

**INDIAN HEALTH SERVICE
HSPD-12 COMPLIANT ACCESS CARDS FOR
TRIBAL EMPLOYEES and TRIBAL CONTRACTORS**

Questions and Answers (Q&As)

1. What does the Homeland Security Presidential Directive 12 (HSPD-12) require?

Answer: Homeland Security Presidential Directive 12: Policy for a Common Identification (ID) Standard for Federal Employees and Contractors, requires all Federal employees, contractors, volunteers, and affiliates, including Tribal employees and Tribal contractors, to use standard forms of identification to gain access to federally controlled facilities and Federal Information Technology (IT) systems. To comply with HSPD-12 requirements, the IHS must issue an HSPD-12-compliant access card, in this case a Personal Identity Verification (PIV) card, to individuals who need to access IHS controlled space or IHS IT networks. Prior to being issued a PIV card, each individual seeking access must undergo a criminal fingerprint check and a Federal background investigation.

2. Does the IHS have an existing policy regarding the implementation of the HSPD-12 directive?

Answer: Yes, the existing policy can be found in the *Indian Health Manual*, Part 5, Chapter 30. The accompanying Dear Tribal Leader letter outlines updated procedures related to Tribal employees and Tribal contractors, intended to ensure compliance with the mandate and consistency with how the IHS implements the directive.

3. Who does this process apply to?

Answer: The HSPD-12 requirement applies to all employees and contractors who require physical and logical access to federally controlled facilities and information systems, including Tribal employees and Tribal contractors who choose to access these systems and facilities to carry out their ISDEAA programs. Other leases or contractual agreements that a Tribe and Tribal Organization (T/TO) has related to IHS space does not change or circumvent the HSPD-12 requirements.

- a. Does the HSPD-12 mandate apply to all Tribal employees and Tribal contractors or only those who choose to access IHS networks and federally controlled facilities?

Answer: The HSPD-12 mandate only applies to the T/TOs that choose to access IHS IT systems and federally controlled facilities to carry out their ISDEAA programs. The T/TOs are NOT required to use IHS IT systems and facilities when carrying out their ISDEAA programs.

- b. Does it apply to Intergovernmental Personnel Act (IPA) employees and Commissioned Corps officers working under a Memorandum of Agreement (MOA), who were employed by a T/TO prior to the HSPD-12 requirement?

Answer: Yes, as Federal employees, the requirement applies to IPA employees and Commissioned Corps officers working under an MOA. Presumably, these individuals will already have an existing PIV card prior to being assigned to a T/TO.

- c. Does it apply to Tribal employees or Tribal contractors with an IHS email address?

Answer: Yes, HSPD-12 applies to Tribal employees or Tribal contractors who have logical access to the IHS network, which includes those with an IHS email address.

- d. Does it apply to Tribal employee or Tribal contractor email addresses used to access an IHS web-based system/resource, for example, the OTSG Funds Management Database?

Answer: Yes, at this time, and the IHS will review further as access is “read-only.”

4. What is meant by “logical access” to the IHS network systems?

Answer: “Logical access” means providing an authorized user the ability to access one or more computer system resources such as a workstation, network, application, or database through automated tools. A logical access control system (LACS) requires validation of an individual’s identity through some mechanism such as a personal identification number (PIN), Department of Health and Human Services PIV card, username and password, biometric, or other token. The system has the capability to assign different access privileges to different people depending on their roles and responsibilities in an organization. However, as noted above in the answer to question 1, HSPD-12 requires an HSPD-12-compliant access card, known as a PIV card, for logical access to the IHS network systems.

5. What is considered “federally controlled space?”

Answer: A Federally Controlled Facility is defined as federally owned or leased space in accordance with the Federal Acquisition Regulation (FAR) Subpart 2.1, including:

- a. Buildings with single or multi-tenant occupancy and their grounds and approaches, all or any portion of which is under the jurisdiction, custody or control of an agency;
- b. When federally controlled space is shared with non-government tenants, the directive is only applicable to Federal space;
- c. Federally owned space that is FAR contractor-operated; and
- d. Facilities under a management and operating contract, such as for operation, maintenance or support of a federally controlled establishment.

6. Does the process apply to facilities controlled by a Tribe or Tribal Organization?

Answer: No. Exclusively Tribally operated facilities, even if owned by the Federal Government are not included. For shared facilities, it only applies if the Tribal employees and Tribal contractors have access to the federally controlled areas of the facility.

7. How will HSPD-12 be implemented for Tribal partners?

Answer: All IHS Federal background investigations are conducted by the Defense Counterintelligence and Security Agency (DCSA). The IHS Personnel Security Representatives (PSR) currently process, manage, and adjudicate PIV card requests for Federal employees, and we use the same personnel for the Tribal partners.

8. When will this updated process be required for Tribal partners?

Answer: The HSPD-12 mandate is currently in effect. The IHS plans to work with Tribal partners promptly to ensure applicable Tribal employees and Tribal contractors comply as soon as possible. To ensure consistency and full compliance with the mandate, waivers will not be an option.

9. What is the cost of the background check?

Answer: The estimated per-person total cost for a Tier 2 level background check that complies with HSPD-12 is approximately \$851. When a T/TO also requests an investigation for certain individuals in contact with Indian children, i.e., “child-care covered positions,” such investigation may necessitate an additional cost of \$48. Compliance with these laws for child-care covered positions and any additional suitability criteria established by the T/TO, remain a Tribal responsibility. Also, the cost will be higher in situations where T/TOs request a background investigation higher than a Tier 2 level. These amounts are subject to change as the costs increase for PIV card/supplies and DCSA background investigations. PIV card renewals are required every 5 years and 9 months, which will cost the same as the initial (first) year, plus any increase in cost over those years. Total costs in the subsequent years may also fluctuate depending on the number of Tribal employees or Tribal contractors requiring PIV cards. The administrative fee for IHS support staff to process PIV card requests will increase over time with pay cost increases and the possible need for additional positions as the demand for PIV cards for Tribal employees and Tribal contractors grows over time.

The IHS will rely on Tribal partners to help define the appropriate background check needed based on the duties of the Tribal employee/contractor who needs logical access. Further, background checks also need renewals, which are dependent on the level. Note: Commissioned Corps officers on an MOA will always require a Tier 3 level clearance investigation based on Commissioned Corps policy.

10. Will the costs associated with issuing an access (PIV) card be the responsibility of the Tribe?

Answer: Yes, so long as the Tribe chooses under its ISDEAA agreement to utilize logical access to the IHS systems and/or federally controlled facilities, the cost will be the Tribe’s responsibility. If a Tribe decides it will not operate its ISDEAA programs using the IHS system or federally controlled facility, the cost is no longer applicable.

11. How will the costs be covered?

Answer: Most T/TOs already receive some funding for these activities in the awarded Secretarial amount and may be able to negotiate CSC funding for other aspects of the process if eligible (see #12 below). Ultimately, however, the service must be obtained via a “buy back” agreement with the IHS. The T/TOs are authorized under the ISDEAA to contract with the IHS to “buy back” certain goods and services. In this sense, the IHS acts as a contractor to the T/TO and is mandated to recover full costs for the services provided. See the IHS Appropriations Acts (Title I); 25 U.S.C. § 5388(f) (Title V). Tribal Health Programs make discretionary choices that inform whether there is a need for this service (i.e., obtaining a PIV card). Tribal Health Programs are not required to access IHS IT systems or federally controlled spaces to carry out their ISDEAA responsibilities. However, when T/TOs choose to carry out their ISDEAA responsibilities in a way that requires access to IHS IT systems and/or provides services in federally controlled spaces, they must comply with applicable Federal mandates.

12. Are the activities and associated funds needed to carry out this process contractible under the ISDEAA?

Answer: Yes, some of them. The three main activities and associated costs incurred when providing a PIV card to an eligible individual, include: (1) the cost of the background investigation; (2) the cost of the PIV card itself and related supplies; and (3) the cost for the IHS Headquarters and Area staff to process, manage, and adjudicate PIV card requests. The funds used for background investigations and PIV card/supply costs may be – and in many cases have already been – transferred to T/TOs through ISDEAA agreements as part of their “Secretarial amount.” The processing, managing, and adjudicating of PIV card requests by the IHS staff are inherently Federal functions that cannot be transferred to T/TOs as part of their Secretarial amount and must be performed by Federal staff.

13. Are T/TOs entitled to contract support costs (CSC) reimbursement for any of the costs they pay related to PIV cards?

Answer: Potentially, for a portion. For contractible functions, the T/TO would have received funds for carrying out these functions in the Secretarial amount, and the cost would not be eligible for CSC. So long as all the statutory requirements are met, T/TOs would potentially be eligible for CSC for the non-contractible additional costs associated with processing, managing, and adjudicating Tribal PIV card requests because – due to the nature of these inherently federal functions – the funds cannot be awarded to a T/TO.

14. How often must a PIV card be renewed?

Answer: A PIV card renewal is required every 5 years and 9 months.

15. If a Tribal employee/contractor has an unfavorable adjudication, is there a process that will notify the T/TO and if necessary, remove access?

Answer: Yes. If a Tribal employee/contractor receives an unfavorable adjudication, the IHS will notify the Tribal program's point of contact as identified by the Tribal partner, and if needed, the Tribal employee/contractor's access will be removed.

16. Will a Tribe's background check suffice for the background check needed for a PIV card?

Answer: No. A background check for HSPD-12 compliance purposes must be completed by a Federal employee utilizing the HSPD-12 requirements and standards. Even if the Tribe duplicated the HSPD-12 background check, it still would not be accepted for these purposes. This is different from other situations where Tribal background checks have been specifically identified as acceptable. See 42 CFR 136.410 – Who conducts the background investigation and prepares determinations of eligibility for employment?

17. How is the HSPD-12 background investigation requirement different from the background investigation required by the Indian Child Protection and Family Violence Prevention Act?

Answer: The Indian Child Protection requirements are distinguishable from HSPD-12 requirements. The T/TOs are solely responsible for compliance with the Indian Child Protection background investigations related to their programs. However, the HSPD-12 background investigation may be used to satisfy the Indian Child Protection background check requirements for Tribal employees that are subject to both, but it is the T/TOs responsibility to ensure those requirements are being met.