

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW YORK HAS NOT FULLY
IMPLEMENTED NEW CRIMINAL
BACKGROUND CHECK REQUIREMENTS
FOR CHILDCARE PROVIDERS**

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Office of Inspector General

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Report in Brief

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U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

The Child Care and Development Block Grant Act of 2014 (CCDBG Act) added new requirements for States receiving Child Care and Development Fund (CCDF) funds to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years. Background check requirements apply to any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children. States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds no later than September 30, 2017.

Our objective was to determine New York's progress toward implementing new criminal background check requirements established under the CCDBG Act.

How OIG Did This Review

Our review covered New York's efforts to implement the new criminal background check requirements and its plans to address those requirements that were not implemented as of the end of our fieldwork. We also identified challenges that New York experienced as of October 1, 2018. Our review did not address childcare providers' compliance with the new requirements.

New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers

What OIG Found

The CCDBG Act allowed for the Secretary of HHS to grant a 1-year extension to the States as long as they demonstrate a good-faith effort to implement the requirements. In recognition of significant challenges to implementing the new background check requirements, all States, including New York, applied for and received extensions through September 30, 2018.

While New York had some background check requirements in place prior to the establishment of the CCDBG Act, it had not fully implemented the new criminal background check requirements as of October 1, 2018, the date that its 1-year extension expired. New York must enact supporting legislation to make the changes necessary to its current CCDF program to come into compliance with the CCDBG Act.

Should the Administration for Children and Families (the administrator of the CCDF program) determine New York to be in substantial non-compliance with the Act, New York would be subject to a penalty of 5 percent of the total discretionary CCDF funds awarded to New York for the fiscal year following its determination that non-compliance occurred.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Child Care and Development Block Grant Act of 2014 (CCDBG Act) added new requirements for States receiving Child Care and Development Fund (CCDF) funds to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years (P.L. No. 113-186 § 658H (Nov. 19, 2014)). In New York, the designated CCDF lead agency is the Office of Children and Family Services (State agency).

States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare 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 childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children. This includes not only caregivers, teachers, and directors, but also janitors, cooks, and other employees of a childcare provider who may not regularly engage with children, but whose presence at the facility gives them the opportunity for unsupervised access. For family childcare homes, this includes the caregiver requesting a check of himself or herself, as well as other adults in the household who may have unsupervised access to children.

As part of its oversight activities, the Office of Inspector General (OIG) is conducting a series of reviews to improve the program integrity of child care and development grant programs. This review focuses on New York's implementation of the new criminal background check requirements. (Appendix C lists related OIG reports on States' implementation of new criminal background check requirements.) For this review, we define implementation as the actions taken to establish the requirements, policies, and procedures that will be used to carry out the provisions of the CCDBG Act. Future childcare provider audits will test how the States and childcare providers have implemented these criminal background check requirements in their day-to-day operations.

OBJECTIVE

Our objective was to determine New York's progress toward implementing new criminal background check requirements established under the CCDBG Act.

BACKGROUND

Reauthorized in the CCDBG Act, CCDF is the primary Federal funding source devoted to subsidizing the childcare expenditures of low-income families. Administered by the Administration for Children and Families (ACF), CCDF provides eligible low-income families with help paying for child care at a provider of their choice while they work or participate in training or education, or both. In fiscal year (FY) 2016, ACF provided \$5.7 billion to States, territories,

and Tribes to fund CCDF programs. Each month, CCDF serves approximately 1.4 million children under the age of 13 from 850,000 low-income working families.

New Criminal Background Check Requirements

The U.S. Department of Health and Human Services (HHS) implemented the CCDBG Act's new criminal background check requirements for States, territories, and Tribes in a Final Rule issued in September 2016 (45 CFR part 98). According to Federal regulations, States must have requirements, policies, and procedures in place to conduct comprehensive criminal background checks. States are required to conduct criminal background checks for childcare staff members and prospective staff members that include checks of two national registries, three in-State registries, and checks of three registries in other States as necessary (we refer to those checks as "inter-State checks") (45 CFR § 98.43(b)).

The national background registry checks are:

- a Federal Bureau of Investigation (FBI) criminal history fingerprint check using Next Generation Identification¹ and
- a search of the National Crime Information Center's (NCIC's) National Sex Offender Registry.

In-State background registry checks (applicable to the State in which the childcare staff member resides) are:

- a search of the State criminal registry using fingerprints,
- a search of the State sex offender registry, and
- a search of the State-based child abuse and neglect registry.

Inter-State background registry checks (applicable to each State in which the childcare staff member resided during the preceding 5 years) are:

- a search of each State's criminal registry (fingerprints optional),
- a search of each State's sex offender registry, and
- a search of each State-based child abuse and neglect registry.

¹ The FBI fingerprint check, Next Generation Identification (formerly the Integrated Automated Fingerprint Identification System), provides the criminal justice community with the world's largest and most efficient electronic repository of biometric and criminal history information.

In addition to requiring registry checks, States must comply with several other requirements laid out in Federal regulations. The requirements are described below. In parentheses, we add a descriptor of the requirement that we will use in later discussions in the report:

- Federal regulations require criminal background checks for staff members and prospective staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds. This includes any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children. Throughout the report, these individuals will be referred to as “childcare staff members” (45 CFR § 98.43(a)). (“Applicable to all childcare staff members.”)
- Federal regulations require States to include in their requirements, policies, and procedures specific factors that would cause a childcare staff member to be ineligible for employment by child care providers. (45 CFR § 98.43(c)). (“Disqualification factors.”)
- Federal regulations require criminal background checks prior to employment and at least every 5 years following employment (45 CFR § 98.43(d)(2)). (“5-year timeframe.”)
- States must have requirements, policies, and procedures that a childcare staff member may not start work until the FBI or in-State criminal registry fingerprint check is returned as satisfactory, and that a staff member be continually supervised until a determination is made on all checks (45 CFR § 98.43(d)(4)). (“Condition of employment.”)
- States are required to provide the results of criminal background checks within 45 days after the date on which the childcare provider submitted the checks and provide the results to the current or prospective childcare staff member. (45 CFR § 98.43(e)(1)). (“Results within 45 days.”)
- States are required to provide a process for childcare staff members to appeal the results of criminal background checks and to challenge the accuracy or completeness of the information contained in the member’s criminal background report. (45 CFR § 98.43(e)(3)). (“Appeals process.”)
- States may charge for the costs (not to exceed actual costs) of processing applications and administering criminal background checks (45 CFR § 98.43(f)). (“Appropriate fees.”)
- States must ensure that their policies and procedures for criminal background checks are published on their websites (45 CFR § 98.43(g)). (“Transparency of State policies and procedures.”)

Extension and Waiver Deadlines for Implementation

The CCDBG Act required that all States have requirements, policies, and procedures in place that meet the criminal background check requirements no later than September 30, 2017. The CCDBG Act allowed for the Secretary of HHS to grant a 1-year extension to the States as long as they demonstrate a good-faith effort to implement the requirements. In recognition of significant challenges to implementing the new background check requirements, all States, including New York, applied for and received extensions through September 30, 2018. In addition, ACF has the authority to grant States a waiver of a statutory provision, including one or more criminal background check requirements, and may extend the implementation period for the waived requirements for up to 2 additional years, until September 30, 2020, assuming that the requirements for applying for the waiver are fulfilled. In its State plan preprint,² ACF has indicated that if a State implements the FBI criminal history check and the three in-State background checks for prospective staff by September 30, 2018, the State may receive a time-limited waiver (1 year, with an additional year renewal, subject to conditions being met) to perform the following actions:

- conduct FBI checks and in-State registry checks on current childcare staff, and
- establish procedures and conduct checks of the NCIC's National Sex Offender Registry and inter-State registries for current and prospective staff, as necessary.

Child Care and Development Fund Providers in New York

In New York, child care is regulated by the State Social Services Law (SSL) or by Article 47 of the New York City (NYC) Health Code (Health Code). Under the SSL, the State agency regulates all providers in the State except for licensed day care centers in NYC. According to Section 390 of the SSL, NYC day care centers are excluded from the jurisdiction of the State agency. Rather, the NYC Department of Health and Mental Hygiene (DOHMH) regulates these providers under Article 47 of the Health Code.³

In New York, there are 35,868 CCDF program providers. Of these, the State agency regulates 16,701 State licensed and 16,938 legally exempt CCDF program providers. The DOHMH regulates 2,229 licensed day care centers in NYC. (Legally exempt providers are also referred to as "license-exempt.") Licensed providers include validly licensed, or properly registered day care centers, school-age childcare programs, group family homes or family day care homes. Legally

² The State plan is the primary mechanism that ACF uses to determine State and territory compliance with the requirements of the CCDBG Act. The State plan preprint provides a tool for States and territories to describe to ACF their progress on eight key functions of an integrated system of childcare as described in the preprint (https://www.acf.hhs.gov/sites/default/files/occ/fy_2019_2021ccdf_plan_preprint_11_30_17.pdf).

³ In NYC, child day care centers are known as "child care programs" and must receive a permit to operate from DOHMH.

exempt providers include informal providers and group providers that are not required to be licensed by or registered with the State.

New York's Coordination Efforts for Conducting Criminal Background Checks

The State agency said that it had been working with its State partner agency, the Division of Criminal Justice Services (DCJS), prior to the establishment of the CCDBG Act, to conduct searches of New York's in-State criminal and sex offender registries for CCDF program childcare staff members. Providers may challenge the accuracy of a finding in criminal and sex offender registries through DCJS. The State agency maintains New York's child abuse and neglect registry and conducts checks of this registry for providers licensed and regulated by the State agency or by DOHMH.

The State agency said that it will be working with DOHMH to bring NYC day care centers into compliance with all the CCDBG Act requirements. Currently, the NYC Department of Investigations (DOI) conducts criminal background checks for DOHMH-licensed providers.

HOW WE CONDUCTED THIS REVIEW

Our review covered New York's efforts to implement the new criminal background check requirements as of the end of our fieldwork, July 17, 2018. We also identified challenges that New York experienced as of October 1, 2018, the date that its 1-year extension expired. Our review did not address childcare providers' compliance with the new requirements.

We did not review the overall internal control structure of the State agency or DOHMH. Rather, we limited our review to determining whether New York implemented the new criminal background check requirements.

Appendix A contains the details of our audit scope and methodology.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS OF REVIEW

While New York had some background check requirements in place prior to the establishment of the CCDBG Act, it had not fully implemented the new criminal background check requirements as of October 1, 2018. The State agency stated that New York must enact legislation to revise its current CCDF program in order to achieve compliance with the CCDBG Act’s new requirements. To that effect, two legislative bills were introduced during the 2018 New York State legislative session. However, neither bill was passed before the legislative session ended on June 2018.⁴ The State agency estimated that it would need to hire 120 employees and secure \$29 million annually to cover the costs for performing background checks.

Table 1 provides a summary of New York’s (i.e., the State agency’s and DOHMH’s) implementation status for the national, in-State, and inter-State background registry checks.

Table 1: New York’s Implementation Status of Background Registry Checks

Background Registry Checks	Implementation Status as of 7/17/2018⁵	Implementation Status as of 10/1/2018⁶	Potential Implementation Status as of 10/1/2019⁷
FBI criminal history fingerprint check	Partially Implemented		Undetermined
NCIC’s National Sex Offender Registry	Not Implemented		Undetermined
In-State criminal registry	Partially Implemented		Undetermined
In-State sex offender registry	Partially Implemented		Undetermined

⁴ The State Agency told us that it and the State Assembly disagreed on how to interpret some CCDBG Act requirements. Specifically, the definition of the term “relative” and whether the results of the criminal background clearances could be provided directly to day care providers.

⁵ *Partially implemented* indicates that some aspects of the requirement had been implemented. Tables 3, 4, 5, and 6 in Appendix B show New York’s implementation status as of 10/1/2018 by provider type: State agency licensed, legally exempt informal and legally exempt group providers and DOHMH-licensed daycare centers, respectively.

⁶ We based New York’s implementation status on discussions we had with State agency and DOHMH officials. A “yellow” status indicates that New York had partially implemented the background registry check by the corresponding date. A “red” status indicates that New York did not implement the background registry check by the corresponding date.

⁷ *Undetermined* indicates that the State agency was unable to provide an estimated implementation date since this was contingent on the enactment of supporting legislation.

Background Registry Checks	Implementation Status as of 7/17/2018⁵	Implementation Status as of 10/1/2018⁶	Potential Implementation Status as of 10/1/2019⁷
In-State child abuse and neglect registry	Partially Implemented		Undetermined
Inter-State criminal registry	Not Implemented		Undetermined
Inter-State sex offender registry	Not Implemented		Undetermined
Inter-State child abuse and neglect registry	Not Implemented		Undetermined

In addition, a summary of New York’s implementation status for criminal background check requirements that address other Federal requirements is discussed later in the report.

NEW YORK DID NOT FULLY IMPLEMENT ALL NATIONAL BACKGROUND REGISTRY CHECKS

The National FBI Criminal History Fingerprint Check Was Partially Implemented

According to Federal regulations, States are required to conduct an FBI criminal history fingerprint check using Next Generation Identification for childcare staff members or prospective staff members (45 CFR § 98.43(b)(1)).

As of October 1, 2018, New York had implemented the National FBI criminal history fingerprint check for DOHMH-licensed providers but not for State agency-licensed, legally exempt informal and legally exempt group providers. The State agency indicated that changes were needed to its State laws to create the authority to fully implement this check. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted. The State agency told us that DCJS currently performs the FBI criminal history fingerprint check for State agency employees and that, once legislative authority is established, DCJS will also be able to perform this check for childcare staff members.

The National Crime Information Center’s National Sex Offender Registry Check Was Not Implemented

According to Federal regulations, States are required to conduct a search of the NCIC’s National Sex Offender Registry for childcare staff members or prospective staff members (45 CFR § 98.43(b)(2)).

As of October 1, 2018, New York had not implemented the NCIC’s National Sex Offender Registry check because of the challenges of amending State laws to create the authority to perform this

check and securing resources to implement the requirements. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted. The State agency told us that DCJS does not currently perform the NCIC's National Sex Offender Registry check, but once legislative authority is established, DCJS will be able to perform this check for childcare staff members.

NEW YORK DID NOT FULLY IMPLEMENT ALL IN-STATE BACKGROUND REGISTRY CHECKS

In-State Criminal Registry Check Was Partially Implemented

According to Federal regulations, States are required to conduct a search of the State criminal registry (using fingerprints) in the State in which the childcare staff member or prospective staff member resides (45 CFR § 98.43(b)(3)(i)).

As of October 1, 2018, New York had implemented the in-State criminal registry check for State agency- and DOHMH-licensed providers but not for legally exempt informal and legally exempt group providers. The State agency indicated that changes were needed to its State laws to create the authority to fully implement this check. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

In-State Sex Offender Registry Check Was Partially Implemented

According to Federal regulations, States are required to conduct a search of the State sex offender registry in the State in which the childcare staff member or prospective staff member resides (45 CFR § 98.43(b)(3)(ii)).

As of October 1, 2018, New York had implemented the in-State sex offender registry check for legally exempt informal providers but not for legally exempt group providers and State agency- and DOHMH-licensed providers. The State agency indicated that changes were needed to its State laws to create the authority to fully implement this check. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

In-State Child Abuse and Neglect Registry Check Was Partially Implemented

According to Federal regulations, States are required to conduct a search of the State-based child abuse and neglect registry in the State in which the childcare staff member or prospective staff member resides (45 CFR § 98.43(b)(3)(iii)).

As of October 1, 2018, New York had implemented the in-State child abuse and neglect registry check for State agency- and DOHMH-licensed providers but not for legally exempt informal and legally exempt group providers. The State agency indicated that changes were needed to its State laws to create the authority to fully implement this check. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

NEW YORK DID NOT IMPLEMENT ALL INTER-STATE BACKGROUND REGISTRY CHECKS

According to Federal regulations, States are required to conduct a search of each State's criminal (fingerprints optional), sex offender and child abuse and neglect registries in which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

As of October 1, 2018, New York had not implemented the three inter-State background registry checks. The State agency indicated that it would need to amend State laws to create the authority to perform inter-State background checks. The State agency raised concerns regarding the large number of inter-state checks that would need to be performed in New York, communication between States, and the differences in interpreting penal codes' terms among the States. While the State agency does not currently have the authority to conduct inter-State background checks, it responds to out-of-state requests for checks of former State residents. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

NEW YORK DID NOT FULLY IMPLEMENT ALL BACKGROUND CHECK REQUIREMENTS

In addition to accessing national, in-State, and inter-State registries, States are required to implement eight criminal background check requirements that address other Federal requirements. As of October 1, 2018, New York had not fully implemented any of these requirements.

Table 2 (next page) provides a summary of New York's (i.e., the State agency's and DOHMH's) implementation status for these background check requirements.

Table 2: New York’s Implementation Status of Background Check Requirements

Background Check Requirements	Implementation Status as of 7/17/2018⁸	Implementation Status as of 10/1/2018⁹	Potential Implementation Status as of 10/1/2019¹⁰
Applicable to all childcare staff members	Partially Implemented		Undetermined
Disqualification factors	Not Implemented		Undetermined
5-year timeframe	Partially Implemented		Undetermined
Condition of employment	Not Implemented		Undetermined
Results within 45 days	Not Implemented		Undetermined
Appeals process	Partially Implemented		Undetermined
Appropriate fees	Implemented		Implemented
Transparency of State policies and procedures	Partially Implemented		Undetermined

Applicable to All Childcare Staff Members

Federal regulations require States to have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare 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 childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children (45 CFR § 98.43(a)).

As of October 1, 2018, New York had partially implemented this criminal background check requirement. Specifically, New York had implemented the requirement for the registry checks

⁸ *Partially implemented* indicates that some aspects of the requirement had been implemented.

⁹ We based New York’s implementation status on discussions we had with State agency and DOHMH officials. A “green” status indicates that New York had fully implemented the requirement by the corresponding date. A “yellow” status indicates that New York had partially implemented the requirement by the corresponding date. A “red” status indicates that New York did not implement the requirement by the corresponding date.

¹⁰ *Undetermined* indicates that the State agency was unable to provide an estimated implementation date since this was contingent on the enactment of supporting legislation.

currently being performed: (1) the National FBI criminal history fingerprint check for DOHMH-licensed providers, (2) the in-State criminal registry check for State agency- and DOHMH-licensed providers, (3) the in-State sex offender registry check for legally exempt informal providers, and (4) the in-State child abuse and neglect registry check for State agency- and DOHMH-licensed providers. However, the State agency stated it needs to advance statutory amendments to create the authority to implement the remaining registry checks. The State agency stated that these amendments will include specifying the individuals to whom the checks would be applicable. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

Disqualification Factors

Federal regulations list disqualification factors for childcare staff members employed by providers receiving CCDF assistance. The factors include refusing a background check or knowingly providing a materially false statement in connection with a background check; being registered, or being required to be registered, on the State or National Sex Offender Registry; having been convicted of a felony consisting of murder, child abuse or neglect, a crime against children, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault, or a drug-related offense committed during the preceding 5 years; and having been convicted of a violent misdemeanor committed as an adult against a child (e.g., child abuse, child endangerment, sexual assault, or child pornography) (45 CFR § 98.43(c)(1)).

As of October 1, 2018, New York had not implemented this criminal background check requirement. Neither the State agency nor DOHMH had mandatory disqualification factors as listed in the Federal regulations but had presumptive disqualification factors. Specifically, the State agency stated that, on a case-by-case basis, it considered the duties of the applicant and whether a past offense might jeopardize the health and safety of children. DOHMH stated that it had a similar process. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

Five-Year Timeframe

Federal regulations require States to have requirements, policies, and procedures in place to conduct criminal background checks for childcare staff members and prospective staff members prior to employment and at least once every 5 years (45 CFR § 98.43(d)(2)).

As of October 1, 2018, New York had partially implemented this criminal background check requirement. Specifically, the State agency had implemented the 5-year timeframe requirement for the in-State sex offender registry check for legally exempt informal providers and the in-State child abuse and neglect registry check for DOHMH-licensed providers. These checks were

performed annually and biennially, respectively. The State agency and DOHMH also stated they receive notification of any subsequent changes to a childcare staff member's criminal record; however, the State agency has not discussed with ACF whether this notification process meets the 5-year timeframe requirement.¹¹ The State agency stated it needs to advance statutory amendments to create the authority to implement the remaining registry checks and incorporate the 5-year timeframe requirement for all checks into its Childcare Facilities System. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

Condition of Employment

Federal regulations state that a prospective staff member may begin work for a childcare provider after completing either the FBI criminal history fingerprint check or the in-State criminal registry check. Until all background check components have been completed, the staff member must be supervised at all times by an individual who has received a qualifying result on a background check within the past 5 years (45 CFR § 98.43(d)(4)).

As of October 1, 2018, New York had not implemented this criminal background check requirement. The State agency and DOHMH told us it generally allowed prospective childcare staff members to begin working under the provider's supervision while background registry checks were being processed. The State agency further stated that statutory amendments were needed to require that either the FBI criminal history fingerprint check or the in-State criminal registry check be conducted prior to beginning work under supervision. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

Results Within 45 Days

Federal regulations require States to carry out the request of childcare providers for a criminal background check as expeditiously as possible and within 45 days after the date on which the provider submitted the request. Also, States must provide the results of the criminal background check to the provider and to the current or prospective staff member (45 CFR § 98.43(e)(1)).

As of October 1, 2018, New York had not implemented this criminal background check requirement. The State agency told us that it generally provided the results of background checks to providers within two weeks if there were no findings. If there were findings, the results were reviewed by the State agency and the applicant had the right to due process. The review time could vary depending on the applicant's case and responsiveness. In addition, the State agency expressed concerns that the response time from other States for inter-state

¹¹ The automatic notification only applies to the in-State criminal registry check.

registry checks could impact its ability to meet the 45-day timeframe requirement. The State agency told us that, in addition to advancing statutory amendments to create the authority to implement all registry checks, it will need to incorporate the 45-day timeframe requirement into its Childcare Facilities System. The State agency stated that it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since this was contingent on when supporting legislation is enacted.

Appeals Process

Federal regulations require States to provide a process for childcare staff members and prospective staff members to appeal the results of criminal background checks and to challenge the accuracy or completeness of the information contained in the member's criminal background report (45 CFR § 98.43(e)(3)).

As of October 1, 2018, New York had partially implemented this criminal background check requirement. New York's regulations provide childcare staff members the right to appeal the results of the in-State registry checks. However, neither the State agency nor DOHMH had written policies and procedures in place for providers on how to make such an appeal. The State agency told us that it planned to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since it is waiting until legislative authority is established to create policies and procedures for the appeals process.

Appropriate Fees

Federal regulations allow States to charge up to the actual costs of processing applications and administering the criminal background checks (45 CFR § 98.43(f)).

As of October 1, 2018, New York had implemented this criminal background check requirement for the registry checks currently being conducted. The State agency said that the fee charged for the child abuse and neglect registry check was established in State law and was not in excess of actual costs. Fees were not charged by the State agency to providers for in-State criminal registry and in-State sex offender registry checks. DOHMH-licensed providers were charged a fee by DOI for fingerprinting, criminal registry checks and processing. The State agency told us that it planned to implement all CCDBG Act requirements but it is waiting until legislative authority is established to create the fee schedule for the remaining registry checks.

Transparency of State Policies and Procedures

Federal regulations require States to ensure that their policies and procedures for criminal background checks are published on the State and local lead agency websites (45 CFR § 98.43(g)).

As of October 1, 2018, New York had partially implemented this criminal background check requirement. Only the State agency's and DOHMH's current background check requirements were published on their websites. The State agency told us that it planned to implement all CCDBG Act requirements but was unable to provide an estimated implementation date since it is waiting until legislative authority is established to post the new requirements on its website.

CONCLUSION

While New York had some background check requirements in place prior to the establishment of the CCDBG Act, it had not fully implemented the new criminal background check requirements as of October 1, 2018. The State agency stated that New York must enact supporting legislation to revise its current CCDF program in order to achieve compliance with the CCDBG Act's new requirements. To that effect, two legislative bills were introduced during the 2018 New York State legislative session. However, neither bill was passed before the legislative session ended on June 20, 2018. Additionally, while the State agency has initiated communication with DOHMH on the new background check requirements, it is waiting until the necessary changes are made to the State CCDF program to provide implementation guidance to DOHMH.

Under current ACF guidance, only States that have implemented the FBI criminal history check and the three in-State background checks for prospective staff members may receive an additional 1-year waiver, until September 30, 2019, to be in compliance. Consequently, the State agency has not requested any additional waivers. ACF has indicated that if a review of the 2019-2021 State Plan reveals that a State is out of compliance with one or more CCDF program requirements, it may place the State on a corrective action plan. If, at the end of the corrective action plan period, the State is still not in compliance, ACF has the authority to impose certain penalties or sanctions. For failure to comply substantially with the criminal background check requirements, a State would be subject to a penalty of 5 percent of the total discretionary CCDF funds awarded to it for the fiscal year following its determination that non-compliance occurred.¹²

¹² The penalty for substantial noncompliance with background check requirements will be applied no earlier than the fiscal year following the determination to apply the penalty, and States operating under an approved waiver are not considered to be noncompliant during the period of the waiver. For approximation purposes, a 5 percent penalty of New York's 2018 appropriation of discretionary CCDF funds would total about \$11.3 million (5 percent of \$225 million).

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered New York's progress toward implementing the new criminal background check requirements and plans to address those requirements that were not implemented by the end of our fieldwork, July 17, 2018. We also identified challenges that New York experienced as of October 1, 2018, the date that its 1-year extension expired. Our review did not address child care providers' compliance with the new requirements.

We did not review the overall internal control structure of the State agency or DOHMH. Rather, we limited our review to determining whether New York implemented the new criminal background check requirements.

We conducted our audit, which included fieldwork at the State agency office in Rensselaer, New York.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal regulations and ACF guidance;
- reviewed applicable State laws, regulations, policies, and procedures;
- identified the new criminal background checks that were implemented by New York as of October 1, 2018;
- identified the new criminal background check requirements that were not implemented by New York as of October 1, 2018;
- interviewed State agency and DOHMH officials to gain an understanding of the challenges that they experienced and their plans to address the unimplemented criminal background check requirements;
- interviewed ACF officials to discuss New York's progress toward implementing the new criminal background check requirements; and
- discussed the results of our review with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions

based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**APPENDIX B: NEW YORK’S IMPLEMENTATION STATUS FOR
BACKGROUND REGISTRY CHECKS BY PROVIDER TYPE**

Tables 3 through 6 provide summaries of New York’s implementation status for the national, in-State, and inter-State registry checks for each type of provider: State agency-licensed (Table 3), legally exempt informal (Table 4), legally exempt group (Table 5), and DOHMH-licensed day care centers (Table 6). (A “green” status indicates that the provider type had implemented the background registry check and a “red” status indicates that provider type had not implemented the background check registry check by the corresponding date.)

**Table 3: New York’s Implementation Status of Background Registry Checks for
State Agency-Licensed Providers**

Background Registry Checks	Implementation Status as of 7/17/2018	Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
FBI criminal history fingerprint check	Not Implemented		Undetermined
NCIC’s National Sex Offender Registry	Not Implemented		Undetermined
In-State criminal registry	Implemented		Implemented
In-State sex offender registry	Not Implemented		Undetermined
In-State child abuse and neglect registry	Implemented		Implemented
Inter-State criminal registry	Not Implemented		Undetermined
Inter-State sex offender registry	Not Implemented		Undetermined
Inter-State child abuse and neglect registry	Not Implemented		Undetermined

Table 4: New York’s Implementation Status of Background Registry Checks for Legally Exempt Informal Providers

Background Registry Checks	Implementation Status as of 7/17/2018	Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
FBI criminal history fingerprint check	Not Implemented		Undetermined
NCIC’s National Sex Offender Registry	Not Implemented		Undetermined
In-State criminal registry	Not Implemented		Undetermined
In-State sex offender registry	Implemented		Implemented
In-State child abuse and neglect registry	Not Implemented		Undetermined
Inter-State criminal registry	Not Implemented		Undetermined
Inter-State sex offender registry	Not Implemented		Undetermined
Inter-State child abuse and neglect registry	Not Implemented		Undetermined

Table 5: New York’s Implementation Status of Background Registry Checks for Legally Exempt Group Providers

Background Registry Checks	Implementation Status as of 7/17/2018	Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
FBI criminal history fingerprint check	Not Implemented		Undetermined
NCIC’s National Sex Offender Registry	Not Implemented		Undetermined
In-State criminal registry	Not Implemented		Undetermined
In-State sex offender registry	Not Implemented		Undetermined
In-State child abuse and neglect registry	Not Implemented		Undetermined
Inter-State criminal registry	Not Implemented		Undetermined
Inter-State sex offender registry	Not Implemented		Undetermined
Inter-State child abuse and neglect registry	Not Implemented		Undetermined

Table 6: New York’s Implementation Status of Background Registry Checks for DOHMH-Licensed Day Care Centers

Background Registry Checks	Implementation Status as of 7/17/2018	Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
FBI criminal history fingerprint check	Implemented		Implemented
NCIC’s National Sex Offender Registry	Not Implemented		Undetermined
In-State criminal registry	Implemented		Implemented
In-State sex offender registry	Not Implemented		Undetermined
In-State child abuse and neglect registry	Implemented		Implemented
Inter-State criminal registry	Not Implemented		Undetermined
Inter-State sex offender registry	Not Implemented		Undetermined
Inter-State child abuse and neglect registry	Not Implemented		Undetermined

APPENDIX C: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-09-17-01003</u>	9/19/2018
<i>Colorado Implemented Many New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-07-17-06076</u>	9/17/2018
<i>Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-04-18-03578</u>	7/27/2018
<i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-01-18-02500</u>	7/9/2018
<i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-05-17-00047</u>	6/4/2018