

# AFSCME Facts

## Final CCDBG Regulations - Background Checks (Sec. 98.43)

### Effective date:

September 30, 2017. States can request a one-year waiver (separate from the general transitional waiver). For any year that a state fails to substantially comply, ACF shall withhold up to 5% of state's CCDF funds for each year until coming into compliance.

### Who is subject to background checks? (Section 98.43(a))

- 1) All licensed, regulated, and registered child care providers serving CCDF children and all child care providers eligible to deliver subsidized child care (with the exception of license-exempt providers who are related to all children for whom child care services are provided).
- 2) All child care staff members employed by child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider regardless of age. This could include 16 year olds, depending on the State law. Child care staff members include contract and self-employed individuals. Volunteers who provide infrequent and irregular service that is supervised are not subject to background checks.
- 3) All individuals, 18 or older, residing in a family child care home. It does not extend requirement that Lead Agencies consider additional individuals, such as individuals under the age of 18 in the home.

### What are the components of a criminal background check? (Section 98.43(b))

- 1) FBI fingerprint check using Next Generation Identification;
- 2) Search of the Nat'l Crime Information Center's National Sex Offender Registry;
  - This is effective after guidance is issued by ACF and the FBI.
- 3) Search of the state sex offender registry or repository *and* state-based child abuse and neglect registry and database where the child care staff member resides and where they resided during the last five years;
- 4) Search of the state criminal registry or repository with the use of fingerprints being required in the State where the staff member resides and *optional in other states*.
  1. Problems may arise if a state does not respond to another state's request for results from the state's criminal repository, sex offender registry, and child abuse and neglect registry.
  2. An individual who is on a state-based child abuse and neglect registry is not automatically disqualified. Lead Agencies have flexibility in how to handle these findings. ACF suggests that Lead Agency not necessarily immediately disqualify an individual and evaluate any findings carefully, on a case by case basis. Lead Agencies should be cautious when using unsubstantiated allegations of child abuse and neglect.

### What are the disqualifying offenses? (Section 98.43(c)(1)(iv))

The disqualifying offenses apply to child care providers and staff members (including individuals 18 and older residing in a family child care home) who are serving children receiving CCDF assistance:

- Includes conviction of a felony murder, child abuse or neglect, a crime against children including child pornography, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or a drug-related offense committed during the preceding five years.
- Includes violent misdemeanor committed as an adult against a child, including child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.
- The regulations allow Lead Agencies to consider other disqualifying offenses (see Section 98.43(h)), but the preamble discourages this: "casting too wide a net could have adverse effects on the supply of FCC providers and other consequences for individuals returning from incarceration."

How often do the background checks have to be conducted? (Section 98.43(d)(3))

- For staff members employed prior to the enactment of CCDBG Act of 2014, the provider must request a background check prior to Sept 30, 2017 and at least once every five years.
- Not required to submit a request if a staff member received a background check that included all the required information within the past five years while employed, or seeking employment, by another child care provider in the state; the state gave a qualifying result to the first provider for the staff member; and the staff member is employed by a child care provider within the State or has been separated from employment from a child care provider for less than 180 days.

Provisional Employment (Section 98.43(d)(4))

- Allows prospective staff members to provide services to children after completing either FBI fingerprint check or search of the state criminal repository, using fingerprints in the state where staff member resides.
- Until all background check components have been completed, the prospective staff member must be supervised at all times by someone who has already received a qualifying result on a background check within the past 5 years.

Timeliness (Section 98.43(e)(1))

- Act requires States to carry out background check requests, including searches of state-based child abuse and neglect registries, as quickly as possible and within 45 days.
- Lead Agencies have the flexibility to make employment decisions in the event that not all background check components are completed within 45 days.

Privacy (Section 98.43(e)(2))

- Results indicate whether the staff member is eligible or ineligible.
- Cannot publicly release or share results of individual background checks.

Appeals (Section 98.43(e)(3))

- If results indicate staff member is ineligible, the lead agency must provide information about each specific disqualifying crime to the staff member and how to appeal the results.
- Important protections added:
  - Lead Agency has burden to locate any missing disposition information related to disqualifying crime;
  - Completed in a timely manner (timely not defined);
  - Worker to receive written notice of the decision. In the case of a negative determination, the decision should indicate the state's efforts to verify the accuracy of the information challenged by the worker.
- The preamble states that Lead Agencies have the option of allowing child care providers to employ staff members or prospective staff members while they are involved in the appeals process.

Individualized Review Process (Section 98.43(e)(4))

- Lead Agencies can individually review drug-related felony convictions that were committed during the preceding five years (including residents 18 and older of family child care homes). The review process is recommended, not required, and should meet the [recommendations of the U.S. Equal Employment Opportunity Commission](#).
- All other convictions listed are lifetime bans against employment by a CCDF child care provider.
- The preamble encourages Lead Agencies to also implement an individualized assessment and waiver process for any other disqualifying crimes, but it is not required by regulatory language.

Fees (Section 98.43(f))

- Fee shall not exceed the actual costs for the processing and administration.
- There is no language in the regulations that prohibits Lead Agencies to use CCDF funds to pay the costs of background checks, including for legally exempt and family child care providers, and their household members.

NO Self-disclosure language!