

The Background Screening Credentialing Council volunteer members drafted the following response to a question about the Remote Workforce. This Opinion Letter applies to BSAAP Standard, version 2.0, effective April 6, 2018. This letter is an informal discussion of the question posed and does not constitute a legal opinion of the BSCC.

TITLE: Remote Workforce

Issue: We are a small CRA considering moving our entire workforce to a remote work model. Assuming we had the proper security protocols in place, would this impact our ability to become accredited or is there anything we need to consider/put in place that's unique based on this business model?

Response:

Thank you for your inquiry. The BSCC has been watching closely the issue of remote workforce as increasingly improved technology solutions (including cloud storage services) have been put in place to allow for organizations to enhance their ability to use remote work arrangements without exposing themselves to information security risk. Having said that, the updates made in 2018 to the Accreditation Standard with Audit Criteria (hereafter, "Standard 2.0") and the Background Screening Agency Accreditation Program (hereafter, "Accreditation Program") Policies and Procedures (hereafter, "BSAAP Policies and Procedures 2.0") have had no impact on what the Accreditation Program says about remote workforce.

As a starting point, the BSCC notes that neither the original accreditation standard (which is no longer in effect) nor Accreditation Standard 2.0 (effective as of April 6, 2018) speak **directly** to any type of remote workforce - whether as a single talent solution or as an overall business model. Regardless of workforce practices or models, we do note the jurisdictional limitations on the Accreditation Program and applicant eligibility criteria set forth in the BSAAP Policies and Procedures (both version 1.0 originally enacted December 22, 2009, and version 2.0 as revised effective July 25, 2018), do apply¹.

While neither the original nor the Accreditation Standard 2.0 specifically address workforce type, the audit process itself does speak indirectly on this subject. Specifically, the BSAAP Policies and Procedures require the on-site audit to take place at the agency's "primary operating center(s)". Therefore, **it is required for there to be some form of primary operating center** where the auditor can come onsite to perform an audit.

¹ The accreditation program's jurisdiction only extends to the United States and eligibility for application requires that the applicant be a consumer reporting agency headquartered in the United States, primarily engaged in providing employment background screening services to end-users and providing services under the Standard for a period of at least one year. See BSAAP Policies and Procedures 1.0 and 2.0, Article IV(B).

Specifically, the BSAAP Policies and Procedures 2.0 in Article IV, Section B offers a description of the accreditation process, including, but not limited to the following specifics regarding the location for the On-site Audit process in paragraphs B (10) and (11):

10. *The Auditor will conduct a one (1) - to two (2) - day onsite inspection **at the Applicant agency's primary operating center and up to one (1) additional location** determined at the discretion of the auditor and NAPBS staff, if other location(s) are providing services under the Standard*. The Auditor will validate conformity with the BSAAP Standard and Audit Criteria and verify the accuracy of materials submitted as part of the self-evaluation process.*

**NOTE: Audit locations may include U.S. locations and outside U.S. locations providing services under the Standard. In extenuating circumstances auditor and NAPBS Staff may determine that additional site audits are necessary.*

11. *Applicant must **bring together either physically or by digital platform, at the location(s) to be visited by the Auditor, representatives from all of the Applicant agency's pertinent locations.** Each representative must be authorized to certify, and must be able to demonstrate to the satisfaction of the Auditor, that the agency's policies, procedures and processes are in conformance with the BSAAP Standard and Audit Criteria.*

The Auditor will make a diligent effort to review all necessary documentation while at the Applicant's location in order to avoid having to take the agency's proprietary information offsite. The agency is responsible for onsite visit fees for each site and travel expenses.

[BSAAP Policies and Procedures 2.0, Article IV(B), Revision Date of July 25, 2018, with Bold Emphasis Added]. At the discretion of the auditor, the auditor may also determine a need to visit multiple locations of the agency (and those locations could include a remote workforce site) to properly establish conformity with an applicable Accreditation Standard.

Finally, we note that (as you mentioned in your inquiry) any form of remote access granted to current employees or contractors would need to be done so in accordance with a set of policies, procedures and business practices (to which conformity can be established) that would satisfy all the accreditation standards and audit criteria, including but not limited to the significantly enhanced set of standards surrounding Information Security in Accreditation Standard 2.0, Clause 1.0 (including 1.1 through 1.12). Thus, in addition to having a primary operations center location as required by the BSAAP Policies and Procedures 2.0, you would need to be prepared for the Auditor to exercise discretion on whether to additionally go on-site to one or more of your remote locations for the purpose of establishing conformity with the Accreditation Standard 2.0.

In conclusion, the Accreditation Standard 2.0 does not directly speak to a fully remote workforce business model. However, the BSCC encourages you to carefully review Article IV, Section B of the BSAAP Policies and Procedures 2.0, describing the audit process which does call for (a) primary operating center(s) for the audit to take place as discussed above. We note those provisions do allow for workers from remote locations having responsibility over an area subject to the audit, to be brought to that site or to be accessed via digital or remote means for purposes of the audit. Of course, the auditor would also have to satisfactorily establish conformity with all of the Accreditation Standard 2.0 for all locations of the agency applying for accreditation. To that end, the auditor is allowed by the BSAAP Policies and Procedures 2.0 to exercise discretion and choose additional locations for conducting additional on-site audits.

We believe we have responded fully to your inquiry. Please let us know if you have any further questions.

As always, we note that we are not issuing an opinion that is legal in nature. The above information is general information only as it pertains to the Background Screening Agency Accreditation Program and is not legal advice, express or implied. Consultation with legal counsel is recommended in all matters of employment law.