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	<b>1. Log No:</b> CCDF-ACF-PI-2017-03	<b>2. Issuance Date:</b> October 11, 2017
	<b>3. Originating Office:</b> Office of Child Care (OCC)	
	<b>4. Key Words:</b> Child Care and Development Fund (CCDF); Child Care and Development Block Grant (CCDBG) Act	

### PROGRAM INSTRUCTION

**To:** State and Territorial Lead Agencies administering the Child Care and Development Fund (CCDF) program, as amended, and other interested parties

**Subject:** 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

**References:** The CCDBG Act (42 U.S.C. § 9857 *et seq.*), as amended; section 418 of the Social Security Act (42 U.S.C. § 618); 45 CFR Parts 98 and 99.

**Background:** At 658H(b)(3) and (5), the reauthorized Child Care and Development Block Grant (CCDBG) Act of 2014 (the Act) requires a background check to include searches of the National Crime Information Center (NCIC) and the National Sex Offender Registry (NSOR) (42 U.S.C. § 9858f(b)(3) & (5)). The NCIC is a law enforcement tool consisting of 21 files, including the NSOR. As such, we have determined the only file with information relevant to determining whether an individual could be hired as a child care employee is the NSOR. Therefore, in the CCDF Final Rule, at § 98.43(b)(2), we clarified that a check of the NSOR would satisfy the requirement to search the NCIC. The requirement to check the NCIC NSOR is not satisfied through the FBI fingerprint check, but rather requires a separate check.

It is our understanding that an NCIC NSOR check has not been included in any other non-criminal justice background check laws applicable to States to date. As a result, the process to access the NCIC NSOR results for this purpose has been, in many ways, uncharted territory. Through the rulemaking process, we identified a number of challenges with searching the NCIC NSOR and

informed States that we would not begin to determine compliance with the requirement to search the NCIC NSOR until after guidance had been issued by ACF and the FBI. For a more comprehensive discussion, please see the final rule at 81 FR 67495-97.

**Guidance:**

On June 2, 2017, the FBI issued an eight-page letter to State and Territory central record repositories entitled “The Child Care and Development Block Grant Act of 2014 and the Improving Head Start for School Readiness Act of 2007.” The letter is intended for internal use by State and Territory central record repositories and has not been distributed more broadly, but this PI summarizes the letter’s key points. The letter provides guidance on the CCDBG Act background check requirements and includes information on the Improving Head Start for School Readiness Act. This letter clarifies that the CCDBG Act and the Head Start Act are statutory authorities that can be used to conduct FBI fingerprint checks. It outlines each specific background check provision from the CCDBG Act and CCDF Final Rule, and reiterates statutory definitions of “child care provider” and “child care staff member” verbatim.

The letter also contains technical instructions on how to perform name-based searches of the NCIC NSOR. According to the letter, CCDF Lead Agencies should partner with law enforcement agencies to conduct searches of the NCIC NSOR. Access to the NCIC NSOR continues to be limited to law enforcement agencies; however, the FBI now allows those law enforcement agencies to provide Lead Agencies (or the designated State agency responsible for the CCDF background checks) with the results of the NCIC NSOR search. The results may only be provided to governmental agencies.

Now that the FBI has released guidance on how to access and perform searches of the NCIC NSOR, Lead Agencies should start implementing this provision by contacting the appropriate State central record repository to coordinate the implementation of both the fingerprint background check and the NCIC NSOR requirement. We believe that this letter is another step to help build bridges between State law enforcement agencies and the CCDF Lead Agencies.

**Implementation**

**Deadline:**

Although the Act’s effective date requires States to come into compliance with the background check requirements by September 30, 2017, we informed States in the preamble of the Final Rule that we would address implementation timeframes of the NCIC NSOR in future guidance.

We will not begin to determine compliance with the requirement to search the NCIC NSOR until September 30, 2018. This gives States a little over a year to implement this requirement and come into compliance. States will describe compliance in the submission of their FY 2019-2021 State CCDF Plans.

**Tribes:** OCC is working on separate guidance on background checks for Tribes. Tribal Lead Agencies are subject to the background check requirements at § 98.43. However, the final rule at § 98.83(d)(3) allows Tribes the flexibility to describe an alternative background check approach in their Plans, subject to ACF approval.

**Questions:** Please direct inquiries to the Child Care Program Manager in the appropriate ACF Regional Office.

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Director  
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