



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Federal Investigative
Services

Federal Investigations Notice

Notice No. 10-05

Date: May 17, 2010

SUBJECT: Reminder to Agencies of the Standards for Issuing Identity Credentials Under HSPD-12

The purpose of this memorandum is to remind agencies of the standards that should be used for identity credentialing of persons requiring long-term access to Federally controlled facilities and information systems.

As you know, in Homeland Security Presidential Directive (HSPD) 12, the President directed the Department of Commerce to develop a standard for secure and reliable forms of identification used to access Federally controlled facilities and information systems, and directed executive departments and agencies to have a program in place to ensure that their issuance of identity credentials to employees and contractors meets the standard. The President charged the Office of Management and Budget (OMB) with ensuring compliance with that standard. OMB delegated to the U.S. Office of Personnel Management (OPM) the authority to develop standards for use in determining when persons should be granted or denied identity credentials.

On December 18, 2007, OPM issued a Memorandum to Heads of Departments and Agencies, titled *Interim Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12*, which set out those standards. On June 30, 2008, in Executive Order 13467, the President directed OPM to "continue to be responsible for developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient and timely completion of investigations and adjudications relating to . . . eligibility for logical and physical access" to Federally controlled facilities or information systems. Pursuant to that authority, on July 31, 2008, OPM issued a second memorandum to Heads of Departments and Agencies, titled *Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12*, which superseded its prior memorandum.

The *Final Credentialing Standards* memorandum sets out a set of minimum standards (the "HSPD-12 credentialing standards") that must be used to determine initial eligibility for an identity credential under HSPD-12. The standards list six instances in which identity credentials may not be issued, which are related to the counter-terrorism, information security, and identity verification concerns to which HSPD-12 is directed.

The memorandum also provides a set of “supplemental credentialing standards” that agencies may use when a candidate for an identity credential is not subject to a security clearance determination or a determination of suitability or fitness for Federal employment or to work on a Federal contract. In such cases, supplemental credentialing standards may be used because the final decision to grant or deny the credential is not simply derivative of a suitability, fitness, or security clearance determination. The seven supplemental credentialing standards address whether issuance of the identity credential to the candidate poses an unacceptable risk to the life, safety, or health of employees, contractors, vendors, or visitors; to the Government's physical assets or information systems; to personal property; to records, including classified, privileged, proprietary, financial, or medical records; or to the privacy of data subjects. Under E.O. 13467, individual agencies do not have the authority to prescribe their own credentialing standards for access to Federally controlled facilities and information systems. Accordingly, the *Final Credentialing Standards*, like the *Interim Credentialing Standards* that preceded them, are exclusive.

To further assist agencies in making credentialing determinations, on January 14, 2008, OPM also issued a Memorandum to Heads of Departments and Agencies, Chief Human Capital Officers, and Security Officers, titled *Introduction of Credentialing, Suitability, and Security Clearance Decision-Making Guide*. This guide further explains the identity credentialing process, and it reminds agencies of the nondiscrimination principles that apply in credentialing determinations.

As you may know, questions have arisen in recent litigation as to whether any additional standards may be used for identity credentialing. In *Nelson v. NASA*, 530 F.3d 865 (9th Cir. 2008), cert. granted, No. 09-530, 2010 WL 757694 (2010), a case now before the U.S. Supreme Court, a group of individuals employed by a NASA contractor at NASA's Jet Propulsion Laboratory (JPL) have sued to enjoin the Government from conducting the background checks necessary for issuing identity credentials under HSPD-12. Those individuals contend that the government will make identity credentialing decisions based on an “issue characterization chart” posted on JPL's intranet site. That chart lists standards that are different from those prescribed by OPM in the guidance described above. In light of the questions raised by the plaintiffs in the *Nelson* litigation, OPM issues this further memorandum to ensure that there is no confusion or misinformation about the factors that Government agencies may consider when making credentialing determinations.

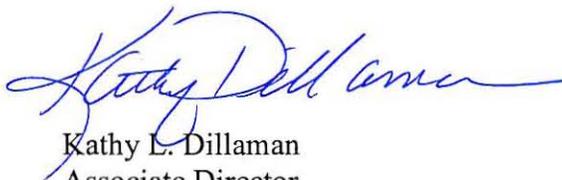
Agencies are reminded that OPM's credentialing standards issued pursuant to E.O. 13467 remain in force. In all cases, agencies must apply the minimum HSPD-12 credentialing standards. When persons requiring credentials are not subject to security clearance determinations, or determinations of their suitability or fitness for Federal employment or to work on a Federal contract, agencies may also apply the supplemental HSPD-12 credentialing standards. Agencies may not, however, waive, modify, replace, or add to OPM's credentialing standards.

Under part 6 of HSPD-12, identity credentialing must be implemented consistent with civil rights law. Agencies are reminded of the non-discrimination policies stated in the

Decision-Making Guide. Under 5 U.S.C. 2302(b)(10), it is a prohibited personnel practice to discriminate “for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States.” This provision prohibits discrimination based on sexual orientation or any other personal characteristic that has no effect on job performance. Further, under E.O. 11478, as amended, "it is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons" and "to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, sexual orientation, or status as a parent."

Finally, in taking actions related to identity credentialing, contractors must adhere to their nondiscrimination obligations. See, e.g., E.O. 11246, as amended and Federal Acquisition Regulation sections 22.810 and 52.222-26.

Hypertext links are provided here to the *Final Credentialing Standards* and the *Decision-Making Guide*.



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