

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**INDIANA'S MONITORING DID
NOT ENSURE CHILD CARE
PROVIDER COMPLIANCE WITH
STATE CRIMINAL BACKGROUND
CHECK REQUIREMENTS AT 17 OF
30 PROVIDERS REVIEWED**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



Amy J. Frontz
Deputy Inspector General
for Audit Services

August 2020
A-05-19-00012

Office of Inspector General

<https://oig.hhs.gov>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These audits help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at <https://oig.hhs.gov>

Section 8M of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG website.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief

Date: August 2020
Report No. A-05-19-00012

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



Why OIG Did This Audit

The Child Care and Development Block Grant Act (CCDBG Act) of 2014 added new requirements for States that receive funding from the Child Care and Development Fund (CCDF) to conduct comprehensive criminal background checks on staff members and prospective staff members of child care providers every 5 years. Criminal background check requirements apply to any staff member who is employed by a child care provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children.

Our objective was to determine whether Indiana's monitoring of child care providers ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act.

How OIG Did This Audit

We analyzed and tested a population of 2,052 licensed child care centers and family homes that received CCDF funding during the period October 1, 2018, through February 5, 2019. We used geographic area, total capacity, and total CCDF funding received to select 15 child care center providers and 15 family home providers. In total, we reviewed supporting documentation for 499 individuals who were current employees or household members at 30 different child care provider locations.

Indiana's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 17 of 30 Providers Reviewed

What OIG Found

Indiana's monitoring of child care providers did not ensure provider compliance with State requirements related to criminal background checks established under the CCDBG Act at 17 of 30 child care provider locations we reviewed. Although we identified errors at 17 of the child care providers, the errors related to only 56 of the 499 employees and household members who were not in compliance with State-required background checks. Additionally, one of the employees was disqualified from working as a child care employee and was onsite at the time of our visit. Despite annual unannounced inspections and other processes in place, these errors occurred because the State agency either did not effectively monitor the child care providers or did not ensure that providers turned in background check paperwork on a timely basis. By not ensuring that all current employees met all criminal background checks, Indiana potentially jeopardized the safety of children in the care of the 30 selected child care providers.

What OIG Recommends and State Agency Comments

We recommend that Indiana (1) conduct all required criminal background checks for the 56 individuals we reviewed who did not have all required background checks at the time of our data requests and site visits, (2) verify that the disqualified employee was terminated and not allowed onsite, (3) conduct the required criminal background checks on all new employees and new household members, and (4) develop a system that regularly notifies providers to initiate required background check procedures for all new employees and notifies providers when background check applications have not been received or fully processed.

In written comments on our draft report, Indiana partially agreed with the reported findings and responded to our recommendations. Indiana verified that it had conducted all required background checks and determined that the disqualified employee completed all required checks and is qualified to work in child care. Regarding required criminal background checks on all new employees and new household members, Indiana's current policy allows for licensing citations to be issued if caregivers are working at a facility before completing the required background check, and the citation requires followup to ensure compliance. Indiana launched a new portal for providers to apply for a child care license and submit caregiver consent for a background check.

TABLE OF CONTENTS

INTRODUCTION.....	1
Why We Did This Audit.....	1
Objective.....	1
Background.....	1
Child Care and Development Block Grant Act.....	1
Criminal Background Check Requirements as of September 30, 2016.....	2
Extension and Waiver Deadlines for Implementation.....	3
Indiana’s Coordination Efforts for Conducting Criminal Background Checks.....	4
How We Conducted This Audit.....	5
FINDINGS.....	5
Indiana’s Monitoring Did Not Ensure Provider Compliance With State Criminal Background Check Requirements.....	6
Indiana State Regulations for Criminal Background Checks.....	6
Child Care Providers at 17 of 30 Locations Did Not Comply With State Criminal Background Check Requirements.....	6
A Disqualified Employee Was Onsite at One Location.....	7
RECOMMENDATIONS.....	8
STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE.....	8
APPENDICES	
A: Audit Scope and Methodology.....	10
B: Prior OIG-Issued Reports Related to Criminal Background Check Requirements.....	13
C: Indiana’s Implementation Status of CCDF Criminal Background Checks.....	15
D: Federal and State Regulations.....	16
E: Number of Individuals Missing Required Criminal Background Checks at 30 Selected Providers.....	18

F: State Agency Comments19

INTRODUCTION

WHY WE DID THIS AUDIT

The Child Care and Development Block Grant Act (CCDBG Act) of 2014 added new requirements for States that receive funding from the Child Care and Development Fund (CCDF) to conduct comprehensive criminal background checks on staff members and prospective staff members of child care providers every 5 years.¹

As part of our oversight activities, we conducted a series of audits that assessed States' criminal background check requirements and reviewed their plans and actions to implement the criminal background check requirements established under the CCDBG Act. Appendix B contains a list of prior Office of Inspector General (OIG) reports related to criminal background check requirements. We conducted this audit as part of a second phase of our oversight activities to assess whether State agencies' monitoring ensured provider compliance with CCDF requirements related to criminal background checks.

OBJECTIVE

Our objective was to determine whether Indiana's monitoring of child care providers ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act.

BACKGROUND

Child Care and Development Block Grant Act

Reauthorized in the CCDBG Act, the CCDF is the primary Federal funding source devoted to subsidizing the child care expenditures of low-income families. Administered by the Administration for Children and Families (ACF), the CCDF helps eligible low-income families pay for child care at a provider of their choice while they work or participate in training, education, or both. In fiscal year (FY) 2019, ACF provided \$8.2 billion to States, territories, and Tribes to fund CCDF programs. In FY 2017, CCDF served approximately 1.3 million children younger than 13 years of age from 796,000 low-income working families each month.

Under the CCDBG Act, each lead agency must certify in its State plan that it has monitoring policies and practices applicable to all child care providers and facilities that deliver services.² States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of child care providers (other than relatives) who are

¹ P.L. No. 113-186 § 658H, enacted November 19, 2014.

² 45 CFR § 98.16(o).

licensed, regulated, or registered under State law or receive CCDF funds.³ Criminal background check requirements apply to any staff member who is employed by a child care 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 child care provider who may not regularly engage with children but whose presence at the facility gives them the opportunity for unsupervised access. For family home providers, 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.⁴

Criminal Background Check Requirements as of September 30, 2016

The U.S. Department of Health and Human Services (HHS) implemented the CCDBG Act's criminal background check requirements for States, territories, and Tribes in a Final Rule issued in September 2016 (CCDF Program Final Rule, 81 Fed. Reg. 67438 (Sept. 30, 2016)). According to Federal regulations (45 CFR § 98.43), States must have requirements, policies, and procedures in place to conduct comprehensive criminal background checks. These regulations require States to conduct criminal background checks for child care staff members and prospective child care staff members that include:

- a Federal Bureau of Investigation (FBI) fingerprint check using the Next Generation Identification system;⁵
- a search of the National Crime Information Center's National Sex Offender Registry (NCIC NSOR); and
- a search of the following registries, repositories, or databases in the State in which the child care staff member resides and each State in which the staff member resided during the preceding 5 years:
 - the State criminal registry or repository, with the use of fingerprints being required in the State in which the staff member resides and optional in other States;
 - the State sex offender registry or repository; and
 - the State-based child abuse and neglect registry and database.

³ 45 CFR § 98.43(a)(1).

⁴ CCDF Program Final Rule, 81 Fed. Reg. 67438, 67494 (Sept. 30, 2016).

⁵ 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.

As of September 30, 2018, Indiana had implemented requirements for four of the criminal background check components (not implemented were the inter-state criminal history registry check, inter-state sex offender registry check, inter-state child abuse and neglect registry check, and national sex offender registry check) and conducts these checks for all new (prospective) child care staff, in accordance with 45 CFR § 98.43.

Extension and Waiver Deadlines for Implementation

The CCDBG Act required all States to have requirements, policies, and procedures in place no later than September 30, 2017, that meet the criminal background check requirements. The CCDBG Act allowed for the Secretary of HHS to grant a 1-year extension to States as long as they demonstrate a good-faith effort to implement the requirements. In recognition of significant challenges to implementing the new background requirements, all States, including Indiana, 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 period of implementation 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,⁶ 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 child care staff and
- establish procedures and conduct checks of the NCIC NSOR and inter-state registries for current and prospective staff, as necessary.

In its 2019 through 2021 CCDF State plan, Indiana requested that ACF approve a waiver to allow additional time for “existing” child care staff to become compliant with the NCIC NSOR check and the three inter-state criminal registry checks. ACF approved the waiver request and allowed additional time (through September 30, 2019) for Indiana to ensure that existing staff completed the FBI fingerprint check and the NCIC NSOR registry check.⁷ Indiana did not request additional time for checks of the in-state criminal registry, in-state child abuse and neglect registry, or in-state sex offender registry.

⁶ The State plan is the primary mechanism that ACF uses to determine State and territory compliance with the requirements of the CCDF 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 child care, as described in the preprint (https://www.acf.hhs.gov/sites/default/files/occ/fy_2019_2021ccdf_plan_preprint_11_30_17.pdf).

⁷ ACF approved Indiana’s waiver request on October 30, 2018 (effective Oct. 1, 2018). ACF approved an additional waiver on February 19, 2020, to implement the background check requirements by September 30, 2020.

Appendix C contains Indiana’s implementation status of the new CCDF criminal background checks.

Indiana’s Coordination Efforts for Conducting Criminal Background Checks

The Indiana Family and Social Services Administration (State agency) licensing consultants perform yearly unannounced inspections as well as renewal checks every 2 years, which includes reviewing staff employment files at each of those visits. The State agency utilizes a process in which the provider has the potential employee fill out the consent form and mail it to the State licensing consultant. The State licensing consultant provides the consent form to the State agency, which then forwards it to the State Police for review.

The State Police run the consent form information, as well as the fingerprints of the employee and household members, through the FBI fingerprint check using the Next Generation Identification system. The search includes the NCIC NSOR and the Indiana state criminal, sex offender, and child abuse and neglect registry check. The State agency mails the results of the background check to the provider in a letter that indicates “there was a disqualifying occurrence” or “there appears to be no disqualifying occurrences;” it does not give the results for each check individually. The letter does not reveal any disqualifying crime or other related information regarding the individual. If the background check is clear, the State agency notifies the provider of the approval for employment, and the employee begins working. If the background check is disqualified, the State agency notifies the provider that the employee is disqualified. The provider can have the employee or household member provide the State with documentation on the circumstances for the event that caused the disqualification. If the documentation is sufficient, the provider receives a letter stating that the employee has a waiver to work at the location.

Indiana monitors a provider’s compliance with the background-check requirements by having State licensing consultants conduct a 100-percent review of employees’ and household members’ criminal background record checks at the time of initial licensing, during annual unannounced inspections, and at license renewal evaluations. Indiana requires the child abuse and neglect registry check to be completed annually, with consent forms filed for all employees and household members.

HOW WE CONDUCTED THIS AUDIT

Indiana had 2,052 licensed⁸ family homes⁹ and child care centers¹⁰ that received CCDF funding during the period October 1, 2018, through February 5, 2019. We reviewed 15 family home providers and 15 child care centers, for a total of 30 licensed child care providers with 499 child care staff or household members.

We conducted unannounced site visits to 15 family home providers, where we obtained a list of all current employees or household members. We verified this list against supporting documentation provided by the State agency. We performed a walkthrough of the provider home to observe anyone in the household and discussed any challenges or obstacles the provider faced with adhering to the criminal background check requirements. In addition, we worked with the State to contact 15 child care center providers to request a list of all current employees. We then conducted unannounced site visits to the child care center providers, where we validated the list of all current employees with supporting documentation from the provider.

We limited our review of internal controls to obtaining an understanding of the laws and regulations concerning the State agency's monitoring process to ensure child care provider compliance with State requirements related to criminal background checks.

Appendix A contains the details of our audit scope and methodology, and Appendix D contains the Federal and State requirements.

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.

FINDINGS

Indiana's monitoring of child care providers did not ensure provider compliance with State requirements related to criminal background checks established under the CCDBG Act at 17 of 30 child care provider locations we reviewed. Although we identified errors at 17 of the child care providers, the errors related to only 56 of the 499 employees and household members

⁸ We did not include license-exempt providers in this audit.

⁹ A family child care provider is one or more individual(s) who provide child care services for fewer than 24 hours per day, per child, in a private residence other than the child's residence (Indiana Code § 12-7-2-28.6).

¹⁰ A child care center is a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day, per child, in a nonresidential setting (Indiana Code § 12-7-2-28.4).

who were not in compliance with State-required background checks (the FBI fingerprint check, In-state Sex Offender Registry Check, In-state Criminal History Check, and the In-state Child Abuse and Neglect Registry Check) (See Appendix E). Additionally, 1 of the employees was disqualified from working as a child care employee and was onsite at the time of our visit.

Despite annual unannounced inspections and other processes in place, these errors occurred because the State agency either did not effectively monitor the child care providers or did not ensure that providers turned in background check paperwork on a timely basis. By not ensuring that all current employees met all criminal background checks, Indiana potentially jeopardized the safety of children in the care of the 30 selected child care providers.

INDIANA’S MONITORING DID NOT ENSURE PROVIDER COMPLIANCE WITH STATE CRIMINAL BACKGROUND CHECK REQUIREMENTS

Indiana State Regulations for Criminal Background Checks

Child day care providers are required to be licensed or registered according to the provisions of the Indiana Code Title 12, Article 17.2, chapters 4 and 5.¹¹ The regulations require an employee or volunteer who has direct contact with a child from the child care center or family home to submit fingerprints for a national criminal history background check by the FBI. The child care center or home must require an individual to apply for a national criminal history background check before the individual is employed or allowed to volunteer and every 3 years thereafter that the individual was continuously employed or allowed to volunteer.

Child Care Providers at 17 of 30 Locations Did Not Comply With State Criminal Background Check Requirements

Of the 30 child care providers we reviewed, 17 did not meet the required criminal background check requirements for 56 employees.¹²

For the 15 family home providers we reviewed, 5 of 15 providers were not in compliance with State criminal background check requirements. Of the 84 employees or household members reviewed, 7 individuals had not obtained the required criminal background checks.

For the 15 child care centers we reviewed, 12 of 15 providers were not in compliance with State criminal background check requirements. Of the 415 employees reviewed, 49 individuals had not obtained the required criminal background checks (Appendix E).

¹¹ Indiana Code §§ 12-17.2-4-3(d & e) and 12-17.2-5-3(d & e).

¹² The State agency mails a letter to the child care provider reporting whether the background checks identified any disqualifying occurrences; for all 56 employees, neither the child care provider nor the State agency could provide the letters of background check results.

Indiana’s monitoring did not ensure provider compliance with State requirements related to criminal background checks for 56 individuals across 17 child care provider locations. State licensing consultants conduct a 100-percent review of employees and household members’ criminal background check documentation at the time of initial licensing, when the provider renews its license, and during an annual unannounced inspection. Despite annual unannounced inspections that include a 100-percent review of employee or household member criminal background check documentation, providers may hire individuals or have household members in the home during the time between these annual inspections and fail to notify the State. We found that 28 of the 56 employees or household members without the required criminal background checks were hired between annual inspection visits.

The State agency relies on child care providers to initiate the background check process and does not know when a provider fails to submit documentation in a timely manner. Until an annual or renewal inspection, the State licensing agency is not aware of employees or household members at a provider location if the provider does not submit a background check form. If the child care provider fails to submit the form or does not submit the form in a timely manner, the State licensing agency has no way to know that someone has started to work at the provider location, nor does it know to follow up with the provider for missing background check documentation.

Current employees not meeting all criminal background checks potentially jeopardize the safety of children in the care of the 30 selected child care providers.

A Disqualified Employee Was Onsite at One Location

Of the 30 child care providers we reviewed, 1 had an employee who was disqualified from working as a child care employee and was onsite at the time of our visit. The State agency records show that the employee was repeatedly contacted and asked to complete the background check fingerprint requirement, but the employee did not do so, and the State disqualified the employee. During the time of our audit, the provider would not receive notification of a rejected fingerprint request if the provider’s email was not on the fingerprint form.¹³

By not ensuring that all current employees or household members met all criminal background checks, Indiana potentially jeopardized the safety of children in the care of the 30 selected child care providers.

¹³ The State agency updated the policy after our audit period to send rejection letters to both the employee and the provider.

RECOMMENDATIONS

We recommend that the Indiana Family and Social Services Administration:

- conduct all required criminal background checks for the 56 individuals we reviewed who did not have all required background checks at the time of our data requests and site visits,
- verify that the disqualified employee was terminated and not allowed onsite,
- conduct the required criminal background checks on all new employees and new household members, and
- develop a system that regularly notifies providers to initiate required background check procedures for all new employees and notifies providers when background check applications have not been received or fully processed.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency partially agreed with our findings and, in response to the report's recommendations, highlighted improvements deployed since the audit period and planned for the near future.

The State agency verified that it conducted all required background checks and determined that the disqualified employee completed all required checks and is qualified to work in child care. Regarding required criminal background checks being conducted on all new employees and new household members, the State agency said that Indiana's current policy allows for licensing citations to be issued if caregivers are working at a facility before completing the required background check; however, the citation requires followup to ensure background check compliance. As part of this effort, Indiana said that it launched a new provider portal (I-LEAD) in July, 2019, to create a "one-stop-shop" for providers to apply for a child care license and submit caregiver consent for a background check.

Indiana said that it has added a number of relevant enhancements to notify providers to initiate required background procedures. First, the State agency said, providers are now notified when a caregiver has Provisional Status, allowing caregivers to begin working under supervision until all required checks have been completed; second, a provider dashboard within I-LEAD provides a gauge to inform providers when the next consent form submission is due; and finally, it has begun contacting providers who have submitted a consent but do not have a current or readable fingerprint submission. Indiana also said that it will develop an email and texting campaign using a new communications platform to target those with expiring fingerprints and consents. The State agency's comments are included in their entirety as Appendix F.

We commend the State agency for taking appropriate corrective actions in response to our recommendations.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

In selecting which State(s) to include in our audit, each OIG audit team was to conduct an analysis of the States within its region and consider the following factors:

- States with a “partial” or “substantial” implementation status for criminal background check requirements in their 2016 through 2018 CCDF State plans,
- States in which we may not have conducted criminal background check work recently or those in which we had findings related to criminal background check requirements in foster care or Head Start audits,
- States where news reports have raised concerns related to criminal background check requirements,
- total CCDF State funding, and
- total children served by CCDF in the State.

In addition to the factors above, the six States¹⁴ included in OIG’s prior CCDF Phase I (State implementation of CCDBG criminal background check requirements) audit series were included in the CCDF Phase II (State monitoring of child care provider compliance). On the basis of our review of these factors, we selected Indiana. We selected and reviewed a nonstatistical sample of 30 out of 2,052 family homes and child care centers that received CCDF funding from October 1, 2018, through February 5, 2019, to improve our understanding of the State’s monitoring of child care provider compliance with State criminal background check requirements. We based our provider selection on the following risk factors:

- **Geographic area (the geographic division of the State identified by the State licensing agency):** For licensing purposes, Indiana is divided into nine geographic areas. For each provider, the State provided a spreadsheet with the Regional code within it, and we identified the corresponding area based on the physical location. We sorted our provider list based on geographical area. We then split the list between child care centers and family home providers. We selected the number of providers per region using a percentage-based approach by calculating the total amount of providers within each region and then applying the percentage of the total to the number of providers within each region. We selected at least one family home provider and one child care center provider within each geographic area to ensure coverage across the State. We used the following factors when making the selection within each geographic area:

¹⁴ The six States in the CCDF Phase I were New York, Nevada, Colorado, Georgia, New Hampshire, and Illinois (Appendix B).

- **Total capacity (the maximum number of children to be served at the provider location):** We sorted the list of providers based on the highest number of children being served and selected the provider with the highest capacity (i.e., the larger family homes and larger child care centers) and selected the providers based on having one of the highest percentages that had not had their annual visit as of March 2019.
- **CCDF funding received (the total amount of CCDF funding received October 1, 2018, through February 5, 2019):** We sorted the list based on the amount of CCDF funding received per provider and selected the provider with the highest amount of CCDF funding received.

We conducted coordinated unannounced site visits with the State licensing consultant at each of the 30 providers selected in our sample. During the site visits to the 15 family home providers, we obtained a list of all current household members or employees. We performed a walkthrough of the provider home to observe anyone in the household and discussed any challenges or obstacles the provider faced with adhering to the criminal background check requirements. In addition, we conducted coordinated unannounced site visits at 15 child care center providers, where we obtained a list of all current employees. We verified this list against the list provided by the State agency.

In total, we reviewed supporting documentation for 499 individuals who were current employees or household members at 30 different child care provider locations. We performed fieldwork at various family home providers and child care center providers from May through June 2019.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- reviewed applicable State laws, policies, and procedures related to CCDF criminal background check requirements;
- identified criminal background check requirements that the State has fully implemented;
- identified criminal background check requirements that the State has not yet implemented;
- interviewed State agency officials to gain an understanding of the State’s process for monitoring (including frequency of visits) provider compliance with criminal background check requirements established under the CCDBG Act;

- interviewed State agency officials to identify any challenges or barriers that the State experienced with monitoring providers to ensure that the new criminal background check requirements are being met;
- interviewed family home providers to identify any challenges or barriers they experienced complying with the new CCDF criminal background check requirements;
- worked with the State agency to obtain employee lists from the 15 child care center providers;
- conducted site visits at each of the 15 child care center provider locations to obtain supporting documentation or evidence from the provider or the State to determine whether all the required criminal background checks were completed;
- conducted site visits at each of the 15 family home provider locations to obtain a current list of all employees or household members and obtain supporting documentation or evidence from the State to determine whether all the required criminal background checks were completed;
- reviewed and analyzed a nonstatistical sample of 30 out of 2,052 licensed family homes and child care centers that received CCDF funding during the period October 1, 2018, through February 5, 2019, to determine whether all the required criminal background checks were completed; and
- discussed the results of our audit 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: PRIOR OIG-ISSUED REPORTS RELATED TO CRIMINAL
BACKGROUND CHECK REQUIREMENTS**

Report Title	Issue Date
<u>Rhode Island's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 18 of 30 Providers Reviewed (A-01-18-02505)</u>	8/17/2020
<u>New Jersey's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements At 9 Of 30 Providers Reviewed (A-02-19-02004)</u>	7/24/2020
<u>Utah's Monitoring Process Generally Ensured Child Care Provider Compliance With State Criminal Background Check Requirements (A-07-19-06085)</u>	7/21/2020
<u>Illinois' Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements At 12 Of 30 Providers Reviewed (A-05-19-00016)</u>	4/29/2020
<u>New Hampshire's Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 21 of 30 Providers Reviewed (A-01-18-02504)</u>	4/3/2020
<u>New Mexico's Monitoring of Childcare Providers Generally Ensured Provider Compliance With State Criminal Background Check Requirements at 30 Childcare Providers Reviewed (A-06-19-07001)</u>	2/19/2020
<u>Georgia's Monitoring of Childcare Providers Ensured Provider Compliance With State Criminal Background Check Requirements (A-04-19-03580)</u>	2/12/2020
<u>Tennessee's Monitoring Ensured Compliance With Criminal Background Check Requirements at 28 of the 30 Childcare Providers Reviewed (A-04-19-02023)</u>	1/15/2020
<u>All Six States Reviewed Had Partially Implemented New Criminal Background Check Requirements for Childcare Providers, and Five of the States Anticipate Full Implementation by Fiscal Year 2020 (A-05-19-00015)</u>	8/23/2019
<u>New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers (A-02-17-02011)</u>	1/8/2019

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

**APPENDIX C: INDIANA'S IMPLEMENTATION STATUS OF
CCDF CRIMINAL BACKGROUND CHECKS**

Criminal Background Check Requirements	Implementation Status as of 9/30/2018	OIG Analysis of State's Implementation Status (Includes a Review of Indiana's Laws, Regulations, and Guidance)
FBI Criminal History Fingerprint Check 45 CFR § 98.43(b)(1)	Implemented	Family Homes: Ind. Code § 12-17.2-5-3 Centers: Ind. Code § 12-17.2-4-3
NCIC's National Sex Offender Registry 45 CFR § 98.43(b)(2)	Not Implemented	The State received a waiver until September 30, 2020
In-State Criminal Registry 45 CFR § 98.43(b)(3)	Implemented	Family Homes: Ind. Code § 12-17.2-5-3 Centers: Ind. Code § 12-17.2-3.5-4
In-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	Family Homes: Ind. Code § 12-17.2-5-3 Centers: Ind. Code § 12-17.2-4-3
In-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	Family Homes: Ind. Code § 12-17.2-5-4 Centers: Ind. Code § 12-17.2-4-5
Inter-State Criminal Registry 45 CFR § 98.43(b)(3)	Not Implemented	The State received a waiver until September 30, 2020
Inter-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Not Implemented	The State received a waiver until September 30, 2020
Inter-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Not Implemented	The State received a waiver until September 30, 2020

APPENDIX D: FEDERAL AND STATE REGULATIONS

FEDERAL REGULATIONS

According to Federal regulations, States must have in effect requirements, policies, and procedures to require and conduct criminal background checks for child care staff members, including prospective child care staff members of all licensed, regulated, or registered child care providers and all child care providers eligible to deliver services for which assistance is provided (45 CFR § 98.43(a)(1)).

“Childcare provider” means a center-based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that (A) is not an individual who is related to all children for whom childcare services are provided and (B) is licensed, regulated, or registered under State law or eligible to receive assistance provided under this subchapter (45 CFR § 98.43(a)(2)(i)).

“Childcare staff member” means an individual (other than an individual who is related to all children for whom child care services are provided) (A) who is employed by a child care provider for compensation, including contract employees or self-employed individuals; (B) whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider; or (C) any individual residing in a family child care home who is age 18 and older (45 CFR § 98.43(a)(2)(ii)).

Federal regulations require States to conduct two national checks: (1) an FBI criminal history fingerprint check using Next Generation Identification (45 CFR § 98.43(b)(1)) and (2) a search of the NCIC’s NSOR for child care staff members or prospective staff members (45 CFR § 98.43(b)(2)).

According to Federal regulations, States are required to conduct a search of three in-State registries: (1) State criminal registry (using fingerprints), (2) State sex offender registry, and (3) State-based child abuse and neglect registry in the State in which the child care staff member or prospective staff member resides (45 CFR § 98.43(b)(3)).

In addition, States are required to conduct a search of three inter-State registries: (1) criminal registry in each State (fingerprints optional), (2) each State’s sex offender registry, and (3) each State’s child abuse and neglect registry in the State(s) in which the child care staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

STATE REGULATIONS

Child day care providers are required to be licensed or registered according to the provisions of the Indiana Code Title 12, Article 17.2, chapters 4 and 5 (Ind. Code §§ 12-17.2-4-3(d & e) & 12-17.2-5-3(d & e)). The regulations require an employee or volunteer who has direct contact with a child from the child care center or family home to submit fingerprints for a national criminal history background check by the Federal Bureau of Investigation. The child care center or home must require an individual to apply for a national criminal history background check before the individual is employed or allowed to volunteer and every 3 years thereafter that the individual is continuously employed or allowed to volunteer.

APPENDIX E: NUMBER OF INDIVIDUALS* MISSING REQUIRED CRIMINAL BACKGROUND CHECKS AT 30 SELECTED PROVIDERS

Provider Number	Provider Type	Number of Individuals Reviewed	Number of Individuals Missing One or More Required Criminal Background Checks
1	Family home	4	0
2	Family home	4	2
3	Family home	6	0
4	Family home	6	0
5	Family home	7	0
6	Family home	2	0
7	Family home	19	1
8	Family home	7	1
9	Family home	4	0
10	Family home	1	0
11	Family home	3	0
12	Family home	3	0
13	Family home	3	1
14	Family home	9	2
15	Family home	6	0
Total for Family Homes		84	7
16	Child care center	9	3
17	Child care center	25	3
18	Child care center	24	0
19	Child care center	31	2
20	Child care center	35	0
21	Child care center	35	4
22	Child care center	44	0
23	Child care center	19	6
24	Child care center	12	1
25	Child care center	27	1
26	Child care center	38	3
27	Childcare center	17	13
28	Childcare center	33	4
29	Childcare center	23	3
30	Childcare center	43	6
Total for Child Care Centers		415	49
Combined Total for Family Homes and Child Care Centers		499	56

* The term "individuals" refers to the current number of employees or household members included in our audit.

APPENDIX F: STATE AGENCY COMMENTS



Eric Holcomb, Governor
State of Indiana

Office of Early Childhood and Out-of-School Learning
402 W. WASHINGTON STREET, ROOM W362, MS02
INDIANA POLIS, IN 46204

July 15, 2020

Report Number: A-05-19-00012

To: Sheri Fulcher, Regional Inspector General

Re: Draft Report from Office of Inspector General (OIG) Background Report, Department of Health and Human Services (DHHS), regarding Provider Compliance with State Criminal Background Check Requirements

The draft report suggests Indiana's monitoring did not ensure childcare provider compliance with State Criminal Background Check Requirements at 17 of 30 providers. The Indiana Office of Early Childhood and Out-of-School Learning (OECOSL) partially agrees with these findings and in response to the report's recommendations would like to highlight many of the improvements deployed since the audit period and those planned for the near future.

Recommendations and Response to Findings

- Conduct all required criminal background checks for the 56 individuals we reviewed who did not have all required background checks at the time of our data requests and site visits.

OECOSL has verified that all background checks have been conducted or determined the individual in question is not employed at the facility.

- Verify that the disqualified employee was terminated and not allowed onsite.

OECOSL continued to work with both the caregiver and provider to ensure a fingerprint was submitted that could be processed. The caregiver has completed all required checks and is qualified to work in childcare. The most recent check was completed on 9/23/19.

- Conduct the required criminal background checks on all new employees and new household members

Current policy in Indiana allows for licensing citations to be issued if caregivers are working at a facility before completing the required background check. If a citation is issued the required follow-up would ensure background check compliance.

To assist with greater provider compliance, Indiana launched a new provider portal (I-LEAD) in July, 2019 to create a one-stop-shop for providers to apply for a childcare license, submit caregiver consents and access to a learning management system that provides professional

www.IN.gov/fssa
Equal Opportunity/Affirmative Action Employer



development opportunities. One of the updated orientation trainings, required for all providers, highlights the background check requirement.

- Develop a system that regularly notifies providers to initiate required background check procedures for all new employees and notifies providers when background check applications have not been received or fully processed.

Since the initial I-LEAD launch Indiana has added a number of relevant enhancements. First, providers are now notified when a caregiver has Provisional Status. This allows caregivers to begin working under supervision until all required checks have been completed. Second, there is a provider dashboard within I-LEAD for providers to maintain an updated staff roster. To help providers better manage the background check process, a gauge has been added that informs providers how long it is before the next consent form submission is due.

Finally, Indiana has begun contacting providers who have submitted a consent but do not have a current or readable fingerprint submission. Indiana will also develop an email and texting campaign using our new communications platform to target those with expiring fingerprints and consents as an additional reminder.

Nicole Norvell

Nicole Norvell

Director
Office of Early Childhood and Out of School Learning