

PROGRAM GUIDANCE

PROGRAM: Indian Housing Block Grant (IHBG)

FOR: Tribal Government Leaders and Tribally Designated Housing Entities

FROM: Heidi J. Frechette, Deputy Assistant Secretary, PN 

TOPIC: Update to Instructions for Obtaining FBI Criminal History Record Information

Purpose: This guidance updates and replaces NAHASDA Guidance No. 2013-08, *Update to Instructions for Obtaining FBI Criminal History Record Information*, August 19, 2013. It advises Tribes and Tribally Designated Housing Entities (TDHEs) on the process for obtaining Federal Bureau of Investigation (FBI) criminal history record information of adult applicants for employment or current and prospective tenants for purposes of applicant screening, lease enforcement, and eviction. Gaining access to such records involves:

- Requesting and obtaining an Originating Agency Identifier (ORI) number from the FBI; and
- Identifying and contracting with either a State Identification Bureau (SIB) or an FBI-Approved Channeler (Channeler) that will process and direct requests from the Tribe/TDHE (hereafter referred to as recipients) to the FBI.

Background: Pursuant to Section 208 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), recipients are permitted to obtain criminal history records of applicants for employment, and of adult applicants for, and tenants of, housing assisted under NAHASDA for purposes of applicant screening, lease enforcement, and eviction. For purposes of this guidance, the term “tenants” includes homebuyers applying for, or currently being assisted under NAHASDA.

The law states that “police departments and other law enforcement agencies shall, upon request, provide information to Indian Tribes or TDHEs regarding the criminal conviction records of adult applicants for employment, or tenants of, housing assisted with grant amounts provided to such Tribe or entity under [NAHASDA] for purposes of applicant screening, lease enforcement, and eviction.”

Confidentiality: NAHASDA provides that each recipient receiving information may use such information only for the purposes provided in the Act. Such information may not be disclosed to any person who is not an officer, employee, or authorized representative of the recipient, and the person must have a job-related need to have access to the information for the allowable purposes. For judicial eviction proceedings, disclosures may be made to the extent necessary.

Overview: Recipients wishing to check applicants and residents have several options. They can:

- a) Use local and State authorities for State records only;
- b) Conduct a name check through their local law enforcement, which has access to limited information from the Interstate Identification Index (III). It is the discretion of the local law enforcement whether it will charge a reasonable fee for this service. Access for this purpose does not entitle the requesting law enforcement agency to obtain the full content of automated records through the III; or
- c) Submit an employee/applicant/tenant fingerprint card (through the SIB or Channeler) to the FBI in order to obtain the full content of a criminal history record. The FBI and HUD have jointly agreed that every recipient shall use the SIB or Channeler to submit its fingerprint cards to the FBI. The FBI charges a processing fee for each card. Please contact your SIB or Channeler to determine the current fee. No fees or other costs should be passed on to the family, applicant or employee. An agreement or contract is required with the SIB or Channeler to submit fingerprints.

For recipients to have access to III data through their local or State law enforcement authorities, or to obtain FBI criminal history records through the submission of an applicant fingerprint card, each recipient must be assigned an ORI number by the FBI. Those recipients that have not yet obtained an ORI number from the FBI may do so upon written request.

Some recipients are currently channeling fingerprint cards to the FBI through their SIB. Those recipients that wish to continue channeling fingerprint cards to the FBI through their SIB may do so, or a recipient may choose to use one of the approved Channelers.

Recipients will send the fingerprint cards directly to their SIB or Channeler. The SIB or Channeler will collect a fee to cover their own costs as well as the FBI fee, and forward the recipient's fingerprint cards to the FBI for processing. The FBI will forward the results of the criminal records search back to the SIB or Channeler, who will send them to the recipient.

Issuance of ORI Numbers: The first step in obtaining criminal history data through the III is for the recipient to obtain an ORI number from the FBI. This number identifies the recipient as an entity authorized to receive criminal history records through the submission of fingerprint cards and enables those submissions to be tracked and billed appropriately. Requests for ORI numbers should be sent directly by mail or fax to the FBI at the following address:

Section Chief
FBI CJIS Division
BTC3, Compact Team
1000 Custer Hollow Road
Clarksburg, WV 26306
Fax: 304-625-9072

The request should include the full name of the recipient, the complete mailing address, the county in which its main office is located, the name and phone number of a contact person, and which SIB or Channeler the recipient will utilize. (A sample letter is attached.) After verifying legal authority, the FBI will then assign an ORI number to the recipient. The Recipient will need to coordinate with the SIB or Channeler for fingerprint cards.

Instructions for Obtaining Criminal History Records: Once the recipient has its own ORI number, it is eligible to obtain criminal history records. The following procedures have been developed to facilitate the process:

- A. The recipient submits a name check request to the local/state law enforcement agency. The name check request must include the name, date of birth, and social security number of the employee/applicant/tenant (if he/she has one). Using the ORI number assigned to the recipient, the law enforcement agency will access the III for the purpose of determining whether an employee/applicant/tenant may have a criminal history record indexed in the III.
- B. The law enforcement agency will advise the recipient that either:
 1. The information provided by the recipient did not match any criminal record in the index to the national database, or
 2. The information may match a criminal record indexed in the national database. This statement means only that, based on the information provided, the record may belong to the employee/applicant/tenant, but is inconclusive without a positive fingerprint comparison. The results of an inconclusive name check cannot be used to deny an applicant admission to housing.
- C. If the local/state law enforcement agency indicates to the recipient that there is a criminal history record indexed in the III that may belong to the employee/applicant/tenant, the recipient must submit an applicant fingerprint card to the FBI, through either the SIB or an approved Channeler, in order to verify whether the criminal record is in fact the applicant's. This step would be unnecessary if the individual chooses to withdraw his/her application.

When a fingerprint check is necessary, the FBI recommends that recipients use trained local law enforcement personnel to do the actual fingerprinting. Although the process appears simple, many fingerprints are rejected as unreadable, even when taken by qualified personnel.

- D. The applicant's fingerprints will be compared with criminal fingerprints maintained in FBI files, and if found to be identical, a copy of the corresponding criminal history record will be provided to the recipient. Applicant's fingerprints not identified with a criminal record will be sent an automated response indicating that no record was found. No fingerprint cards will be returned to the recipient.

Channeling to the FBI through a SIB: The link below provides a list of SIBs that may be available to recipients to channel fingerprint card submissions to the FBI and be the responsible billing agent:

<http://www.fbi.gov/services/cjis/identity-history-summary-checks/state-identification-bureau-listing>

Channeling to the FBI through a Channeler: Channelers receive the fingerprint submission and relevant data, collect the associated fee(s), electronically forward the fingerprint submission with the necessary information to the FBI Criminal Justice Information System Division for a national criminal history record check, and receive the electronic record check result for dissemination to the recipient. A Channeler simply helps expedite the criminal history record information response on behalf of the FBI. A list of Channelers can be found at:

<https://www.fbi.gov/services/cjis/compact-council/list-of-approved-channelers>

The process for making a request through a Channeler is consistent with FBI submission procedures. Additional fees may apply above the FBI fee for requests submitted through a Channeler. Contact each Channeler for processing times and fees.

Each recipient that does not choose to channel through a SIB must competitively select a Channeler in accordance with its own procurement standards and HUD regulations at 24 CFR § 85.36.

If there are any questions regarding this guidance, please contact your Area Office of Native American Programs.

Attachment

PRINTED ON LETTERHEAD

REQUEST FOR AN FBI ORI NUMBER FOR NAME CHECKS

Section Chief
FBI CJIS Division
Compact Team, BTC3
1000 Custer Hollow Road
Clarksburg, WV 26306
Fax: 304-625-9072

Dear Section Chief:

The following Tribe/tribally designated housing entity (TDHE) is submitting this written request for an ORI number from the Federal Bureau of Investigations to be used to conduct name checks on applicable housing employees, applicants and/or tenants.

Tribe/TDHE Name: _____

Address (including city, state and zip): _____

Contact Name: _____

Title of Contact: _____

Phone/Fax/Email: _____

Number of fingerprint cards needed: _____

SIB or Channeler selected for fingerprint submissions: _____

If Channeler, must also submit additional request letter.)

Existing ORI Number (if applicable): _____

Sincerely,

Requestor's Name
Title
Phone
Fax
Email

SAMPLE REQUEST LETTER

FOR [insert Tribe/Tribally Designated Housing Entity's name] TO USE
[insert FBI-approved Channeler's name] AS A CHANNELER FOR THE SUBMISSION OF
AUTHORIZED NONCRIMINAL JUSTICE BACKGROUND CHECKS

Ms. Chasity S. Anderson, FBI Compact Officer
FBI CJIS Division
1000 Custer Hollow Road, Module D3
Clarksburg, West Virginia 26306

Dear Ms. Anderson:

[Insert Tribe/Tribally Housing Designated Entity's name and address], the Authorized Recipient, requests permission to outsource noncriminal justice administrative functions to FBI-approved Channeler, [insert Contractor's name and address], the Contractor, to perform "Channeler" functions as set forth below. This request is made pursuant to Title 28, Code of Federal Regulations, Part 906 and the relevant Security and Management Control Outsourcing Standard. [Insert Tribe/Tribally Designated Housing Entity's name]'s authority to submit fingerprints for noncriminal justice purposes and obtain the results of the fingerprint search, which may contain criminal history record information (CHRI), is pursuant to Section 208 of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). This authority requires or authorizes fingerprint-based background checks of applicants for employment, and of adult applicants for, and tenants of, housing assisted under NAHASDA for purposes of applicant screening, lease enforcement, and eviction [Insert Contractor's name] will serve as a "Channeler" on behalf of [insert Tribe/Tribally Designated Housing Entity's name]. The noncriminal justice administrative functions to be performed by the Channeler that may result in Channeler access to CHRI on behalf of [insert Tribe/Tribally Designated Housing Entity's name] are:

- Receive noncriminal justice applicant fingerprint submissions and collect associated fees;
- Ensure each fingerprint submissions is properly and adequately completed;
- Electronically store and forward [insert estimated number of annual submissions] fingerprint transactions to the FBI's CJIS Division for national criminal history record checks;
- Receive electronic criminal history record check results from the FBI;
- Promptly disseminate all criminal history record check results to [insert Tribe/Tribally Designated Housing Entity's name] by [insert means of dissemination – e.g. United States mail, e-mail, or posting to a web site]; and
- Comply with all Outsourcing Standard requirements.

Upon execution of the Contract, [insert Tribe/Tribally Designated Housing Entity's name] will take responsibility for [insert Contractor's name] compliance with the terms of the Contract, to include the Outsourcing Standard, and will notify the FBI Compact Officer of any violations.

Sincerely,

[insert name]
[insert title]
[insert phone number]
[insert email address]
[insert fax number]