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### INFORMATION MEMORANDUM

**To:** State, Territorial, and Tribal Lead Agencies administering child care programs under the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended; State child care licensing agencies; child care resource and referral agencies; and other interested parties.

**References:** The CCDBG Act (42 U.S.C. § 9858 *et seq.*); Section 418 of the Social Security Act (42 U.S.C. § 618); 45 CFR Parts 98 and 99; 25 CFR Part 63

**Purpose:** The Office of Child Care (OCC) recommends that all child care providers undergo comprehensive criminal background checks. Accordingly, OCC is issuing this guidance to strongly encourage CCDF Lead Agencies to institute comprehensive criminal background checks for child care providers serving children receiving CCDF subsidies, as part of minimum health and safety requirements. A comprehensive criminal background check should include: (1) using fingerprints for State checks of criminal history records; (2) using fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records; (3) checking the child abuse and neglect registry; and (4) checking sex offender registries.

**Background:** Comprehensive background checks are a basic safeguard essential to protect the safety of children in child care and minimize children’s risk of abuse and neglect. Parents need to know that child care providers and others who come into contact with their children do not have a record of violent offenses, sex offenses, child abuse or neglect, or have not engaged in other behaviors that should disqualify them from caring for children.

CCDF regulations at 45 CFR 98.41(a) require that Lead Agencies certify they have in effect requirements for child care providers designed to protect the health and safety of children who receive assistance through the CCDF program. These health and safety requirements must include: (1) prevention and control of infectious diseases (including immunization); (2) building and physical premises safety; and (3) minimum health and safety training appropriate to the provider setting. While CCDF regulations do not explicitly require that criminal background checks be included in Lead Agency health and safety

requirements, the preamble to CCDF regulations states that “ACF considers [criminal background checks] to fall under the building and physical premises safety standard in the statute.” (63 FR 39956) Lead Agencies are responsible for ensuring that CCDF funds are expended on programs that meet minimal standards to protect the health and safety of children receiving subsidies, which as a best practice should include criminal background checks for child care providers.

OCC has been working with Lead Agencies to improve the health and safety and quality of child care, including in the area of background checks. For example, both the State/Territory and Tribal FY 2012-2013 CCDF Plan applications were recently overhauled to better reflect Lead Agency practices and highlight areas of interest to the Federal government and CCDF grantees. This included strengthening the section of the Plan that addresses background checks to obtain more specific information on the types and frequency of background checks Lead Agencies require for center-based providers, family child care homes, group child care homes, and in-home child care. This information from the FY 2012-2013 CCDF Plans provides comprehensive data about background check policies across the country and is included in *Appendix A*.

In continuation of this effort, this Information Memorandum provides a recommendation to Lead Agencies regarding adoption of comprehensive criminal background checks for child care providers serving children receiving CCDF subsidies. It describes who should be required to undergo background checks, the various types of background checks available, and when checks should be required. Finally, it discusses considerations a Lead Agency may need to weigh when implementing a comprehensive criminal background check requirement. Much of this guidance is based on recommendations that have been made by national early care and education organizations and experts with knowledge and experience related to background checks. This recommendation is also in alignment with Federal requirements included in the Head Start Act (42 U.S.C. 9843A(g)(3)), which requires that Head Start and Early Head Start agencies must obtain a criminal record check before employment for all prospective Head Start and Early Head Start employees. While much of this guidance is directed toward CCDF Lead Agencies regarding children served through the CCDF program, OCC recommends comprehensive background checks be incorporated for all providers caring for children, as part of State, Territory, and Tribal child care licensing standards.

*Indian Child Protection and Family Violence Prevention Act*

For Tribal Lead Agencies, some child care providers may already be required to receive background checks. The Indian Child Protection and Family Violence Prevention (ICPFVP) Act requires background checks for Federal and Tribal agency employees that have regular contact with, or control over, American Indian children (25 U.S.C. 3207(c)). Regulations

implementing the ICPFVP Act provide minimum guidelines and require an individual to be denied employment if he or she has been convicted of any felony, or any two or more misdemeanor offenses, under Federal, State, or Tribal law involving crimes of violence, sexual assault, molestation, exploitation, contact or prostitution, crimes against persons, or offenses committed against children. For more information about ICPFVP, see Department of Interior regulations at 25 CFR Part 63.

**Guidance:**

*Scope of Criminal Background Checks*

Children who receive CCDF subsidies are served in a wide variety of child care provider settings, including settings that are licensed and those legally exempt from licensing as determined by the State. OCC strongly recommends that all providers serving children receiving assistance through the CCDF program, regardless of whether they are required to be licensed, undergo a comprehensive criminal background check. In addition, any other persons who have regular unsupervised access to children in these child care settings should be required to undergo comprehensive criminal background checks.

CCDF regulations at 45 CFR 98.41(c) allow Lead Agencies to exempt relative providers serving children receiving subsidies from health and safety requirements. Accordingly, Lead Agencies should use that discretion when determining whether to require relative providers to undergo a background check.

*Components of a Comprehensive Criminal Background Check*

Given the lack of a national system for checking criminal history and child abuse records, multiple checks are necessary. A comprehensive criminal background check should include all of the following checks: (1) using fingerprints for State checks of criminal history records; (2) using fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records; (3) checking the child abuse and neglect registry; and (4) checking the sex offender registries.

(1) Using Fingerprints for State Checks of Criminal History Records.

A State database search of its criminal history records generally contains the most accurate and current records documenting most felony and some misdemeanor offenses committed within the State. State checks of criminal history records are also the most common type of background check performed for child care purposes; but unfortunately, less than half of States use fingerprints to conduct these checks. When conducting a check of State criminal history records, some Lead Agencies require child care providers to submit fingerprints while other Lead Agencies search criminal history records solely on basic identifying information such as a person's name, social security number, and date of birth.

OCC recommends that Lead Agencies require child care providers to submit fingerprints as opposed to limiting searches to criminal history records with only basic identifying information. A simple background check using a name search may not be as effective as a background check using a fingerprint match because a name check can be easily manipulated and individuals can have very common names or use aliases.

#### (2) Using Fingerprints for Checks of FBI Criminal History Records.

State records systems do not typically provide information reported by other Federal and State law enforcement agencies and do not account for individuals who may move across State lines. FBI federal checks require fingerprinting and can be used to share certain criminal history information housed in other State and Federal databases, as well as some information related to a few specific homeland security databases. OCC recommends that Lead Agencies use the comprehensive background check systems facilitated through the FBI. These federal checks require fingerprinting and can be used to share certain criminal history information housed in other State and Federal databases.

#### (3) Checking the Child Abuse and Neglect Registry.

Many substantiated cases of child abuse and neglect do not lead to criminal convictions and may not be included in State and Federal criminal history files. However, most States have a central registry for the reporting of certain child abuse and neglect cases that may not have resulted in a criminal conviction. OCC recommends that Lead Agency background checks include a search of the child abuse and neglect registries in the State where the child care provider resides and also every State where the provider has indicated they previously resided.

#### (4) Checking Sex Offender Registries.

The National Sex Offender Registry, established under the Adam Walsh Child Protection and Safety Act of 2006, Pub.L. 109-248, requires anyone convicted of a “criminal offense against a victim who is a minor” or a “sexually violent offense” to register as a sex offender. The U.S. Department of Justice maintains the National Sex Offender Public Website ([www.nsopw.gov](http://www.nsopw.gov)), a government system that links public State, Territory, and Tribal sex offender registries into one national search site. Participating jurisdictions include the 50 States and the District of Columbia, U.S. Territories, and participating Tribes. The website allows users to submit a single national search and also includes a listing of public registry websites by State, Territory, and Tribe that host their own public sex offender registries. This allows users to do both a national search and to narrow their search to a specific jurisdiction. OCC recommends that Lead Agencies check the National Sex Offender

Registry as well as the specific State and local jurisdictions where a child care provider resides and has previously resided.

*Frequency of Criminal Background Checks*

OCC recommends that Lead Agencies require child care providers serving children receiving CCDF subsidies, as well as staff or other adults who have regular unsupervised access to children, to receive a comprehensive criminal background check *prior* to being authorized to provide services. In addition, OCC recommends that Lead Agencies identify a reasonable frequency for conducting periodic background checks to ensure providers continue to remain eligible to provide services.

**Discussion:**

OCC recognizes that Lead Agencies may encounter some challenges when implementing a comprehensive criminal background check requirement and will need to carefully weigh different policy options. This will include making well-considered and transparent determinations as to what types of criminal offenses and behaviors disqualify a provider, the frequency with which background checks will be conducted on providers, and development of processes for appeals and waivers. OCC urges Lead Agencies to consult with their legal counsels as they work through these and other issues, including procedures to safeguard personal information collected through the background check process. **Appendix A** provides information regarding current State practices and policies for child care provider criminal background checks.

OCC also strongly recommends that Lead Agencies consult with the child care provider community when implementing background check policies and provide a process for hearing concerns. For example, the Lead Agency could consider implementing a process by which a child care provider or staff member may appeal the results of a background check to challenge the accuracy or completeness of the information contained in their criminal background report. A waiver policy might allow for exceptions based on the nature of the crime or offense, age at the time of the offense, length of time since the last offense, relationship of the offense to ability to care for children, or other extenuating circumstances.

**Questions:**

Direct all inquiries to the Child Care Program Manager in the appropriate [ACF Regional Office](#).

Sincerely,

/s/

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Shannon L. Rudisill  
Director  
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## APPENDIX A

### **Current State Practices for Criminal Background Checks**

All States and Territories require some type of background check for child care providers; however, which types of providers must undergo background checks, the type of background check required, and the frequency of background checks varies widely. Most background check processes consist of some combination of searching State and Federal databases for criminal history records as well as checks of child abuse and neglect registries and sex offender registries. States vary considerably, however, in which databases they use and whether or not they use fingerprint checks.

Some States examine only the criminal history records located in their own law enforcement databases, while other States have the FBI perform a criminal history records check that includes information from other Federal and State databases. Most States perform at least a name-based criminal records search of the State database as well as check their child abuse and neglect registries. Beyond that, the number of States that use fingerprints to check State databases or conduct Federal fingerprint checks (i.e., FBI background checks) decreases significantly. Roughly half of the States require State fingerprint checks and Federal fingerprint checks. Even fewer States check against the National Sex Offender Registry. The table below includes the most current information on the types of background checks required by States and Territories across the different categories of care. This self-reported information was taken from responses to question 3.1.3d of the recently submitted State and Territory FY 2012-2013 CCDF Plans.

<b>CCDF Plans FY 2012-2013</b>	
<b>Question 3.1.3.d from the ACF-118</b>	
<b>Number of States/Territories Checked (Response = Yes) for Each Item</b>	
<b>Center-Based Child Care</b>	
Child Abuse Registry	52
State/Territory Criminal Background	53
FBI Criminal Background (e.g., fingerprint)	40
Sex Offender Registry	31
<b>Group Child Care Homes</b>	
Child Abuse Registry	44
State/Territory Criminal Background	46
FBI Criminal Background (e.g., fingerprint)	31
Sex Offender Registry	27
<b>Family Child Care Homes</b>	
Child Abuse Registry	49
State/Territory Criminal Background	50
FBI Criminal Background (e.g., fingerprint)	36
Sex Offender Registry	31

\* Updated February 2012

### ***Which Providers Are Required to Undergo Criminal Background Checks?***

States also vary considerably in who they require to undergo criminal background checks. The vast majority of States require all child care center staff to receive criminal background checks. Some States limit this by only requiring background checks of center staff having contact with children. Additionally, over half of the States require child care center volunteers to undergo criminal background checks.

In family child care settings, once again, the vast majority of States require all licensed family child care staff to undergo criminal background checks. However, States vary in the extent to which they require family child care providers to be licensed. Only 10 States (including the District of Columbia) require family child care homes to be licensed when they care for one or more children. The remaining 41 States allow some number of children to be in family child care that is not covered by licensing. The result is that even if a State requires every licensed child care provider to undergo a background check, there are still many providers who are not licensed in the first place, so are not required to receive a background check. On the other hand, some States require unlicensed family child care providers who serve children receiving CCDF subsidies to undergo a criminal background check, regardless of their status as licensed or unlicensed.

Another important consideration when thinking about family child care is whether to require other adult household members and volunteers to undergo background checks. Currently, most States require background checks for other adult household members, but less than half the States require background checks for volunteers in family child care homes.

### ***Frequency of Criminal Background Checks***

The vast majority of States require child care providers to undergo criminal background checks prior to working in a child care center or a family child care home. After that, States vary considerably in how often they require child care staff to receive background checks. Recently proposed legislation before both the U.S. House and Senate would require background checks to occur not less than once during each 5-year period following the initial background check.

### ***Criminal Offenses and Behaviors that Disqualify Child Care Staff***

Another important consideration when evaluating background check procedures is determining what criminal offenses or behaviors will disqualify an individual from working in a child care setting. While a previous criminal conviction does not always mean that a person is unsuitable to work or live with children, Lead Agencies should use this information as part of a wider process to help ensure the safety of children served through their organizations.

Based on current State practice, there seems to be consensus that a child care staff member should be disqualified from child care employment or continuing in child care employment if they have been convicted of a felony consisting of—murder; child abuse and neglect; a crime against children, including child pornography; spousal abuse; a crime involving rape or sexual assault; kidnapping; arson; and cases of physical assault, battery, or drug-related offense, committed within the past 5 years. Many States also disqualify child care staff members who are registered or required to register on a State Sex Offender Registry or on the National Sex Offender Registry. Some States also disqualify a child care provider that knowingly employs an individual who has committed one of the above mentioned crimes.

In addition, States also disqualify individuals as child care staff members based on their conviction for crimes not specifically listed in the above that bear upon an individual's fitness to provide care for and have responsibility for the safety and well-being of children. A waiver policy may allow for exceptions to the above mentioned crimes.

### ***Challenges and Concerns of Implementing a Comprehensive Background Check***

Many States choose not to require fingerprints for their background checks because the fingerprinting process is usually slower, more expensive, and places an additional burden on both the agencies performing the check and the applicant. Child care organizations often cite the fingerprint process as a reason for delays in the approval process. Unlike background checks that rely on a person's name and social security number alone, fingerprinting often requires a person to make an additional trip to a law enforcement agency for the printing service. This process may be burdensome for people with busy work schedules or who live in rural areas without a fingerprinting location nearby. In addition, some organizations that are dependent on volunteer support have expressed concern that a lengthy background check process may discourage people from applying for a needed position.

FBI criminal history record checks can be processed in as little as 24 to 48 hours for electronically submitted fingerprints or can take as long as 6 to 8 weeks for fingerprints submitted on 10-finger print cards. Some of the delays and administrative burdens associated with fingerprint-based records checks are reduced when submitted to State and FBI databases electronically (paperless), rather than on 10-finger print cards. Electronic submissions are faster because they do not have to be converted to electronic format before the check can be made. They also reduce some of the errors associated with 10-finger cards such as misprinted or smeared submissions that can cause considerable delays in the hiring of new child care employees.

For electronic submissions, individuals usually visit a local law enforcement agency and are fingerprinted using an optical scanning machine called Livescan. These machines put the fingerprints in electronic format for quick transmission to State and Federal crime information centers. This potentially can shorten the background check process several days or weeks since the cards no longer need to be physically delivered between agencies. While electronic submissions are generally preferred over 10-finger cards, the large cost of Livescan equipment is the main reason that many local law enforcement agencies are still using 10-finger print cards. Some local law enforcement agencies have been able to use grant funding from the National Criminal History Improvement Program (NCHIP) and other sources to help purchase Livescan equipment and improve data integration to decrease transmission time between local, State, and Federal law enforcement agencies.

The cost of requiring a more comprehensive background check that includes fingerprinting has also been cited as a concern of many States. However, an FBI background check, only costs between \$18 and \$24. In addition, State and local agencies charge their own fees for this service. States also vary in their approach to covering these costs. Almost half of the States require individuals to pay for their own background checks. In some States, the child care facility pays for staff members' background checks.

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