

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

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3. Originating Office: Office of Child Care (OCC)

4. Key Words: Child Care and Development Fund (CCDF); Child Care and Development Block Grant (CCDBG) Act

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

Subject: Clarification on the CCDBG Act background check requirements and health and safety training requirements.

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: OCC has received questions about the CCDBG Act background check requirements, including questions about the applicability of the requirements, as well as questions about the health and safety training requirements.

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

/s/

Shannon Christian
Director
Office of Child Care

Background Check Requirements

Question: Are license-exempt child care providers that are not receiving CCDF funds required to meet the background check requirements?

Answer: No, child care providers are not subject to background check requirements if they: (1) are not licensed, regulated, or registered; and (2) do not receive CCDF funds. Such providers do not meet the definition of “child care provider” in the background check section of the law and final rule. In accordance with section 658H(i)(1), the background check requirements in the CCDBG Act apply to all licensed, regulated, or registered child care providers, regardless of whether they receive CCDF funds, and all license-exempt providers that receive CCDF (with the exception of individuals who are related to all children for whom child care services are provided). States have the flexibility to determine which providers are considered licensed, regulated, or registered. As an example, if a faith-based provider is not licensed, regulated, or registered and does not serve CCDF children, that provider would not be subject to the background check requirements of the CCDBG Act. In addition, the list of disqualifications for employment specifically do not apply to child care staff members of licensed providers that do not serve children receiving CCDF subsidies. This gives States the flexibility to determine employment disqualifications, if any, for child care providers who may be licensed, regulated, or registered, but do not receive CCDF funds.

Background Checks Apply:	Background Checks Do NOT Apply:
Any licensed, regulated or registered provider* except relatives	License-exempt Non-CCDF providers
Any provider who receives CCDF except relatives	Relative providers regardless of CCDF status

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

Question: If public school pre-k programs in the State are not licensed, regulated, or registered by the Lead Agency and do not serve any children receiving CCDF subsidy, are they required to meet the background check requirements?

Answer: No. Child care providers that do not meet the definition of “child care provider” in the law and final rule, including providers that are not licensed, regulated, or registered under State law and do not receive CCDF funds, are not subject to these requirements. In addition, our understanding is that many States do not consider public school pre-k programs to be child care providers, and these programs would not be subject to the background check requirements.

Question: Are the criminal background check requirements applicable to those caregivers who are registered with the State solely for the Child and Adult Care Food Program (CACFP) and do not serve any children receiving CCDF subsidies?

Answer: States have discretion to determine whether or not these caregivers are considered “registered” and therefore subject to background checks. In accordance with section 658H(i)(1), the background check requirements in the CCDBG Act apply to all licensed, regulated, or registered child care providers, regardless of whether they receive CCDF funds, and all license-exempt providers that receive CCDF (with the exception of individuals who are related to all children for whom child care services are provided). We have not defined “licensed,” “regulated,” or “registered” so States have the flexibility in defining these terms. Some States consider “registered” providers to be those providers that receive CCDF funds. States have the flexibility to define whether other child care providers are also included in this definition. In addition, some States have different terms for these providers, including “listed” or “certified,” as discussed in the preamble language in the final rule.

Question: What should a State do if all background check components are not completed within 45 days?

Answer: While we expect checks to be completed in the timeframe established by the Act, Lead Agencies may create their own procedures in the event that one or more of the components of a background check are not complete within the required 45 days. Likewise, States also have the flexibility to make employment decisions in the event that not all background check components are completed within 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 staff member resides, before a child care staff member 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.

Question: Is the FBI fingerprint check duplicative of the search of the State criminal repository?

Answer: The CCDBG Act requires a search of both the FBI fingerprint check and the State criminal history record repositories. The FBI maintains a national criminal history record database which contains criminal history records from Federal, State, Tribal, and local agencies and is used by the FBI to facilitate interstate criminal record exchange. The records contained within the FBI’s database are based upon positive identification and provide a link between those record systems maintained in each State and the FBI. However, there may be information in State databases that is not in the FBI database. In most cases, a search of *both* the State criminal records and an FBI fingerprint check returns the most up-to-date record and better addresses instances where individuals are not forthcoming regarding their past residences, or committed crimes in a State in which they did not reside.

For States participating in the FBI’s National Fingerprint File (NFF) program, an FBI fingerprint check is duplicative of the search of the State’s criminal history record repository. The NFF States respond to record requests for all authorized noncriminal

justice purposes and as such the FBI ceases to maintain duplicate criminal history data for these States.

Question: When a State is participating in the FBI’s National Fingerprint File (NFF) program, does an FBI fingerprint check also satisfy the requirement to search the State criminal repository?

CCDF Background Check Components	States participating in NFF must complete:	States NOT participating in the NFF must complete:
FBI Fingerprint Check	✓	✓
National Crime Information Center National Sex Offender Registry	✓	✓
In-State Criminal Repository		✓
Interstate Criminal Repository in other States of residence for past 5 years	Only for non-NFF States	Only for non-NFF States
State Sex Offender Registry, in State and other States of residence for past 5 years	✓	✓
State Child Abuse and Neglect Registry, in State and other States of residence for past 5 years	✓	✓

Answer: Yes, we determined that for States participating in the NFF program, an FBI fingerprint check satisfies the requirement to check both the FBI fingerprint database and the requirement to search the State’s own criminal history record repository. For States participating in the NFF program, a separate search of the State criminal history record repository is not necessary as this type of search is performed prior to forwarding the fingerprints to the FBI as part of the NFF participation requirements.

The same is true for the interstate background check requirements: we have determined that an FBI fingerprint check also satisfies the requirement to perform an interstate check of another State’s criminal history record repository if the responding State (where the child care staff member has resided within the past five years) participates in the NFF program. It is unnecessary to conduct both the FBI fingerprint check and the search of an NFF State’s criminal history record repository.

However, if a State does not participate in the NFF program, separate searches of both the FBI database and the State’s criminal history record repository are required. For these non-NFF States, there is no measurement for the percent of duplication between the State and FBI databases, and therefore both are required, as indicated in the CCDBG Act. Additionally, searches of non-NFF State criminal history repositories are required if the individual has resided in a non-NFF State within the past five years.

More information on the NFF, including the list of participating States, can be found here: <https://www.fbi.gov/services/cjis/compact-council/interstate-identification-index-iii-national-fingerprint-file-nff>

Health and Safety Training Requirements

Question: Are caregivers, teachers, and directors working for CCDF providers required to complete health and safety training prior to caring for children unsupervised?

Answer: The Lead Agency must identify those health and safety trainings that are required prior to caring for children unsupervised, but has flexibility in determining such requirements. 45 CFR 98.44(b)(1)(i) of the CCDF final rule requires Lead Agencies to describe in their plans their established requirements for pre-service or orientation training that addresses “[e]ach of the requirements relating to matters described in § 98.41(a)(1)(i) through (xi) and *specifying critical health and safety training that must be completed before caregivers, teachers, and directors are allowed to care for children unsupervised.*” (*Emphasis added.*) The Lead Agency has flexibility to determine which of these trainings are required prior to serving children unsupervised (i.e., not supervised by an individual who has completed the trainings).

There is a discrepancy between the final rule’s regulatory language and the preamble language at 81 FR 67507. The preamble mistakenly states that:

- “During those three months, caregivers and teachers who provide direct care for children must be supervised until training is completed in pediatric first aid and CPR, safe sleep practices, standards precautions to prevent communicable disease, poison prevention, and shaken baby syndrome/abuse head trauma” and
- “Because SIDS and other trainings are so important to health and safety, § 98.41(b)(1)(i) of the final rule requires supervision during the pre-service or orientation period.”

These two statements are errors. The final rule’s regulatory language takes precedence over the preamble, so the Lead Agency has the flexibility to specify trainings required prior to unsupervised care. The trainings described in the preamble may be treated as recommendations or suggestions, but are not requirements.