

JANUARY
2021

RESEARCH BRIEF



States' Status of and Identified Barriers
to Implementation of the Child Care and
Development Block Grant Act of 2014
Out-Of-State Background Check Requirements

Brittany Cunningham and Nandita Ravishankar

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OPRE Report 2021-15

January 2021

Brittany Cunningham and Nandita Ravishankar

Submitted to:

Project Officers: Meryl Barofsky and Sarah Blankenship
Office of Planning, Research, and Evaluation
Administration for Children and Families
U.S. Department of Health and Human Services

Contract Number: HHSP233201500045I

Project Director: Elizabeth Raistrick
CNA
3003 Washington Blvd
Arlington, VA 22201

CNA Reference Number: IPD-2020-U-024916

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Suggested citation: Cunningham, Brittany, and Nandita Ravishankar (2021). *States' status of and identified barriers to implementation of the CCDBG Act of 2014 out-of-state background check requirements*, OPRE Report #2021-15, Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

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Overview

INTRODUCTION

The 2014 reauthorization of the Child Care and Development Block Grant (CCDBG) Act (CCDBG Act) included, among other things, new background check requirements for current and prospective child care staff. The background check provisions in the CCDBG Act are novel due to their multiple components (including checks of out-of-state criminal history, child abuse and neglect, and sex offender registries), the use of specific checks that have not previously been used for child care employment purposes, the large number of child care staff that must be checked, and the need for timely results for hiring decisions. Because implementation requires building new partnerships and infrastructure within and across states, this work has been challenging. Consistent with the existing literature, states have cited the out-of-state checks as particularly challenging to implement. In partnership with the Office of Child Care (OCC), the Office of Planning, Research, and Evaluation (OPRE) commissioned the Child Care Interstate Background Checks (CC-IBaCs) contract to better understand the specific barriers to implementing the out-of-state background check requirements and to identify promising solutions that can be supported by OCC and its technical assistance (TA) providers.

RESEARCH QUESTIONS

1. What is the status of states' implementation of the CCDBG Act background check requirements?
2. What are the barriers to full implementation of the CCDBG Act out-of-state background check requirements?
3. What are state-recommended solutions to reduce the barriers to complete the CCDBG Act out-of-state background check requirements?



PURPOSE

The purpose of this research brief is to provide a summary of available information on the known barriers to and solutions for implementing out-of-state background checks. This summary is intended to inform OCC, states, and TA providers on the type of support needed to implement the CCDBG Act out-of-state background check requirements.

METHODS


This brief summarizes information from two research activities: (1) a Synthesis and Review of available research and information on background checks and (2) an Environmental Scan of state CCDBG Act background check implementation.

The Synthesis and Review analyzed relevant academic peer-reviewed research, institutional and government reports, and existing data sources, which described barriers to implementing out-of-state background checks and potential solutions to mitigate those barriers.

The Environmental Scan examined variation in the status of and barriers to state implementation of the CCDBG Act background check requirements and identified the types of support states would like from the federal government. All 56 states and territories were invited to participate. Data collection consisted of a web-based survey of Child Care and Development Fund (CCDF) Lead Agencies followed by semi-structured telephone interviews with CCDF Lead Agencies as well as child abuse and neglect, criminal history, and sex offender registry data custodians.

KEY FINDINGS AND HIGHLIGHTS

- **Out-of-state background checks.** At the time of data collection, 32 states and territories reported that they had implemented the out-of-state criminal history checks, 34 had implemented the out-of-state child abuse and neglect (CAN) registry checks, and 33 had implemented the out-of-state sex offender registry (SOR) checks. 80 percent (41/51) of states reported implementing at least one of the out-of-state checks, meaning 20 percent (10/51) reported not implementing any of the out-of-state checks.
- **Legal restrictions.** Many states have laws that prohibit them from making requests for out-of-state of checks and/or responding to background check requests from other states. These laws may place restrictions on the use of specific registries for employment



purposes, on who can access the registries or background check results, and on what types of information can be shared across state lines.

- **Limited staff.** Lack of staffing was often cited as a barrier to complete out-of-state checks. The out-of-state background check requirements expand the number of child care applicants who need background checks and the number of checks needed for each applicant. State agencies must have enough staff to conduct checks, review results, make determinations of eligibility, and notify applicants in a timely manner.
- **Payment of fees.** Several states have fees associated with processing out-of-state background check requests. Many states do not have funding to support payment of background check fees, while others cited logistical difficulties, such as incompatible payment processing systems.
- **Poor data quality and incomplete records.** Incomplete and inaccurate data can delay background checks, thereby affecting the ability of states to be compliant with the legislation and requiring more staff time to conduct rechecks.
- **Lack of clear processes.** Each state has its own system for requesting and accepting out-of-state background check requests (e.g., paper or electronic submissions, required documentation). Navigating these processes can be burdensome and affect timeliness of processing requests, especially if extensive follow-up is needed to clarify requirements or request additional documentation.
- **Various definitions and policies.** When states use different terms or definitions for the offenses contained in their registries or when policies differ about what information the registries include, it becomes challenging for requesting states to interpret out-of-state background check results and make final determinations of eligibility for employment.
- **Non-response to out-of-state checks.** When responses to out-of-state background check requests are not received, requesting states must make eligibility determinations based on incomplete information, delay a decision, or invest additional resources to receive a response.
- **Recommendations to address challenges.** States suggested: national resources, guidance, standardization of information sharing, amendments to the out-of-state background check requirements, and support for upgraded technology (e.g., automated background check systems).



Introduction

Congress reauthorized the CCDF through the passage of the Child Care and Development Block Grant (CCDBG) Act¹ of 2014 (CCDBG Act). The CCDBG Act includes, among other things, new background check requirements for current and future child care staff. The background check requirements are uncharted territory due to the multiple components, the use of specific checks that have not previously been used for child care employment purposes (including out-of-state checks), the large number of child care staff that must be checked, and the need for timely results for hiring decisions. Because implementation requires building new partnerships and infrastructure within and across states, this work has been challenging.

This research brief (Brief) summarizes available information on the known barriers to and solutions for implementing the out-of-state background check requirements of the CCDBG Act.

RESEARCH QUESTIONS

Three research questions guide this Brief:

1. What is the status of states' and territories' implementation of the CCDBG Act background check requirements?
2. What are the barriers to full implementation of the CCDBG Act out-of-state background check requirements?
3. What are state-recommended solutions to reduce the barriers to complete the CCDBG Act out-of-state background check requirements?

¹ See www.acf.hhs.gov for the legislation in its entirety.



Overview of the CCDBG Act

Individuals subject to background checks

- Those employed by a provider for compensation
- Contracted employees and self-employed
- Those who care for, supervise, or have unsupervised access to children in care
- Adults living in a family child care home

The CCDBG Act reauthorized the law governing the CCDF, a federal program to support low-income working families' access to child care. It included a number of new measures to increase program monitoring and effectiveness and improve child safety, including requirements for background checks of child care staff members.

Under the CCDBG Act, states and territories² (hereafter "states") must have requirements, policies, and procedures in place to conduct background checks for staff members of child care providers (other than relatives) that are licensed, regulated, or registered under state law or receive CCDF funds. Background check

requirements apply to any staff member who is employed by a child care provider for pay and any person 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).

For each child care staff member, the CCDBG Act requires states to check several sources of federal and state-level information before deciding if an applicant is eligible to work in a child care setting.

There are two federal checks³:

- **National FBI Fingerprint Criminal History Repository:** The Federal Bureau of Investigation (FBI) maintains a national database that contains criminal history record

² Tribal CCDF Lead Agencies are also required to put into place similar background check procedures. Their implementation dates are after states and territories, and they were not included in the data collection effort of this project.

³ While the two federal databases are populated by state criminal histories, the information is not identical. For various reasons (not discussed here), there may be information in a state repository that is not captured in the FBI Criminal History Repository or NCIC NSOR databases.

information⁴ from federal, state, tribal, and local agencies (Office of Child Care, 2017).

- **National Crime Information Center (NCIC) National Sex Offender Registry (NSOR):** The FBI maintains a database on people who are required to register in a state's sex offender registry.

There are three in-state registry checks required for each staff member's current state of residence. If a staff member lived in another state in the previous five years, these three checks are also required for those states:

- **State criminal history repository:** A state's official database containing criminal history records on all state criminal offenders.
- **State sex offender registry (SOR):** A statewide database for monitoring and tracking sex offenders following their release into the community.
- **State central registries for child abuse and neglect (CAN) reports:** A centralized statewide database for the collection and maintenance of CAN investigation records (Child Welfare Information Gateway, 2018).

Any state that fails to implement the CCDBG Act background checks requirements may face an annual penalty of up to five percent of the state's annual CCDF discretionary funds. The initial deadline for states to implement the background check requirements was September 30, 2017. Because of significant challenges, all states applied for and received extensions through September 30, 2018, based on their good faith effort to implement the

Background checks required under the CCDBG Act of 2014

FEDERAL CHECKS:

1. FBI Fingerprint Criminal History Repository
2. National Crime Information Center (NCIC) National Sex Offender Registry (NSOR)


IN-STATE CHECKS FOR CURRENT STATE OF RESIDENCE:

3. State criminal history repository
4. Sex offender registry
5. Child abuse and neglect registry

OUT-OF-STATE CHECKS FOR ANY STATE IN WHICH THE STAFF MEMBER HAS RESIDED IN THE PREVIOUS FIVE YEARS:

6. State criminal history repository
7. Sex offender registry
8. Child abuse and neglect registry

⁴ Criminal history record information: Information that includes an individual's personal identification and descriptions of that person's contacts with the criminal justice system, including arrests, added or altered charges, and subsequent dispositions (Bureau of Justice Statistics, 2018).



requirements. Despite the one year extension, many states needed additional time to implement the requirements. Therefore, OCC gave states the option to request additional time-limited waivers of up to two years, in one year increments (potentially through September 30, 2020)⁵. To receive these time-limited waivers, states had to meet “milestone” requirements (i.e. full implementation of the FBI criminal history check and the three in-state background checks for prospective staff members) by September 30, 2018.

In December 2018, OCC reviewed states’ CCDF plans for fiscal years 2019-2021 and determined that only two states were implementing all of the requirements, 35 states met the milestones and received waivers, 10 states were placed on corrective action plans, and four states received a preliminary notice of non-compliance and notice of potential penalty.

In an effort to support states, territories, and tribal authorities, the Office of Planning, Research, and Evaluation (OPRE), with OCC, is conducting research to provide CCDF administrators, policymakers, and technical assistance providers with the knowledge and options for helping states achieve full implementation of the background check requirements of the CCDBG Act.

Data Collection

This Brief summarizes information collected from two activities: (1) a Synthesis and Review of available research and information on background checks and (2) an Environmental Scan of state background check implementation.

SYNTHESIS AND REVIEW

In the Synthesis and Review, we reviewed literature that described barriers to implementing out-of-state background checks and potential solutions to address those barriers. We reviewed relevant academic peer-reviewed research, institutional and government reports, and existing data sources. We identified 48 documents: 14 government reports, nine white papers, seven technical user guides, five non-governmental reports, five fact sheets, three policy papers,

⁵ In response to the COVID-19 health pandemic, States may apply for temporary waivers for extraordinary circumstances in accordance with 45 CFR 98.19. If approved, these waivers may temporarily exempt States from meeting portions of the background checks requirements (with some restrictions). These extraordinary circumstances waivers may last for the duration of each State’s emergency declaration (up to 1 year initially).

three peer-reviewed academic articles, and two legislative records. Findings from the Synthesis and Review informed the development of instruments for the Environmental Scan.

ENVIRONMENTAL SCAN

In the Environmental Scan, we examined variation in state successes and challenges to full implementation, studied the types of support needed from the federal government, and assessed the extent to which other systems can be leveraged to help states perform background checks. We conducted the Environmental Scan in two overlapping phases from April 2019 to September 2019.

In Phase 1, we sent a web-based survey to CCDF Lead Agencies in all 56 states and territories. We designed the survey items to collect (1) how states complete background checks, (2) the status of states' implementation efforts, and (3) contact information for individuals who manage state data for criminal history, SOR, and CAN registry checks (i.e., data custodians).

In Phase 2, we used the contact information collected through the surveys to conduct in-depth semi-structured telephone interviews with state CCDF Lead Agencies and state CAN registry, SOR, and criminal history data custodians. By law, CCDF Lead Agencies

Child Care and Development Fund (CCDF) Lead Agency

A CCDF Lead Agency administers the CCDF program within the state. This may be one agency or a joint interagency office. This is typically housed in the state Department of Health and Human Services or Department of Education.


Data Custodians

Data custodians own, maintain, and disseminate information from specified datasets as allowed by law. The following custodians served as representatives of their agencies for the Environmental Scan interviews:

Criminal History Data Custodians own, maintain, and disseminate criminal history data often housed in Criminal Justice Services Bureaus, Departments of Public Safety, and Departments of State Police, among others.

CAN Registry Data Custodians own, maintain, and disseminate state CAN registry data often housed in Child Care Licensing Bureaus, Child and Family Services Agencies, Departments of Health and Human Services, and Departments of Family and Protective Services, among others.

SOR Data Custodians own, maintain, and disseminate SOR data typically housed in state Bureaus of Investigation. Sometimes the SOR data custodian is also the Criminal History Data custodian.



are responsible for coordinating implementation in their states. For this reason, they were the primary respondents to give overviews of the background check processes in each state. Data custodians were interviewed to better understand the barriers to responding to background check requests from other states. The interviews allowed us to delve deeper into the challenges states encountered while attempting to implement the requirements of the CCDBG Act from different perspectives. We conducted a total of 120 interviews: 42 CCDF Lead Agencies and 18 criminal history,⁶ 34 CAN registry, and 26 SOR data custodians.

Findings from the Synthesis and Review and the Environmental Scan

RESEARCH QUESTION 1

What is the status of states' implementation of the CCDBG Act background check requirements?

As described above, many states have been unable, despite extensions and waivers, to fully implement the background check requirements. In the next several pages, we highlight the status of states' implementation of the background check requirements at the time of data collection.

Implementation of Background Check Requirements: Federal, In-State, and Out-of-State Checks

Nearly all CCDF Lead Agencies reported completing the in-state background checks: all states (100 percent) reported completing in-state SOR checks, 50 states (98 percent) reported completing in-state CAN registry checks, and 45 (88 percent) reported completing in-state criminal history checks. However, not all states may be completing these checks as required by the CCDBG Act. For example, the federal law, as interpreted through Federal regulation, requires in-state criminal history checks to be conducted with fingerprints, yet six states reported that

⁶ For National Fingerprint File (NFF) Program states, the FBI national criminal history check provides the same information as an out-of-state criminal history check. Therefore, NFF Program states do not have to respond to out-of-state criminal history check requests. Because the Environmental Scan data custodian interviews focused on responding to out-of-state requests, NFF Program states were not invited to participate in the criminal history data custodian interviews.

their in-state criminal history checks were based on names only. Most CCDF Lead Agencies also reported conducting each of the three out-of-state checks, with 63 percent, 65 percent, and 67 percent of states implementing the criminal history, SOR, and CAN checks, respectively. 80 percent (41 of 51) of states reported implementing at least one of the out-of-state checks, meaning 20 percent (10 of 51) reported not implementing any of the out-of-state checks. Most states (88 percent) reported that they were able to complete fingerprint-based FBI criminal history checks. Four of the states that do not complete the FBI criminal history checks said they are not able to do so because the state does not collect fingerprints from child care applicants. The fewest number of states (47 percent) reported implementing the name-based NCIC NSOR check.⁷

Number of Annual Background Checks

State CCDF Lead Agencies reported conducting an average of 100 to 150,000 background checks annually.⁸ The percentage of checks reported to have an out-of-state component varied from two percent to 100 percent, with an average of 23 percent. In many cases, CCDF Lead Agencies

TABLE 1. NUMBER OF STATES REPORTING COMPLETING REQUIRED CCDBG ACT OF 2014 BACKGROUND CHECKS

Required background check	Number of States	Percentage
Federal checks		
FBI Criminal History	45	88.2%
National Sex Offender Registry	24	47.0%
Out-of-state		
Criminal history	32	62.7%
Sex offender	33	64.7%
Child abuse and neglect	34	66.7%
In-state		
Criminal history	45	88.2%
Sex offender	51	100%
Child abuse and neglect	50	98.0%

Note: The CCDF Lead Agencies provided the data for this table. This data is self-reported and many states may not be fully implementing the checks as required by law. n=51.

⁷ A search of the NCIC NSOR for noncriminal justice background checks was unprecedented prior to the CCDBG Act Reauthorization. States have found it difficult to fulfill the NCIC NSOR check requirement of the CCDBG Act because it requires a labor-intensive name-based search (as opposed to a fingerprint search) and access is limited to specific law enforcement officials. The FBI is working on a solution to streamline the process.

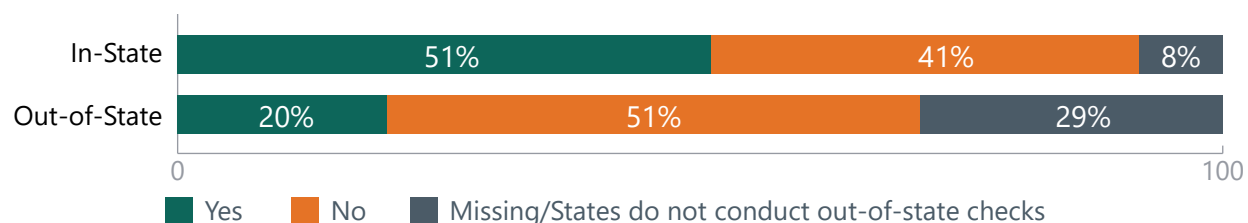
⁸ The Environmental Scan survey asked for the "annual volume" of background checks processed, and some states may have provided data that include checks conducted for existing employees to meet the new requirements. These checks are conducted once every five years and, if included, would inflate annual numbers.

were unable to provide specific estimates of out-of-state versus in-state requests for child care employment because they do not track the requests in this way.

Timeliness of Background Checks

The CCDBG Act requires state CCDF Lead Agencies to make a final determination of employment eligibility based on background check results within 45 days of the request. Only 20 percent of states reported being able to complete over 95 percent of background checks with an out-of-state component within 45 days (Figure 1). Several barriers were identified in the Synthesis and Review and the Environmental Scan that affect the timeliness of out-of-state checks. The next section discusses these barriers in greater detail.

FIGURE 1. DOES STATE COMPLETE OVER 95 PERCENT OF BACKGROUND CHECKS WITHIN 45 DAYS?



RESEARCH QUESTION 2

What are the barriers to complete implementation of the CCDBG Act out-of-state background check requirements?

Nearly half of survey respondents, 47 percent, said that out-of-state checks were the most significant barrier to full implementation of the CCDBG Act background check requirements. In this section, we outline the most common barriers identified in the Synthesis and Review and the Environmental Scan related to out-of-state checks.

The barriers to conducting out-of-state background checks vary by registry (Table 2). Few challenges were identified for SOR checks. This may be due to the fact that almost all out-of-state SOR checks are completed by the requesting state directly checking another state’s public-facing SOR website.⁹


TABLE 2. BARRIERS TO CONDUCTING OUT-OF-STATE BACKGROUND CHECKS BY REGISTRY

	Criminal History Checks	Child Abuse and Neglect Checks	Sex Offender Registry Checks
Legal Restrictions	✓	✓	✓
Limited Staff	✓	✓	
Payment of Fees	✓	✓	
Poor Data Quality and Incomplete Records	✓	✓	✓
Transparent Processes	✓	✓	✓
Definitions and Policies	✓	✓	✓
Non-Response to Out-of-State Requests	✓	✓	

Legal Restrictions

Many states have laws that prohibit them from making requests for out-of-state checks and/or responding to background check requests from other states. At the time of data collection, 22 percent of states who responded to this question (10 of 46) reported that they currently needed new legislation to implement the out-of-state background check requirements. An additional third of states reported that they had already passed the legislation that was needed for out-of-state checks. Only eight states reported that they did not need to pursue legislation to meet any of the CCDBG Act requirements, and three states reported needing new legislation for all components of the background check requirements. While some states may have laws that place restrictions on *requesting* out-of-state background checks (OIG, 2019), states are more commonly faced with challenges related to legislative restrictions on *responding* to background check requests. Many

⁹ As discussed later, state public-facing SOR websites may not include all available SOR records. For example, some states may exclude juvenile or low risk offenders on the public site. Many states have processes in place for checks of the full private registry, but there are often restrictions on who can make the request (see Legislative Barriers).



states have legislation barring the use of specific registries for employment purposes, placing restrictions on who can access the registries or receive background check results, or limiting what types of information can be shared across state lines¹⁰. As a result, requesting states, in some instances, cannot get the information needed to make informed determinations of eligibility. For example, some states have policies that prohibit the sharing of criminal records with non-law enforcement agencies. Similarly, all but one SOR custodian said only law enforcement or other state data custodians can make requests for information from their non-public datasets.

Legislative restrictions on the types of information that can be shared with out-of-state requestors can be particularly challenging if the requesting state has additional disqualifiers beyond those outlined in the CCDBG Act. For example, nine states reported that they can only provide conviction information for criminal records. This can be problematic for requesting states who need information on arrests, dropped charges, or jail time to determine eligibility based on their own state disqualifiers. Further, if a responding state with additional state disqualifiers shares a red light indicator¹¹ and does not indicate whether the person was disqualified based on the responding state's own or federal disqualifiers, the requesting state may disqualify someone who is eligible to work in their state.

The majority of CAN representatives interviewed (23 of 34) also reported limitations on what they can share. Most states only provide a red/green light indication of whether an applicant has a substantiated finding on the state's CAN registry. In these cases, state laws may prohibit giving the reason or additional details on why a person is on the registry. Restrictions on data sharing are further complicated for CAN registries because although the CCDBG Act requires states to check CAN registries, it does not specify what types of offenses should disqualify an individual from child care employment. Therefore, every state has its own policies around how to use CAN registry findings to determine eligibility. For both criminal history and CAN registries, challenges related to restrictions on the release of information are compounded by state differences in definitions of offenses and the policies for inclusion on the registry (see below).

¹⁰ States that have legislative restrictions on the sharing of records are considered "closed record" states.

¹¹ A "red light" response indicates that the background check identified one or more disqualifying offenses, but often does not provide any information about the specific offense(s). A "green light" response indicates that the background check did not identify any disqualifying information. State processes for making a red/green light determination vary.



Solutions for Legal Restrictions

Most, but not all states, have the legislation they need to conduct all components of child care background checks. As noted above, at the time of data collection, nearly three-quarters of states already had the necessary legislation to meet the out-of-state requirements of the CCDBG Act¹². To address legislative barriers, some CCDF Lead Agencies worked directly with their legislatures on statutory changes to comply with the federal law (OIG, 2018a). States that needed to pursue new legislation generally already had a statute requiring some type of child care worker background check and this, they felt, helped them to pass additional legislation to align their laws with CCDBG Act requirements. In other background check programs, states worked with stakeholders to prompt legislative change (National Background Check Program (NBCP, 2016).

Another solution some states have used is to work with data custodians to review and respond to out-of-state requests. Two states in the Environmental Scan reported working with CAN, SOR, or criminal history data custodians to authorize responses to out-of-state requests instead of pursuing legislative change for the CCDF Lead Agencies to access the information directly.


To overcome legislative restrictions on *what* information can be shared with out-of-state requestors, in some instances, a state can obtain more criminal history information by making a fingerprint-based request instead of a name-based request¹³. Fingerprint-based checks provide positive identification confirming of an individual's identity. Fingerprints allow for the retrieval of accurate information for a single individual that might have previously been identified by different names (e.g., maiden name, alias) and/or social security number (SSN) variations.

Limited Staff

Lack of enough staff is a common barrier to the full implementation of the background check requirements (OIG, 2018a, 2018b, 2018c, 2018d, and 2018e). The out-of-state background checks expand the number of child care staff who need background checks and the number of checks that need to be completed for each staff member. State agencies must have enough staff to conduct checks, review results, make determinations of eligibility, and notify applicants in a timely manner.

¹² Twenty-one states never needed new legislation and 15 states had already passed the legislation that was necessary to implement the out-of-state checks.

¹³ The CCDBG Act requires, at a minimum, name-based out-of-state checks. States may choose to require or accept fingerprint-based records.



Nineteen CCDF Lead Agencies interviewed named staffing as a barrier to complete out-of-state checks. One state, for example, noted that its out-of-state CAN registry checks are “manual all the way around.” It has a spreadsheet to track the requests, and obtaining responses takes consistent follow-up, including occasional phone calls. Further, 11 CAN registry data custodians and two criminal history representatives said staffing is a periodic issue, noting that staffing problems can vary as workload surges or as staff turns over, leaving vacant positions.

Solutions for Limited Staff

To reduce the staffing barrier, the literature provides examples of some states using cost and staffing estimators or tools to help support the volume of checks now required (Matthews et al., 2015).

Automating processes can also help combat the lack of staffing and delays. Automating registry searches, rather than manually entering search information (such as applicant name and date of birth), can reduce the time burden for state staff (NBCP, 2014; CNA, 2018). For example, some states participating in a background check program for long-term care have achieved quick-turnaround results by conducting automated background checks within their health care agencies (CNA, 2018). Idaho built a system that allows prospective health care employees to apply online for a background check and make an appointment to have their fingerprints taken at the agency’s offices. Those fingerprints are then digitally forwarded to a law enforcement agency that automatically runs the checks. Results are returned within approximately one hour. These processes are somewhat costly to implement, but they save money once they are in place (NBCP, 2017).

States with automated background check systems may want to consider adding automated registry recheck functionality. The registry recheck process allows providers to upload a list of their current employees and then, as often as monthly, conduct an automated recheck of selected registries for employees and for applicants whose applications are in process. The registry recheck process can help identify any individuals who may have been added to registries after hire (NBCP, 2013).



Payment of Fees

Often, requests for out-of-state background checks have associated fees. Criminal history representatives commonly reported that fees varied based on a number of factors, including: whether the check was name-based or fingerprint-based, the method of request (e.g., online vs mail-in), who submitted the request (i.e., the public vs regular subscribers), and whether the check was bundled with a SOR check. Overall, the fees charged to out-of-state requestors for criminal history checks ranged from \$0 for a name-based online check to \$67 for a fingerprint-based check. While more than two-thirds of CAN registry data custodians do not charge for registry checks, those that do reported charging anywhere from \$5 to \$35 to process an out-of-state request. 24 state CCDF Lead Agencies surveyed cited payment of these fees as a barrier to implementing the out-of-state background check requirements of the CCDBG Act.


Some states discussed logistical difficulties when the state was covering the cost of the background checks. The most commonly cited challenge 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. Some payment methods also add additional time or burden. Writing a check may require coordination with a Finance Office and takes longer to process because it must be sent through the mail. CAN registry data custodians also noted that there is not always a budget in place to cover the payment of fees.

Solutions for Payment of Fees

To address these barriers, some CCDF Lead Agencies have passed background check fees on to child care providers or child care worker applicants. Others have brokered agreements with other states to not charge fees for CAN checks.

Poor Data Quality and Incomplete Records

The ability to request and respond to background checks is crucial to fully implementing the CCDBG Act requirements. Incomplete and inaccurate data can delay background checks, thereby affecting the ability of states to comply with the legislation and requiring more staff time to conduct rechecks.



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. The Bureau of Justice Statistics (2018) 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. Two-thirds of criminal history data custodians interviewed in the Environmental Scan reported data quality issues, particularly incomplete records (e.g., missing final decisions on charges). Similar data quality issues have been identified in SOR records. In 2014, Vermont conducted a review of its SOR records and found that 253 (or 11 percent) of the SOR records had critical errors. These errors were caused primarily by manual processes, procedures that were incomplete or lacked detail, and inaccurate or untimely data (Hoffer, 2014).

Solutions for Poor Data Quality and Incomplete Records


There were two commonly cited solutions to address incomplete records in criminal history searches: (1) asking applicants to provide the missing information themselves or (2) having the agency responsible for making the final decision investigate missing dispositions¹⁴.

Environmental Scan interview participants did not provide detailed information on how states overcome data quality issues. However, information from the literature offers some solutions. In response to the data quality issues identified in the 2014 SOR review, Vermont was encouraged to set performance standards for timely entry of data and document retention. Vermont's review also recommended implementing processes to track offenders who are registered or required to register to prompt Department of Corrections staff to enter the required information into their system (Hoffer, 2014). Similar approaches may be appropriate for data quality issues in criminal history records.

Lack of Transparent Processes

Each state has the flexibility to develop its own system for requesting and accepting out-of-state background check requests. This means that every state may need to be familiar with up to 55 other states' and territories' processes for submitting a background check request. Examples of this variability include: who may submit a request (e.g., the CCDF Lead Agency or the applicant), method of submission (electronic versus paper), required documentation, whether a notarized signature is needed, the fee for processing a request, and acceptable methods for

¹⁴ Final decision, for example conviction, acquittal, or dropped charges.



paying those fees (see above). Complicating matters more, 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, especially if extensive follow-up is needed to clarify requirements or request additional documentation. In many cases, appropriate contacts within a state may not be clearly published, causing additional delays in resolving questions or problems.


Solutions for Lack of Transparent Processes

Although OCC maintains a database of contacts for out-of-state checks and the CCDBG Act requires all states to publish their background check processes on their state websites, many respondents found that the information was out-of-date or not sufficiently detailed to meet their needs. A number of states noted that they have spent time and effort creating their own list of contacts for out-of-state checks, but keeping the list updated requires resources they do not always have available. The most frequent suggestion for federal support made by CCDF Lead Agencies (13 states) was providing more information about each states' background check processes (see Research Question 3, below). States suggested OCC create and regularly update an online database of state contacts for background checks with information on who can make a request (i.e., the state agency or applicant), fees, forms to be completed, what information can be shared, and terminology used.

Different Definitions and Policies On Offenses

When states use different terms or definitions for the offenses contained in their registries or when policies differ about what information the registries include, it becomes challenging for requesting states to interpret background check results and make final determinations of eligibility for employment across state lines (GAO, 2015).

For example, there is substantial variation in definitions and in the types of data, information, and cases included within state CAN registries (Radel, 2009). Although nearly all states have basic categories of physical abuse, neglect, sexual abuse, emotional or psychological maltreatment, and medical neglect among their recognized maltreatment types, the specific definitions of those terms and the policies for investigating, substantiating, and recording those offenses vary between states (Radel, 2009). This results in significant differences in the content of each state's




CAN registry. These differences make it difficult to interpret another state's CAN registry results. Consistent with the literature, 14 CCDF Lead Agencies pointed out this issue for CAN results where it is not clear how states define abuse and neglect, substantiated finding, or due process.

Definitional issues are not exclusive to CAN registries. Similar challenges exist for criminal histories where states may have different definitions or statutes for what constitutes a felony versus a misdemeanor (Greenspan & Schauffler, 2016). Legal experts are often needed to crosswalk offenses from one state onto another state's list of disqualifying crimes. During the Environmental Scan interviews, one state noted that they "look at the components of a crime committed in [the other] state and see what it includes and make a determination as to what applies to [their own state's] statutes... The names of crimes can be different too, that adds extra research time. Trying to obtain those reports also adds a layer of difficulty."

Challenges also emerge due to differences in the offenses included in states' public facing SOR websites — which, as noted above, are the primary sources used for completing out-of-state SOR checks. For example, one state mentioned that "people go to the website and think they get the full picture, but do not." In this state, juvenile and low risk offenders are not on the public website. Requestors can ask for a full list of registered offenders that includes juvenile and low risk offenders, but many do not. If states are checking public registries without full knowledge of what types of offenses are or are not included on each registry, critical offenses may be missed by the background check.

Solutions for Different Definitions and Policies On Offenses

One solution identified is following up with responding states for additional information on how other states define abuse and neglect, substantiated finding, or due process. This can be a very labor intensive process for states that are already struggling with insufficient staffing. One state noted, "We would have to get more information [on definitions], and typically, [the responding state is] not inclined to provide it. We would try to get some more information [on definitions for abuse, neglect; or a substantiated finding] to know what the determination was based on. We send them our rules and ask if it meets them. It's not great; those out-of-state central registries are already taking a long time to get back. So following up again for more information is not easy, but we do our due diligence."



One solution that has not been implemented, but has been requested by states (see Research Question 3, below) is a reference guide that includes every state's definition of substantiation in CAN registries. This would provide states with additional information to help them interpret and use CAN registry results received from out-of-state requests and reduce the need for manual follow-up.

Non-Response to Out-of-State Requests

A final challenge states face with completing out-of-state background checks is handling non-response to out-of-state requests. States may not respond to requests for a number of reasons such as legal restrictions (i.e., closed record laws), incomplete applications, or overburdened staff. However, when responses are not received, requesting states are faced with the challenge of how to move forward with making determinations of eligibility within the 45-day window: should they commit extra staff resources to track down a response, should they miss the deadline in hopes of eventually obtaining a response, or should they make a decision based on incomplete information?

Solutions for Non-Response to Out-of-State Requests

Nine states reported having regulations or policies that allow them to proceed to make a determination without the requested information within a specified period, most often 45 days. Several states reported if there are no other disqualifying items, the state will determine the applicant is eligible. One state noted, "We cannot deny the person without a reason on hand". Two states noted they do send a second request if a response is not received within a month and document the attempts of due diligence. Further, one state implemented a provisional qualification status due to their experience with not receiving information from other states. Under the provisional qualifications, the state marks applications eligible but the individual cannot be left unsupervised with children, and that provisional employment expires in six months' time. During that time, the provisional hire is encouraged to reach out to the other states to obtain the information to clear the provisional status. However, the provisional qualification is fairly new and the state is still trying to determine how to qualify applicants after six months of provisional employment if a response to an out-of-state check is never received.



RESEARCH QUESTION 3

What are state-recommended solutions to reduce the barriers to complete the CCDBG Act out-of-state background check requirements?

CCDF Lead Agencies and SOR, CAN, and criminal history data custodians recommended several solutions for federal support to help address the barriers to full implementation of the out-of-state requirements of the CCDBG Act. In this section, we list those recommendations.

Development of National-Level Resources


States frequently cited the need for an updated national online database for child care background checks that could include (1) primary points of contact, (2) who can make a request (i.e., the state agency or applicant), (3) fees, (4) the request process (e.g., forms to be completed), (5) restrictions on information sharing, and (6) definitions for background check results. 13 CCDF Lead Agencies recommended that OCC create and regularly update such a national database because a single source of information would save time and effort on the part of child care background check staff.

Further, one state suggested that OCC develop or promote the use of software that would check all state SORs at once and eliminate the need to manually enter applicant information into each state's SOR website. The ability to use a single source would save time and effort on the part of child care background check staff; staff could use one source to check in- and out-of-state sex offender records as opposed checking several public SOR websites.

Several states recommended a national resource to facilitate communication and sharing of information between states and with the federal agencies. Four states identified a need for more open communication, specifically with federal agencies. Examples include an easier way to ask questions of federal agencies, including the FBI, and the ability to get definitive answers to questions from federal agencies.

Guidance on Meeting CCDBG Act Requirements

CCDF Lead Agencies recommended additional federal guidance on what to do when states do not receive responses from other states on background check requests. Seven states requested more guidance on acceptable alternatives to meeting requirements. For example, to meet the out-of-state SOR check requirement, provide guidance on whether states can substitute the



National Sex Offender Public Website for an out-of-state SOR check if a requesting agency does not get a response from another state.

Further, three states suggested that OCC provide guidance on joining the National Fingerprint File (NFF) Program. Participation in the NFF eases administrative burden by alleviating the need for states to conduct both the FBI fingerprint check and an out-of-state check of another state's criminal history record repository if the responding state participates in the NFF program.


Standardization Across States

States recommended standardization of sharing information and processes across states. Three states suggested OCC work with states to open criminal history and/or CAN registry records solely for use in child care worker background checks, and two states requested draft language to help with writing legislation. Encouragement for NFF participation was also a recommendation to support standardization across states. Specifically, whether lead agencies are aware of what it takes to become an NFF state or not, they do understand the advantages for the background check programs and would like to see more states join the NFF. One state asked that OCC provide information on the benefits of NFF participation that they could share with their governor's office. Another state asked for help working through their NFF challenges. One state suggested that OCC require states to accept online requests for out-of-state checks.

Several states made recommendations for standardization across states specific to conducting CAN registry checks. For example, three states suggested that OCC broker an agreement between states to conduct CAN checks without charge. While most CAN custodians currently do not charge for registry checks, when fees are charged, payment is often difficult because there is no budget to cover the fees or CCDF Lead Agencies face logistical challenges (e.g., issuing checks must be approved by the Finance Office) to make payments to other states. A few states suggested that OCC create mandates to standardize CAN registry definitions of what constitutes abuse and neglect, clarify who can request information (e.g., CCDF Lead Agencies versus potential child care employees), and the inclusion criteria for the registry.

Amend the CCDBG Act

Given state experience with implementation of out-of-state background check requirements, several CCDF Lead Agencies and CAN registry data custodians recommended amendments to the CCDBG Act. Several interview participants, frustrated with lack of responses to out-of-state



child care background check requests, suggested an amendment to the CCDBG Act to require states to respond to out-of-state background check requests. Two CAN registry data custodians suggested extending the time period for completing checks beyond the 45-day limit. One state recommended changing the CCDBG Act so that background check requests do not have to be made to closed-record states. Finally, two states suggested that OCC align requirements of the CCDBG Act with federal child welfare rules and policies. One state felt the requirements to check CAN registries do not take into consideration child welfare laws.


Support for Automation and Upgraded Technology

13 states reported that several identified barriers (e.g., lack of staff) to completing the out-of-state requirements can be reduced with automated background check systems. Both criminal history data custodians and CCDF Lead Agencies recommended that OCC allocate grant funding for states to implement automated systems¹⁵; specifically 10 states expressed the need

Additional State-Recommended Solutions for Federal Government to Support the Implementation Of Out-of-State Requirements of the CCDBG Act

- Clarify expectations regarding the CAN registry (e.g., what CAN registries are and why checks of a CAN registry cannot always be done quickly).
- Create a federal online child care worker background check registry to identify individuals unable to work in child care.
- Allocate staffing funds to support states to implement background checks.
- Conduct a return-on-investment study to provide evidence on the importance of comprehensive child care background checks. Such a study would help states garner buy-in with external stakeholders.

¹⁵ States may use CCDF funding to support the full implementation of the CCDBG Act of 2014, including activities to improve the quality and safety of child care programs and to ensure that health and safety standards are met. CCDF funding may be used to invest in IT systems-building, equipment, and infrastructure that will increase the capacity to meet background check requirements in a more timely and efficient manner.



for grant funding for updated IT infrastructure to support the development of online systems (e.g., electronic signatures). Two states noted the need for notarized signatures to allow the release of information can increase the time it takes to make out-of-state requests. According to two states, CAN registries, in particular, could use this type of technology to make their processes more efficient.


Conclusion

This Brief is the first step towards building a comprehensive understanding of the complex challenges and promising solutions to fully implementing the out-of-state background check requirements established under the CCDBG Act of 2014. Building on the information gathered in this Brief, the Office of Child Care and its technical assistance providers can develop a framework to identify and strategically plan how to effectively support states in implementing comprehensive programs for child care background checks.



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