ADMINISTRATION FOR CHILDREN & FAMILIES
Office of Child Care

CCDBG BACKGROUND CHECK AND MONITORING REQUIREMENTS FOR CCDF TRIBAL LEAD AGENCIES

TOPIC: CCDF PLAN GUIDANCE

PURPOSE

- To review information contained in the TA Resource: "Approved Methods for the FBI Fingerprint Component of the Criminal Background Checks."
- To identify alternative approaches that are aligned with the requirements of the CCDBG Act and the CCDF regulations yet flexible enough to be culturally appropriate and cost-effective for Tribal communities.
- To provide an overview of how to describe these alternative approaches/methods in the Tribal CCDF Plan.
- To highlight opportunities for Tribal – State partnership.

OVERVIEW

There are two provisions in the Final Rule that apply to all Tribes, unless the Tribe describes an alternative in the CCDF Plan:

- Conducting background checks at § 98.43
- Monitoring of child care providers and facilities at § 98.42(b)(2)

Tribal Background Check Requirement Highlights

Applicability of Rules

- Tribal Lead Agencies
- Licensed, regulated, and registered providers*
- CCDF providers*
- Current and prospective staff members*
  - Including those employed before 11/19/2014 (date of enactment)

*Except those related to all children in care.

Individuals Subject to Background Checks

- Those employed by a provider for compensation
- Contracted employees and self-employed
- Those who care for, supervise, or have unsupervised access to children in care
- Adults living in a family child care home

Tribes may describe an alternative background check approach, subject to OCC approval.

Required National and State-based Background Checks

FBI Check + Current State of Residence

- National FBI Fingerprint Criminal History Check
- In-State Criminal History Check
- NCIC National Sex Offender Registry Check
- In-State Sex Offender Registry Check
- In-State Child Abuse and Neglect Registry Check

Fingerprint Required:
- FBI Check
- In-State Criminal

Fingerprint Optional:
- In-State SOR
- Out-of-State SOR
- Out-of-State Criminal

Name Based:
- NCIC NSOR
- All CAN Checks

Previous State(s) of Residence for Last 5 Years

- State Criminal History Check
- State Sex Offender Registry Check
- State Child Abuse and Neglect Registry Check

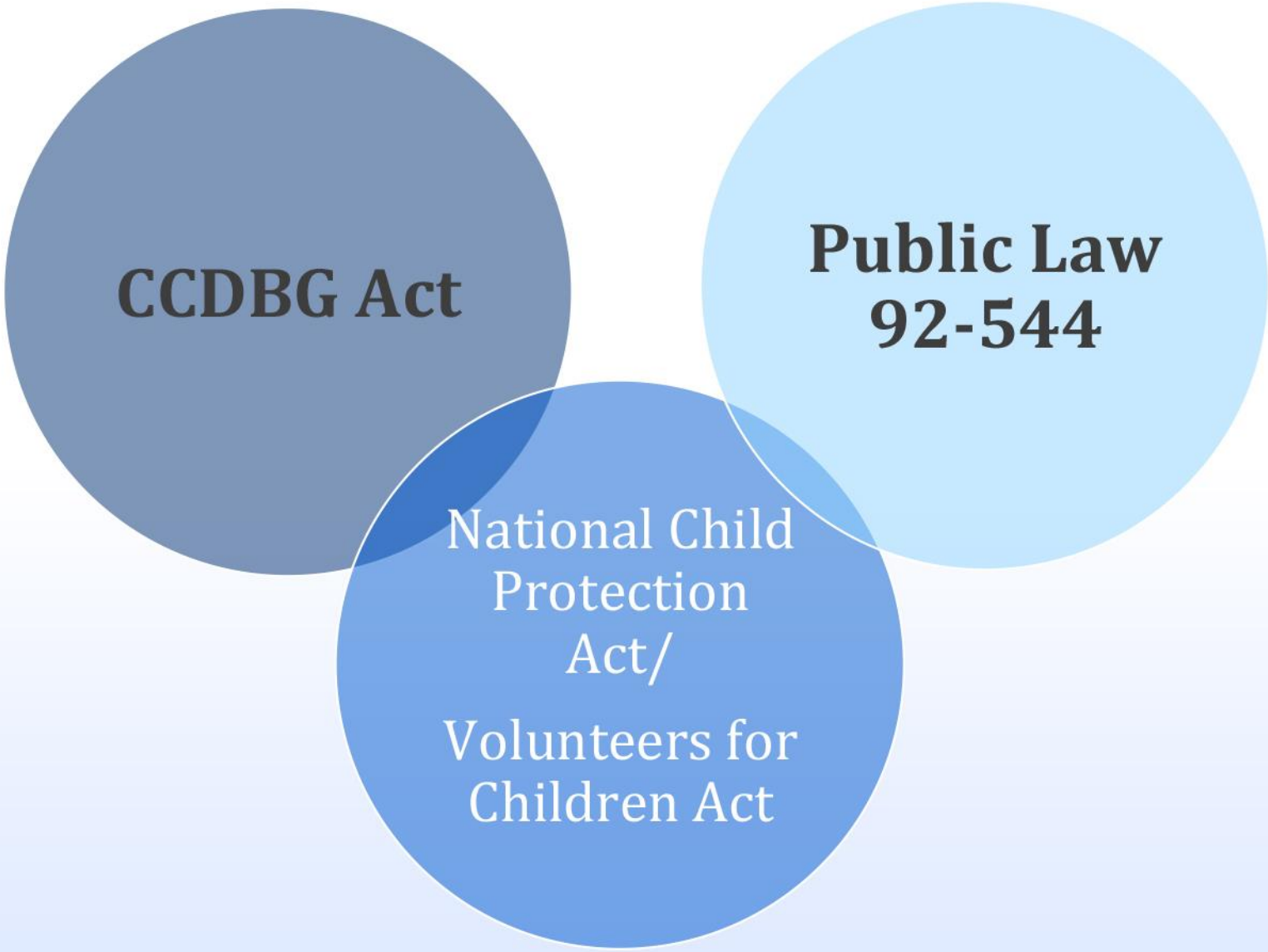
The FBI fingerprint check is national, why doesn't it cover the out-of-state background check requirements?

Only offenses/records with a valid fingerprint make it into the national FBI database.
Checking the individual State records helps mitigate gaps between the State and FBI records.

Background checks are required prior to employment and at least every 5 years.
Background checks should meet a standard 45-day or less turnaround time.
Individuals may start work once the FBI or State fingerprint check is returned as satisfactory, but must be continually supervised until a determination is made on all checks.

Revised: 03/12/2019

- Lead Agencies must act under an authority granted by a Federal statute.
- States, may choose among three federal laws that grant authority for FBI background checks for child care staff.
- These three laws give States the authority to conduct FBI fingerprint checks, but none of them specifically grant that same authority to Tribes.



Authority

- The CCDBG Act does not provide explicit authority for Tribes to request FBI fingerprint checks for all child care staff.

Access

- Even when a Tribe has authority to request FBI fingerprint checks (which they may have under another statute), they must also have access to relevant systems in order to receive the necessary information.

FEDERAL AUTHORITY FOR FBI CHECK (SUMMARY)

- Under the Indian Child Protection and Family Violence Prevention Act, Tribes have the authority (and requirement) to conduct an FBI fingerprint check for individuals who are being considered for employment by the Tribe in positions that have regular contact with, or control over, Indian children.

OR

- Tribes will need to work with States to complete the FBI background check using a State's authority under an approved Public Law 92–544 statute or under procedures established pursuant to the National Child Protection Act/Volunteers for Children Act (NCPA/VCA).

- Authorizes and requires Tribes to conduct checks for persons being considered for employment by Tribes (who have contact or control over Indian children). Fingerprints may be submitted using any of the approved methods.

- Tribes must be authorized by the State to submit fingerprints through State central record repository. If state statute permits (and approved by FBI OGC), Tribes can request checks be performed by State.

- Requires all Head Start programs to conduct background checks for each employee, consultant or contractor (fingerprints may be submitted using any of the approved methods).

- States may designate the Tribe as a qualified entity in order to conduct fingerprint check on behalf of the Tribe (through the State central record repository).

Methods for Accessing FBI Fingerprint Check

- ***Hard-Copy Fingerprint Cards to the FBI***
- ***State Identification Bureau (SIB)***
- ***FBI-Approved Channeler***
- ***Department of Justice Tribal Access Program (TAP)***

REMAINING CHALLENGES

- Tribes depend on the ability, authority, and willingness of the State to provide the necessary authority and access to conduct components of the background check.
- OCC recognizes that there may be particular challenges for Tribes due to the unique nature of State-Tribal relationships.

ALTERNATIVE APPROACHES

- Implementing all components of the CCDBG background check requirements present difficulties for Tribes, especially for those that do not currently have a partnership with the State.

- **Tribes should coordinate with States as much as possible in order to obtain access to the FBI and State databases.** However, without an authorizing statute, we are allowing Tribes to describe an alternative background check approach in their Plans, subject to ACF approval, and must describe an adequate justification for the approach (see final rule § 98.83(d)(3))

AREAS OF TRIBAL FLEXIBILITY FOR CERTAIN COMPONENTS OF THE CCDBG BACKGROUND CHECK REQUIREMENT

FBI Fingerprint Check

- Authority: 4 laws discussed earlier
- Access: SIB, TAP, FBI Channeler, Hard Copy Cards
- **Alternatives:** Name-based checks of State or Tribal record management systems if fingerprint checks are not available or feasible

NCIC NSOR Check

- Since there is no Federal authority under the CCDBG Act for Tribes to access information through the NCIC NSOR, OCC will consider approaches that do not include accessing the NCIC NSOR.

State Checks

- **Alternatives:** OCC will consider approaches that include checks of Tribal criminal, sex offender, and/or child abuse and neglect registries
- OCC will consider approaches that include checks of databases of third party or private entities

OTHER AREAS OF FLEXIBILITY FOR TRIBES

Checks for Household Members

- Requiring all members of the household to complete all 5 components of the check could be burdensome for family and the Tribal Lead Agency.
- OCC will consider an alternative strategy for conducting background checks on adults in a family child care home.

Disqualifying Crimes

- OCC will consider alternative approaches that include individualized review processes for determining employment eligibility for those convicted of crimes.

Lifetime Ban

- OCC will consider alternative approaches that include less than a lifetime ban for offenses that are not against children.

OTHER AREAS OF FLEXIBILITY FOR TRIBES (CONT'D)

Background Check Results

- OCC will consider alternative approaches that allow some information to be shared with the provider
- Note: This is subject to limitations in FBI policy and State or Tribal requirements which may prevent the release of information.

45 Day Timeframe

- In many cases, Tribes must rely on State systems, which may extend the background check process.
- May request flexibility around the requirement to carry out background check requests within 45 days.
- Tribes may make employment eligibility decisions in the event that not all background check components are completed with 45 days.

Provisional Hire

- OCC will consider alternative approaches that allow for staff members to be provisionally hired once the background check request has been submitted, but prior to receiving results of the check.

EXPECTATIONS

- OCC expects Tribes to comply with the background check requirements to the best of their abilities, in accordance with the intent of the CCDBG Act and CCDF regulations.
- OCC will not approve approaches with blanket exemptions or waivers to the background check requirements. We expect to allow some flexibility around the components of a comprehensive background check, particularly when there are jurisdictional issues between States and Tribes or when conducting background checks on other adults residing in family child care homes. However, Tribal Lead Agencies cannot use this flexibility to bypass the background check requirement altogether.

RESTRICTIONS

OCC will not approve:

- alternative approaches that do not include the criminal background check required by the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630) (25 U.S.C. 3201 *et seq.*) for all child care staff employed by a Tribe (*e.g.*, child care staff at a Tribally-operated center).
- alternative approaches that do not include some attempt to determine criminal history of all child care staff.
- alternative approaches that do not include some attempt to determine whether all child care staff members are registered sex offenders or have a history of child abuse and neglect.

RESTRICTIONS (CONT'D)

OCC will not approve:

- alternative approaches that require checks to be completed less frequently than 5 years.
- alternative approaches that do not include any background checks for other adults in a family child care home (note: there is flexibility to choose which components of the background check will apply to these individuals).
- alternative approaches that change the definition of which child care staff member must receive a check.

RESTRICTIONS (CONT'D)

OCC will not approve:

- alternative approaches that allow employment for individuals who have been convicted of crimes against children.
- alternative approaches that that allow additional flexibility around the appeals process described at 45 CFR 98.43(e)(3).
- alternative approaches that that charge a fee to providers or to staff that exceed the actual costs for processing and administration of the background checks, as is prohibited by 45 CFR 98.43(f).

ALTERNATIVE APPROACHES FOR TRIBES TO MEET CCDBG MONITORING REQUIREMENTS

MONITORING REQUIREMENTS OVERVIEW

- In the final rule, all Tribes, regardless of allocation size, are subject to the monitoring requirements at § 98.42(b)(2) that require annual inspections of child care providers and facilities that receive CCDF funds.

REASONS FOR FLEXIBILITY

- Monitoring requirements in the Act and additional requirements in the Rule may not be culturally appropriate or financially feasible for some Tribal communities.
- OCC will allow Tribal Lead Agencies to describe an alternative monitoring approach in their Plans, subject to ACF approval, and must provide adequate justification for the approach.

EXAMPLES OF ALTERNATIVE APPROACHES

Collaborative Monitoring

- May propose an alternative monitoring approach that includes partnering with other agencies that are already conducting monitoring visits such as State Lead Agencies, State licensing agencies, State QRIS, other Tribal departments, Indian Health Services, Office of Head Start, Child and Adult Care Food Program.

Announced Inspections

- May propose an alternative monitoring approach that requires that all inspections be announced (for both licensed and license-exempt providers).

Differential Monitoring

- May propose an alternative monitoring approach that investigates a subset of requirements to determine compliance, provided that the content covered during each inspection visit is representative of the health and safety requirements.

EXAMPLES OF ALTERNATIVE APPROACHES (CONT'D)

On-site/ Annual

- May propose alternative approaches that include less than annual onsite inspections. In this case, the Tribe must propose another type of non-onsite annual monitoring that will be performed (for example, a virtual check-in and/or a required data submission).

Sampling

- May propose alternative approaches that rely on a sampling of providers.
- Ensure that all providers be eligible for inspection at any time, and that every provider would receive a full onsite inspection periodically.

Providers in the Child's Home

- May propose alternative approaches for care provided in the child's home.
- May choose to monitor in-home providers in the child's home on basic health and safety requirements such as training and background checks.
- May choose to focus on health and safety risks that pose imminent danger to children in care
- Culturally appropriate options: Notifying parents of monitoring protocols, obtaining parental permission prior to entering home for inspection, meeting with providers in another location outside of child's home.

RESTRICTIONS

OCC will not approve:

- alternative approaches that bypass the monitoring requirements altogether.
- alternative approaches that rely exclusively on the use of self-certification by the provider to assess provider compliance with standards.

JUSTIFICATION FOR AN ALTERNATIVE APPROACH

Section 2.2 & 2.3 of Tribal CCDF Plan

Description of Issues and Barriers	• Tribal Lead Agencies should describe the issues/barriers that are preventing them from conducting the required background checks or monitoring inspection.
Description of Alternative Approach	• Outline an alternative strategy/approach (note: OCC will not approve any alternative approaches that include blanket exemptions or waivers to any of the criminal background check requirements or monitoring inspection requirements).
Justification of Alternative Approach	• Provide a justification for the proposed alternative strategy/approach and describe how it is comprehensive and ensures the health and safety of children in child care.

TRIBAL - STATE COORDINATION

- OCC encourages Tribal - State partnerships and agreements, whenever possible, in order to meet the requirements of the Act.
- See "State-Tribal Coordination Regarding CCDF Requirements **CCDF-ACF-PIQ-2018-01,** August 15, 2018

OCC PROGRAM UPDATES & ANNOUNCEMENTS

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Thank You