

## Interagency Task Force on Child Safety Report to Congress



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**



## Table of Contents

<b>Background .....</b>	<b>3</b>
2014 Reauthorization of the Child Care and Development Block Grant .....	3
The Child Care Protection and Improvement Act of 2020 .....	5
<b>Background Checks: Current Processes, Challenges, and Best Practices.....</b>	<b>7</b>
Criminal History Background Checks .....	7
Sex Offender Registry Background Checks .....	12
Child Abuse and Neglect Registry Background Checks.....	14
Interstate Background Checks .....	17
<b>Task Force Recommendations.....</b>	<b>23</b>
Criminal History Background Check Recommendations .....	23
Sex Offender Registry Background Check Recommendations .....	24
Child Abuse and Neglect Registry Background Check Recommendations.....	25
Interstate Background Check Recommendations .....	26
<b>Tribal Background Checks: Critical Issues, Challenges, and Recommendations .....</b>	<b>26</b>
Lack of Statutory Authority to Request FBI Background Checks .....	27
Challenges to Accessing Inter-tribal/state Background Checks.....	29
Exacerbated Challenges .....	30
Task Force Recommendations for Tribal Implementation Challenges.....	30
<b>Conclusion .....</b>	<b>32</b>
Appendix A .....	34
Stakeholder Consultation to Task Force .....	34
Appendix B .....	37
State Implementation Data .....	37
<b>Appendix C.....</b>	<b>40</b>
National Fingerprint File Participating States .....	40
<b>Appendix D.....</b>	<b>41</b>
List of Acronyms Used In this Report.....	41

## Background

### 2014 Reauthorization of the Child Care and Development Block Grant

In 2014, Congress reauthorized the Child Care and Development Block Grant Act (CCDBG)<sup>1</sup> to significantly strengthen the program’s health and safety requirements and other provisions, including a new comprehensive background check requirement for most child care providers. While states, territories, and tribes have invested money and time to comply with the new comprehensive background check, many jurisdictions and stakeholders have encountered substantial barriers implementing the background check requirements. As of January 2022, only 34 states conduct all checks and at least 19 states are not requiring any checks before staff work with children. Together, only 24 states conduct all checks and adhere to related hiring practices.<sup>2</sup> This report summarizes the findings of the Interagency Task Force for Child Safety (hereafter the “Task Force”), convened by the Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services (HHS) in 2021 to examine barriers to implementation of CCDBG’s background check provisions and to identify, evaluate, and recommend solutions and best practices.

CCDBG, as amended in 2014, newly included five background checks for child care staff members (including prospective child care staff members), three interstate background checks in any state a staff member resided in the prior 5 years, and it required these checks be completed within 45 days from the date the check was initiated for each staff or prospective staff member. (See Table 1 for a description of the eight types of checks required by section 658H(b) of CCDBG.) In addition, the 2014 reauthorization newly prohibited child care providers who receive Child Care and Development Fund (CCDF)<sup>3</sup> subsidies from employing child care staff convicted of specified offenses. (See Table 2 for the list of CCDBG disqualifying offenses as required by section 658H(c) of CCDBG.) Prior to these additions in 2014, CCDBG included no background check requirements, though all states had some background check processes and disqualifications for certain categories of child care providers.

In 2016, as part of the final rule for the 2014 law, CCDBG regulations included additional clarifications for some of the requirements. First, regulations defined “child care staff members” to include staff of all child care providers that are licensed, registered, or regulated, as well as staff of license-exempt child care providers receiving CCDF funds who are non-relative caregivers. This includes any hired-for-pay staff whose activities involve the care or supervision of children or who may have unsupervised access to children (*e.g.*, adults living in a family child care home). In addition, CCDBG regulations permit the provisional hire of prospective staff members to provide care to children after the state receives results from either the Federal Bureau of Investigation (FBI) fingerprint-based criminal history record check or the state criminal history record repository using fingerprints in the state where the staff member resides

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<sup>1</sup> The CCDBG Act is codified at 42 USC 9857 *et seq.*

<sup>2</sup> The state data counts used throughout this report are primarily derived from FFY 2022-2024 CCDF State Plans. The District of Columbia is included in state data counts. U.S. Territories are not included in these counts.

<sup>3</sup> CCDF consists of the discretionary funds authorized by the CCDBG Act and the mandatory/matching funds provided by the Social Security Act.

but prior to completion of all checks, as long as the provisional hire is always supervised by someone who has already received a qualifying result on a comprehensive background check within the past 5 years. This provisional hire regulation is intended to protect child safety while also recognizing logistical constraints and parent child care needs. Other early childhood programs may be subject to these rules as well. For example, ACF-funded Head Start programs that are licensed or regulated by the state are also subject to the CCDBG background check regulations. (Head Start programs that are not licensed and regulated under the state child care licensure system must meet Office of Head Start comprehensive background check regulations that were developed to align with the 2016 CCDBG final rule). State-funded preschool programs in mixed delivery settings may be subject to CCDBG rules as well.

Table 1. Required Background Checks in Section 658H(b) of CCDBG (42 USC 9858f(b)) and CCDF Regulations (45 CFR 98.43(b))

<b>State, Territory, or Tribe of Residence</b>			
<b>Requirement</b>	<b>Purpose</b>	<b>Search Type</b>	<b>State or Federal</b>
FBI fingerprint check using Next Generation Identification (NGI)	Criminal History	Fingerprint	Federal
National Crime Information Center’s National Sex Offender Registry (NCIC NSOR)	Sex Offender History	Fingerprint (automatic with NGI check); Name-Based	Federal
State criminal registry	Criminal History	Fingerprint	State
State sex offender registry or repository	Sex Offender History	Name-Based or Fingerprint; Public or private	State
State child abuse and neglect registry database	Child Abuse and Neglect History	Name-Based	State
<b>State, Territory, or Tribe of Residence in Past 5 Years</b>			
<b>Requirement</b>	<b>Purpose</b>	<b>Search Type</b>	<b>State or Federal</b>
State criminal registry	Criminal History	Name-Based or Fingerprint	State
State sex offender registries or repositories	Sex Offender History	Name-Based or Fingerprint; Public or private	State
State child abuse and neglect registries	Child Abuse and Neglect History	Name-Based	State

Table 2. Employment Disqualifications in Section 658H of CCDBG (42 USC 9858f)

<b>Criminal Convictions</b>
Felony conviction for: <ul style="list-style-type: none"> <li>• Murder</li> <li>• Child abuse or neglect</li> <li>• Crime against a child, including child pornography</li> <li>• Spousal abuse</li> <li>• Rape or sexual assault</li> <li>• Kidnapping</li> <li>• Arson</li> <li>• Physical assault or battery</li> </ul>
Drug offense in the prior 5 years (CCDBG allows a state to review and disregard on a case-by-case basis)
Violent misdemeanor committed as an adult against a child, including: <ul style="list-style-type: none"> <li>• Child abuse</li> <li>• Child endangerment</li> <li>• Sexual assault</li> <li>• Child pornography</li> </ul>
<b>Sex Offense Convictions</b>
Registered or required to be registered in state sex offender registry or repository
<b>Other</b>
Any other offenses a state, territory, or tribe deems disqualifying

### The Child Care Protection and Improvement Act of 2020

The Interagency Task Force for Child Safety was created in 2021 with the passage of the Child Care Protection Improvement Act (CCPIA), signed into law on December 31, 2020 (Pub. L. 116-279). CCPIA required HHS to establish the Task Force to review research regarding CCDBG child care background checks and to identify, evaluate, and recommend best practices and technical assistance to assist federal and state agencies in fully implementing the requirements of section 658H(b) of CCDBG. CCPIA required the Task Force to consult with federal, state, and local stakeholders to identify implementation challenges and potential solutions and submit this report to Congress on its findings and recommendations.

The Task Force included the following members, appointed by the President, in February 2021:

- JooYeun Chang (Task Force Chair), Acting Assistant Secretary, ACF, HHS
- Ruth J. Friedman, Ph.D., Director, Office of Child Care (OCC), ACF, HHS (The Acting Director of OCC, Ellen Wheatley, was officially appointed in February 2021, but was replaced by Ruth Friedman who was appointed Director of OCC in May 2021.)
- Aysha E. Schomburg, Esq., Associate Commissioner, Children’s Bureau, ACF, HHS
- Kimberly J. Del Greco, Deputy Assistant Director, Criminal Justice Information Services Division, FBI, U.S. Department of Justice (DOJ)

In addition to the formal membership, the Task Force included participation from the following federal offices:

- Executive Office of the President
- Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS
- Office of Child Care, ACF, HHS
- Office of Early Childhood Development, ACF, HHS
- Office of External Affairs, ACF, HHS
- Office of the General Counsel, HHS
- Office of Head Start, ACF, HHS
- Office of Legislative Affairs and Budget, ACF, HHS
- Office of Planning, Research, and Evaluation (OPRE), ACF, HHS
- Operational Programs Branch, Criminal Justice Information Services Division, FBI, DOJ
- National Crime Prevention and Privacy Compact Council, FBI, DOJ

The Task Force heard testimony from federal, state, and local stakeholders and analyzed available data and research. Data sources included:

- Testimony from 23 stakeholder entities presented during 9 Task Force convenings (See Appendix A for a full list of witnesses)
- Empirical research conducted by OPRE
- Data analysis conducted by ASPE and OCC of state statutes and procedures, federal fiscal year (FFY) 2022-2024 CCDF State Plans, and other sources
- HHS Office of Inspector General 2019 review of six states’ implementation of CCDBG background check requirements<sup>4</sup>
- ACF regional roundtable discussions on “Improving Access to High-Quality Child Care”
- State/Territory Child Care Administrators Meetings

This report to Congress, mandated by CCPIA, provides the Task Force findings and recommendations and includes information required by the CCPIA. First, the report presents current background check processes, the critical issues and challenges states face in implementing each check, and best practices. Second, it presents the Task Force recommendations. Finally, the report concludes with a discussion of key challenges and recommendations related specifically to tribal background check requirements.

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<sup>4</sup> U.S. Department of Health and Human Services, Office of Inspector General, August 2019, Report No. A-05-19-00015 Link: Retrieved from: <https://oig.hhs.gov/oas/reports/region5/51900015.asp>

## Background Checks: Current Processes, Challenges, and Best Practices

CCDBG background check processes vary by state and by type of check. Depending on the jurisdiction, the background check process might be initiated by the prospective staff member, the provider, the CCDF lead agency, or the designated state background check unit. Background check results may be processed and reviewed by a single background check unit or different entities may be responsible for reviewing specific results. For instance, state CCDF lead agency or background check unit staff may review the criminal history results and make a separate qualification decision based on those results. Meanwhile, state law enforcement may be responsible for checks of non-public sex offender registries, and the child abuse and neglect (CAN) registry results may be reviewed by state child welfare agency staff. Information from all sources may be combined into a single employment eligibility determination or providers/employers may be given eligibility determination information from several sources.

Notification to providers and applicants of background check results can also occur in different ways. Some states use an online portal where providers (and sometimes the prospective applicants) can view results and notifications can be made via email or mail. Employers may be tasked with notifying applicants of eligible results, but ineligible results are most often provided by states directly to applicants with appeal procedures.

Although states have made progress implementing the CCDBG background check requirements, significant challenges remain for many states. Based on review of the FFY 2022-2024 CCDF State Plans, only 34 states conduct all required national, in-state, and interstate checks, and only 29 states report compliance with the provisional hire requirement (see Appendix B). Data on compliance with the 45-day timeline is unavailable for each of the background checks. However, a 2019 survey by OPRE found only 26 of 51 child care state lead agencies reported completing over 95 percent of in-state checks within 45 days and only 10 of 51 complete over 95 percent of interstate background checks within 45 days. Across the eight types of background checks and the various associated data systems, implementation problems range from unclear processes or outdated infrastructure to systemic problems like implicit racial bias. This is consistent with the findings from a 2019 HHS Office of Inspector General audit of six states, which cited data system limitations, insufficient funds and staff to process the criminal background checks, and delays associated with making changes to state laws or policies and procedures as the biggest barriers to implementation.<sup>5</sup> In an effort to follow OIG's recommendations, OCC continued to monitor states' progress toward implementation and concluded that some of the challenges could be addressed through technical assistance and adopting best practices while others would require a larger effort and investment and in some cases would require changes to state laws.

### Criminal History Background Checks

The CCDBG criminal background checks include a fingerprint-based FBI criminal history record check and a fingerprint-based check of the state's own criminal history repository, but

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<sup>5</sup> Ibid -: <https://oig.hhs.gov/oas/reports/region5/51900015.asp>

specific processes vary by state. According to FFY 2022-2024 CCDF State Plan data, forty-seven states conduct the FBI criminal history check, and 47 states conduct the in-state criminal history check (See Appendix B, Table 3). However, 19 states allow employment to begin before either check is completed, which is prohibited by CCDBG rules.<sup>6</sup> Typically, once a prospective staff member applies for a position, they are sent for fingerprinting by either a live scan or a hardcopy fingerprint card. The fingerprints are sent to the state's authorized background check unit to be processed, where they are checked against the state's criminal history repository and submitted to the FBI Next Generation Identification (NGI) system for review. Most states have a statewide, centralized background check unit that is responsible for conducting background checks for child care staff and located in the state's department of social or human services or department for children and families. But some states locate them in other agencies, including education departments, health departments, human resources departments, law enforcement agency/State Identification Bureau (SIB), licensing agencies, or employment agencies, and some do not have a centralized unit.

NGI is an FBI-maintained fingerprint-based criminal history record repository (previously called the Integrated Automated Fingerprint Identification System) used by all states to conduct the FBI criminal background check. It provides the FBI an automated biometric identification and criminal history record reporting system to support both criminal justice and noncriminal justice purposes, to include statutorily authorized noncriminal justice entities that conduct background checks of individuals for employment or licensing purposes (*e.g.*, child care staff members). All fingerprints and criminal history record information maintained in the NGI system are submitted voluntarily by state, tribal, territorial, and federal agencies. As of September 2021, all 50 states, the District of Columbia, the U.S. territories, have access to the NGI system, including 18,000 law enforcement agencies. Only some tribes have direct access to the NGI system, via the Tribal Access Program (TAP).

Since a check of the FBI criminal history record repository includes fingerprint-based records from across the nation, there is significant redundancy between the FBI criminal history record check and state criminal history record checks. However, state criminal history repositories contain data not found in the FBI criminal history record repository, such as disposition information. In most cases, a search of both the state criminal history record repository and the FBI criminal history record repository returns the most up-to-date record and can provide a more complete information on an individual.

The time it takes for the state to process the in-state criminal registry and FBI NGI registry results depends on the state's technology and data systems and the state's capacity to manage the caseload and coordinate the criminal background check process across multiple state agencies and offices. The FBI reports that all non-urgent criminal fingerprints are processed and returned to states within 24 hours of receiving a submission.

Key critical issues and challenges to the implementation of these checks include:

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<sup>6</sup> Nineteen states report policies that are non-compliant, and compliance is unknown for three states who failed to report their provisional hire policy.



- **Hiring before criminal check results.** It is extremely concerning that CCDF Plan data indicates that at least 19 states allow child care staff to be hired prior to completion of either the FBI or the in-state criminal history check. Since the FBI processes these requests in less than 24 hours, this level of non-compliance likely reflects significant state capacity and funding constraints to process and relay results to child care providers and/or a lack of understanding of the need to prioritize such a foundational safeguard.
- **Continued reliance on hard copy fingerprint cards.** While all the states have access to NGI fingerprint technology to some degree, the machines are expensive and require high-speed internet connections. For many counties, the only fingerprinting option is hard copy fingerprint cards. Thirty-one states and territories continue to use hard-copy fingerprint cards when submitting to the state central record repository<sup>7</sup>, which increases financial burdens to providers because there are additional charges at the state and local level associated with processing ink rolled hard copy fingerprint cards, decreases in efficiencies by passing paperwork back and forth between agencies if electronic processes are not available, and challenges regarding ensuring that information is kept confidential. Hard copy fingerprints can also cause delays due to:
  - Collecting the fingerprints for a hard copy card requires a trained person to minimize errors
  - Rejections on hard copy fingerprint cards remain high due to issues such as fingerprint image quality
  - Time required for the state central record repository to submit these fingerprints and either verify or reject them and reply to the child care lead agency.
- **Poor data quality and incomplete records.** The inaccuracy of criminal history data is a well-documented problem in state criminal records and subsequently in the FBI repository, which gets most of its data from these state sources. In 2018, the Bureau of Justice Statistics reported that the timeliness of data entry, readability of criminal history records, and accessibility of the records are data quality issues facing criminal history repositories.<sup>8</sup> In an environmental scan conducted in 2019 by OPRE, nearly one third of states reported data quality issues, particularly incomplete records (e.g., missing final decisions on charges). Similar data quality issues have been identified in sex offender records. Records are often incomplete, inaccurate, or out-of-date.
- **Limited access to fingerprinting services.** Some providers have limited access to fingerprinting services due to geographic location like rural areas where there may not be a place to process fingerprints and limitations on fingerprinting resources. Limited access may also be due to a lack of extended hours or limited appointments.
- **Inadequate processes for license-exempt providers.** The Task Force anecdotally learned that in some states, accessing fingerprint appointments can be challenging for license-exempt providers because access has been structured around licensed providers.
- **Confusion over statutory authority to conduct background checks for Head Start programs.** Though most Head Start programs must comply with CCDBG background checks due to their licensing status, some states do not recognize the CCDBG authority

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<sup>7</sup> Survey of State Criminal History Information Systems, 2018, Table 8a  
Retrieved from: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/255651.pdf>

<sup>8</sup> Bureau of Justice Statistics. (2017 - 2018). Terms & Definitions: Criminal Justice Data Improvement Program.  
Retrieved from <https://bjs.ojp.gov/library/publications/federal-justice-statistics-2017-2018>

as applying to prospective Head Start staff. Nor does the Head Start Act provide sufficient authority for Head Start programs to access state background check fingerprinting systems for employment purposes. This can make it difficult for Head Start programs to comply with the CCDBG requirements they are required to follow under state licensing rules.

- **Slow response time for in-state and FBI criminal history checks.** Conducting background checks is slowed by a number of factors, including lack of automation, need for collaboration between multiple state agencies, and decentralized processes. In some states, the state and FBI fingerprint checks are conducted simultaneously, such that the retrieval of both results cannot be disaggregated, which can result in delays to the provisional hiring process.
- **Inadequate discretion on disqualifying elements.** Except for a drug offense, CCDBG permits states no discretion to consider the context of criminal offenses before disqualification. While that may be the appropriate choice for some offenses, with other offenses it may be more appropriate to allow states to consider factors such as offender rehabilitation, length of time since the offense was committed, and the age of the offender during commission of the offense. Some states used this practice prior to the new CCDBG requirements and have voiced preference for a discretionary process that is better aligned with a rehabilitative approach to criminal justice, and most importantly, a case-by-case determination based on the facts and timing related to each individual. The Task Force did not find data suggesting this discretionary process would create a greater risk to children's safety than the mandatory disqualification.
- **Delays create child care workforce challenges and supply scarcity for parents.** Though CCDF regulations allow prospective child care employees to be provisionally hired once they pass either an FBI fingerprint-based criminal history record check or a state criminal history record check if they are always supervised, delays in the process can create significant challenges to program operations. Particularly in the context of the low wages typically offered to child care staff, delays in processing the check required for a provisional hire may lead prospective child care staff to accept a different job. In addition, providing this type of supervision is a burden for providers who may already be facing staffing challenges. This is particularly true for family child care providers, whose staffing patterns may make this less possible than for center-based programs. These child care workforce challenges can create their own challenges for parents looking to enter or stay in the workplace because it can make it harder for them to find child care.

Examples of best practices that facilitate implementation of these two criminal history checks include the following:

- **FBI and state Rap Back services:** The FBI Rap Back Service allows authorized agencies to receive on-going status notifications of criminal history reported to the FBI after the initial processing and retention of civil fingerprints. By using fingerprint identification to identify persons arrested and prosecuted for crimes, Rap Back responds and provides a notice to subscribing agencies regarding subsequent criminal justice actions for enrolled individuals.

Some states have developed Rap Back services for their own records and provide ongoing notifications of any criminal history reported on an individual's record maintained by the state's criminal history record repository. These notifications are specific to state-only activity, rather than activity that occurs in other states or at the national level, as offered through the FBI Rap Back Service.

States may use their SIB to enroll child care staff members in their state-based rap back programs as well as the FBI's Rap Back Service to remain current of possible changes in a staff member's criminal history record. Rap back programs may assist in fulfilling the CCDBG requirement that a check must be conducted on each staff member once every 5 years. The state would not need to repeat checks for components that are covered by an FBI Rap Back Service or a state rap back program. They would, however, still be required to repeat checks for components that are not part of a rap back program (*i.e.*, state CAN registry, state sex offender registry, or NCIC NSOR).

- **Streamlining processes through partnerships and technology:** The comprehensive background checks process is a complicated one that involves a wide range of partners and requires a significant amount of internal and external coordination. Some of the strategies that states have used to make these processes more efficient include:
  - Implementation of a portable background check card that a covered individual can use to work or volunteer at any child care facility in the state
  - Improving infrastructures within their background check systems to allow for easier access to the correct forms within each state
  - Providing access to information through a universal portal that uses simple functionalities (including allowing for accurate data on the number of criminal background check requests and employment tracking statewide)
- **Clear communications and technical assistance to provider community:** Child care providers need clear information from states about these requirements and how to comply. A robust strategy for clear instructions to the provider community and technical assistance can improve compliance. States have made strides in this area by providing the following information on their consumer education websites<sup>9</sup>:
  - Comprehensive, easy to understand instructions on how an individual, either in-state or out-of-state, can request background checks
  - Graphics and/or video tutorials showing the steps to complete a background check
  - Information clearly outlining each background check component, the disqualifying crimes, and how to appeal the disqualifying decision of a background check
- **Federal technical assistance:** OCC's National Center on Subsidy Innovation and Accountability (NCSIA) technical assistance center supports lead agencies as they implement the background check requirements. Since 2017, NCSIA has conducted

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<sup>9</sup> Section 45 CFR 98.33 of the CCDF Final Rule requires State and Territory Lead Agencies administering the CCDF program to collect and disseminate consumer education information to parents of eligible children, the general public, and providers through a consumer-friendly and easily accessible Website. The Consumer Education Website includes information about State or Territory policies (related to background checks).

hundreds of technical assistance activities with grantees including targeted technical assistance, national webinars and presentations, and individual on-site and virtual visits. The Center's efforts include an ongoing Comprehensive Background Checks Targeted/Intensive Technical Assistance Project which provides ongoing intensive supports to lead agencies as they develop and execute strategies to improve their background check processes.

## Sex Offender Registry Background Checks

CCDBG requires checks of two different sex offender registries that contain significant overlap with each other. First, it specifically requires a search of the National Crime Information Center's National Sex Offender Registry (NCIC NSOR), which is maintained by the FBI. The NCIC NSOR is meant to include anyone nationwide convicted of a "criminal offense that has an element involving a sexual act or sexual contact with another including...a criminal offense that is a specified offense against a minor" or a "sexually violent offense" to register as a sex offender. The vast majority of NCIC NSOR records are fingerprint records and are automatically included in the FBI fingerprint criminal background check. But a small percentage of NCIC NSOR records are only name-based records for reasons such as fingerprint rejection by the FBI for poor quality or because no fingerprints were recorded at time of arrest. This small percentage of records can be accessed through a name-based search of the NCIC NSOR and is limited primarily to law enforcement agencies. CCDBG is the only federal statute that requires the NCIC NSOR name-based records be checked for employment purposes. According to FFY 2022-2024 CCDF State Plan data, 41 states conduct this background check (see Appendix B, Table 4), but there is no data on what percentage are completed in the 45-day timeline.

Second, CCDBG requires a search of the sex offender registry or repository in the staff member's state of residence. Oftentimes, the in-state sex offender check results are received as part of the in-state criminal history check. The state sex offender registry requirement can be met with a search of either the state's public registry; the non-public registry maintained by a state, tribe, or territory; or a search of the National Sex Offender Public Website (NSOPW), a federal system maintained by DOJ that links public state, territory, and tribal sex offender registries into one national search site. However, OCC recommends states check their non-public registries because these registries are more likely to be complete and up-to-date. Checking the non-public registry usually requires the child care lead agency to make formal inquiries to the appropriate state law enforcement agency who has access to the non-public registry. According to FFY 2022-2024 CCDF State Plan data, 47 states including D.C. conduct this required in-state check (See Appendix B, Table 4), but there is no data on what percentage are completed in the 45-day timeline.

Key critical issues and challenges to the implementation of these checks include:

- **Name-based checks yield false positives and false negatives.** Name-based background checks, like state sex offender public websites, yield false positives in which an individual (*e.g.*, Joe Smith) found on the list is not the same individual seeking hire. They also can yield false negatives, such as when slight variances in how a name is

entered (*e.g.*, Joe T. Smith vs. Joe Smith) can lead the state to miss that the individual is an offender. As a result, name-based checks are time-consuming because states need to research which of several identical names, if any, is the specific individual applying to work in child care.

- **Limited access to the name-based NCIC NSOR.** The NCIC was created for criminal investigative purposes so access to the NCIC is not typically provided to agencies without a criminal justice focus. Therefore, state child care offices and local criminal justice agencies must work together to obtain results, and such collaboration can be slow because of continued confusion on the part of law enforcement and child care agencies about what access is allowable for civil purposes. CCDBG is the first instance of these name-based records being used for civil purposes. Moreover, the 2019 OPRE Environmental Scan data revealed that eight (of the 26) state respondents surveyed indicated a need for new legislation to provide the requisite authority necessary to implement this component of the background check. According to FFY 2022-2024 CCDF State Plan Data, ten states are not conducting this check (see Appendix B, Table 4). In addition, lead agencies only receive a yes/no verification from law enforcement without any information on the underlying disqualifying criteria that led to that decision and have no way of confirming the agency is responding on the right individual.
- **Confusion about the name-based NCIC NSOR requirement.** There are 21 different file results in the NCIC, but CCDBG only requires a check of the NCIC NSOR file. Some child care lead agencies and partnering state law enforcement agencies continue to check the entire NCIC instead of the NSOR file specifically. OCC and the FBI continue to provide technical assistance on an ongoing basis to improve understanding of the requirement to law enforcement agencies, but it continues to be an issue.
- **Small database.** When a state conducts an FBI fingerprint check, the request automatically includes a check of the NCIC NSOR fingerprint database. But it does not include the small number of NCIC NSOR records that are name-based only. Name-based records occur for reasons such as individuals were not fingerprinted at the time of arrest, or the prints were rejected by the FBI for poor quality. Only about 4 percent<sup>10</sup> of NCIC NSOR records are name-based but they require states to submit additional requests and additional effort and can delay final completion of the background check.

Examples of best practices that facilitate implementation of these two sex offender registry checks include the following:

- **FBI NCIC NSOR technical solution.** The FBI implemented a technical solution in Spring 2020 to streamline the NCIC NSOR check process by linking FBI fingerprint records to existing NCIC NSOR name records. Because access to the NCIC NSOR database is limited to specific law enforcement officials, this technical solution allows the SIB's to assist CCDF agencies with using NCIC NSOR information for child care employment purposes. The FBI's NCIC NSOR technical solution has had a positive impact on the SIB retrieval of the name-based records and states' use of the name-based records to make an employment eligibility determination.
- **Rap Back programs.** As previously noted, rap back programs are very useful for implementing the CCDBG requirement that background checks be conducted every 5

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<sup>10</sup> FBI data request from March 2022.

years because the programs allow agencies to receive on-going status notifications of an individual's record maintained by state or national repositories and ensures compliance with the requirement to conduct background checks every 5 years. The FBI Rap Back service allows for on-going notification for the FBI fingerprint criminal data base and the NCIC NSOR fingerprint records. Some states also use rap back services for some components of the state background checks, which can reduce administrative burden and increase compliance.

## Child Abuse and Neglect Registry Background Checks

The CCDBG background check requires states to review their own child abuse and neglect (CAN) registry though unlike the other CCDBG checks, the law includes no automatic disqualification nor specifies any other action if a child care staff member or prospective staff member appears on a CAN registry. According to FFY 2022-2024 CCDF State Plan data, forty-six states conduct this check (see Appendix B, Table 5) though they vary in how they use the information to make employment decisions for CCDBG. State timelines for completing these checks is unknown. All states maintain a CAN registry, which is a centralized registry of records related to reports and investigations of child abuse and neglect to facilitate the tracking of such investigations and findings.<sup>11</sup> The information included in CAN registries varies among states. For example, some states include all reports of child abuse and neglect, while others maintain only reports that have been investigated and substantiated. However, criminal child abuse dispositions, such as felony child abuse (which is an automatic employment disqualification under CCDBG) would be captured under the criminal background check and do not require a check of a CAN registry, which only sometimes include criminal cases.

Key critical issues and challenges to the implementation of these checks include:

- **CAN registry practices and information make them problematic for use in child care employment decisions.** CAN registries were created to assist child welfare agencies in the identification and protection of abused and neglected children. The recent use of CAN registries for screening the suitability of potential staff for employment in child care does not meet the original purpose and adds confusion to the hiring process, and CAN registries include data that have no bearing on child care employment suitability such as unsubstantiated claims. Critical flaws discussed briefly below make the information sent to state CCDF lead agencies for screening prospective child care staff unfair and discriminatory to prospective child care employees.
  - Unsubstantiated reports. The type of information in state CAN registries varies by state.<sup>12</sup> Some only include substantiated reports while others include all unsubstantiated reports as well. In many cases, these unsubstantiated reports can lead to employment disqualification under a state's CCDBG background check processes.

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<sup>11</sup> Child Welfare Information Gateway. (2018). Establishment and maintenance of central registries for child abuse or neglect reports. Washington, DC: U.S. Department of Health and Human Services, Children's Bureau

<sup>12</sup> <https://www.childwelfare.gov/pubPDFs/centreg.pdf>

- Racial Bias. Racial disparities exist at nearly every major decision-making point along the child welfare continuum. In a recently published report, the National Conference of State Legislators identified the following five primary factors to explain the evidence of disproportionality and disparity surrounding racial groups and low-income families in the child welfare system: correlation between poverty and maltreatment; visibility or exposure bias; limited access to services; geographic restrictions; and child welfare professionals knowingly or unknowingly letting personal biases impact their actions or decisions.<sup>1314</sup> This bias places people of color at a disadvantage for child care employment without any meaningful risk analysis.
- Criminalization of poverty. In 2019, 74 percent<sup>15</sup> of all child welfare cases were a result of child neglect rather than child physical or sexual abuse. It is increasingly clear that many determinations around child neglect reflect a family's poverty status rather than parental neglect.<sup>16</sup> For example, a parent unable to find affordable housing may be reported for child neglect in some jurisdictions. Twenty-four states have statutory definitions of neglect that include failure to provide basic necessities, while 21 states and the District of Columbia have statutory definitions of neglect that include an exception for families whose issue of failure to provide for their child was due to lack of financial means. Barring individuals in poverty from the child care workforce has no known benefits for child safety and is counterproductive from the standpoint of the parent trying to achieve financial stability and the child care sector growing its workforce.
- Domestic violence. In some states and in some local jurisdictions, victims of domestic violence are placed on a CAN registry even though they are not a perpetrator of abuse or neglect, because an investigator or prosecutor decided they failed to protect the child from the actual perpetrator or from witnessing violence against a victimized parent. In 2019, 24 states had statutory definitions of neglect that included domestic violence. Consequently, victims of domestic violence can remain on CAN registries for years, regardless of whether the individual themselves would be unsafe providing care in a child care program.
- Expungement practices. States set their own schedules for expunging parent names and the records associated with them from the CAN registry, and consequently, many CAN registries include records of persons who do not present harm to children. Despite the Child Abuse Prevention and Treatment Act requiring prompt expungement, state policies vary greatly. For records in cases determined to be unsubstantiated, states' policies and practices for

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<sup>13</sup> 2021 National Conference of State Legislators <https://www.ncsl.org/research/human-services/disproportionality-and-race-equity-in-child-welfare.aspx>

<sup>14</sup> Edwards, F, Wakefield, S, Healy, K and Wildeman, C. (2021). Contact with Child Protective Services is pervasive but unequally distributed by race and ethnicity in large US Counties. PNAS 2021 18:30, e2106272118.

<sup>15</sup> U.S. Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2021). *Child Maltreatment 2019*. <https://www.acf.hhs.gov/cb/research-data-technology/statistics-research/child-maltreatment>

<sup>16</sup> Disentangling Neglect From Poverty Across Definitions, Outcomes, Interventions and Policy Recommendations (April 2022). Symposium. Pennsylvania State University.



expunging the records range from immediately upon the state's final determination in a case to 10 years.<sup>17</sup> For substantiated cases, many states have policies that consider multiple factors, such as length of time that has passed since the most recent abuse or neglect allegation, the age of the child, the degree of harm caused, and the type of abuse or neglect. For example, a few states expunge the CAN registry record if there has been no additional allegation for as few as 5 and up to as many as 25 years; a few states keep the name and records until the child has attained a certain age (*e.g.*, 18 or 30 years old); and some states consider the type of abuse or neglect and if sexual abuse or fatality/near fatality is substantiated. There are states that keep the record on the CAN registry for decades, such as a state that expunges the record after 50 years and another that expunges the record only after receiving verified documentation of the perpetrator's death. The Children's Bureau reports that 19 states do not immediately expunge unsubstantiated cases and may keep such records on the registry for years, 18 states immediately expunge unsubstantiated cases or add only substantiated cases to the CAN registry, and 15 states do not address expunging unsubstantiated reports in their regulations.

- **Improper use of information.** CCDBG requires that CAN registries be checked but does not include requirements about how states assess or use the results for child care employment. State policies vary in this regard, ranging from blanket exclusion of any person whose name appears on a CAN registry to individualized assessment of CAN registry information to determine if a person poses a threat to children. Many states use this check to prohibit employment without any true assessment of the individual's risk. Since many state registries use criteria, due process, and expungement processes that do not reflect risk of harm, states are improperly using CAN registry checks for child care employment decisions. More information on how states use information contained in the CAN registry can be found in Appendix B, Table 5.
- **State capacity.** Before CAN registries were judged to be important for child care employment decision purposes, many states had only one employee assigned to the operation of the CAN registry. CCDBG background checks have greatly increased the volume of CAN registry checks so states have needed to increase internal capacity for this portion of the check within their child welfare agency as well as their child care agency. Only some have been able to expand capacity due to continued limited resources, which lead to prospective employers and employees waiting excessively long times for the CAN registry review results.

Examples of best practices that facilitate better implementation of the CAN registry check include the following:

- **Proactive individualized assessment.** Only three states currently use this approach that requires an individualized assessment of the extent to which the individual on a CAN registry presents a danger to children, but it is clearly the most appropriate way to gauge the results of the CAN registry background checks in a child care employment screen.

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<sup>17</sup> *Review and Expunction of Central Registries and Reporting Records* 2018, Washington, DC: U.S. Department of Health and Human Services, Children's Bureau <https://www.childwelfare.gov/pubPDFs/Registry.pdf>



- **Templates and portals.** The State of Washington created electronic folders for each state with prefilled email templates to reduce the time and effort involved in requesting interstate CAN registry reports and an electronic portal system for other states to more easily request Washington’s CAN registry findings.
- **Collaborations.** Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont developed a partnership to minimize any barriers with terminology variations, payment methods, and responses to requests for information.

### Interstate Background Checks

For prospective child care staff members who resided in different state(s) during the prior 5 years, CCDBG requires lead agencies to conduct three interstate background checks in each of the states: an interstate criminal fingerprint check, an interstate sex offender check, and an interstate CAN registry check. According to FFY 2022-2024 CCDF State Plan data, only 37 states conduct all interstate checks, and 11 states are conducting none of the interstate requirements. Nine states do not have procedures in place to respond to one or more interstate check requests from other states (see Appendix B, Table 6). Average processing times for states to complete these checks is unknown. However, interviews from the 2019 OPRE Environmental Scan of a subset of states found a range from 1 to 24 days to receive a reply to an out-of-state criminal history check; a range of 1 to 35 days to receive a reply to an out-of-state sex offender check; and 1 to 60 days to receive a reply to an out-of-state CAN registry check. In general, these three interstate searches are conducted and completed to the extent that the requesting state agency receives information from the responding state agency. The entities responsible for initiating the request and responding to the request vary by state, which can make the process challenging to navigate. State centralized background check units are the most common entity responsible for submitting interstate requests and can be tasked with requesting some or all interstate checks by preparing the request forms, following any state-specific instructions, and paying any required fees. According to the 2019 OPRE Environmental Scan, fees charged to out of state requestors ranged from as little as \$0 for an online name-based check to \$67 for a fingerprint-based check. The most commonly cited challenge for the payment of fees was misalignment between the requesting and responding state’s procedures for making and accepting payment. For example, some states only accept payment by credit card, but not all state agencies have the policies and processes in place to make credit card payments. Similarly, if there are no procedures in place for a state’s background unit to make interstate requests, the responsibility may fall to the CCDF lead agency. Some states have made requesting and obtaining interstate check results the responsibility of the applicant, but this is not allowable under the CCDF regulations, unless the responding state has closed record laws.

For the 24 states that participate in the National Fingerprint File (NFF) program (see Appendix C), the interstate criminal background check is relatively simple. The NFF is an FBI-maintained database of fingerprints or other unique personal identification information relating to an arrested or charged individual to provide positive fingerprint identification of records indexed in the Interstate Identification Index system. States that participate in the NFF are only required to send arrest card images to the FBI while maintaining disposition information at the state level where they may be accessed directly for both criminal and other authorized purposes. A state that participates in the NFF program is required to provide its fingerprint-based criminal history record information for all purposes unless the information is sealed. Thus, when an FBI

fingerprint-based criminal history record check is conducted, any request for an NFF state-maintained record will result in the NFF state's repository being queried directly by the FBI for its criminal history record information. This allows the NFF state to automatically provide the most accurate and complete information in response to all inquiries. There are a number of reasons states do not choose to participate in the NFF. For example, the NFF program requires a participating state to agree to release all information to other states, but some states do not wish to share such data so broadly. The 2019 OPRE Environmental Scan also found states cited a lack of resources for the required time, staff and funding and outdated infrastructure. At least one state requires legislation to be passed to allow NFF participation.

For non-NFF states and for NFF states making a request to a non-NFF state, the procedures are more complex. States may use online portals, mail, fax, phone, and/or email to initiate the out of state request. The responding state may require fingerprints through mail or live scan vendors to process out of state criminal history requests. However, most states respond to name-based requests for state criminal checks from out of state requesters using a combination of data elements such as the prospective employee's name, date of birth, and social security number. When responding to out-of-state requests, the state may opt to provide only conviction information, or the state may opt to provide all available records. Alternatively, some states provide a yes/no indicator of whether the prospective staff member is eligible for employment based on their state's criteria, which may differ from the requesting state's criteria, and the CCDBG criteria. According to FFY 2022-2024 CCDF State Plan data, thirty-seven states, including D.C., conduct interstate criminal checks (see Appendix B, Table 6). A 2019 survey of states by OPRE found only 10 out of 51 state and territory respondents complete more than 95 percent of interstate background checks within 45 days.

Most states use the NSOPW to complete out-of-state checks of sex offender registries because it is publicly available and does not require an interstate process. Because the NSOPW is a public resource, anyone can use it to search the public sex offender registries from all 50 states, the District of Columbia, the 5 principal U.S. territories, and participating federally recognized tribes. The website allows users to submit a single national search through an online web service that performs real-time searches of state, territory, and tribal databases. CCDBG does not require states to conduct a search beyond the NSOPW for the interstate sex offender registry check requirement, but OCC encourages states to request sex offender information from state non-public sex offender registries when conducting an interstate sex offender registry check, if available, because it is more likely to be complete and updated. To obtain another state's non-public information, states must make a direct request, usually from state law enforcement agency to state law enforcement agency. According to FFY 2022-2024 CCDF State Plan data, forty states conduct interstate sex offender checks (see Appendix B, Table 6). Compliance with the 45-day timeline is unknown.

The process and cost to request an interstate CAN registry check vary by state. The type of information provided to requesting states also varies. Some states respond with a yes/no indicator as to whether the individual applicant is on the registry for a substantiated case, and others respond with more detailed information about the record, and some states refuse to reply because of differences in state rules. For example, a state that requires due process in their own state might refuse to accept results from a state that does not have due process requirements.

According to FFY 2022-2024 CCDF State Plan data, thirty-nine states conduct interstate CAN registry checks. Compliance with the 45-day timeline is unknown.

The CCDBG interstate criminal and CAN registry background checks requirements continue to pose significant implementation challenges for a variety of reasons. Implementation is complicated by differences in state laws and processes, limited capacity, and a lack of automation and infrastructure across states. In addition, while the CCDBG Act requires states to request interstate checks from other states where the individual resided within the last 5 years, the statute does not require states to respond to the interstate requests.<sup>18</sup> Some states indicate that they have laws that prevent them from providing records to out-of-state entities (e.g., closed record laws for either the criminal and/or child abuse and neglect records), or that their state laws do not provide authority to conduct checks on non-residents. Key critical issues and challenges to the implementation of these checks include:

- **State data-sharing restrictions.** Many states have laws prohibiting or restricting the type of interstate data sharing required by CCDBG interstate background checks. Some have closed record laws, which prohibit the release of any criminal history information for employment purposes to other states. In addition, many states have restrictions on the types of information that can be shared with other states, and the level of detail that can be shared can constrain the requesting state’s ability to make an informed determination of eligibility. For example:
  - Criminal history requests: Some states prohibit the release of any criminal history information for employment eligibility determination purposes to other states, while others have restrictions allowing the sharing only of conviction information (which constitutes the publicly available portion of criminal history records) but not disposition information, which can include information on whether a case is still pending and therefore is necessary for making an employment determination under CCDBG.
  - CAN registry requests: There is often misalignment between what states can share with interstate requestors and what requesting states need to evaluate an individual’s eligibility for child care employment. For example, some states require detailed case information on the offense and due process procedures, but this information may not always be available within the registry and, even if it is, the responding state may have restrictions on sharing it. Incomplete responses from interstate CAN registries may require follow-up that creates additional barriers to making final determinations of eligibility within the 45-day timeframe. Many states report they only provide to a requesting state a basic yes/no indication of whether the applicant has a substantiated finding on the state’s CAN registry but provide no other details like the date or type of substantiated finding that could allow a state to assess risk or allow them to assess whether the finding would disqualify employment under the receiving state rules. A small number of states provide additional data, such as the date and type of the substantiated finding, while other states provide information on eligibility based on their state’s

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<sup>18</sup> Federal regulations require that states must have “Requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe required in paragraph (e)(1) of this section.” 45 CFR 98.43(a)(1)(iii).

own criteria. In addition, states have varying definitions of child abuse and neglect, such that a finding in one state may not constitute abuse or neglect in another. As a result, an interstate check may bar an individual from employment even if they would not have been substantiated under the definition in their residing state, or vice versa. These definitional differences as well as differences in due process rights also make some states reluctant to accept interstate CAN registry information.

- Sex offender registry requests: If a state wants to check the more up-to-date and complete non-public sex offender registry in another state, data-sharing restrictions can be an impediment. In addition, it may be difficult for a child care lead agency to obtain non-public information from another state through a direct request because such information is typically only shared for criminal justice purposes.
- **Low state participation in the NFF program.** The NFF greatly simplifies interstate criminal requests because it allows for the uniform dissemination of criminal history records for purposes not related to criminal justice, but only 24 states participate in the NFF. It allows states to maintain their own criminal history records so that there is no need to duplicate records at the federal level, thereby allowing requesting states to automatically receive the most up-to-date interstate records for child care employment screenings from an NFF state through the FBI fingerprint check without the need for a separate interstate check. States report a variety of reasons for not joining the NFF, including a lack of resources (*e.g.*, time, staff, and funding) and out-of-date infrastructure.
- **Administrative burdens.** Because each state has the flexibility to develop its own system for requesting and accepting interstate background check requests, requesting states need clarity and processes for navigating many different state-specific procedures. States vary in who may submit a request, method of submission, required documentation, whether a notarized signature is needed, the fee for processing a request, and acceptable methods for paying those fees. Complicating matters, these processes not only vary by state, but may also vary by registry check within a state. Navigating these processes can be burdensome and affect timeliness of processing requests. Head Start grantees may also have additional challenges in navigating these processes as they do not have the support of a state agency, such as the child care lead agency, to assist. In many cases, appropriate contacts within a state may not be clearly published, causing additional delays in resolving questions or problems. Many states have increased the number of staff responsible for the background check process because of the CCDBG requirements, but many states still don't have enough staff to appropriately process the volume of checks in a timely manner.
- **Definitional issues on offenses.** There is substantial variation in the terms or definitions for the criminal offenses contained in state registries. When policies differ about what information the registries include, it can be challenging for requesting states to interpret background check results and make final determinations of eligibility for employment. For example, states may have different definitions or statutes for what constitutes a felony versus a misdemeanor. In addition, the actual names of crimes listed on an

individual criminal history record may differ as well, and often state legal experts are needed to crosswalk offenses from one state onto another state's list of disqualifying crimes. As previously noted, there is also substantial variation in definitions and in the types of data, information, and cases included within state CAN registries, which makes it difficult to interpret another state's CAN registry results.

- **Slow processing time.** States cannot control the length of time it takes to receive background check results from another state, which can make compliance with the 45-day timeline difficult since it is only partially in their purview. Response times vary depending on the specific background check request, but states report that a significant number of interstate background checks are not returned within the required 45-day timeframe. A recent survey by OPRE found 26 of 51 child care state lead agencies reported completing over 95 percent of in-state checks within 45 days. However, a far fewer number of states, 10 of 51, complete over 95 percent of background checks with an interstate component within 45 days. Reasons for delayed responses include restriction on the release of information, limited staffing, lack of automated processes, misalignment for processing fees, existing backlogs, differing interstate methodology, time of year, age of case, opportunities to appeal, and new hire vs renewal request.
- **Fees.** States report financial burdens from the costs associated with completing background checks even though CCDBG prohibits states from charging fees that exceed the actual costs to process the checks. Based on responses from OPRE's 2019 Environmental Scan, the fee for interstate criminal history background check requests, ranged from free (if submitted via an online portal) to \$67 (for a fingerprint-based check). The fee charged for CAN Registry checks ranged from free to \$35. The majority of interstate sex offender registry checks are conducted by checking the other state's public sex offender registry website or the NSOPW, so no state charged a fee for a public website search. However, one state respondent reported a \$20 fee for requests involving the non-public sex offender registry dataset. State offices managing CAN registry data also noted that there is not always a budget in place to cover the payment of fees.

Examples of best practices that facilitate implementation of the interstate checks include the following:

- **Compact ratification and the NFF program:** The Compact, developed under the National Crime Prevention and Privacy Compact Act, provides a legal framework for the establishment of a cooperative federal-state system for the interstate exchange of criminal history record information for uses not related to criminal justice. Some states have statutes or policies that restrict dissemination of records from reasons not related to criminal justice. However, under the Compact, the federal government and participating states agree to make available their respective criminal history records to parties of the Compact for authorized purposes not related to criminal justice. The Compact facilitates uniformity in the dissemination of records among states for these purposes and requires that a signatory state provide its records upon request for all authorized purposes not related to criminal justice. The goal is to make available the most complete and up-to-date records possible and to enhance public safety through these background checks

based on positive identification, while protecting individual privacy rights. As of September 2021, 34 states participate in the Compact.

States and territories that have ratified the Compact may join the NFF program. The NFF is a database of fingerprints, or other unique personal identification information relating to an arrested or charged individual to provide positive fingerprint identification of the individual and their criminal history record. As a participant in the NFF program, the state becomes the sole maintainer and provider of its criminal history records. Participation in the NFF program can ease the administrative burden of interstate background checks. A state that participates in the NFF program is required to provide its fingerprint-based criminal history record information for all purposes unless the information is sealed, as defined in the Compact. Thus, when an FBI fingerprint-based criminal history record check is conducted, any request for an NFF state-maintained record will result in the NFF state's repository being queried directly by the FBI for its criminal history record information. As such, the FBI ceases to maintain duplicate criminal history data for these states. OCC has issued policy guidance stating 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 5 years) participates in the NFF program. Thus, states are not required to conduct separate interstate criminal background checks of other states participating in the NFF program.

- **Streamlining processes through partnerships and technology:** Some states have created partnerships and regional agreements with surrounding states to minimize any barriers with terminology variations, payment methods, and responses to requests for information. One example is the regional compact between nine states who partnered on the Western Identification Network<sup>19</sup> database, a multi-state automated fingerprint identification system, which provides a centralized fingerprint database with connectivity across participating states for interstate exchange of criminal records. Similarly, the Tri-State Automated Fingerprint Identification System<sup>20</sup> (AFIS) Fingerprint database connecting the fingerprint databases of three New England states, allowing for seamless interstate criminal data exchange.
- **Recent consumer education requirement:** In 2020, OCC provided new clarification about CCDBG consumer education website regulations to ensure state and territory lead agencies provide certain background check information on their consumer education websites (*e.g.*, relevant state agency contact information, state-specific instructions, etc.) that is needed to initiate an interstate background check request. The goal of this revision to the consumer education website reporting requirement is to encourage the transparency needed to allow states and territories to better exchange information to meet the interstate background check requirements of CCDBG, which is particularly important given the wide variation in state points of contact and requirements.

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<sup>19</sup> The Western Identification Network is a regional compact between the following nine states including Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming, and California.

<sup>20</sup> The Tri-State Automated Fingerprint Identification System is a regional compact between three states including New Hampshire, Vermont, and Maine.

- **Federal technical assistance:** As previously noted, OCC’s National Center on Subsidy Innovation and Accountability technical assistance center supports states as they implement the background check requirements. This includes a targeted and intensive technical assistance project with one-on-one consultation and process mapping, peer to peer consultation, document review and analysis, facilitation, interviewing, and project management to selected lead agencies to help lead agencies develop and strengthen their in-state partnerships and in-state and interstate background check processes.

Though some stakeholders have asked whether the National Electronic Interstate Compact Enterprise (NEICE) should be used to facilitate interstate CAN registry record checks for child care employment, the Task Force deliberations concluded the NEICE should not be included as a potential best practice for child care employment and concluded the NEICE should not be expanded to facilitate interstate CAN registry record exchanges for the purpose of child care background checks. Limitations in the system’s current capacity and functionality and associated costs pose significant barriers. In addition, before expanding the use of NEICE for purposes outside the child welfare system, the Task Force concluded that numerous changes would be needed to CAN registries themselves as well as to state usage of these registries for child care employment purposes.

## Task Force Recommendations

The Task Force offers recommendations for improving implementation of the CCDBG background check requirements in the five sections below. They include actions for child care lead agencies, federal agencies, and Congress. Of greatest concern to the Task Force is that according to FFY 2022-2024 CCDF State Plan data, between 19 and 22 states allow child care staff members to care for children before receiving any background check results (see Appendix B, Table 3).

The Task Force made some recommendations for the Administration for Children and Families (ACF) and its component offices, including the Office of Child Care (OCC). ACF and OCC agree with these recommendations and are committed to implementing them.

### Criminal History Background Check Recommendations

- **OCC should reevaluate the supervision elements of the provisional hiring regulation.** A preliminary OPRE analysis of five states’ 2019 administrative data found most CCDBG employment disqualifications come from the FBI fingerprint, the in-state criminal fingerprint, and the in-state CAN registry checks. As previously discussed, CAN registry results distort risk assessment because of the data included in the registry and the manner in which states use the checks. Therefore, the requirement for supervision of probationary hires who have passed either the FBI fingerprint check or the state criminal history fingerprint check but for whom additional results are outstanding may not create safety benefits for children and should be reevaluated.

- **Congress should consider amending the CCDBG Act to permit states some discretion to consider past offenses.** CCDBG statute and regulations currently list disqualifying offenses for which an individual would not be allowed to provide child care services funded through CCDBG. The requirement does allow a review process for individuals who have been convicted of a drug-related felony within the preceding 5 years. This recommendation is to revise the CCDBG Act to allow states the option to engage a similar process for other potentially disqualifying offenses, particularly those offenses that did not involve children, and where there have been documented rehabilitation efforts or coordinated criminal justice reform initiatives in place. This would give states the flexibility to consider rehabilitation efforts, the severity of the offense, and the length of time since the last offense, when assessing a prospective employee's suitability for employment. This additional flexibility would be aligned with criminal justice reform efforts and allows cases to be considered on a case-by-case basis. The revised statutory or regulatory language could be written in a way to reduce risk.
- **States should improve coordination between CCDF lead agencies (and other relevant state and local agencies) and SIBs.** Encourage state and local agencies involved in the background check process and SIBs to develop better partnerships. SIBs have resources to help alleviate some of the access issues and have authority to submit criminal background checks. SIBs may not know if the CCDF lead agencies need assistance with certain processes. States should improve awareness of existing grants that are available to SIBs that could improve background check implementation.
- **States should allow prospective employees to provide proactive documentation of prior offenses.** To reduce state burden and expedite the clearance processes, states should allow prospective employees the opportunity to pre-emptively provide an explanation or justification (including relevant documentation if available) for findings that may appear on a background check report. If the prospective employee already has official documentation showing that they have been exonerated of a particular charge, such information could help expedite the clearance process.
- **CCDF lead agencies should improve maintenance of consumer education websites.** As previously noted, OCC issued clarifying guidance in 2020 regarding the background check related information that must be included on state consumer education websites. This has increased transparency to stakeholders, but its potential impact is lessened by the infrequent updates to information on these websites. For consumer education websites to remain useful, they must have current, valid, and reliable information. Therefore, it is important that lead agencies maintain and regularly update the information on these sites to ensure they are as current as possible.

#### Sex Offender Registry Background Check Recommendations

- **The FBI should provide technical assistance to states to support efforts to establish state-based Rap Back programs.** The opportunity to enroll in and use a Rap Back



program reduces burden on states and providers and improves compliance with requirements by automatically ensuring compliance with the background check every 5 years because it creates an ongoing and always current check.

- **Congress should consider amending CCDBG to clarify that the NCIC NSOR check requirement is limited to a check of the NSOR fingerprint database only.** The Taskforce does not believe the name-based NSOR background check is needed to ensure child safety. This check is currently 96 percent aligned with the FBI criminal history fingerprint check required by CCDBG, and the remaining 4 percent of information can lead to inaccurate or duplicative results, with no means to confirm the identity connected to the finding or known appeals process. Removing this requirement would reduce burden for the child care lead agency, the SIB, and the FBI, with negligible added risk to child safety.

#### Child Abuse and Neglect Registry Background Check Recommendations

- **Congress should consider amending CCDBG to clarify that states may not use CAN registry checks to automatically disqualify an individual in child care employment decisions and instead develop policies and practices that consider employment decisions on a case-by-case basis.** Currently, states may receive from another state a report of only whether a person is or isn't in the CAN registry. How state CCDF lead agencies are to use CAN registry information is not included in CCDBG, creating state flexibility that has resulted in states misusing CAN registry results.
- **States should use individualized assessment for child care employment judgements for CAN registry checks instead of blanket judgements.** The breadth of activities that can lead to a person's inclusion on a CAN registry and the challenges to due process around those inclusions makes blanket judgements for child care employment too broad to be a useful proxy for estimating danger to child safety. States should continue to check CAN registries as required by CCDBG but should use a fair process of individualized assessment to make an employment disqualification determination.
- **OCC, OHS, and the Children's Bureau should collaborate to provide technical assistance to states use individualized assessment of CAN registry data, including not excluding employment based solely on domestic violence or child neglect.** In some jurisdictions, some victims of domestic violence are inappropriately placed on CAN registries for allowing a child to bear witness to domestic violence. Long-term diminishment of employment opportunities for the survivor is neither appropriate for the individual nor is there any data showing that keeping them from child care employment improves the safety of children in a child care program. OCC, Office of Head Start (OHS), and the Children's Bureau should collaborate to cease practices that would necessarily preclude the employment of such individuals.
- **Congress should consider funding a study on the value of CAN registry checks for child care employment purposes and on the racially disproportionate impact of CAN registry checks for employment purposes.** The value of CAN registry checks for

child care employment is unclear given the many problems with these registries and that felony abuse or neglect would be identified in the criminal history check. A study examining whether these checks improve child safety in child care settings would allow a more informed path forward.

## Interstate Background Check Recommendations

- **OCC should work with CCDF lead agencies to reinforce and clarify the current 45-day policy for completing a background check.** OCC policy guidance<sup>21</sup> clarifies that lead agencies can create their own procedures in the event that one or more of the components of a background check is not complete within the required 45 days. This policy provides CCDF lead agencies some additional flexibility since the timeline for receiving interstate check responses is outside the control of the requesting state. OCC should work closely with lead agencies to ensure that they are familiar with this policy clarification and that it is used in a way that maintains the safety of children while removing some of the barriers to hiring.
- **Neighboring states should consider partnerships and reciprocal agreements to streamline interstate background check processes and reduce barriers.** Since background check processes vary by state, states should explore partnerships and agreements with surrounding states to address the barriers that currently hinder their most common interstate requests. Such collaborative efforts would allow states to align differences in terminology and better manage processes for responding to background check requests. For example, to the extent that states list background check fees as an obstacle to interstate requests, neighboring states should consider entering into joint agreements to waive fees for each other. Some states have already entered into such reciprocal agreements (often through memoranda of understanding) and this joint waiver of fees can eliminate that cost barrier and reduce administrative burden. A partnership to create a centralized fingerprint identification system within a region (such as the aforementioned Western Identification Network database) would allow states to process fingerprint checks across all participating states. These types of partnerships and reciprocal agreements have shown to effectively improve the flow of information and streamline processes in a way that is mutually beneficial to all states involved.

## Tribal Background Checks: Critical Issues, Challenges, and Recommendations

The 2014 reauthorization was unclear as to what background checks explicitly applied to tribal lead agencies, but OCC interpreted the statute through regulations to require tribal child care lead agencies to generally comply with the same CCDF background check requirements as states and territories. The CCDF regulations additionally allow a tribe to use an alternative background check approach that is described and justified in the tribal lead agency's approved CCDF plan. Tribal lead agencies experience many of the same challenges in implementing the background

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<sup>21</sup> [CCDF-ACF-PIQ-2017-01](#)

check requirements just discussed. But they also encounter additional unique and exacerbated challenges. This section discusses tribal implementation challenges and some recommendations for addressing them.

### Lack of Statutory Authority to Request FBI Background Checks

Though CCDF regulations require tribes to conduct background checks of the FBI NGI fingerprint criminal history database and the NCIC NSOR, CCDBG does not provide tribes the legal authority to do so, and no other federal law explicitly grants tribes this authority for all child care providers. Lacking statutory authority in CCDBG or elsewhere to conduct fingerprint-based FBI criminal history and fingerprint-based sex offender registry checks, tribes must rely on using alternate means. In 2019, OCC issued guidance (CCDBG-ACF-PI-2019-05) clarifying the ways in which tribal lead agencies may meet the CCDBG FBI fingerprint check requirement, but each of these alternatives come with challenges and none are adequate solutions. They are discussed below.

- **Submission via the states.** Tribes can access the FBI fingerprint checks by requesting a state submit them on behalf of the tribal lead agency. Federal Public Law 92-544 allows tribes who enter into an agreement or memorandum of understanding with a state to use the state’s background check systems to conduct the FBI fingerprint checks if state statute permits and is approved by the FBI Office of General Counsel. However, this alternative is fraught with problems, the most important being that it does not recognize tribal sovereignty to carry out the law themselves. Likewise, it can create situations where the state imposes their disqualifying crimes on tribes. For example, if a conviction of animal cruelty is not a restricted crime in a state’s child care licensing rule, a tribe that has submitted the FBI background check via the state would receive results indicating the staff member is acceptable for employment even if animal cruelty would be disqualifying under tribal rules. In addition, reliance on state background check systems means that tribes are subject to state backlogs, state waivers, and state non-compliances. This method is also problematic because it has led to inappropriate data privacy practices by states. DOJ and OCC have observed an ongoing practice taking place between partnering tribes and states, in which the state requires the tribe to provide copies of criminal records of tribal child care staff members to the state. Per FBI regulations,<sup>22</sup> this practice is not allowable. Some tribes do not even have the option of requesting state submission because their law enforcement agency is not recognized by the state.
- **Other Federal Statutes.** There are three federal statutes that allow tribes some access to FBI fingerprint checks, but each is limited in its reach and scope.
  - The Indian Child Protection and Family Violence Prevention Act (ICPFVP)<sup>23</sup>  
The ICPFVP authorizes tribal governments to employ individuals in positions involving regular contact with or control over Indian children only if the individuals meet certain standards of character, and it authorizes FBI fingerprint-based background checks of applicants that may have regular contact with, or

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<sup>22</sup> 28 CFR 50.12(b)

<sup>23</sup> 25 USC 3201 *et seq.*

control over, Indian children. Thus, ICPFVP provides tribes the authority to submit background checks to the FBI for employees at tribally operated child care programs. However, this authority does not extend to family child care providers or child care centers that are not tribally operated. Moreover, ICPFVP has different disqualifying offenses than CCDBG so a child care staff member can be inappropriately disqualified from employment if the check is submitted via the ICPFVP.

- Title IV-E of the Social Security Act.<sup>24</sup> Title IV-E provides tribes authority and procedures for criminal background checks that include FBI fingerprint-based checks of criminal histories, including the fingerprint records in the NCIC NSOR for prospective foster and adoptive parents prior to approving the placement of a child. But when a background check is submitted, a purpose code must accompany the request and it is beyond the scope of Title IV-E to use the background check authority for the purpose of child care providers under CCDBG. Thus, while there may be some instances where tribes have used IV-E authority for CCDBG-related purposes, it is not the appropriate authority for child care employment background checks.
  - The Head Start Act.<sup>25</sup> The Head Start Act requires background checks for all programs, including tribal programs, but this authority only extends to Head Start employees and cannot be used for CCDBG.
- **Tribal Access Program (TAP).** TAP provides federally recognized tribes access to various national crime information databases, including NCIC and NGI, for both criminal justice and purposes not related to criminal justice. TAP allows tribes to perform FBI record checks on employees and volunteers who have contact with or control over Indian children and it allows tribes to register sex offenders in compliance with the Adam Walsh Child Protection and Safety Act. TAP offers online and onsite training, software, hardware kiosks, and computer terminals equipped with palm print readers that can support tribes to conduct background checks for tribal members who work with children. Importantly, it allows tribes to assert their sovereignty when obtaining national criminal background checks and appropriately recognizes the sovereignty of their courts.

Though TAP is currently the best way for tribes to access the FBI fingerprint check, it too is not an adequate solution because it has numerous limitations related to CCDBG background checks. First, while it facilitates access, it does nothing to establish tribal authority, which means tribes can only use TAP for staff caring for children at tribally operated centers, an authority provided under ICPFVP. Second, to be eligible for TAP, tribes must provide high-speed internet access and pay any FBI user fees associated with fingerprint- and name-based checks for noncriminal justice purposes and execute a user fee memorandum of understanding with the FBI to pay those fees. They also must comply with auditing and policy requirements, personnel and physical requirements, and technical security requirements applied to all agencies when accessing national crime

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<sup>24</sup> 42 USC 670 *et seq.*

<sup>25</sup> 42 USC 9831 *et seq.*

information systems. The Task Force learned that some tribes cannot enroll in TAP because they do not meet the eligibility criteria, particularly the requirements to have adequate high-speed internet access and sufficient funding for user fees. Only 50 percent of the 265 CCDF tribal lead agencies are within tribes that participate in TAP. Additionally, the Task Force learned there is significant confusion about TAP's use in CCDBG. The Task Force learned some tribes mistakenly believed TAP could be used for all of the background checks, and DOJ TAP officials were burdened with determining if all child care employment checks could be conducted through TAP under the ICPFVP authority.

- **FBI-Approved Channeler.** To request background checks, tribes are permitted to use an FBI-approved Channeler, which is a private business that has contracted with the FBI to electronically submit fingerprints to the FBI consistent with FBI submission procedures. However, relying on this process undermines sovereignty, and if fingerprint submissions do not meet the outlined FBI specifications or appropriate quality thresholds, they will be rejected by the NGI system, which can delay the hiring process.
- **Mailing Fingerprint Cards.** Tribes may submit hard copy fingerprint cards directly to the FBI through the U.S. mail, and the FBI, likewise, returns an Identity History Summary response to the tribe via the mail. This option requires a billing agreement between the tribe and the FBI, and it requires the tribe to apply for an Originating Agency Identifier. This method is slow and can yield a high rejection rate of prints due to the burden it puts on tribal staff who may not be experienced in rolling or scanning prints.

Note that none of these alternative options provide access to the name-based portion of the NCIC NSOR. Tribes currently have no mechanism for obtaining a background check of those records in the NCIC NSOR and, thus, cannot comply with that CCDBG requirement.

### Challenges to Accessing Inter-tribal/state Background Checks

CCDBG requires tribes to conduct criminal background, sex offender, and child abuse registry checks in every state a prospective or current child care employee resided in the previous 5 years (unless the tribe uses an alternative background check approach that is described and justified in the tribal lead agency's approved CCDF plan). This can be challenging and time intensive because tribes do not participate in the Interstate Compact for state criminal checks, and the Native American Children's Safety Act,<sup>26</sup> which provides tribes with the authority to conduct checks of state CAN registries, is only for the purposes of foster care placement. Consequently, to comply with the background check requirement for previous state residencies, in many cases, each tribe must have a formal agreement or memorandum of understanding in every relevant state. Sometimes tribes can conduct state CAN checks by working with a third-party vendor. Checks of state sex offender registries are more straightforward for tribes since this requirement can be met by using NSOPW. However, as previously mentioned, OCC encourages checks of non-public state sexual offender registries as a best practice because NSOPW can be out-of-date

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<sup>26</sup> Pub. L. No. 114-165. This law amended the ICPFVP.

and incomplete. To access these more complete non-public registries, tribes need to enter into agreements or memoranda of understanding with states.

Though not required by CCDBG, checking tribal records can be beneficial in cases where an individual resides on a tribal reservation or service area. Tribes are required to set up a process for ensuring that employees or applicants have never been convicted of a tribal criminal offense, which would exclude them from employment under the ICPFVP. Since many tribes do not maintain criminal databases or enter their tribal criminal conviction information into any national or state tracking registry, this provision of ICPFVP has proven particularly problematic for tribes. At minimum, tribes may be able to set up a system to ensure that their own tribal court criminal records are reviewed when hiring a prospective employee, but it is not always possible to ensure that a tribe will have access to conviction information from other tribes.

Some states have questioned how to conduct inter-tribal/state checks for tribal members who apply to work in a state-licensed child care facility. In these instances, it is common for some tribal members to have lived primarily on a reservation, and so any available criminal data may only exist in a tribal registry or database. Since states do not have the authority to directly request or access this data, there can be crucial gaps when assessing an individual's eligibility for child care employment.

### Exacerbated Challenges

In addition to these unique challenges, tribal lead agencies often face some of the same challenges as states but to an exacerbated degree. Many tribes report continued challenges relating to providing readable fingerprints with paper rolled cards, the considerable expense of conducting criminal history background checks given the special expertise, travel, and considerable time involved; and how to manage background checks for an individual that has criminal records housed in a tribal registry when the individual has lived on multiple tribal reservations or is applying to work in a state-licensed child care facility. In addition, some tribes do not have their own licensing system and rely on the state's. Oftentimes, these tribes are in rural and economically challenged areas, which pose serious barriers to meeting state licensing requirements. For example, the Bristol Bay Native Association has tribal villages located in remote areas of Alaska but must roll fingerprints on paper cards and transport them a great distance because the Alaska state background check unit does not accept digital fingerprints. The tribes must transport ink and card fingerprints via airplane to a nearby hub city and express mail them to Anchorage, which puts the cost of processing one set of prints to well over \$150 and processing time at over 2 weeks. In remote areas, there is often no designated person with specific training in rolling fingerprints, so they are often low quality, resulting in a 50 percent rejection rate on prints taken in some village sites. If the prints are rejected, the process starts again, creating hiring delays and additional costs for transport and processing.

### Task Force Recommendations for Tribal Implementation Challenges

Tribes face unique challenges in information sharing and accessing state, federal, and even other tribal databases, which impact law enforcement and public safety not only in Native American communities but across the United States. The Task Force recommendations support tribal

sovereignty and self-determination with the Task Force's mission to protect the safety and well-being of all children under the requirements of CCDBG.

- **Congress should consider amending CCDBG to provide tribes with the authority to conduct FBI fingerprint background checks and name-based NCIC NSOR checks.** Statutory authority should be provided by Congress for tribal lead agencies to directly request FBI fingerprint background checks. In addition, should Congress decide to retain the name-based NCIC NSOR check, then it should provide tribes with the authority to conduct the check.
- **Congress should explore statutory options to simplify the process of tribes requesting state criminal, state sex offender, and state CAN registry checks.** Tribes need less cumbersome processes to request checks from state criminal, sex offender, and CAN databases. Statutory authorities could ease the pathway.
- **Congress should amend the Tribal Access Program to be allowable for CCDBG background check purposes.** Granting tribes authority to FBI databases via CCDBG should be accompanied with expanding the purpose of TAP to include child care employment background checks to increase access to these databases.
- **DOJ and OCC should collaborate on technical assistance resources on the Tribal Access Program to improve understanding of its applicability to tribal child care programs and to help tribes navigate the available services.** Until Congress provides tribes with statutory authority to directly request data from FBI criminal databases, TAP remains the only mechanism for accessing the FBI NGI system for the CCDBG-required FBI fingerprint check, but only for some tribes under certain conditions. This partial applicability has created confusion and difficulties. DOJ and OCC should collaboratively provide technical assistance to tribes that want to enroll in TAP and better explain its applicability to tribal child care programs.
- **ACF and DOJ should coordinate on training and technical supports that will simplify the background check processes between tribes and states and recognize tribal sovereignty.** Cross-agency training and technical assistance to tribes and states should address the following:
  - Improving tribal and state understanding of existing databases related to CCDBG background checks and processes and obligations for submitting data to these databases
  - Improving tribal and state collaboration and agreements that facilitates the exchange of criminal, sex offender, and CAN registry data by assisting tribes and states to develop agreements that allow tribal sovereignty on employment disqualifications in instances where a state conducts checks on the tribe's behalf
  - Finding alternative solutions for remote tribes that do not have direct access to state licensing services



- Facilitating background check information-sharing between tribes and states and between tribes on the use of tribal registries and databases, especially in instances where an existing or prospective employee has only resided on tribal land.

## Conclusion

This Task Force was convened to identify, evaluate, and recommend best practices and technical assistance to assist federal and state agencies in fully implementing the requirements of the CCDBG. The recommendations in this report are the result of a rigorous inter-agency process that incorporated current research, best practices, and expert testimony from federal, state, and local stakeholders. The Task Force believes that these recommendations will lead to important improvements in the background check processes within current statutory and regulatory parameters. However, implementation of these recommendations is unlikely to be sufficient for all grantees to achieve full compliance with CCDBG background check requirements.

Since the reauthorization of CCDBG in 2014, states, territories, and tribes have invested large amounts of time, money, and effort to comply with the new comprehensive background check requirements. But despite these substantial investments, according to FFY 2022-2024 CCDF State Plan data, as of 2022 slightly less than half of states, territories, and tribes have been able to come into full compliance with these requirements. This compliance rate excludes the 45-day timeline, for which no state is in total compliance, given the challenges of interstate requests.

The result is that these background check safeguards have the unintended consequence of slowing the basic functions of the child care system, which needs to be responsive in order to safely provide the essential service of child care for working families. The Task Force believes some portion of the CCDBG background check requirements are essential and important. Parents must have full confidence that each staff member caring for their child has passed background checks. But the additive value of each check as currently sequenced and implemented may not optimally enhance child safety and wellbeing.

Although the Task Force's recommendations will help federal and state agencies, child care providers, and other stakeholders improve implementation of existing background check requirements, the Task Force believes they are insufficient to achieve full compliance with CCDBG and that the current CCDBG background check requirements will continue to be a resource- and time-consuming challenge for states, territories, and tribes; and a logistical barrier to timely employment in the child care field. ACF additionally notes that Full implementation of the current array of checks is unlikely without major additional fiscal investment and changes to state laws not addressed in this report. Moreover, the Task Force does not have data to assess whether full compliance with the current set of requirements will improve child safety more than other approaches, such as devoting additional time and resources to stronger state licensing and oversight, and funding a system that supports a skilled and essential workforce. The federal agency members of the Task Force are committed to working with Congress, states, Tribes and other stakeholders to continue to identify a better path forward for ensuring child safety.





## Appendix A

### Stakeholder Consultation to Task Force

The Task Force heard prepared remarks from state child care lead agencies, state child protective services, state criminal justice agencies, providers of child care services, and other relevant stakeholders across nine formal meetings between April and August of 2021. The full schedule is listed below.

#### **April 30, 2021: Overview of the Prevalence of Issues and Existing Research**

- Laura Radell, ASPE, ACF
- Meryl Barofsky, OPRE, ACF

#### **May 14, 2021: Overview of Interstate Background Check Challenges**

- Massachusetts Department of Early Education
  - Tom Myers, Co-Administrator/Legal Counsel
- Mississippi Department of Human Services
  - Chad Allgood, Division Director, Division of Early Childhood Care and Development

#### **May 28, 2021: Interstate Child Abuse and Neglect Challenges and Solutions**

- Georgia Department of Early Care and Learning
  - Ira Sudman, Chief Legal Officer
  - Gregory Brown, Supervisor, Background Check Unit
- Washington State Department of Children, Youth and Families
  - Matt Judge, Child Care Administrator
  - Chris Parvin, Provider Supports Administrator
  - Jin Kim, Eligibility and Provider Supports Division
- American Public Human Services Association
  - Marci Roth, Project Director, National Electronic Interstate Compact Enterprise Project
- Children's Bureau Division of Capacity-Building, ACF, HHS
  - June Dorn, National Adoption Specialist

#### **June 11, 2021: Interstate Criminal History Challenges and Solutions**

- Maryland Department of Education
  - Jennifer Nizer, Director, Office of Child Care, Division of Early Childhood,
  - Louis Valenti, Branch Chief, Child Care Licensing Branch, Division of Early Childhood Development
- Utah Department of Health
  - Simon Bolivar, Child Care Licensing Administrator, Bureau of Licensing and Certification, Division of Family Health and Preparedness
- FBI
  - Marissa Barron, Management and Program Analyst, Federal Bureau of Investigation Criminal Justice Information Services Division

**June 25, 2021: CCDBG Provisional Employment Requirement and the FBI/State Fingerprint Retrieval Process**

- New York Office of Children and Family Services, Division of Child Care Services
  - Jim Hart, Director of Program Operations
  - Janice Molnar, Deputy Commissioner and CCDF Administrator
  - Stephanie Deyoe, Senior Attorney and Federal Liaison, Division of Legal Affairs
- Boys and Girls of Topeka, Kansas
  - Dawn McWilliams, Chief Executive Officer
- Kansas State Identification Bureau
  - Leslie Moore, Director, Information Services Division

**July 9, 2021: Retrieval Issues Associated with the NCIC NSOR Name Based Check, FBI Technical Solution, and Sex Offender Registry Check Challenges**

- Ohio Department of Job and Family Services, Office of Family Assistance, Bureau of Child Care Policy and Technical Assistance
  - Tracey Chestnut, CCDF State Administrator, Chief, Bureau of Child Care Policy and Technical Assistance
  - Laura Harper, Chief, Bureau of Child Care Licensing and Monitoring
  - Greg Leyland, Quality Assurance Administrator, Bureau of Child Care Licensing and Monitoring
- Minnesota Department of Public Safety
  - Julie A. Lackner, Manager, Minnesota Justice Information Services, Bureau of Criminal Apprehension, Minnesota Department of Public Safety

**July 23, 2021: Tribal Background Checks: Access and authority for conducting CCDBG background checks**

- Bristol Bay Native Association (CCDF Lead Agency)
  - Anne Shade, Child Development Department Director
  - Absentee Shawnee tribe of Oklahoma (CCDF Lead Agency)
  - Briana Ponkilla, CCDF Coordinator
- DOJ TAP for National Crime Information, Law Enforcement Services and Information Sharing
  - Bradley Colquitt, Department of Justice Office of the Chief Information Officer, Tribal Access Program (TAP)

**August 6, 2021: Provider Perspective on CCDBG Background Check Challenges**

- Auburn University Family Child Care Partnerships
  - Caroline Martin, Managing Director, Accreditation Facilitation Project
  - Dr. Kimberly Burgess-Neloms, Managing Director, AU Early Head Start-CCP
- Head Start State Collaboration Office, Michigan Department of Health and Human Services
  - Cynthia Derby, Director of the Head Start Collaboration Office, Michigan Department of Education
  - John Tschoe, Program Specialist, Office of Head Start, ACF
- Afterschool Alliance
  - Erik Peterson, Senior Vice President of Policy

**August 20, 2021: State Innovations, Barriers and Cost/Financial Impact Associated with State Background Check Systems Development and Implementation**

- Michigan Department of Education and Michigan Department of Licensing and Regulatory Affairs
  - Lisa Brewer Walraven, Director, Child Development and Care, Office of Great Start
  - Emily Laidlaw, Division Director, Child Care Licensing Bureau
  - K. Adam Krajniak, Jr., Manager, Workforce Background Check Section
  - Cheryl Gandhi, Program Analyst
- National Center on Subsidy Innovation and Accountability, Office of Child Care Technical Assistance Network
  - Theresa Campisi, Project Manager

## Appendix B

### State Implementation Data

The data in this Appendix is derived from FFY 2022-2024 CCDF State Plans except where noted. The District of Columbia is included in state data counts.

Table 3. State Implementation Data of Criminal History Background Checks

<b>Conducts Check</b>	
<ul style="list-style-type: none"> <li>• <b>47 states:</b> Conduct FBI criminal history checks</li> <li>• <b>47 states:</b> Conduct state criminal history checks</li> </ul>	
<b>Non-Compliance with Check</b>	
FBI criminal history check	Policy not yet in place as of October 1, 2021: AL, MS, WV Policy not yet implemented for license-exempt providers: NJ
State criminal history check	Policy not yet in place as of October 1, 2021: AL, MS Policy not yet implemented for license-exempt providers: NJ Policy does not yet include fingerprint: PA
<b>Provisional Hire Compliance</b>	
<ul style="list-style-type: none"> <li>• <b>29 states:</b> In compliance with provisional hiring requirement</li> </ul>	
<b>Types of Non-Compliance For Provisional Hiring</b>	
<ul style="list-style-type: none"> <li>• <b>14 states:</b> Allow prospective employees to work supervised after submitting fingerprint requests but before results are known - AK, AL, DC, DE, IA, MA, MD, NV, NY, OR, PA, SD, WA, WV</li> <li>• <b>1 state:</b> Allows prospective employee to work unsupervised after submitting fingerprint requests but before results are known - VT</li> <li>• <b>3 states:</b> Allow prospective employees to work after submitting fingerprint requests but before results are unknown, OCC cannot discern whether work is supervised or unsupervised - AZ, KY, NH</li> <li>• <b>1 state:</b> Some localities within state do not follow provisional hire policy - ID</li> <li>• <b>3 states:</b> Unknown because no provisional hire policy in place - MS, TN, VA</li> </ul>	

Table 4. State Implementation Data on Sex Offender Background Checks

<b>Conducts Check</b>	
<ul style="list-style-type: none"> <li>• <b>41 states:</b> Conduct NCIC NSOR name-based sex offender registry checks</li> <li>• <b>47 states:</b> Conduct In-state sex offender registry checks</li> </ul>	
<b>Non-Compliance With Check</b>	
NCIC NSOR name-based check	Policy not yet in place as of October 1, 2021: AL, AK, CA, IA, MD, MS, OH, WV Policy not yet implemented for license-exempt providers: NJ Policy not implemented in all localities: NY
Sex offender registry check	Policy not yet in place as of October 1, 2021: AL, MS, WV Policy not yet implemented for license-exempt providers: NJ

Table 5. State Implementation Data on Child Abuse and Neglect Registry Background Checks

<b>Conducts Check</b>	
<ul style="list-style-type: none"> <li>• <b>46 states:</b> Conduct CAN registry check</li> </ul>	
<b>Non-Compliance with Check</b>	
<ul style="list-style-type: none"> <li>• Policy not yet in place as of October 1, 2021: AL, MS</li> <li>• Policy not yet implemented for license-exempt providers or a sub-set of providers: AZ, NJ, WV</li> </ul>	
<b>Use of CAN Registry Check</b>	
<ul style="list-style-type: none"> <li>• <b>Blanket Exclusion (15 states):</b> Any potential employee who appears in a state’s CAN registry is deemed unqualified for employment in a child care setting: AL, GA, ID, IN, LA, ME, MS, MO, MT, NE, NJ, NC, SC, WI, WY.</li> <li>• <b>Default Exclusion with Available Review or Mitigation Process (16 states):</b> Potential child care employees who appear on the state’s CAN registry are, by default, excluded from child care employment but may seek a review to argue that they do not represent a risk to children: AZ, DC, FL, KY, MA, NV, NH, NM, ND, OK, OR, TN, TX, UT, VT, WA.</li> <li>• <b>Targeted Exclusion (8 states):</b> Not all appearances in the state’s CAN Registry are exclusionary. These states narrow the exclusion either by listing specific types of findings that cause exclusion or by limiting the exclusion to offenses that have occurred within a specific timeframe: CA, HI, IA, IL, KS, MN, OH, RI.</li> <li>• <b>Proactive Individualized Assessment (3 states):</b> Any appearance in the CAN registry triggers an individualized assessment of the extent to which the individual presents a danger to children: DE, MA, MD.</li> <li>• <b>Provider’s Determination (2 states):</b> The applicant’s appearance in the state’s CAN registry is reported to the provider and the determination of risk and employment is left to the provider’s discretion: AK, CO. This practice is not compliant with CCDBG because regulations prohibit states from publicly sharing individual results, unless the individual consents</li> <li>• <b>Unknown/Unclear (7 states):</b> AR, CT, MI, NY, PA, VA, WV.</li> </ul>	

Note: Data on ways states use this information is based on a scan conducted by ASPE of information about the use of background checks available from child care agency websites and licensing regulations.

Table 6. State Implementation on Interstate Background Checks

<b>Conducts Interstate Checks</b>	
<ul style="list-style-type: none"> <li>• <b>37 states:</b> Conduct interstate criminal history checks</li> <li>• <b>40 states:</b> Conduct interstate sex offender registry checks</li> <li>• <b>39 states:</b> Conduct interstate CAN registry checks</li> <li>• <b>11 states:</b> Implement none of the three interstate checks</li> </ul>	
<b>Non-Compliance with Conducting Interstate Checks</b>	
Interstate criminal history check	Policy not yet in place as of October 1, 2021: AL, AK, AZ, CA, HI, IA, MS, NH, NV, PA, WV, WY Policy not yet implemented for license-exempt providers: NJ Policy not implemented in all localities: ID
Interstate sex offender registry check	Policy not yet in place as of October 1, 2021: AL, AK, CA, HI, IA, MS, NV, PA, WV Policy not yet implemented for license-exempt providers: NJ Policy not implemented in all localities: ID
Interstate CAN registry check	Policy not yet in place as of October 1, 2021: AL, AK, CA, HI, IA, MS, NV, PA, WV Policy not yet implemented for license-exempt providers or a subset of providers: AZ, NJ Policy not implemented in all localities: ID
<b>Responds to Interstate Checks</b>	
<ul style="list-style-type: none"> <li>• <b>42 states:</b> Respond to all interstate check requests from other states</li> <li>• <b>9 states:</b> Do not have procedures in place to respond to one or more interstate check requests from other states (AK, CA, ID, KY, MT, OR, RI, VA, WV)</li> </ul>	

## Appendix C

### National Fingerprint File Participating States

Colorado	Maryland	Ohio
Connecticut	Michigan	Oklahoma
Florida	Minnesota	Oregon
Georgia	Missouri	Tennessee
Hawaii	Montana	Utah
Idaho	North Carolina	Vermont
Iowa	New Jersey	West Virginia
Kansas	New York	Wyoming



## Appendix D

### List of Acronyms Used In this Report

ACF - Administration for Children and Families, HHS  
AFIS - Tri-State Automated Fingerprint Identification System  
ASPE - Assistant Secretary for Planning and Evaluation, HHS  
CAN - Child Abuse and Neglect  
CCDBG - Child Care and Development Block Grant Act  
CCDF - Child Care and Development Fund  
CCPIA - Child Care Protection Improvement Act  
DOJ - U.S. Department of Justice  
FBI - Federal Bureau of Investigation  
FFY - Federal Fiscal Year  
HHS - U.S. Department of Health and Human Services  
ICPFVP - Indian Child Protection and Family Violence Prevention Act  
NCSIA - National Center on Subsidy Innovation and Accountability  
NEICE - National Electronic Interstate Compact Enterprise  
NFF - National Fingerprint File  
NCIC - National Crime Information Center  
NGI - Next Generation Identification  
NSOPW - National Sex Offender Public Website  
NSOR - National Sex Offender Registry  
OCC - Office of Child Care, ACF  
OHS - Office of Head Start, ACF  
OPRE - Office of Planning, Research, and Evaluation, ACF  
SIB - State Identification Bureau  
TAP - Tribal Access Program