

child care providers. . . .” Having procedures in place to conduct background checks on child care staff members will require coordination across public agencies. The CCDF Lead Agency must work with other agencies, such as the Child Welfare office and the State Identification Bureau, to ensure the checks are conducted in accordance with the law. In recognition of this effort, we propose to add to the law’s language at § 98.43(a)(1) to clarify that these requirements involve multiple State, Territorial, or Tribal agencies.

**Tribes and background checks.** ACF is proposing that Tribal Lead Agencies be subject to the background check requirements described in this section, with some flexibility as discussed later in subpart I.

**Applicability of background checks requirements.** The statutory language identifying which providers must conduct background checks on child care staff members is unclear. It is our interpretation of the statute that all licensed, regulated, and registered child care providers and all child care providers eligible to deliver CCDF services (with the exception of those individuals who are related to all children for whom child care services are provided) are subject to the Act’s background check requirements. At § 98.43(a)(1)(i), we propose to apply this requirement to all licensed, regulated, or registered providers, regardless of whether they receive CCDF funds and all license-exempt CCDF providers (with the exception of individuals who are related to all children for whom child care services are provided).

We acknowledge that the statutory language is not clear about the universe of staff and providers subject to the background check requirement; however, we believe that our interpretation aligns with the general intent of the statute to improve the overall safety of child care services and programs. Furthermore, there is justification for applying this requirement in the broadest terms for two important reasons. First, all parents using child care deserve this basic protection of having confidence that those who are trusted with the care of their children do not have criminal backgrounds that may endanger the well-being of their children. Second, limiting those child care providers who are subject to background checks has the potential to severely restrict parental choice and equal access for CCDF children, two fundamental tenets of CCDF. If not all child care providers are subject to comprehensive background checks, providers could opt to not serve CCDF children, thereby restricting

access. Creating a bifurcated system in which CCDF children have access to only a portion of child care providers who meet applicable standards would be incongruous with the purposes of the CCDBG Act and would not serve to advance the important goal of serving more low-income children in high quality care. We would like to invite comment on the anticipated impacts of requiring background checks for child care staff members of all licensed, regulated, and registered child care providers and all child care providers eligible to deliver CCDF services (other than an individual who is related to all children for whom child care services are provided) based on current State practices and policies.

The law defines a child care staff member as someone (other than an individual who is related to all children for whom child care services are provided) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. We are proposing at § 98.43(a)(2)(ii) to include contract and self-employed individuals in the definition of child care staff members as they may have direct contact with children. We propose to require individuals, age 18 or older, residing in a family child care home be subject to background checks, as well as the disqualifying crimes and appeals processes. We asked for comment on individuals 18 or older in family child care homes receiving background checks in the 2013 NPRM and received support from commenters who agreed this was important for ensuring the safety of children in child care. Forty-three States require some type of background check of family members 18 years of age or older that reside in the family child care home (*Leaving Child Care to Chance: NACCRRA’s Ranking of State Standards and Oversight for Small Family Child Care Homes*, National Association of Child Care Resource and Referral Agencies, 2012).

We are asking for comment on whether additional individuals in the family child care home should be subject to the background check requirements. Volunteers who have not had background checks should not be left with children unsupervised. We encourage Lead Agencies to require that volunteers who have not had background checks be easily identified by children and parents, for example through visible name tags or clothing.

**Components of a criminal background check.** The CCDBG Act outlines five components of a criminal background check: (1) A search of the State criminal

and sex offender registry in the State where the staff member resides and each State where the staff member has resided for the past five years; (2) a search of the State child abuse and neglect registry in the State where the staff member resides and each State where the staff member has resided for the past five years; (3) a search of the National Crime Information Center; (4) a Federal Bureau of Investigation (FBI) fingerprint check using the Integrated Automated Fingerprint Identification System; and (5) a search of the National Sex Offender Registry.

After extensive consultation with the FBI and other subject-matter experts, we propose technical changes to address duplication among these components. We propose to consolidate the list of required components in the regulations at § 98.43(b) to:

- A search of the National Crime Information Center’s National Sex Offender Registry;
- A Federal Bureau of Investigation fingerprint check using Next Generation Identification; and
- A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding 5 years:
  - State criminal registry or repository using fingerprints;
  - State sex offender registry or repository; and
  - State-based child abuse and neglect registry and database.

The National Crime Information Center (NCIC) is a law enforcement tool consisting of 21 files, including the National Sex Offender Registry (NSOR). The 21 files contain seven property files that help track missing property and 14 person files with information relevant to law enforcement (e.g., missing persons or wanted persons). State criminal records are not stored in the NCIC. We believe that the only file with information that would aid in determining whether an individual could be hired as a child care employee is the NSOR. The other files do not appear to contain information on the disqualifying crimes listed in the statute. Further, the FBI has advised that a general search of the NCIC database will return records that cannot be made privy to individuals outside of law enforcement (i.e. the Known or Appropriately Suspected Terrorist File). Therefore, we are clarifying that a check of the NCIC will only need to search the NSOR file.

ACF has identified a number of potential challenges in requiring an NCIC check. It is our understanding that