding child abuse reporting obligations; Inadequate training of employees regarding child sexual abuse reporting; Confusing policies, procedures, and jurisdictional issues when reporting suspected child abuse; Systemic issues of low-morale, lack of leadership, and inability to recruit and retain enough qualified healthcare professionals; and Deficiencies in verifying and credentialing processes. See Report of the Presidential Task Force on Protecting Native American Children in the Indian Health Service System, dated July 23, 2020.

emergency medical services, nutrition services, inpatient hospital care, and programs for women, infants, and children.

With regard to Report No. A-01-20-01505, which focused on an audit period of October 1, 2018, through December 31, 2019, the Cherokee Nation concurs with the four OIG recommendations discussed below and provides comments on actions already taken by the Cherokee Nation to more fully comply with the Indian Child Protection and Family Violence Prevention Act.

Prior to discussing the substantive recommendations contained in the report, the Cherokee Nation wishes to address the unfortunate title of your report. The current title fails to identify the audit period and may create a misimpression that the findings referenced in the report are ongoing or occurred recently. Moreover, it may leave the misimpression that the Cherokee Nation was not mostly compliant—which it overwhelmingly was. During the audit, your audit investigators favorably commented that they were generally impressed with the Cherokee Nation Health Services' policies and practices. In fact, the Cherokee Nation—by its own volition and before this audit investigation was concluded—updated its policies and procedures to more fully comply with your interpretation of the Indian Child Protection and Family Violence Prevention Act ("ICPFVPA") when we became aware of the Office of Inspector General's novel interpretations of applicable regulations by virtue of our independent review of another OIG report.²

Recommendation Number 1: Cherokee Nation concurs with the recommendation.

We recommend that the Cherokee Nation perform background investigations, as required by the ICPFVPA, on the employees and volunteers we identified as not having complete background investigations who currently have contact with Indian children and determine whether these individuals meet the required minimum character standards.

Planned and completed actions:

The Cherokee Nation has performed complete background investigations on all individuals identified as having incomplete background investigations and has determined that all individuals still in contact with Indian children meet or exceed the required minimum character standards.

Recommendation Number 2: Cherokee Nation concurs with the recommendation.

We recommend that the Cherokee Nation identify employees and volunteers outside our sample who lack evidence that a background investigation was performed, as required by the ICPFVPA, and who currently have contact with Indian children and perform the required background investigation and determine whether these individuals meet the required minimum character standards.

Planned and completed actions:

Since the time of the audit period, the Cherokee Nation has verified that all individuals who currently have contact with Indian children have undergone complete background investigations and have been determined to have met the required minimum character standards under the ICPFVPA.

² See U.S. Department of Health and Human Services, Office of Inspector General Memorandum A-01-20-01500 regarding "Tribal Health Programs: Concerns About Background Verifications for Staff Working With Indian Children (A-01-20-01500)"

Recommendation Number 3: Cherokee Nation concurs with the recommendation.

We recommend that the Cherokee Nation request and review agency contractor background investigations that comply with the ICPFVPA, including investigations of HHS employees, or perform background investigations on these individuals that comply with the ICPFVPA.

Planned and completed actions:

Following HHS's publication of its "Early Alert Letter" on August 28, 2020, the Cherokee Nation updated its internal practices to require collection of background investigation documentation for contractors according to the same guidelines it used for volunteers, as these guidelines comply with the standards of the ICPFVPA and implementing regulations.

Recommendation Number 4(a): Cherokee Nation concurs with the recommendation.

We recommend that the Cherokee Nation develop and implement policies and procedures to ensure that all individuals, including contractors and volunteers, in contact with Indian children are fingerprinted prior to starting employment.

Planned and completed actions:

As of March 2021, the Cherokee Nation updated its internal processes to require that fingerprints be captured prior to the first day of orientation for all individuals in contact with Indian children.

Recommendation Number 4(b): Cherokee Nation concurs with the recommendation.

We recommend that the Cherokee Nation develop and implement policies and procedures to ensure that illegible fingerprints are retaken and resubmitted to FBI until a background investigation is completed in accordance with the requirements of the ICPFVPA.

Planned and completed actions.

The Cherokee Nation has developed a policy requiring illegible fingerprints to be recollected and resubmitted to the FBI until fingerprints are considered legible and a complete FBI background investigation may be performed.

Recommendation Number 4(c): Cherokee Nation concurs with the recommendation.

We recommend that the Cherokee Nation develop and implement policies and procedures to ensure that background investigations of contractors, including HHS employees, are reviewed or performed as required by the ICPFVPA and Tribal policies.

Planned and completed actions:

Following HHS's publication of its "Early Alert Letter" on August 28, 2020, the Cherokee Nation updated its internal practices to require collection of background investigation documentation for contractors according to the same guidelines it used for volunteers, as these guidelines comply with the standards of the ICPFVPA and implementing regulations.

Recommendation Number 4(d): Cherokee Nation concurs with the recommendation. *We recommend that the Cherokee Nation develop and implement policies and procedures to ensure that criminal history results are assessed to verify that applicants meet the required minimum character standards.*

Planned and completed actions:

The Cherokee Nation has implemented such policies and procedures and wishes to highlight the following positive finding made by OIG in the above-mentioned report: “The policies and procedures of Cherokee Nation require more stringent character standards for individuals in contact with Indian children than those prescribed in the ICPFVPA. In addition to the character standards identified in the ICPFVPA, applicants for positions with Cherokee Nation must meet additional standards of the 1990 Crime Control Act.”

Thank you again for affording the Cherokee Nation the opportunity to provide written comments regarding your audit.

Wado,

A handwritten signature in black ink that reads "Chuck Hoskin Jr." in a cursive style.

Chuck Hoskin Jr.
Cherokee Nation Principal Chief



DATE: September 22, 2023

TO: Juliet T. Hodgkins
Principal Deputy Inspector General

FROM: Director

SUBJECT: Indian Health Service Response to Office of Inspector General Draft Report:
Two Tribes in Oklahoma and Their Health Programs Did Not Conduct Required Background Investigations on All Individuals in Contact With Indian Children (A-01-20-01505), dated August 17, 2023

We appreciate the opportunity to provide the official comments of the Indian Health Service (IHS) on the draft Office of Inspector General (OIG) report entitled, *Two Tribes in Oklahoma and Their Health Programs Did Not Conduct Required Background Investigations on All Individuals in Contact With Indian Children*. The IHS both concurs and non-concurs with the five OIG recommendations as stated below.

OIG Recommendation No. 1: The IHS concurs with this recommendation.

OIG recommends the Indian Health Service enhance Single Audit Compliance Supplement, part 4: “Agency Program Requirements,” for Tribes receiving ISDEAA funds from IHS by establishing special tests and audit procedures in the annual Single Audit Compliance Supplement for all its ISDEAA programs to ensure that the ICPFVPA’s requirements are tested during a review of a Tribal health program as part of the Single audit.

Planned and completed actions:

In May 2023, the 2023 Compliance Supplement (2 C.F.R. Part 200, Appendix XI) was issued. Within Part 4, “Agency Program Requirements,” the Department of Health and Human Services section includes updates to “Assistance Listing 93.210 Tribal Self-Governance Program - IHS Compacts/Funding Agreements.” These updates specifically address Special Tests and Provisions, and include a subsection on Character Investigations by Indian Tribes and Tribal Organizations. This subsection outlines compliance requirements, audit objectives to determine whether Tribes and Tribal organizations are performing the required background investigations for persons employed by or being considered for employment at Tribal health care facilities, and suggested audit procedures that test for compliance with background investigation requirements as part of the Single Audit.

OIG Recommendation No. 2: The IHS concurs with this recommendation.

OIG recommends the Indian Health Service enhance Single Audit Compliance Supplement, part 4: “Agency Program Requirements,” for Tribes receiving ISDEAA funds from IHS by reviewing the results of those special tests and audit procedures in the annual Single Audits for Tribal health programs to help assess whether Tribes are complying with ICPFVPA requirements to conduct background investigations and meet minimum standards of character.

Planned and completed actions:

As noted above, the 2023 Compliance Supplement includes a specific section on Special Tests and Provisions, and a subsection on Character Investigations by Indian Tribes and Tribal Organizations, which outlines compliance requirements, audit objectives, and suggested audit procedures that test for compliance with background investigation requirements. As part of the Single Audit review process, the IHS checks for compliance with the requirements identified in the Compliance Supplement.

OIG Recommendation No. 3: The IHS concurs with this recommendation.

OIG recommends the Indian Health Service develop and offer a nationwide training seminar to Tribes on background investigation requirements of the ICPFVPA.

Planned and completed actions:

The IHS will develop a plan by March 31, 2024, to offer periodic training seminars to Tribes receiving ISDEAA funds, and training will begin in calendar year 2024.

OIG Recommendation No. 4: The IHS non-concurs with this recommendation.

OIG recommends the Indian Health Service provide background investigation results (COI with child care designation if required) to Tribes for current HHS employees assigned to Tribal health programs.

Planned and completed actions:

The IHS does not concur with OIG recommendation 4.

First, Certificates of Investigation (COI) cannot be broadly shared as requested by OIG. The Federal government, not Tribes, is the employer of civilian employees under Intergovernmental Personnel Act (IPA) agreements and the commissioned corps officers under memoranda of agreements working at Tribal health facilities. One condition of Federal employment for these employees is successful background investigations, and these background investigations are an inherently Federal function of the Federal Government. Most importantly, the results of the background investigations, the COI, are between the IHS and the employees and are subject to the Federal Privacy Act; regulations at 5 C.F.R. Part 293 (information maintained in an employee’s Official Personnel Folder); U.S. Office of Personnel Management’s (OPM) Operating Manual, “The Guide to Personnel Recordkeeping;” and OPM GOVT-1, General Personnel Records. Therefore, any release of an employee’s COI must be considered under applicable law to determine if the release is authorized in a particular situation. The law would not authorize a general rule of releasing every employee’s COI to Tribes.

Second, the issues identified would not necessarily be resolved by releasing employees' COI to Tribes. Instead, the issues stemmed from: (a) lack of tracking and accountability with the Tribes; and (b) lack of communication between the Tribe and the IHS about the position. The IHS has implemented a new IPA agreement template, which should help alleviate the communication issue by requiring more communication between IHS and Tribes about position descriptions. The language in the template states:

Employee will occupy the same position with the Tribe/Tribal Organization that was previously occupied in IHS as a Federal position. A description of duties is attached. The Tribe/Tribal Organization will review the description of duties regularly and notify the IHS Supervisor . . . of any changes. The IHS Supervisor will then document the change in Employee's personnel records.

Third, routinely providing Tribes with COI could open the door to Tribes being involved in (or the perception that they are involved in) personnel matters of Federal employees. Personnel matters of Federal employees are an inherently Federal function.

In summary, at best, each request for each employee's COI or other confidential personnel records must be considered on a case-by-case basis and could only be provided to a Tribe if authorized by the Privacy Act.

OIG Recommendation No. 5: The IHS partially concurs and partially non-concurs with this recommendation.

OIG recommends the Indian Health Service develop policies and procedures to communicate background investigation and reinvestigation results (COI with child care designation if required) to Tribes for HHS employees working at Tribal health programs and ensure that Tribes understand that background investigation criminal history results may not cover more stringent character standards that Tribes may adopt as allowed by the ICPFVPA.


Planned and completed actions:

The IHS does not concur with recommendation 5 in as much as it directs the IHS to develop policies and procedures to communicate background investigations and reinvestigation results to Tribes for Department of Health and Human Services employees working at Tribal health programs. See the response above to recommendation 4 for reasons the IHS does not concur.

The IHS concurs in part with Recommendation 5 and will ensure that Tribes understand that background investigation criminal history results may not cover more stringent character standards that Tribes may adopt as allowed by the Indian Child Protection and Family Violence Prevention Act. The IHS will include this information in the training being developed as described in the response above to recommendation 3.

Thank you for the opportunity to review and comment on this draft report. Please refer any follow up questions you have regarding our comments to Mr. Benjamin Smith, Deputy Director, IHS, by e-mail at Benjamin.Smith@ihs.gov.

Roselyn Tso
-S
Roselyn Tso
Director



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Roselyn Tso -S
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