Approved Methods for the FBI Fingerprint Component of Criminal Background Checks: Brief for CCDF Tribal Lead Agencies

Federal regulations and implications

In November 2014, the Child Care and Development Block Grant (CCDBG) Act of 2014 was signed into law. The CCDBG Act, also known as "CCDF reauthorization," reauthorized the Child Care and Development Fund (CCDF) program and made changes to strengthen the health, safety, and quality of child care and provide more stable child care assistance to families. The CCDBG Act was not explicit in how many of the provisions applied to Tribes, and therefore, the CCDF final rule defines how the Act applies to American Indian Alaska Native (AI/AN) CCDF grantees.

The CCDF final rule requires all Tribal Lead Agencies to conduct comprehensive background checks for child care staff members and prospective employees every five years. The requirements are addressed in 45 CFR 98.43 and 45 CFR 98.83(d)(3) of the CCDF final rule. The requirements apply to all licensed, regulated, and registered child care providers, regardless of whether they receive CCDF funds, as well as to all providers that receive CCDF funds. Tribal Lead Agencies are not required to conduct criminal background checks for individuals who are related to all children in care (defined as grandparents, great grandparents, siblings if living in a separate residence, aunts, and uncles), provided there are no other unrelated children who are cared for in the same setting.

Tribal Lead Agencies administering child care programs under the CCDBG Act experience unique challenges in complying with the required criminal background check requirements in the CCDF final rule. The CCDBG Act does not provide explicit authority for Tribes to request FBI fingerprint checks for child care staff. Further, even when a Tribe has authority to request FBI fingerprint checks under another statute, they may not have access to the relevant technology to receive the information.

In light of those challenges, the intent of this resource is to provide Tribes with an overview of the statutory authorities and identify potential avenues to access FBI fingerprint check results.

Authorities for Tribes to conduct or request FBI fingerprint-based background checks for child care

State Statute (Public Law [P.L.] 92-544, 34 U.S.C. 41101)

- If the state statute permits and is approved by the FBI Office of the General Counsel, Tribes can request background checks be performed by the state pursuant to the P.L. 92-544 statute. This law authorizes states to conduct FBI criminal history background checks for

licensing and employment purposes, subject to the approval of the U.S. Attorney General.

- Tribes must be authorized by the state to submit fingerprints pursuant to the state statute.
- Fingerprints must be submitted through the state central record repository.

Indian Child Protection and Family Violence Prevention Act (P.L. 101-630, 25 U.S.C. 3207)

- Under the Indian Child Protection and Family Violence Prevention Act, P.L. 101-630 (25 USC 3207(a-c)), Tribes have the authority (and requirement) to conduct criminal background checks for persons being considered for employment by Tribes in positions that have regular contact with, or control over, Indian children, when receiving funds under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) or the Tribally Controlled Schools Act of 1988 (P.L. 100-297). The statute also establishes "minimum standards of character" that ensure that no individuals who have been found guilty of, or entered a plea of nolo contendere or guilty to, any felonious offense or any of two or more misdemeanor offenses under federal, state, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact, or prostitution; or crimes against persons or offenses committed against children, are placed in positions involving regular contact with, or control over, Indian children.
- Fingerprints may be submitted using any of the methods listed below.

National Child Protection Act/Volunteers for Children Act (NCPA/VCA) (P.L. 101-209, as amended, 34 U.S.C. 40101 et seq.)

- Tribes can request background checks be performed by states under procedures established pursuant to the NCPA/VCA. The NCPA/VCA allows state governmental agencies that have state procedures established by state statute or regulation to conduct background checks and suitability reviews of covered individuals providing care to children, the elderly, and disabled persons. If the state is using the NCPA/VCA to submit background checks on covered individuals, at the state's discretion it may designate the Tribe as a qualified entity, and therefore, conduct the national fingerprint-based background check on behalf of the Tribe.
- Fingerprints must be submitted through the state central record repository.

Head Start Program Performance Standards Final Rule (45 CFR Chapter XIII)

- The Head Start Program Performance Standards final rule requires Head Start programs to conduct comprehensive background checks for each employee, consultant, or contractor. Further, a newly hired employee, consultant, or contractor cannot have unsupervised access to children until a comprehensive background check process is completed.
- Fingerprints may be submitted using any of the methods below.

Ways that Tribes can access FBI fingerprint checks:[1]

State Identification Bureau (SIB)

- Tribes may obtain access to FBI's Next Generation Identification (NGI) System through the SIB or the State Criminal Justice Information System (CJIS).
- If the Tribe is utilizing a state's P. L. 92-544 state statute, or the state's discretion under the NCPA/VCA, the fingerprints must be submitted to the FBI via the SIB.
- For this option, the Tribe must contact the SIB or State CJIS Systems Officer (CSO) and enter into one or more agreements to address the Tribe's user rights and how the state will bill and audit the Tribe for access. (A list of SIBs is available at: https://www.fbi.gov/services/cjis/identity-history-summary-checks/state-identification-bureau-listing). Tribes should inform the state contact of the Tribe's need to access national crime information databases to perform criminal background checks on child care staff.

Department of Justice Tribal Access Program (TAP)

- The DOJ launched the Tribal Access Program for National Crime Information (TAP) in August 2015 to offer Tribes an additional method to access Federal criminal databases for civil and criminal purposes, including the FBI's NGI System. Participating Tribes receive a kiosk containing a computer, flatbed scanner, printer, camera, and fingerprint/palmprint scanner, connection through DOJ to the FBI CJIS Division systems, and training and help desk assistance. The TAP kiosk expedites fingerprint processing and usually provides results of the national fingerprint-based background checks relatively quickly.
- Tribes may only submit fingerprints for those authorities that are not required to come through the SIB.
- Tribes must apply and be accepted into the DOJ TAP. Tribes interested in participating in the TAP should contact the DOJ at tribalaccess@usdoj.gov. Tribes will want to ask when the next application deadline is because applications are accepted periodically (approximately annually). Once selected as a DOJ TAP participant, a Tribe must execute a user fee Memorandum of Agreement/Billing Agreement with the FBI's CJIS Division.

FBI-Approved Channeler

- FBI-approved Channelers are private entities who, through contract with the FBI, provide access to the NGI System, and work on behalf of an authorized Tribe to conduct the national fingerprint-based checks. The FBI-Channeler submits fingerprints, receives the results of the criminal history checks from the FBI's NGI System, and forwards those results to the authorized recipient. This option also requires a contract between the authorized

1. U.S. Department of Interior, Bureau of Indian Affairs. (2018). Guidance: Background Checks for Foster Care Placements under the Native American Children's Safety Act (NACSA). Available at: https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/NACSA%20Guidelines%20FINAL%20-%20May%202018.pdf. Accessed March 7, 2019.

recipient and the FBI-approved Channeler. The legal authority must exist in order for a Tribe to submit fingerprints via a Channeler.

- For this option, the Tribe must send a letter to the FBI Compact Officer requesting approval to use one of the current FBI-approved Channelers. A current list of FBI-approved Channelers may be accessed at: www.fbi.gov/services/cjis/compact-council/list-of-approved-channelers.
- If the Tribe uses this option, the Tribe must enter into a contract with the FBI-approved Channeler for the Channeler's services. Please note that some companies conduct other types of background checks, but only FBI-approved Channelers may submit fingerprints to obtain data contained in the FBI's NGI System.

Hard-Copy Fingerprint Cards to the FBI

- Tribes may submit hard copy fingerprint cards directly to the FBI through the U.S. mail. The FBI returns Identity History Summary responses to the Tribe via the U.S. Postal Service, First Class Mail. This option requires a billing agreement between the Tribe and the FBI and requires the Tribe to apply for an Originating Agency Identifier (ORI). Please note that this method is not an electronic process and results in slower response times. Once the hard-copy fingerprint card arrives at the FBI, the fingerprint card must be scanned into an electronic format prior to processing. The FBI then returns the results by U.S. mail.
- This is not the preferred method of fingerprint submission (due to the possibility of fingerprint rejections and the processing time to complete the check).
- For this option, the Tribe must contact the FBI at (304) 625-5590 and request a billing agreement to allow for the submission of hard copy fingerprint cards.

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