

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES	
	1. Log No: CCDF-ACF-PI-2019-05	2. Issuance Date: August 16, 2019
	3. Originating Office: Office of Child Care (OCC)	
	4. Key Words: Tribal Child Care and Development Fund (CCDF), Alternative Approaches, Criminal Background Checks, Monitoring, Inspections	

CHILD CARE AND DEVELOPMENT FUND

PROGRAM INSTRUCTION

To: Tribal Lead Agencies administering child care programs under the Child Care and Development Block Grant (CCDBG) Act and other interested parties.

Subject: Guidance on alternative approaches for purposes of conducting background checks of child care staff and monitoring and inspection of child care providers.

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

Purpose: This Program Instruction provides guidance to Tribal Child Care and Development Fund (CCDF) Lead Agencies on developing and implementing alternative approaches for 1) conducting background checks of child care staff and 2) monitoring and inspection of child care providers.

Background: Criminal Background Checks – Section 658H of the CCDBG Act (42 U.S.C. § 9858f) and 45 CFR 98.43 outline requirements to conduct criminal background checks for child care staff members (including prospective child care staff members) of child care providers. The CCDF regulations at 45 CFR 98.83(d)(3) indicate that all Tribes (small, medium, and large allocation sizes) are subject to the CCDF requirements at 45 CFR 98.43 to conduct comprehensive criminal background checks, unless the CCDF Tribal Lead Agency describes an alternative background check approach in its Plan and provides adequate justification for the approach.

Monitoring and Inspection – Section 658E(c)(2)(K) of the CCDBG Act (42 U.S.C. § 9858c(c)(2)(K)) and 45 CFR 98.42(b)(2) include requirements for conducting monitoring and inspection of child care providers who are receiving CCDF. Licensed CCDF providers must have pre-licensure and annual unannounced visits and license-exempt CCDF providers must have an annual visit, which can be announced or unannounced. The CCDF regulations at 45 CFR

98.83(d)(2) indicate that all Tribes (small, medium, and large allocation sizes) are subject to the CCDF requirements at 45 CFR 98.42(b)(2) to require inspections of child care providers and facilities, unless the CCDF Tribal Lead Agency describes an alternative monitoring approach in its Plan and provides adequate justification for the approach.

Guidance: In their Fiscal Year (FY) 2020-2022 CCDF Plans, Tribes must demonstrate compliance with the CCDF Final Rule that was published September 30, 2016. As Tribes develop their Plans, this document gives guidance on two key areas where Tribes have flexibility in proposing alternative approaches to CCDF requirements – 1) background checks of child care staff and 2) monitoring and inspection of child care providers. Tribes must provide an adequate justification for alternative approach(es) they are proposing; and, any alternative approach(es) proposed by a Tribe must be approved in writing by the Administration for Children and Families (ACF) Office of Child Care (OCC) as part of the Plan approval process. This guidance applies to all Tribes regardless of allocation size (small, medium, or large). Throughout this guidance, OCC balances a commitment to tribal sovereignty and self-determination with a mission to protect the safety and well-being of all children under the requirements of the CCDBG Act and CCDF regulations.

Comprehensive Criminal Background Checks of Child Care Staff

For Tribes that are proposing alternative approaches to conducting criminal background checks, the following guidance addresses key aspects of the criminal background check requirements that Tribes may want to consider — a) components of the checks; b) definition of child care staff member; c) disqualifying crimes; d) background check results and provisional hire requirements; e) and other requirements. Under each category, we indicate areas where alternative approaches may be proposed.

It is important to note that OCC will not approve any alternative approaches that include blanket exemptions or waivers to any of the criminal background check requirements. 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.

a) Components of the Checks

As outlined in the CCDF Final Rule, requirements for States, Territories, and Tribes to conduct criminal background checks for child care staff members (including prospective child care staff members) of all licensed, regulated, or registered child care providers and all other CCDF-eligible child care providers¹ include the following separate components:

¹ Child care staff members include an individual (other than an individual who is related to all children for whom child care services are provided): (A) Who is employed by a child care provider for compensation, including

- (1) A Federal Bureau of Investigation (FBI) fingerprint check using Next Generation Identification;
- (2) A search of the National Crime Information Center’s (NCIC) National Sex Offender Registry (NSOR); and
- (3) A search of the following registries, repositories, or databases in the State where the child care staff member currently resides and each State where such staff member resided during the preceding five years:
 - (i) State criminal registry or repository, with the use of fingerprints being:
 - (A) Required in the State where the staff member resides;
 - (B) Optional in other States;
 - (ii) State sex offender registry or repository; and
 - (iii) State-based child abuse and neglect registry and database.

Tribes have indicated that there are many challenges related to complying with all required components of the criminal background checks as outlined in the Final Rule. For example, for FBI fingerprint checks, unlike with States, the CCDBG Act does not provide explicit authority for Tribes to request FBI fingerprint checks for all child care staff.² Further, 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; this may not be the case for many Tribes. (An overview of Tribes’ authority and access to conduct FBI fingerprint checks is located in Appendix A.) For the State-based registry checks, the Tribe depends on the ability, authority, and willingness of the State to provide the necessary information. Therefore, for all components of the checks, it may be necessary for Tribes to propose alternative approaches.³

It is important to note that, under the Indian Child Protection and Family Violence Prevention Act, Public Law (P.L.) 101-630 (25 USC 3207(a-c)), Tribes must conduct criminal background checks for all persons being considered for employment by Tribes in positions that have regular contact with, or control over, Indian children, when receiving funds under the Indian Self-Determination and Education Assistance Act (P.L. 93-638)

contract employees or self-employed individuals; (B) Whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or (C) Any individual residing in a family child care home who is age 18 and older. Includes those who may not be considered traditional child care “providers,” such as summer camp employees, before and after school employees, seasonal care employees, and those who receive quality dollars from a Tribal CCDF program.

² Tribes may have authority under other statutes to conduct background checks for some individuals (see Appendix A).

³ OCC recognizes that there may be particular challenges for Tribes due to the unique nature of State-Tribal relationships, such as issues related to the Alaska Natives Claims Settlement Act (P.L. 92-203, 43 USC 1601 *et seq.*) for Tribes in Alaska. OCC also recognizes the complications that may exist for Tribes whose reservation boundaries lie in more than one State. We encourage Tribes to consult closely with their OCC Regional Office.

(25 U.S.C. 450 *et seq.*) or the Tribally Controlled Schools Act of 1988 (P.L. 100-297) (25 U.S.C. 2501 *et seq.*).

OCC will consider alternative approaches in cases where the Tribe does not have authority or access to conduct a particular component of the check, particularly in cases where staff are not Tribal employees (*e.g.*, staff of family child care providers or center-based providers receiving vouchers/certificates). If State statute permits, Tribes must request checks via the State for FBI fingerprint checks of individuals not employed by the Tribe (through States' authority under P.L. 92-544 (34 USC 41101) or under procedures established pursuant to the National Child Protection Act/Volunteers for Children Act) and State-based registry checks (*e.g.*, State criminal, sex offender, and child abuse and neglect records).⁴ Tribes may propose that, if they have attempted to work with the State to access these checks, but have been unsuccessful, they will use an alternative approach for assessing criminal history, sex offender status, and child abuse and neglect history. In the justification for the alternative approach, the Tribe must describe its reasoning, including information about its attempts to request the information via the State.

It has become clear that there is no Federal statutory authority, under the CCDBG Act, for Tribes to access information through the NCIC NSOR. Recognizing these challenges, OCC will evaluate, and if warranted, approve alternative approaches that do not include accessing the NCIC NSOR.

In addition, where relevant and appropriate, OCC will consider alternative approaches that include checks of Tribal criminal, sex offender, and/or child abuse and neglect registries in cases where Tribes operate such registries. In general, such checks are encouraged, particularly if an individual has always lived on the reservation or service area and the Tribe has complete records. OCC will also consider approaches that rely on third-party public or private entities, and approaches that rely on name-based checks of State or Tribal record management systems if fingerprint checks are not available or feasible.

OCC will not approve the following alternative approaches:

- OCC will not consider alternative approaches that do not include the criminal background check required by the Indian Child

⁴ States are required at 45 CFR 98.16(o) to include in their Plans a description of the requirements, policies, and procedures in place to respond to other States', Territories', and Tribes' requests for background check results in a timely manner. It should be noted that any transmittal of FBI-provided criminal justice information to another governmental entity or to the individual of the record must follow the applicable law, regulation, and policy concerning the handling of Criminal History Records Information (CHRI); the confirming of the existence or nonexistence of CHRI; and secondary dissemination.

Protection and Family Violence Prevention Act (P.L. 101-630) (25 U.S.C. 3201 et seq.) for all child care staff employed by the Tribe (e.g., child care staff at a Tribally-operated center).

- OCC will not approve alternative approaches that do not include some attempt to determine criminal history of all child care staff.
- OCC will not approve 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.

b) Definition of Child Care Staff Member

The CCDF regulations at 45 CFR 98.43(a)(2)(ii) define child care staff members for whom a criminal background check must be completed to include individuals (other than an individual who is related to all children for whom child care services are provided): individuals who are employed by a child care provider for compensation, including contract employees or self-employed individuals; individuals whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or any individual residing in a family child care home age 18 and older.

OCC will not accept alternative approaches that change the definition of which child care staff member must receive a background check.

OCC will not approve alternative approaches that do not include any background checks for other adults in a family child care home. As stated in the preamble of the CCDF Final Rule (81 FR 67542-43), ACF expects that Tribal Lead Agencies will conduct some components of a background check for these individuals, for example, a check of Tribal criminal history records. However, when a Tribe is conducting background checks on other adults over age 18 in a family child care home, OCC recognizes that many Tribal families reside in households with several generations. Requiring all members of the household to complete all components of a comprehensive background check could be burdensome for the family and for the Tribal Lead Agency. Therefore, the Tribal Lead Agency could propose an alternative approach to conduct background checks on other adults in a family child care home.

c) Disqualifying Crimes

Per the CCDF regulations at 45 CFR 98.43(c)(1)(iv), a child care staff member is ineligible for employment by child care providers if such individual has been: convicted of a felony consisting of murder, child abuse or neglect, a crime against children (including child pornography), spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, a drug-related offense committed during the preceding 5

years; or has been convicted of a violent misdemeanor committed as an adult against a child, including child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography. States, Territories, and Tribes may allow for an individualized review process through which the State, Territory, or Tribe may determine that a child care staff member convicted of drug-related offense committed during the preceding 5 years is eligible for employment.

OCC will not approve alternative approaches that allow employment of individuals who have been convicted of crimes against children.⁵ OCC will accept alternative approaches that include less than a lifetime ban for offenses that are not against children.⁶ For example, recognizing Tribal sovereignty, OCC would accept alternative approaches that include individualized review processes for determining employment eligibility, similar to the review process that the CCDF rule allows for drug-related offenses, for those convicted of crimes *other than* drug-related offenses committed during the preceding 5 years.

Similarly, Tribes may also disqualify individuals as child care staff members based on crimes or reasons not specifically listed in the Final Rule. The Tribe may determine that some other crimes bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children. This is allowable under the CCDF regulations for all Lead Agencies and does not require Tribes to propose an alternative approach.

d) Background Check Results and Provisional Hire Requirements

As outlined in the CCDF Final Rule, a child care provider must submit a request to the appropriate State, Territorial, or Tribal Lead Agency for a criminal background check for each child care staff member (including prospective child care staff members) of the provider. All Lead Agencies are required to carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which the provider submitted the request, and must provide the results of the criminal background check 1) to the provider in a statement⁷ that indicates whether a child care staff member or prospective child care staff member is eligible or ineligible for employment (without revealing any disqualifying crimes or other related information regarding the individual); and 2) to the current or prospective staff member in a report.

⁵ The preamble to the CCDF Final Rule (81 FR 67543) states that OCC would not approve any approaches that ask for flexibility around violent crimes and crimes against children. However, this PI provides clarification on this issue.

⁶ Checks conducted under the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630) (25 U.S.C. 3201 *et seq.*) must consider the “minimum standards of character” requirements under that legislation when making employment decisions.

⁷ The statement cannot indicate whether an FBI background check was conducted, nor can the statement indicate the existence or non-existence of FBI Criminal History Record Information (CHRI).

Further, a prospective staff member may begin work for a child care provider after completing either the FBI fingerprint check or the State criminal registry fingerprint check in the State where the prospective staff member resides. Pending completion of all other background check components, the staff member must be supervised at all times by an individual who received a qualifying result on a comprehensive background check within the past five years.

In many cases, as described above, Tribes may rely on State systems to conduct certain portions of the background checks (*e.g.*, State criminal registry or repository, State sex offender registry or repository, State child abuse and neglect registry and database, and FBI fingerprint check using an authorized statute), which may extend the process and make it difficult to provide the results within 45 days of the request. Tribal Lead Agencies may create their own procedures in the event that one or more of the components of a criminal background check are not complete within the required 45 days. Tribes have the flexibility to make employment eligibility decisions in the event that not all background check components are completed within 45 days.

In addition, OCC will consider alternative approaches, submitted as part of the Tribe's CCDF Plan, 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. Such approaches must make efforts to ensure children's safety, such as supervising staff pending the results of the check.

e) Other Requirements

There are a number of other requirements in the Final Rule related to criminal background checks. Here we outline areas where Tribes may or may not have flexibility to propose alternative approaches.

- OCC will not consider alternative approaches that require criminal background checks to be completed less frequently than every 5 years, as required by 45 CFR 98.43(d)(2)(ii).
- OCC will not consider alternative approaches that allow additional flexibility around the appeals process described at 45 CFR 98.43(e)(3). It is important that individuals have the right to appeal the accuracy of information provided in the background checks.
- OCC will not consider alternative approaches 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).
- OCC will consider alternative approaches to the requirement that criminal background check results be shared with the provider in a statement

without the underlying specifics of criminal history, in order to protect the privacy of the staff member (45 CFR 98.43(e)(2)). Tribes may propose to share some information with the provider, subject to limitations in FBI policy and State or Tribal requirements, which may prevent the release of information. It will be important to consider the issues of privacy related to any alternative approach, particularly in the context of small Tribal communities.

Monitoring and Inspection of Child Care Providers

In the CCDF Final Rule, all Tribes, regardless of allocation size, are subject to the monitoring and inspection requirements at 45 CFR 98.42(b)(2), which reflect the requirements in the CCDBG Act. Section 658E(c)(2)(K) of the Act (42 USC 9858c(c)(2)(K)) requires at least one pre-licensure inspection and at least one annual unannounced inspection for licensed child care providers receiving CCDF funds (whether licensed by the Tribe or the State). License-exempt providers receiving CCDF funds are subject to annual monitoring on health, safety, and fire standards (except, at Lead Agency discretion, those that only serve relatives). The rule also allows all Lead Agencies to use differential monitoring strategies⁸ and to develop alternate monitoring requirements for care provided in the child's home. In addition, a Lead Agency may choose to exclude relative providers as defined by CCDF (including grandparents, great-grandparents, siblings (if such providers live in a separate residence), and aunts or uncles) from any monitoring requirements if a description and justification is provided in the CCDF Plan.

It is important to note that a Tribe is not required to conduct additional monitoring for providers that are already monitored by the State (*e.g.*, State-licensed providers) and can accept the results of the State's monitoring, if the Tribe prefers (though in some cases, the Tribe may need to provide approval for such visits to occur for providers located on Tribal lands).

OCC recognizes that the monitoring requirements in the CCDBG Act and in the Final Rule may not be culturally appropriate or financially feasible for some Tribal communities. For example, some elders who are family child care providers may also be cultural bearers for their Tribe and there may be strict protocols regarding entry of outsiders into the home, or restrictions on entry at particular times of year when ceremonies are occurring. Other Tribes may be supporting Tribal language revitalization and use only Tribal languages in family child care homes; it might be inappropriate for a monitoring inspector to visit and use English in the home while children are in care. Regarding financial feasibility, some Tribes may not receive sufficient funding to make outside contracts to conduct monitoring visits, so the Tribal Lead Agency may need to take costly steps to develop internal or tribal capacity to conduct monitoring and inspection.

⁸ For more information on differential monitoring, please see pages 81 FR 67490-91 of the preamble to the CCDF Final Rule.

Recognizing these realities, Tribes are allowed some flexibility (through use of an alternative monitoring approach) in determining which monitoring requirements should apply to child care providers. The following guidance outlines which alternative approaches will be considered approvable by OCC. Where examples are provided, these should not be seen as excluding other possible approaches.

OCC will not accept alternative approaches that bypass the monitoring requirements altogether. In addition, OCC will not approve alternative approaches that rely exclusively on the use of self-certification by the provider to assess provider compliance with standards.

OCC will consider the following alternative approaches:

- Tribes may propose an alternative approach that involves partnering with other agencies that may already be conducting monitoring visits, such as State Lead Agencies, State child care licensing agencies, State Quality Rating and Improvement System reviewers, other Tribal departments, the Indian Health Service, the Office of Head Start, or the Child and Adult Care Food Program. Coordinating and partnering with existing agencies can help lessen the financial and administrative burden associated with monitoring. To the extent that other agencies provide an on-site monitoring component that may satisfy or partially satisfy the monitoring requirement, the Tribal Lead Agency is encouraged to pursue collaboration, which may include sharing information and data as well as coordinating resources. However, the Tribal Lead Agency is ultimately responsible for meeting the requirements and ensuring that any collaborative monitoring efforts satisfy all CCDF requirements.
- Recognizing that many Tribal communities are located in rural areas where travel distances may be significant, Tribes may propose an alternative monitoring approach that requires that all inspections be announced (for both licensed and license-exempt providers). Such an approach might minimize the likelihood that providers would not be available (or children not present) for an inspection.
- As mentioned above, all Lead Agencies have flexibility to implement differential monitoring approaches that investigate a subset of requirements to determine compliance, provided that the content covered during each inspection visit is representative of the full complement of health and safety requirements. Tribes therefore may propose alternative approaches that include differential monitoring.
- If the Tribe can demonstrate that annual inspections are cost-prohibitive or culturally inappropriate (for example, by providing cost projections on conducting required inspections, or statements from Tribal leadership regarding the cultural appropriateness of certain monitoring strategies), Tribes 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). Such an approach might align with

existing flexibilities that all Lead Agencies have to implement differential monitoring approaches, while giving Tribes additional flexibility to conduct inspections less than annually.

- Unlike States, Tribes may propose alternative approaches that rely on sampling of providers. OCC would require, however, that all providers be eligible for inspection at any time, and that every provider would receive a full onsite inspection at least every three years. In addition, as outlined above, the alternative approach would need to include some other type of non-onsite annual monitoring.
- All Lead Agencies have the authority to develop alternate monitoring requirements for care provided in the child's home. For example, Lead Agencies may choose to monitor in-home providers on basic health and safety requirements such as training and background checks. Lead Agencies could choose to focus on health and safety risks that pose imminent danger to children in care, and should develop procedures for notifying parents of monitoring protocols and consider whether it would be appropriate to obtain parental permission prior to entering the home for inspection purposes. Tribes have additional flexibility to propose alternative monitoring approaches that are more culturally appropriate. For example, the Tribe could propose that it meet with providers in another location outside of the child's home.

ACF Approval of Alternative Approach

The Final Rule at 45 CFR 98.83(d)(2-3) requires Tribes to provide an adequate justification for alternative approaches for criminal background checks of child care staff and monitoring and inspection of child care providers. Tribes will provide this justification in their FY 2020-2022 Tribal CCDF Plan Preprint. The FY 2020-2022 Tribal CCDF Plan Preprint will describe what information must be included when describing the alternative approach and providing a justification. Alternative approaches must be approved by ACF via review of the Tribe's FY 2020-2022 Tribal CCDF Plan.

Conclusion: Tribal Lead Agencies have an opportunity to implement alternative background check and monitoring and inspection approaches that are culturally appropriate, cost-effective, and aligned with the requirements of the CCDBG Act and the CCDF regulations. Background checks and monitoring and inspections continue to be vital instruments in safeguarding children's health and safety. Tribes must justify how their alternative approaches are appropriately comprehensive and protect the health and safety of children in child care. By following the guidance in this Program Instruction, Tribal Lead Agencies will be able to identify alternative approaches that are acceptable to OCC while still providing the maximum flexibility and recognition of Tribal sovereignty. OCC looks forward to providing guidance, support, and technical assistance as Tribes consider these approaches.

Questions: Inquiries should be directed to the appropriate [ACF Regional Office](#).

/s/

Shannon Christian
Director
Office of Child Care

cc: [Office of Child Care Regional Program Managers](#)

Appendix A: Tribal Authority and Access to FBI Fingerprint Checks

Authorities for Tribes to conduct or request FBI fingerprint-based background checks for child care staff (list may not be all inclusive):

State Statute (Public Law [P.L.] 92-544, 34 U.S.C. 41101)

- If the State statute permits and is approved by the FBI Office of the General Counsel, Tribes can request background checks be performed by the State. This law authorizes States to conduct FBI criminal history background checks for licensing and employment purposes, subject to the approval of the U.S. Attorney General.
- Tribes must be authorized by the State to submit fingerprints pursuant to the State statute.
- Fingerprints must be submitted through the State central record repository.

Indian Child Protection and Family Violence Prevention Act (P.L. 101-630, 25 U.S.C. 3207)

- Under the Indian Child Protection and Family Violence Prevention Act, P.L. 101-630 (25 USC 3207(a-c)), Tribes have the authority (and requirement) to conduct criminal background checks for persons being considered for employment by Tribes in positions that have regular contact with, or control over, Indian children, when receiving funds under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) (25 U.S.C. 450 *et seq.*) or the Tribally Controlled Schools Act of 1988 (P.L. 100-297) (25 U.S.C. 2501 *et seq.*). The statute also establishes “minimum standards of character” that ensure that no individuals who have been found guilty of, or entered a plea of *nolo contendere* or guilty to, any felonious offense or any of two or more misdemeanor offenses under Federal, State, or Tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons or offenses committed against children, are placed in positions involving regular contact with, or control over, Indian children.
- Fingerprints may be submitted using any of the methods listed in this Appendix.

National Child Protection Act/Volunteers for Children Act (NCPA/VCA) (P.L. 101-209, as amended, 34 U.S.C. 40101 *et seq.*)

- Tribes can request background checks be performed by States under procedures established pursuant to the NCPA/VCA. The NCPA/VCA allows State governmental agencies that have State procedures established by State statute or regulation to conduct background checks and suitability reviews of covered individuals providing care to children, the elderly, and disabled persons. If the State is using the NCPA/VCA to submit background checks on covered individuals, at the State’s discretion it may designate the Tribe as a qualified entity and therefore conduct the national fingerprint-based background check on behalf of the Tribe.
- Fingerprints must be submitted through the State central record repository.

Improving Head Start for School Readiness Act (P.L. 110-134, 42 U.S.C. 9843a)

- The Head Start Act requires Head Start programs to conduct background checks for each employee, consultant, or contractor. Further, a newly hired employee, consultant, or contractor cannot have unsupervised access to children until a comprehensive background check process is completed. However, the Head Start Act does not authorize background checks of volunteers. Another approved statute may be used to background check volunteers at Head Start programs.
- Fingerprints may be submitted using any of the methods listed in this Appendix.

Ways that Tribes can access FBI fingerprint checks:⁹

- **State Identification Bureau (SIB)**
 - Tribes may obtain access to FBI's Next Generation Identification (NGI) System through the SIB or the State Criminal Justice Information System (CJIS).
 - If the Tribe is utilizing a State's P. L. 92-544 state statute, or the State's discretion under the NCPA/VCA, the fingerprints *must* be submitted to the FBI via the SIB.
 - For this option, the Tribe must contact the SIB or State CJIS Systems Officer (CSO) and enter into one or more agreements to address the Tribe's user rights and how the State will bill and audit the Tribe for access. (A list of SIBs is available at: <https://www.fbi.gov/services/cjis/identity-history-summary-checks/state-identification-bureau-listing>). Tribes should inform the State contact of the Tribe's need to access national crime information databases to perform criminal background checks on child care staff.
- **Department of Justice Tribal Access Program (TAP)**
 - The DOJ launched the Tribal Access Program for National Crime Information (TAP) in August 2015 to offer Tribes an additional method to access Federal criminal databases for civil and criminal purposes, including the FBI's NGI System. Participating Tribes receive a kiosk containing a computer, flatbed scanner, printer, camera, and fingerprint/palmprint scanner, connection through DOJ to the FBI CJIS Division systems, and training and help desk assistance. The TAP kiosk expedites fingerprint processing and usually provides results of the national fingerprint-based background checks relatively quickly.
 - Tribes may only submit fingerprints for those authorities that are not required to come through the SIB.
 - Tribes must apply and be accepted into the DOJ TAP. Tribes interested in participating in the TAP should contact the DOJ at tribalaccess@usdoj.gov. Tribes will want to ask when the next application deadline is because applications are accepted periodically (approximately annually). Once selected as a DOJ TAP

⁹ U.S. Department of Interior, Bureau of Indian Affairs. (2018). Guidance: Background Checks for Foster Care Placements under the Native American Children's Safety Act (NACSA). Available at: <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/NACSA%20Guidelines%20FINAL%20-%20May%202018.pdf>. Accessed March 7, 2019.

participant, a Tribe must execute a user fee Memorandum of Agreement/Billing Agreement with the FBI's CJIS Division.

- **FBI-Approved Channeler**

- FBI-approved Channelers are private entities who, through contract with the FBI, provide access to the NGI System, and work on behalf of an authorized Tribe to conduct the national fingerprint-based checks. The FBI-Channeler submits fingerprints, receives the results of the criminal history checks from the FBI's NGI System, and forwards those results to the authorized recipient. This option also requires a contract between the authorized recipient and the FBI-approved Channeler. The legal authority must exist in order for a Tribe to submit fingerprints via a Channeler.
- For this option, the Tribe must send a letter to the FBI Compact Officer requesting approval to use one of the current FBI-approved Channelers. A current list of FBI-approved Channelers may be accessed at: www.fbi.gov/services/cjis/compact-council/list-of-approved-channelers. If the Tribe uses this option, the Tribe must enter into a contract with the FBI-approved Channeler for the Channeler's services. Please note that some companies conduct other types of background checks, but only FBI-approved Channelers may submit fingerprints to obtain data contained in the FBI's NGI System.

- **Hard-Copy Fingerprint Cards to the FBI**

- Tribes may submit hard copy fingerprint cards directly to the FBI through the U.S. mail. The FBI returns Identity History Summary responses to the Tribe via the U.S. Postal Service, First Class Mail. This option requires a billing agreement between the Tribe and the FBI, and requires the Tribe to apply for an Originating Agency Identifier (ORI). Please note that this method is not an electronic process and results in slower response times. Once the hard-copy fingerprint card arrives at the FBI, the fingerprint card must be scanned into an electronic format prior to processing. The FBI then returns the results by U.S. mail.
- This is not the preferred method of fingerprint submission (due to the possibility of fingerprint rejections and the processing time to complete the check).
- For this option, the Tribe must contact the FBI at (304) 625-5590 and request a billing agreement to allow for the submission of hard copy fingerprint cards.