



NATIONAL CENTER ON
Subsidy Innovation and Accountability



CRIMINAL BACKGROUND CHECK REQUIREMENTS (TRIBAL)

CCDBG ACT BACKGROUND CHECK REQUIREMENTS

AUGUST 2018

WELCOME AND INTRODUCTIONS

Melody Redbird-Post, Project Director

National Center on Tribal Early Childhood Development

Leigh Ann Bryan, TA Lead

National Center on Subsidy Innovation and Accountability

AGENDA

- Tribal Requirements for Criminal Background Checks
- Detailed Criminal Background Check Requirements Review
- Policy Clarifications
- FBI Presentation
- Q&A



TRIBAL REQUIREMENTS FOR CRIMINAL BACKGROUND CHECKS

Do criminal background check requirements differ for Tribal Lead Agencies?

- All Tribal Lead Agencies are subject to the same CCDF background check requirements as states and territories, regardless of allocation size
 - Large Allocations (Over \$1 Million)
 - Medium Allocations (\$250,000 - \$1 Million)
 - Small Allocations (Under \$250,000)
- *Exception:* The Final Rule allows Tribes the flexibility to propose an alternative background check approach in their CCDF plans
 - If an alternative approach is proposed, it is subject to ACF approval



QUESTIONS?



Background Check Requirements Highlights

Applicability of Rules

- **State, Territorial and Tribal Lead Agencies**
- **Licensed, regulated, and registered providers**
 - Whether or not they receive CCDF funds
- **License-exempt CCDF providers**
 - Except those related to all children in care
- **Current and prospective staff members**
 - Including those employed before 11/19/2014 (date of enactment)

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
- Those (adults) living in a family child care home

Required National and State-based Background Checks

FBI Check + Current State of Residence

National FBI Fingerprint Criminal History Check

In-State Criminal History 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

NCIC National Sex Offender Registry Check

In-State Sex Offender Registry Check



In-State Child Abuse and Neglect Registry Check

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.

BACKGROUND CHECK REQUIREMENTS

The background check requirements are broken into 3 primary categories:

- **National**
 - This refers to national checks that must be conducted in addition to the state-based checks
 - There are **TWO** required national checks
- **In-state**
 - This refers to the current state/territory/tribe of residence (employment) of the individual or prospective individual
 - There are **THREE** required in-state checks
- **Inter-state (or out-of-state)**
 - This refers to any and all states/territories/tribes where the individual or prospective individual has resided within the previous 5 years
 - There are **THREE** required inter-state checks

| National background checks: | In-state background checks: | Inter-state background checks: |
|----------------------------------------------------------|------------------------------------------------------|-------------------------------------------------------|
| 1. National FBI criminal history check, with fingerprint | 3. In-state criminal history check, with fingerprint | 6. Inter-state criminal history check |
| 2. NCIC National sex offender registry (NSOR) check | 4. In-state sex offender registry check | 7. Inter-state sex offender registry check |
| | 5. In-state child abuse and neglect registry check | 8. Inter-state child abuse and neglect registry check |

All five of these checks must be performed for all designated individuals

All three of these checks must also be performed for each additional state where the individual has resided within five years

All checks must meet a 45-day or less turnaround time

BACKGROUND CHECK REQUIREMENTS (CONT'D)

#1 – National FBI Criminal History Check

- The national FBI criminal history check is the first of two national checks that must be completed, in addition to the three in-state (state-based) checks
- It is *required* that this check be completed *with* the use of a fingerprint
- This national check *does not* cover the in-state or inter-state criminal history check because there could be state crimes that don't appear in the national repository



BACKGROUND CHECK REQUIREMENTS (CONT'D)

#2 – NCIC National Sex Offender Registry

- The NCIC national sex offender registry check is the second of two national checks that must be completed, in addition to the three in-state (state-based) checks
- This is a name-based search
- Searching general public facing sex offender registries *does not* satisfy this requirement
- This national check *does not* cover the in-state or inter-state sex offender registry check requirements
- Must be performed by law enforcement



BACKGROUND CHECK REQUIREMENTS (CONT'D)

#3 – In-state Criminal History Check

- The in-state criminal history check is the first of three in-state, state-based checks that must be completed, in addition to the national checks and inter-state checks, when applicable
- It is *required* that this check be completed *with* the use of a fingerprint
- Searching a general public facing judicial website *does not* satisfy this requirement
- This state-based check must be completed in addition to the national FBI criminal history check to mitigate any gaps that may exist between the two sources



BACKGROUND CHECK REQUIREMENTS (CONT'D)

#4 – In-state Sex Offender Registry Check

- The in-state sex offender registry check is the second of three in-state, state-based checks that must be completed, in addition to the national checks and inter-state checks, when applicable
- It is *optional* to use a fingerprint to conduct this check
- This state-based check must be completed in addition to the national NCIC sex offender registry check to mitigate any gaps that may exist between the two sources



BACKGROUND CHECK REQUIREMENTS (CONT'D)

#5 – In-state Child Abuse and Neglect Registry Check

- The in-state child abuse and neglect registry check is the third of three in-state, state-based checks that must be completed, in addition to the national checks and inter-state checks, when applicable
- This is a name-based search



BACKGROUND CHECK REQUIREMENTS (CONT'D)

#6 – Inter-state Criminal History Check

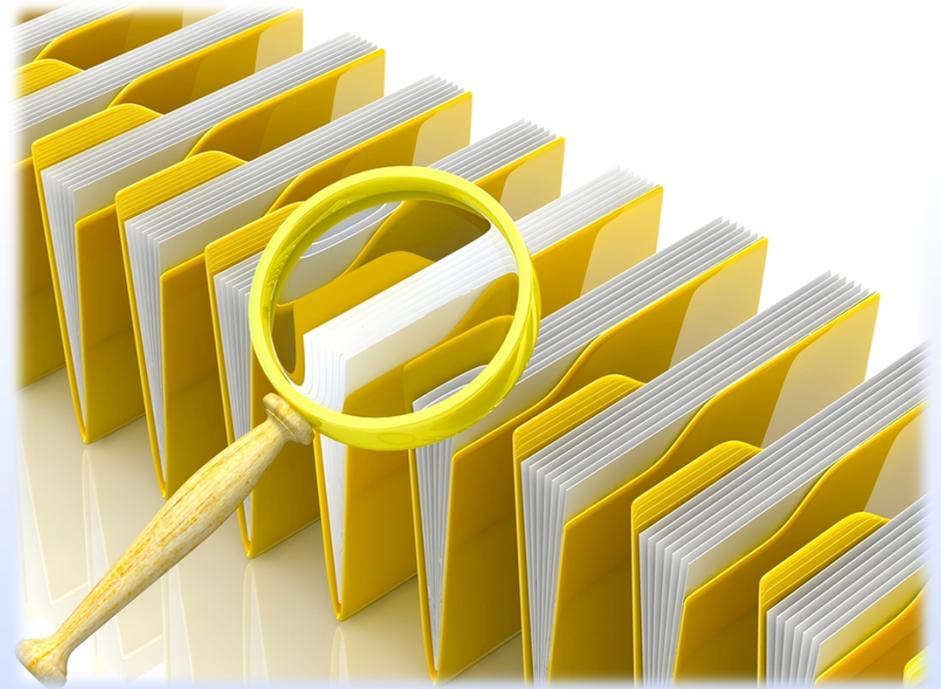
- The inter-state criminal history check is the first of three inter-state, state-based checks that must be completed, in addition to the national checks and in-state checks
- It is *optional* to use a fingerprint to conduct this check
- Searching a general public facing judicial website *does not* satisfy this requirement
- This state-based check must be completed in addition to the national FBI criminal history check to mitigate any gaps that may exist between the two sources



BACKGROUND CHECK REQUIREMENTS (CONT'D)

#7 – Inter-state Sex Offender Registry Check

- The inter-state sex offender registry check is the second of three inter-state, state-based checks that must be completed, in addition to the national checks
- It is *optional* to use a fingerprint to conduct this check
- This state-based check must be completed in addition to the national NCIC sex offender registry check to mitigate any gaps that may exist between the two sources



BACKGROUND CHECK REQUIREMENTS (CONT'D)

#8 – Inter-state Child Abuse and Neglect Registry Check

- The inter-state child abuse and neglect registry check is the third of three inter-state, state-based checks that must be completed, in addition to the national checks
- This is a name-based search



APPLICABILITY OF BACKGROUND CHECK REQUIREMENTS TO CHILD CARE PROVIDERS

Simply put, applicability of requirements identifies which provider types are required to adhere to the background check guidelines for current and prospective employees.

This table illustrates which provider types must comply and those that are exempt from the background check requirements.

| These Providers Must Comply: | These Providers Do Not Have To Comply: |
|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| All licensed, regulated or registered providers* (except relatives caring for only related children) | License-exempt who do NOT receive CCDF funds |
| Any provider who receives CCDF funds (except relatives caring for only related children) | Relative providers, regardless of whether or not they receive CCDF funds |

** States/territories/tribes have the flexibility to determine which providers are considered licensed, regulated, or registered.*

APPLICABILITY OF BACKGROUND CHECK REQUIREMENTS TO CHILD CARE STAFF MEMBERS

Individuals subject to background checks refers to all current and prospective staff employed by a provider who meets the applicability of background check requirements, as previously described, AND who meet at least ONE of the descriptions illustrated in the table.

These Individuals Are Subject To Background Checks*:

Any individual employed by a provider for compensation

Any individual who is either a contracted employee or self-employed

Any individual who cares for, supervises or has unsupervised access to children in the child care setting

Any individual who is an adult (18+ years old) living in a family home provider

** When the provider meets the applicability requirements*

DISQUALIFYING CRIMES

When is a staff member ineligible for employment by a child care provider?

- Refuses to consent to the criminal background check
- Knowingly makes a materially false statement in connection with a criminal background check
- Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry
- Has been convicted of a felony listed at §98.43(c)(1)(iv)
- Has been convicted of a violent misdemeanor committed as an adult against a child listed at §98.43(c)(1)(v)
- States, territories, and tribes have flexibility to disqualify staff members based on a conviction of a crime not listed above.



[45 CFR 98.43(c)(1)]

DISQUALIFYING CRIMES

Which providers are subject to the disqualifying crimes?

- Unlike the other requirements in the background check section, the Act only applies the restriction against employing ineligible child care staff members to child care providers receiving CCDF assistance.
- These employment disqualifications specifically do not apply to child care staff members of licensed providers who do not serve children receiving CCDF subsidies.

[48 CFR 98.43(c)]

RED LIGHT/GREEN LIGHT

What if our state is a closed-record state?

- Most states have adopted FBI security policies and standards to protect their own state criminal data. These state laws and policies are a barrier to sharing state criminal data with other states.
- Responding states determine whether the individual is eligible or ineligible for employment given the state background check results.
 - It is important to note that the responding state may use additional disqualifying crimes that are not listed in the Final Rule for the purposes of determining eligibility.
- Responding states disclose this determination (red light/green light) to the requesting state, without revealing the specific disqualifying crime(s).
- If the individual is deemed ineligible by a responding state, then that state is also responsible for notifying the individual and following the appeals process.

POLICY CLARIFICATIONS

When is a child care provider not required to submit a background check for a staff member?

- The staff member received a background check that included all of the required parts within the past five years while employed by, or seeking employment by, another child care provider in the state;
- The state gave a qualifying result to the first provider for the staff member; and
- The staff member is employed by a child care provider within the state or has been separated from employment from a child care provider for less than 180 days.



[45 CFR 98.43(d)(3)]

POLICY CLARIFICATIONS (CONT'D)

When can a staff member begin working?

- Prospective staff members may not begin work until one of the following results have been returned as satisfactory:
 - FBI fingerprint check or
 - State criminal repository using fingerprints in the state where the staff member resides
- Until a determination is made on all checks, prospective staff must be supervised at all times by someone who has already received a qualifying result on a background check within the past five years.
- States may pose additional requirements beyond this minimum.



[45 CFR 98.43(d)(4)]

POLICY CLARIFICATIONS (CONT'D)

What if background checks are not completed within 45 days?

- Lead Agencies may create their own procedures in the event that one or more of the components of a background check are not completed within the required 45 days.
- A state must process, at the very least, either the FBI fingerprint check or the search of the state criminal repository, using fingerprints in the state where the prospective staff member resides, before an individual may begin work.
- In instances where a state is waiting for interstate background check components, ACF does not intend to penalize states that have made a good faith effort to request information from other states.



[45 CFR 98.43(e)(1)]

DIFFERENCES BETWEEN CHECKS

National Crime Information Center National Sex Offender Registry (NCIC NSOR) vs. National Sex Offender Public Website (NSOPW)

- A search of the NSOPW does not satisfy the statutory requirement for a search of the NSOR.
- States are required to conduct both an FBI fingerprint check AND a separate name-based search of the NCIC NSOR.
- The FBI check searches several files of the NCIC, including NSOR, but there are a number of individuals in the NSOR who are not identified by solely conducting an FBI fingerprint search.
 - In some cases, individuals were not fingerprinted at the time of arrest, or the prints were rejected by the FBI for poor quality.
 - This small percentage of records can be accessed through a name-based search of the NCIC.

DIFFERENCES BETWEEN CHECKS (CONT'D)

FBI Check vs. In-State and Inter-State Criminal Repository

- FBI fingerprint check provides access to national criminal history record information across state lines on people arrested for felonies and some misdemeanors under state, federal, or tribal law.
- There may be information in state databases that is not in the FBI database.
- A search of both the state criminal records and an FBI fingerprint check returns the most up-to-date record.
- Both checks better address individuals that are not forthcoming regarding their past residences, or committed crimes in a state in which they did not reside.

QUESTIONS?





ADMINISTRATION FOR
CHILDREN & FAMILIES
Office of Child Care



Thank You

Email: nccsia@ecetta.info
Phone: 301-881-2590 x273



NATIONAL CENTER ON

Subsidy Innovation and Accountability