



Criminal Background Check Requirements

The CCDBG Act of 2014 requires states and territories to have in effect requirements, policies and procedures to conduct criminal background checks for all child care staff members (including prospective staff members) of all child care programs that are 1) licensed, regulated, or registered under state/territory law; or, 2) all other providers eligible to deliver CCDF services (e.g., license-exempt CCDF eligible providers) (45 CFR 98.43(a)(1)(i)).

Background check requirements apply to any staff member who is employed by a child care provider for compensation, including contract employees and self-employed individuals; whose activities involve the care or supervision of children; or who has unsupervised access to children (45 CFR 98.43(2)). For FCC homes, this requirement includes the caregiver and any other adults residing in the family child care home who are age 18 or older (45 CFR 98.43(2)(ii)(C)). This requirement does not apply to individuals who are related to all children for whom child care services are provided (45 CFR 98.43(2)(B)(ii)).

A child care provider must submit a request to the appropriate state/territory agency for a criminal background check for each child care staff member, including prospective staff members, prior to the date an individual becomes a child care staff member and at least once every five years thereafter (45 CFR 98.43(d)(1) and (2)). Under provisional employment requirements, a prospective child care staff member may not begin work until one of the following results have been returned as satisfactory: either the FBI fingerprint check or the search of the state/territory criminal registry or repository using fingerprints in the state/territory where the staff member resides. The child care staff member must be supervised at all times pending completion of all the background check components (45 CFR 98.43(d)(4)).

Background Check Components

A comprehensive criminal background check includes eight components as specified in 45 CFR 98.43(b)(2) of the CCDF regulations. They include three in-state background checks, two national background checks, and three interstate background checks as shown in the following table taken from section 5.4 of CCDF FY 2019 – 2021 CCDF Plan Preprint.

Background Check Components	In-State	National	Inter-State
1. Criminal registry or repository using fingerprints in the current state of residence	x		
2. Sex offender registry or repository check in the current state of residence	x		
3. Child abuse and neglect registry and database check in the current state of residence	x		
4. FBI criminal background check using fingerprints		x	
5. National Crime Information Center (NCIC) National Sex Offender Registry (NSOR)		x	
6. Criminal registry or repository in any other state where the individual has resided in the past 5 years, with the use of fingerprints being optional			x

7. Sex offender registry or repository in any other state where the individual has resided in the past 5 years			x
8. Child abuse and neglect registry and database in any other state where the individual has resided in the past 5 years			x

Implementation Timelines

CCDBG reauthorization established September 30, 2017 as the initial due date for implementing the background check requirements. Due to significant challenges related to implementing the requirements, all states applied for and received extensions through September 30, 2018.

Even with this one-year extension, states needed more time to implement the most challenging aspects of the checks. Therefore, the Office of Child Care (OCC) informed states that they had the opportunity to request additional time-limited waivers/extensions of up to two years, in one-year increments (i.e., potentially through September 30, 2020) for the interstate and NCIC NSOR checks and to clear the backlog of existing providers. The granting of these waivers was contingent on meeting milestones requiring specific parts of the checks being in place for new staff (i.e., FBI fingerprint check and in-state checks).

Section 5.4 FY 2019 – 2021 CCDF Plan Preprint

Components	New (Prospective) Staff	Existing Staff
1. Criminal history registry or repository using fingerprints in the current state of residence	Milestone/prerequisite for waiver	Possible time limited waiver for current (existing) staff
2. Sex offender registry or repository check in the current state of residence	Milestone/prerequisite for waiver	Possible time limited waiver for current (existing) staff
3. Child abuse and neglect registry and database check in the current state of residence	Milestone/prerequisite for waiver	Possible time limited waiver for current (existing) staff
4. FBI fingerprint check	Milestone/prerequisite for waiver	Possible time limited waiver for current (existing) staff
5. National Crime Information Center (NCIC) National Sex Offender Registry (NSOR)	Possible time limited waiver for: <ul style="list-style-type: none"> establishing requirements and procedures; and/or conducting checks on all new (prospective) staff; and/or conducting checks on current (existing) staff 	
6. Criminal history registry or repository in any other state where the individual has resided in the past 5 years, with the use of fingerprints	Possible time limited waiver for: <ul style="list-style-type: none"> establishing requirements and procedures; and/or conducting checks on all new (prospective) staff; and/or conducting checks on current (existing) staff 	
7. Sex offender registry or repository in any other state where the individual has resided in the past 5 years	Possible time limited waiver for: <ul style="list-style-type: none"> establishing requirements and procedures; and/or conducting checks on all new (prospective) staff; and/or conducting checks on current (existing) staff 	

Components	New (Prospective) Staff	Existing Staff
8. Child abuse and neglect registry and database in any other state where the individual has resided in the past 5 years	Possible time limited waiver for: <ul style="list-style-type: none"> • establishing requirements and procedures; and/or • conducting checks on all new (prospective) staff; and/or • conducting checks on current (existing) staff 	

Nationally, 35 states met the milestones and received waivers/extensions for more time to implement the interstate and/or NCIC NSOR checks and/or clear the backlog of existing providers. Two states met all requirements requested in the plan. Four states received a notice of possible penalty because they did not meet the FBI fingerprint check milestone. Ten additional states that did not meet the milestones for all required providers were placed on a corrective action plans.

OCC also provided states meeting certain conditions the opportunity to apply for time-limited waivers/extensions on the provisional employment requirements. A number of states received waivers/extensions or were placed on corrective action plans related to the provisional employment requirements.

Implementation Checklist

This checklist contains specific questions concerning key planning steps Lead Agencies are considering, or have taken, to implement comprehensive criminal background checks. It is organized into five sections. Each question includes space for Lead Agencies to record notes and planning steps that are in process.

- A. State and Local Regulatory Authority:** This section reviews Lead Agency statutory and regulatory authority needed to conduct criminal background checks.
- B. Organizational Structure:** Using existing infrastructure is critical to the timely and cost-effective implementation of the CCDBG requirements. This section reviews how Lead and other agency responsibilities can be aligned within existing organizational structures.
- C. Disqualifying Crimes and Offenses:** The CCDBG Act established a uniform list of disqualifying crimes but does not prevent Lead Agencies from adding other crimes, offenses or activities that present risks to the health and well-being of children.
- D. Volume Estimates and Staffing:** States will need to estimate the volume of background check requests to ensure the availability of adequate staffing resources and infrastructure. This section identifies steps Lead Agencies can take to project the initial and ongoing volume of background checks and reduce the volume of FBI and interstate criminal background checks that need to be completed.
- E. Central Background Check Registry:** Lead Agencies may need a central registry to record current and historical information on criminal, child abuse and neglect, and sex offender findings for child care staff members and prospective staff members. This section addresses some of the key questions concerning the modification or development of a centralized background check registry.

Section A: State and Local Regulatory Authority	Y/N	Notes and Planning Steps
1. Has the Lead Agency established regulatory authority to require background checks for all staff members and prospective staff members of CCDF providers as well as licensed, regulated or registered child care providers regardless of whether the provider receives CCDF funds?		

Section A: State and Local Regulatory Authority	Y/N	Notes and Planning Steps
2. Has the Lead Agency established regulatory authority to require background checks for individuals employed by child care providers, contractors and others whose activities involve the care or supervision of children, or who have unsupervised access to children?		
3. Has the Lead Agency established regulatory authority to require background checks for adults, age 18 and older, not related to all children in care and residing with a family child care home provider?		
4. Has the Lead Agency established regulatory authority to disqualify individuals that refuse to consent to criminal background checks or knowingly make materially false statements in connection with background checks?		
5. Has the Lead Agency established regulatory authority to disqualify a child care provider from receiving CCDF assistance if they employ a staff member who is ineligible for employment?		
6. Does the Lead Agency have regulatory authority to respond to interstate background checks?		
7. If your state is a closed record state, has the Lead Agency resolved regulatory issues that would prohibit sharing criminal, sex offender and child abuse and neglect information with other states for CCDF purposes?		
8. Has your state established regulatory authority to require the results of either the FBI fingerprint check or in-state fingerprint criminal check before the staff member may begin working, and to require that the staff member be supervised at all times until completion of all background check components?		
Section B: Organizational Structure		Notes and Planning Steps
1. Has the Lead Agency established a process for conducting fingerprint searches of the FBI Next Generation Identification (NGI) system and the NCIC National Sex Offender Registry (NSOR)?		
2. What state agency is responsible for conducting in-state criminal background checks and interstate criminal background checks when a child care staff member resided in another state within the past five years?		
3. Has the Lead Agency established a process for providers to submit background check requests and disclosure authorization forms for staff members and prospective staff members?		

Section B: Organizational Structure		Notes and Planning Steps
4. Do child care staff members and prospective staff members have adequate access to fingerprint locations needed to complete in-state and FBI criminal background checks?		
5. Has the Lead Agency considered using Live Scan fingerprint devices to improve the quality of fingerprints and to reduce the time it takes for the FBI to respond to background check submissions?		
6. Has the Lead Agency developed outreach and education strategies to inform and seek input from parents, providers, and the public on implementing the child care background check requirements?		
Section C: Disqualifying Crimes and Offenses	Y/N	Notes and Planning Steps
1. Has the Lead Agency reviewed their state’s list of disqualifying crimes and offenses, and developed a standardized list of disqualifying crimes that includes the felony and violent misdemeanors offenses specified in section 98.43(c)(1) of the CCDF regulations?		
2. Does the Lead Agency’s list of disqualifying crimes include criminal offenses not specifically listed in the Act, such as an individual’s overall criminal history or record of pending arrests or criminal proceedings?		
3. Does the Lead Agency disqualification policy appropriately consider the fitness of individuals that may present potential risks to the health and well-being of children?		
4. Has the Lead Agency established fair and reasonable disqualification practices that consider mitigating circumstances for child care staff members who committed crimes that do not require mandatory disqualification, such as individuals who committed non-violent or drug-related crimes in their youth and who have a long history of no additional criminal activity?		
5. Does the Lead Agency have a process for individuals to appeal the accuracy or completeness of background check findings?		
Section D: Volume Estimates and Staffing	Y/N	Notes and Planning Steps
1. Has the Lead Agency estimated the number of current child care staff members for whom providers need to submit background checks, and provided those estimates to the partnering Criminal Justice agency to coordinate ways to address increases in volume/timeframes?		

Section D: Volume Estimates and Staffing	Y/N	Notes and Planning Steps
2. Has the Lead Agency developed an initial workload assessment and distribution strategy for processing the initial volume of background checks for existing child care staff members?		
3. Has the Lead Agency estimated the annual volume of criminal background checks following initial implementation and provided those estimates to the partnering Criminal Justice agency to coordinate ways to address the increased volume and potential costs and positions allocated to cover the increased workload?		
4. Does your state currently enroll child care staff members in the FBI’s Rap Back Service to reduce the volume of background checks that must be repeated every five years? The FBI retains the staff member’s fingerprints when you subscribe to Rap Back and automatically notifies states of new arrests or criminal activity that match the fingerprints.		
5. Has your state considered enrolling in the FBI National Fingerprint File (NFF) program to reduce the volume of interstate criminal background checks that need to be completed? An FBI fingerprint check satisfies the requirement to perform an interstate check of another state’s criminal history record repository if the responding state participates in the NFF program because the FBI check will search the NFF state’s database directly.		
Section E: Central Background Check Registry	Y/N	Notes and Planning Steps
1. Does the Lead or other State/Territory agency have, or need to develop a central registry that captures current and historical demographic and criminal background check information on individuals employed in the child care workforce?		
2. Does the existing central registry capture the data required for initiating criminal background checks and informing providers and/or individuals when background checks need to be repeated?		
3. Does the central registry generate a notice of the results of the background check to the child care provider without revealing any disqualifying crime or other related information regarding the individual?		
4. Does the central registry generate a notice of the results of the background check to the staff member or prospective staff member that includes information related to each disqualifying crime in a report and information on the appeal process?		