

Child Care Background Check Basics TA Guide

The Child Care and Development Block Grant (CCDBG) Act requires States to have requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of child care providers. The CCDF Lead Agency must work with other agencies within their state to ensure the checks are conducted in accordance with the CCDBG Act. This guide provides an overview of some of the implementation areas that require a partnership with the State Identification Bureaus (SIBs) in order to meet the requirements of the law.

This guide focuses primarily on issues related to the Federal checks that are required by CCDBG and does not address all of the required components, most notably the child abuse and neglect (CAN) registry checks.

As such, the topics presented in this document are at the discretion of your State Identification Bureau (SIB). Your state's SIB agency maintains the criminal history repository for your state. Since participation in the National Fingerprint File (NFF) Program and the FBI's Rap Back Services Program are determined by the SIB, child care lead agencies must coordinate with their SIBs to obtain additional information on these topics.

The FBI Criminal Justice Information Services (CJIS) Division will work directly with the SIB should the child care agency have questions regarding the national fingerprint-based FBI background check, National Crime Information Center (NCIC) National Sex Offender Registry (NSOR) search, or participating in NFF or the FBI's Rap Back Services. While the FBI cannot approve or endorse this document, OCC created this document to provide factually accurate information regarding FBI CJIS's programs and services and to guide Lead Agencies' in their discussions with SIBs.

Understanding Federal Authority

Lead Agencies must act under an authority granted by a Federal Statute to conduct Federal background checks such as the FBI fingerprint or NCIC NSOR checks:

Child Care and Development Block Grant (CCDBG) Act

The CCDBG Act authorizes and requires Lead Agencies to conduct criminal background checks for all child care staff members.

Public Law 92-544

P.L. 92-544 authorizes states to enact state statutes for employment and licensing purposes, if approved by the U.S. Attorney General. This law does not authorize a name-based check of the NCIC NSOR.

CCDBG Act Authority

The CCDBG Act is a Federal law that authorizes and allows name-based checks of the NCIC NSOR for child care employment checks. Checks performed under the authority of P.L. 92-544 or NCPA/VCA may not serve as the basis to conduct NCIC NSOR checks. Even if a P.L. 92-544 state statute references the CCDBG Act, it does not give the state the authority to conduct NCIC NSOR name-based checks.

National Child Protection Act/Volunteers for Children Act (NCPA/VCA)

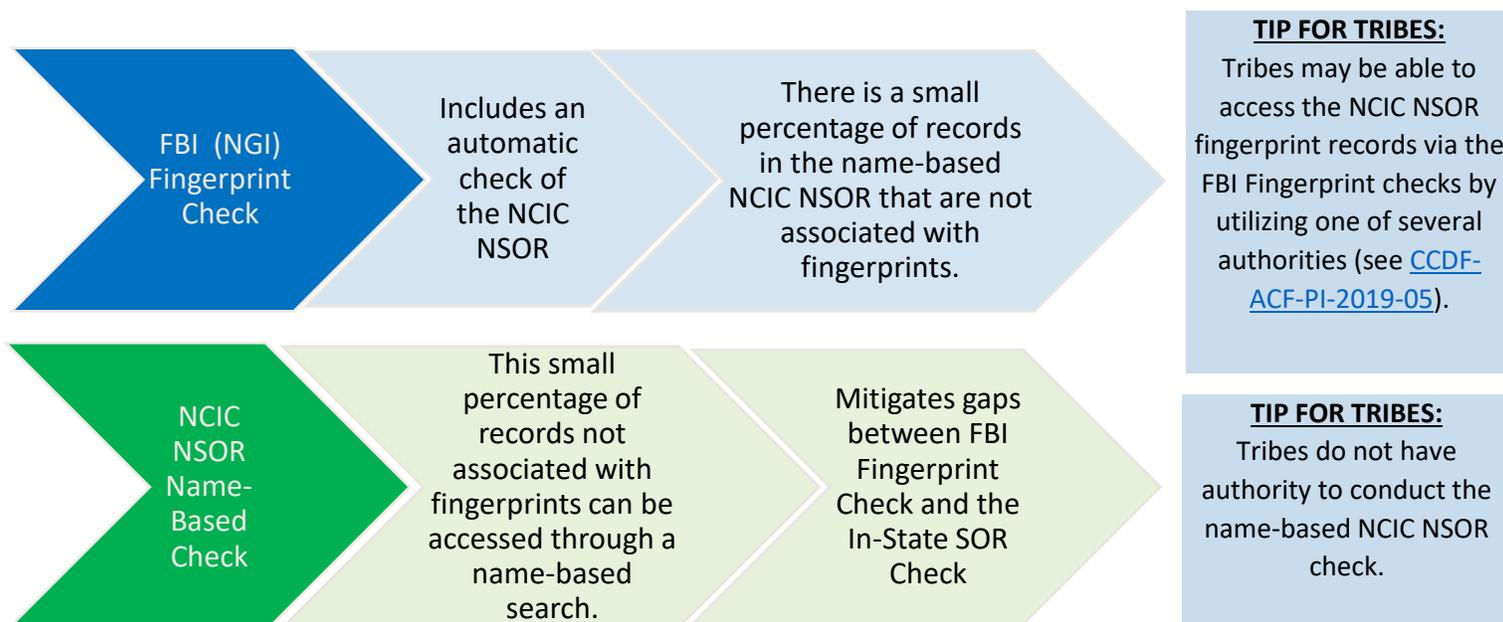
The NCPA VCA is a federal law that encourages states to authorize fingerprint-based national criminal history record information checks of individuals having access to children, the elderly and individuals with disabilities. This law does not authorize a name-based check of the NCIC NSOR.

Understanding the Name-Based National Crime Information Center National Sex Offender Registry Check

The National Crime Information Center (NCIC) is an electronic clearinghouse of crime data that can be accessed by law enforcement agencies nationwide. The NCIC database includes 21 files (seven property files and 14 person files). The National Sex Offender Registry (NSOR) is one of the 14 person files that make up part of the NCIC database. The NSOR is a name-based file that contains records on individuals who are required to register in a jurisdiction’s sex offender registry.

The FBI fingerprint check will provide a person’s criminal history record information which may incorporate data from the NCIC NSOR when based upon positive fingerprint identification.

However, there may be a difference between the NCIC NSOR information associated with the FBI fingerprint check and the separate name-based NCIC NSOR check that is required by the CCDBG Act.



Why is it important to do a separate name-based check of the NCIC NSOR?

The FBI fingerprint check will provide a person’s criminal history record information which will incorporate data from the NCIC NSOR if associated with positive fingerprint identification. However, there are individuals in the NSOR who are not identified by solely conducting an FBI fingerprint search but may be identified through a name-based search of the NCIC NSOR.

Is the name-based NCIC NSOR check duplicative of the inter-state Sex Offender Registry check?

The NCIC NSOR may include certain state-based data which may not be included in a state’s own sex offender registry. Conversely, an individual may be listed in the state sex offender registry and not in the NCIC NSOR.

For example, some states have statutes that disallow the removal of offenders, regardless of offender status. In addition, federal, juvenile, and international sex offender records may be included in the NSOR; whereas, state laws may prohibit the use of this information in the state sex offender registry.

Thus, it is important to conduct a state sex offender registry check, and FBI Fingerprint check, and a name-based NCIC NSOR check to mitigate any gaps that may exist between these three sources.

The NCIC NSOR name-based check does NOT cover the in-state or inter-state sex offender registry check requirement.

A check of the National Sex Offender Public Website (NSOPW) does not satisfy the requirement to conduct a name-based check of the NCIC NSOR.

What are the differences between NCIC NSOR, the State Sex Offender Registry, and the National Sex Offender Public Website (NSOPW)?

NCIC NSOR	State Sex Offender Registry	NSOPW
<p>NCIC is an information system that provides law enforcement and criminal justice agencies with around-the-clock access to federal, tribal, state, and local crime data, including wanted or missing person records.</p> <p>The NCIC NSOR is one of 21 total files that is searchable by name, date of birth, and other biographic descriptors.</p>	<p>The in-state and interstate sex offender check is fingerprint optional.</p> <p>As a best practice, ACF encourages lead agencies to request sex offender information from a state’s non-public sex offender registry.</p>	<p>The NSPOW is a public registry of persons convicted of sex offenses.</p> <p>It includes most registered sex offenders. Note: Some juveniles and some tier 1 offenders are not listed on NSOPW.gov.</p> <p>NSPOW is searchable by name, jurisdiction, zip code, county (if provided by the jurisdiction), and city/town (if provided by the jurisdiction).</p>

How should States conduct an inter-state sex offender registry check when the responding State does not have a non-public registry?

As a best practice, ACF encourages lead agencies to request sex offender information from a state’s non-public sex offender registry. Outside of requesting information from a state’s non-public registry, lead agencies may conduct a search of the NSOPW at www.nsopw.gov.

The CCDBG Act and the CCDF Final Rule do not specify whether a search beyond the NSOPW is required for the interstate sex offender registry check requirement; therefore, this is an area of Lead Agency flexibility.

FBI Fingerprint Background Check Process

Is the FBI Fingerprint check duplicative of the search of the state criminal repository fingerprint check?

The CCDBG Act requires a search of both the FBI and the State criminal history record repositories. The FBI maintains a national criminal history record database which contains criminal history records from Federal, State, Tribal, and local agencies and is used by the FBI to facilitate interstate criminal history record exchange. The records contained within the FBI's database are based upon positive fingerprint identification and provide a link between those record systems maintained in each state and the FBI. However, there may be information in state databases that is not in the FBI database. In most cases, a search of both the state criminal history records and an FBI fingerprint check returns the most up-to-date record and better addresses instances where individuals are not forthcoming regarding their past residences, or crimes committed in a State in which they do not currently reside.

FBI Rap Back Services

What is rap back?

Many states have rap back services for their own records. A state's rap back program provides on-going notifications of any criminal history reported on an individual's record maintained by the state's criminal history record repository. Therefore, these notifications are specific to state-only activity, rather than activity that occurs in other states or the national level.

FBI Rap Back allows authorized agencies to receive on-going status notifications of criminal history reported to the FBI after the initial processing and retention of civil transactions. By using fingerprint identification to identify persons arrested and prosecuted for crimes, Rap Back provides a notice to noncriminal justice agencies regarding subsequent actions for enrolled individuals.

The CCDBG Act requires a check to be conducted for each staff member once every five years.

Although not a requirement, we encourage Lead Agencies to inquire with their SIBs regarding opportunities to enroll child care staff members in their state-based rap back programs as well as the FBI's Rap Back Program, to advise of possible changes in a staff member's criminal history record.

Unless the state or FBI Rap Back program(s) includes all the components of a comprehensive background check under the CCDBG Act and CCDF rule, the Lead Agency is responsible for ensuring that child care staff members complete all other components at least once every five years. In addition, FBI Rap Back **does not** cover the NCIC NSOR check.

Does a state have to repeat background checks every five years if the individual is enrolled in a rap back program?

The Lead Agency does not need to repeat checks for components that are covered by a rap back program but must continue to repeat checks for components that are not part of a rap back program (i.e. state Child Abuse and Neglect Registry and/or state Sex Offender Registry).

Lead Agencies are encouraged to enroll child care staff members in Rap Back programs. However, it

is important to differentiate between a **state-only rap back** program and the **FBI's Rap Back** service.

Will enrollment in the Federal FBI Rap Back service suffice for the CCDBG/CCDF background check requirement to conduct an FBI fingerprint check every five years for a child care staff member?

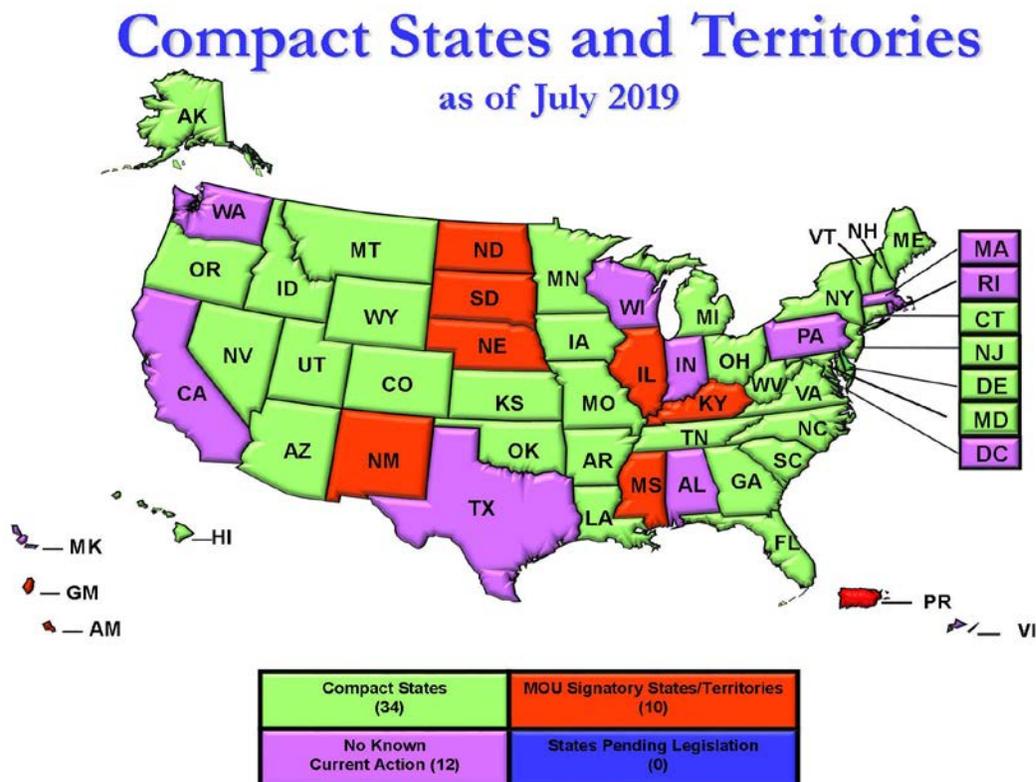
Yes. The FBI fingerprint check does not need to be repeated if the individual is enrolled in the Federal Rap Back service.

Will enrollment in the Federal FBI Rap Back service suffice for the requirement to conduct a name-based NCIC NSOR check every 5 years?

No, participation in the Federal Rap Back service **does not** fulfill the requirement to check the NCIC NSOR every five years. Lead Agencies will need to ensure a manual **name-based** check of the NCIC NSOR occurs at the five-year mark.

National Crime Prevention and Privacy Compact Act

Thirty-four states are Compact States, or states that have ratified the National Crime Prevention and Privacy Compact Act of 1998 to facilitate electronic information sharing for noncriminal justice purposes among the Federal Government and the states. The Compact allows signatory states to disseminate its criminal history record information to other states for noncriminal justice purposes in accordance with the laws of the receiving state. State Ratification of the Compact is a prerequisite to joining the National Fingerprint File Program (see below).



For the most up to date Compact States and Territories map visit: <https://www.fbi.gov/services/cjis/compact-council/maps>

National Fingerprint File (NFF) Program

The NFF is a database of fingerprints, or other unique personal identification information relating to an arrested or charged individual, which is maintained by the FBI to provide positive fingerprint identification of record subjects.

Only a state or territory that has ratified the Compact (a Compact State) may join the NFF program. A state becomes the sole maintainer and provider of its criminal records.

How does participation in the National Fingerprint File (NFF) ease the administrative burden of interstate background checks?

CCDF Background Check Components	States participating in NFF must complete:	States NOT participating in NFF must complete:
FBI Fingerprint Check	✓	✓
National Crime Information Center National Sex Offender Registry	✓	✓
In-State Criminal History Repository using fingerprints	✓ *Completed prior to FBI check	✓
Interstate Criminal History Repository in other states of residence for past 5 years	Only for non-NFF states	Only for non-NFF states
State Sex Offender Registry, in state and other states of residence for past 5 years	✓	✓
State Child Abuse and Neglect Registries, both in state and in any other previous states of residence during the past 5 years	✓	✓

*States participating in the NFF Program are required to conduct a search of the state repository prior to forwarding the fingerprints to the FBI.

A state which participates in the NFF Program is required to provide its fingerprint-based **criminal history record information** for all purposes, unless the information is sealed as defined in the National Crime Prevention and Privacy Compact Act of 1998. Thus, when a national fingerprint-check is conducted, any request for an NFF state-maintained record will result in the NFF state's repository being queried directly for its **criminal history record information**. As such, the FBI ceases to maintain duplicate **criminal history data** for these states.

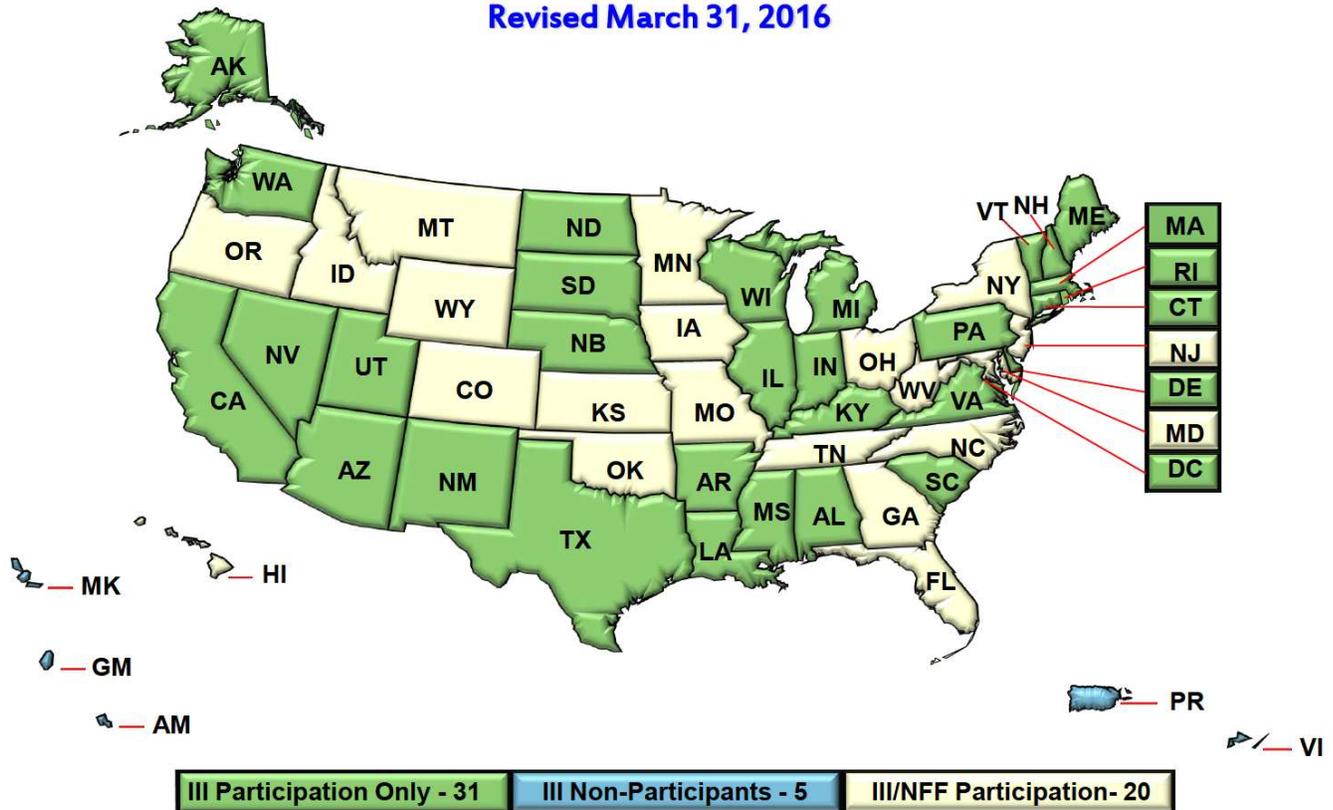
We have determined that an FBI fingerprint check also satisfies the requirement to perform an interstate check of another state's **criminal history record** repository if the responding state (where the child care staff member has resided within the past five years) participates in the NFF program.

It is unnecessary to conduct both the FBI fingerprint check and the search of an NFF state's **criminal history record** repository ([CCDF-ACF-PIQ-2017-01](https://www.ccdp.acf-piq-2017-01)). However, other background check components must still be completed, including the state child abuse and neglect registry, the state sex offender registry, and the NCIC NSOR name-based check.

Is my state an NFF state?

Interstate Identification Index (III) National Fingerprint File (NFF)

Revised March 31, 2016



For the most up to date III/NFF Participation map visit: <https://www.fbi.gov/services/cjis/compact-council/maps>

Other Resources

Lead Agencies may be interested in the following additional resources to help understand the Comprehensive Background Checks:

Contact your State Identification Bureau (SIB):

www.fbi.gov/about-us/cjis/identity-history-summary-checks/state-identification-bureau-listing

CCDF-ACF-PIQ-2017-01, Clarification on the CCDBG Act background check requirements and health and safety training. <https://www.acf.hhs.gov/occ/resource/ccdf-acf-piq-2017-01>

CCDF-ACF-PI-2017-03, Guidance on Implementing the National Crime Information Center National Sex Offender Registry Background Check Requirement in the Child Care and Development Block Grant (CCDBG) Act.
https://www.acf.hhs.gov/sites/default/files/occ/ccdf_acf_pi_2017_03.pdf

Child Care and Development Fund Final Rule Frequently Asked Questions, Background Checks
<https://www.acf.hhs.gov/occ/resource/ccdf-final-rule-faq>

Criminal Background Check Requirements: CCDBG Act Background Check Requirements
<https://childcareta.acf.hhs.gov/resource/criminal-background-check-requirements-ccdbg-act-background-check-requirements>

Fingerprint Considerations and Resources Brief.

https://childcareta.acf.hhs.gov/sites/default/files/public/downloads/STAM2018_CBC_FingerprintConsiderationsAndGuidance.pdf