

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**THE DISTRICT OF COLUMBIA'S  
MONITORING DID NOT ENSURE CHILD  
CARE PROVIDER COMPLIANCE WITH  
CRIMINAL BACKGROUND CHECK  
REQUIREMENTS AT 7 OF 30 PROVIDERS  
REVIEWED**

*Inquiries about this report may be addressed to the Office of Public Affairs at  
[Public.Affairs@oig.hhs.gov](mailto:Public.Affairs@oig.hhs.gov).*



**Amy J. Frontz**  
Deputy Inspector General  
for Audit Services

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## Report in Brief

Date: November 2021

Report No. A-03-20-00252

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 the District of Columbia's monitoring process ensured provider compliance with District requirements related to criminal background checks established under the CCDBG Act.

### How OIG Did This Audit

Our audit covered 113 child development centers and child development homes that received CCDF funding during District fiscal year 2018. We used geographic area, total CCDF funding received, and total capacity to select 15 child development centers and 15 child development homes providers. In total, we reviewed supporting documentation for 541 household members and employees at 30 child care provider locations.

## The District of Columbia's Monitoring Did Not Ensure Child Care Provider Compliance With Criminal Background Check Requirements at 7 of 30 Providers Reviewed

### What OIG Found

The District's monitoring process did not ensure provider compliance related to criminal background checks for 7 of the 30 child care providers (55 of the 541 individuals requiring background checks) we reviewed. In response to our audit, the District took action and completed background checks for 52 of the 55 individuals. The errors we found occurred because: (1) providers did not send the in-State child abuse and neglect (Child Protection Register) check results to the District, (2) District law did not allow Child Protection Register check results to be sent directly to the District unless the individual was found not to be suitable for employment, and (3) processing delays resulted in incomplete Federal Bureau of Investigations fingerprint checks and inter-State checks. To ensure the safety of children at these child care providers, the District needs to strengthen its process for conducting criminal background checks for all individuals who supervise or have routine unsupervised contact with children.

### What OIG Recommends and District Comments

We made multiple recommendations, including that the District: (1) conduct all required criminal background checks for the three individuals we reviewed who did not have the required checks and whose background checks were not resolved during our audit, and (2) work with District legislators to allow Child Protection Register check results to be sent directly to the District without requiring a signed and notarized consent form from the individual whose records are to be released. The detailed recommendations are in the report.

In written comments on our draft report, the District concurred with our recommendations and provided information on actions that it had taken or plans to take to address them. Specifically, the District stated that it has completed the criminal background checks for the three individuals noted in our report and plans actions that include: (1) proposing a legislative solution for obtaining access to Child Protection Register check data and (2) implementing monitoring actions to ensure provider compliance with background check requirements.

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## 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.<sup>1</sup>

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. We conducted this audit as part of a second phase of our oversight activities to assess whether State agencies' monitoring processes ensured provider compliance with CCDF requirements related to criminal background checks.

Appendix B contains a list of prior Office of Inspector General (OIG) reports related to criminal background check requirements.

### OBJECTIVE

Our objective was to determine whether the District of Columbia's (the District's) Office of the State Superintendent of Education (State agency's) monitoring process ensured provider compliance with District requirements related to criminal background checks established under the CCDBG Act.

### BACKGROUND

#### Child Care and Development Block Grant Act

Reauthorized by 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 provides eligible low-income families with help paying for child care at a provider of their choice while they work or participate in training, education, or both. In Federal fiscal year (FY) 2019, ACF provided \$8.2 billion to States, territories, and Tribes to fund CCDF programs. In FY 2019, the most recent year for which nationwide data is available, CCDF served approximately 1.4 million children under 13 years of age from 857,700 low-income working families each month.

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

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<sup>2</sup> and facilities that deliver services.<sup>3</sup> States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of child care providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds.<sup>4</sup>

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 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.<sup>5</sup>

### **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.<sup>6</sup> According to Federal regulations, States must have requirements, policies, and procedures in place to conduct comprehensive background checks (45 CFR § 98.43(a)). 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;<sup>7</sup>
- a search of the National Crime Information Center's (NCIC's) National Sex Offender Registry; and

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<sup>2</sup> As defined in Federal regulations, "child care provider" is a center-based child care provider, family child care provider, or another provider of child care services for compensation on a regular basis that: (1) is not an individual related to all children for whom child care services are provided and (2) is licensed, regulated, or registered under State law or eligible to receive assistance (45 CFR § 98.43(a)(2)). In its regulations, the District established the categories "child development center" and "child development home," which meet the requirements of the Federal definition of a child care provider.

<sup>3</sup> 45 CFR § 98.16(o).

<sup>4</sup> 45 CFR § 98.43(a)(1)(i).

<sup>5</sup> CCDF Program Final Rule, 81 Fed. Reg. 67438, 67494 (Sept. 30, 2016).

<sup>6</sup> CCDF Program Final Rule, 81 Fed. Reg. 67438 (Sept. 30, 2016).

<sup>7</sup> The FBI fingerprint check, Next Generation Identification (formally 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.

- a search of the following registries, repositories, or databases for the State in which the child care staff member resides (in-State checks) and each State in which the staff member resided during the preceding 5 years (inter-State checks):
  - the State criminal registry or repository, with the use of fingerprints required for the State in which the staff member resides and optional for other States;
  - the State sex offender registry or repository; and
  - the State-based child abuse and neglect registry and database.

### **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.<sup>8</sup> 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 the District, 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,<sup>9</sup> 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 1-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’s National Sex Offender Registry and inter-State registries for current and prospective staff, as necessary.

ACF has further indicated that if a review of the 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 the State is not in compliance with background check requirements by September 30, 2020, ACF has the authority to impose certain penalties or sanctions. For

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<sup>8</sup> ACF, *Criminal Background Check Implementation Deadline*. Available online at <https://childcareta.acf.hhs.gov/ccdf-fundamentals/implementation-deadline> (accessed July 23, 2021).

<sup>9</sup> 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 child care as described in the preprint [https://www.acf.hhs.gov/sites/default/files/documents/occ/ccdbg\\_fy2019\\_2021\\_ccdf\\_plan\\_preprint.pdf](https://www.acf.hhs.gov/sites/default/files/documents/occ/ccdbg_fy2019_2021_ccdf_plan_preprint.pdf).



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 FY following ACF's determination that noncompliance occurred (45 CFR § 98.92(b)(4)(i)).

### **District of Columbia's Implementation of Criminal Background Check Requirements**

As of September 30, 2018, the State agency had implemented requirements for all background check components except the inter-State child abuse and neglect registry background checks. Specifically, the State agency had implemented requirements for the FBI criminal history fingerprint check and checks of the NCIC's National Sex Offender Registry, the in-State criminal registry, the in-State sex offender registry, the in-State child abuse and neglect registry, the inter-State criminal registry, and the inter-State sex offender registry. The State agency conducts these checks for all new and prospective child care staff in accordance with 45 CFR section 98.43 (District of Columbia Municipal Regulations (DCMR) Title 5A, Chapter 1, §§ 132, 133, and 135).

On September 30, 2020, the State agency requested and was granted a waiver to delay the inter-State child abuse and neglect registry background checks through September 30, 2021. ACF approved this waiver on November 24, 2020.

See Appendix C for details on the implementation status of the State agency's CCDF criminal background checks and Appendix D for the Federal and District regulations related to criminal background checks.

### **District of Columbia's Coordination Efforts for Conducting Criminal Background Checks**

The State agency has a Memorandum of Understanding with the District's Department of Human Resources (DCHR); the Memorandum states that DCHR will process criminal background checks and provide suitability determination for child care services for employees of early learning providers licensed by the State agency's Division of Early Learning.<sup>10</sup>

Early learning providers submit fingerprints to DCHR for a background check for all positions requiring a background check. DCHR uses these fingerprints to conduct the required criminal background checks.<sup>11</sup> All background checks must include a search of both the FBI and District of Columbia criminal repositories as well as the in-State child abuse and neglect register (Child Protection Register) run by the District of Columbia's Child and Family Services Agency (CFSA).

The background check results, excluding the Child Protection Register results, are sent to DCHR for review. DCHR staff reviews the results and makes a preliminary determination about

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<sup>10</sup> The mission of the State agency's Division of Early Learning is to provide leadership and coordination to ensure that all District children, from birth to kindergarten entrance, have access to high quality early childhood development programs and are well-prepared for school. Early learning providers include both child development homes and child development centers (DCMR § 5-A101.3).

<sup>11</sup> DCMR Title 5A, Chapter 1, §§ 132, 133, and 135.

whether the individual is cleared to work in an early learning program. Once DCHR completes this review, it sends the results to the State agency, which makes all final determinations about whether an individual is suitable for employment.

The Child Protection Register results are sent directly to either the individual or the child care provider based upon the individual's preference indicated on the Child Protection Register form. The child care provider is responsible for obtaining the results, either directly from CFSA or from the individual, and uploading them to the provider's Facility Profile page in the Division of Early Learning Licensing Tool.<sup>12</sup> The State agency is automatically notified when updates are made to the Facility Profile page.

The State agency reviews the results of all of the background checks, including the Child Protection Register, and determines the final suitability of the individual. The State agency then sends a Notice of Suitability Letter to the child care provider letting its officials know whether the individual is cleared to work in child care.

Every licensed child care provider receives monitoring visits to ensure that it continues to meet licensing and health and safety requirements. These visits are conducted by a State agency child care licensing specialist. Providers receive one announced visit and one unannounced visit each year. Additional visits may happen at any time. During these visits, the licensing specialist conducts several checks, including inspecting the environment and checking that all required documentation for staff, children, and the facility is maintained. For staff, the State agency reviews background check documentation for all new employees (those hired since previous inspection was performed) and household members plus at least 25 percent of the remaining employees.

## **HOW WE CONDUCTED THIS AUDIT**

Our audit covered 113 child development centers and child development homes that received CCDF funding during District FY 2018.<sup>13, 14</sup> We reviewed 15 child development center providers and 15 child development home providers for a total of 30 child care providers. In total, we

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<sup>12</sup> The Division of Early Learning Licensing Tool application contains information about each provider's license, including the license application and the license issuance, as well as information about the continuous management of licensed facilities. Once a license is issued, the system keeps track of facility inspections and compliance records, staff credentials and qualifications, complaints, unusual incident reports, and deficiencies and actions taken to address them.

<sup>13</sup> A "child development center" is a child development facility that serves more than 12 children and is located in premises other than the facility operator's residence (DCMR Title 5-A, Chapter 1, § 199). A "child development home" may provide care for up to six children, not including the caregiver's own children who are aged 6 years or older provided that no more than three of the caregiver's own children are between the ages of 6 and 15 and that no more than two of those three children are aged 10 years or younger (DCMR Title 5-A, Chapter 1 § 167.5).

<sup>14</sup> District FY 2018 began on October 1, 2017 and ended on September 30, 2018.

reviewed supporting documentation for 541 household members and employees at 30 child care provider locations.

To determine whether all of the individuals requiring a background check at the 15 child development centers had completed criminal background checks, we obtained from the child development centers a list of all currently employed individuals and validated the lists by requesting a payroll report and a timesheet, if available, showing all employees at the selected location. We then requested and received the Notice of Suitability Letters for all employees who had successfully passed all background checks and were cleared to work in the child development centers.

To determine whether all of the individuals requiring a background check at the 15 child development homes had completed criminal background checks, we conducted site visits and, at each facility, obtained a list of all individuals requiring a background check who were present or living at the child development home at the time of our visits. We also reviewed the household members' and employees' files to verify whether they had all required criminal background checks.

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. We reviewed the key internal controls included in the CCDF State Plan along with the Memorandum of Understanding between the State agency and DCHR to assess the segregation of duties between the two agencies and the roles and responsibilities of each agency.

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

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

## **FINDING**

The State agency's monitoring process did not ensure provider compliance related to criminal background checks for 7 of the 30 child care providers (55 of the 541 individuals requiring background checks) we reviewed. Specifically, we found that 54 of these 55 individuals were missing the Child Protection Register checks, 3 did not have completed FBI fingerprint checks, and 3 did not have completed inter-State checks. Some individuals had more than one missing or incomplete check.

For the 54 individuals who did not have completed Child Protection Register checks, the errors occurred because providers did not update their Facility Profile page to include this information and District law did not allow CFSA to send the results of the Child Protection Register directly

to the State agency unless the individual was found to be not suitable for employment. For the three individuals who did not have completed FBI fingerprint checks and inter-State checks, the State agency officials attributed these errors to processing delays. To ensure the safety of children at these child care providers, the State agency needs to strengthen its process for conducting criminal background checks for all individuals who supervise or have routine unsupervised contact with children.

## **THE DISTRICT OF COLUMBIA NEEDS TO STRENGTHEN ITS PROCESS FOR ENSURING PROVIDER COMPLIANCE WITH CRIMINAL BACKGROUND CHECK REQUIREMENTS**

### **District Requirements for Criminal Background Checks**

District regulations state that all early learning providers, including child care providers, must submit fingerprints to DCHR for background checks. All background checks must include an FBI fingerprint check and a search of the NCIC's National Sex Offender Registry, State criminal and sex offender registries for every State in which the individual resided during the preceding 5 years, State child abuse and neglect registries for every State in which the individual resided during the preceding 5 years, and the Child Protection Register (DCMR Title 5A, Chapter 1, §§ 132, 133, and 135).

The background check results, excluding the in-State Child Protection Register results, are sent to DCHR for review. DCHR staff reviews the background check, makes a preliminary determination whether the individual is suitable to work in an early learning program, and sends the results to the State agency. The Child Protection Register results are sent directly to either the individual or the child care provider based upon the individual's preference indicated on the Child Protection Register form. The child care provider is responsible for obtaining the results, either directly from CFSA or from the individual, and uploading them to the provider's Facility Profile page in the Division of Early Learning Licensing Tool. The State agency is automatically notified when updates are made to the Facility Profile page. The State agency reviews the results of all of the background checks, including the Child Protection Register, and determines the final suitability of the individual. The State agency then sends a Notice of Suitability Letter to the child care provider letting its officials know whether the individual is cleared to work in child care (DCMR Title 5A, Chapter 1, §§ 132, 133, and 135).

### **Seven of Thirty Child Care Providers Did Not Comply With District Criminal Background Check Requirements**

The State agency's monitoring process did not ensure provider compliance with District requirements related to criminal background checks for 7 of the 30 child care providers (55 of the 541 individuals requiring background checks) we reviewed. Specifically, for the 55 individuals requiring background checks, we found the following errors:

- 54 individuals were missing Child Protection Register checks,
- 3 individuals did not have completed FBI fingerprint checks, and

- 3 individuals did not have completed inter-State checks.

Some individuals had more than one missing or incomplete check. In particular, the same three individuals did not have completed FBI fingerprint checks and inter-State checks, and all but one individual with errors had missing Child Protection Register checks. For the three individuals who did not have completed FBI fingerprint checks and inter-State checks, the State agency officials attributed these errors to processing delays. In response to our audit, the State agency took action and completed 52 of the incomplete background checks and supplied the Notice of Suitability Letters for these individuals.<sup>15</sup> See Appendix E for the number of individuals at each of the 30 selected child care providers who were missing criminal background checks.

As shown below, increased monitoring and access to data is needed to ensure that all individuals who supervised or had routine unsupervised contact with children passed all criminal background checks.

The State agency did not receive notification of the status of Child Protection Register checks for the 54 individuals because providers did not update their Facility Profile page to include this information. After we identified the individuals with missing Child Protection Register checks, the State agency took prompt action to follow up with the providers, obtain the results of the checks, and issue Notice of Suitability Letters. On average, the Notice of Suitability Letters for these individuals were issued 443 days after the individuals began providing child care services.

State agency officials indicated that District law does not allow CFSA to send the results of the Child Protection Register check directly to the State agency unless the individual is found to be not suitable for employment (District of Columbia Municipal Code (DCMC) § 4-1302.03 (a-1)(1)).<sup>16</sup> The officials noted that to date, 51 of the 54 individuals were found to be suitable for employment and that the errors noted in our review would be prevented if CFSA could send notification of all Child Protection Register check results directly to the State agency without requiring a signed and notarized consent form from the individual whose records are to be released.

## RECOMMENDATIONS

We recommend that the District of Columbia Office of the State Superintendent of Education:

- continue to take actions to pursue Notice of Suitability Letters for all individuals identified, and, specifically, conduct all required child abuse and neglect background checks for the three individuals we reviewed who did not have the required checks at

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<sup>15</sup> The District is still working on receiving all clearances for the final three individuals.

<sup>16</sup> On April 11, 2019, DCMC § 4-1302.03(a-1) was amended to allow CFSA to release to the State agency all results of Child Protection Register checks received after October 2002 if CFSA receives a signed and notarized consent form from the individual whose records are to be released (DC Law 22-294, § 402).

the time of our review and whose background checks were not resolved during our audit;

- work with District legislators to enable CFSA to send Child Protection Register background check results directly to the State agency without requiring a signed and notarized consent form from the individual whose records are to be released; and
- remind its child care licensing specialists to follow up with child care providers to ensure all Child Protection Register background check results are uploaded to the provider's Facility Profile page in the Division of Early Learning Licensing Tool in a timely manner.

### **STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, the State agency concurred with our recommendations and provided information about actions that it has taken or plans to take to address them.

Specifically, the State agency concurred with our first recommendation and stated it has completed all components of the required background checks for the three individuals for whom Notice of Suitability Letters had not been issued.

For our second recommendation, the State agency concurred and stated it is working with DCHR to modify the existing Memorandum of Agreement to ensure that the State agency receives CFSA Child Protection Register check data. The State agency also said it is working on proposing a legislative solution for obtaining access to Child Protection Register check data.

For our third recommendation, the State agency concurred and described monitoring actions it plans to implement to ensure all child development facilities comply with criminal background check provisions. It also stated that it is building an integrated system to streamline criminal background check data management and provider notifications and will propose legislative changes and changes to the licensing regulations to ensure compliance with the CCDBG Act.

The State agency also requested some revisions to the wording of our findings. Specifically, it requested that we use different wording for the effect of missing background checks on children's safety and also requested that we adjust our finding language to reflect that increased monitoring and access to data is needed to strengthen the State agency's process for ensuring provider compliance with criminal background check requirements. We incorporated the State agency's requested revisions, as appropriate, into our report.

The State agency's comments are included in their entirety as Appendix F.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

In selecting which State(s) to include in our audit, each OIG 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 the 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 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 funding within the State, and
- total children served by the CCDF within the State.

In addition to the factors above, the six States included in our previous 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) audits.<sup>17</sup> Based on our review of these factors, we selected the District.

We selected and reviewed a nonstatistical sample of 30 of the 113 child development centers and child development homes that received funding during District FY 2018 to improve our understanding of the District’s monitoring of child care provider compliance with District criminal background check requirements. We reviewed 15 child development centers and 15 child development homes for a total of 30 child care providers, which we selected based on the geographic area, the amount of CCDF funding received for District FY 2018, and the number of children served by the provider.

To determine whether all of the employees of the 15 child development centers had completed criminal background checks if required, we obtained from the child development centers a list of all currently employed individuals and validated the lists by requesting a payroll report and a timesheet, if available, showing all employees at the selected provider. We reviewed all 496 employees of these 15 centers.

To determine whether all of the employees and household members of the 15 child development homes had completed criminal background checks if required, we conducted site

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<sup>17</sup> The six States included in CCDF Phase I were New York, Nevada, Colorado, Georgia, New Hampshire, and Illinois. (See Appendix B.)

visits and, for each facility, obtained from the State agency's inspectors a list of all current household members and employees. We reviewed the files of all 45 household members and employees.

In total, we reviewed supporting documentation for 541 individuals requiring a background check at 30 different child care providers.

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 District requirements related to criminal background checks. We reviewed the key internal control included in the CCDF State Plan along with Memorandum of Understanding between the State agency and DCHR to assess the segregation of duties between the two agencies and the roles and responsibilities of each agency.

We conducted our audit, which included meetings with State agency personnel and fieldwork at 15 child development homes, from October 2019 through May 2021.

## **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal and District laws, regulations, and guidance;
- identified whether State-required criminal background check requirements had been fully implemented within the District;
- interviewed State agency officials to gain an understanding of the District's monitoring process over 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 agency experienced monitoring providers to ensure that the new criminal background check requirements are being met;
- conducted reviews at 15 child development centers to obtain lists of all individuals requiring a background check;
- conducted site visits at each of the 15 child development homes to obtain current lists of all individuals requiring a background check;
- obtained supporting documentation and evidence from the State agency's system to determine whether all required criminal background checks were completed for the 541 individuals requiring background checks at the 30 child care providers selected;



- reviewed and analyzed a nonstatistical sample of 30 out of 113 child development centers and child development homes that received CCDF funding from District FY 2018 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 OFFICE OF INSPECTOR GENERAL REPORTS RELATING TO CRIMINAL  
BACKGROUND CHECK REQUIREMENTS**

<b>Report Title</b>	<b>Report Number</b>	<b>Date Issued</b>
<i>Colorado’s Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 18 of 30 Providers Reviewed</i>	<a href="#"><u>A-07-19-06084</u></a>	4/19/2021
<i>Virginia’s Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 8 of 30 Providers Reviewed</i>	<a href="#"><u>A-03-19-00253</u></a>	2/19/2021
<i>Hawaii’s Monitoring Generally Ensured Child Care Provider Compliance With State Criminal Background Check Requirements</i>	<a href="#"><u>A-09-19-01000</u></a>	09/03/2020
<i>Indiana’s Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 17 of 30 Providers Reviewed</i>	<a href="#"><u>A-05-19-00012</u></a>	8/26/2020
<i>Rhode Island’s Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 18 of 30 Providers Reviewed</i>	<a href="#"><u>A-01-18-02505</u></a>	8/17/2020
<i>New Jersey’s Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements At 9 of 30 Providers Reviewed</i>	<a href="#"><u>A-02-19-02004</u></a>	7/24/2020
<i>Utah’s Monitoring Process Generally Ensured Child Care Provider Compliance With State Criminal Background Check Requirements</i>	<a href="#"><u>A-07-19-06085</u></a>	7/21/2020
<i>Illinois’ Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 12 of 30 Providers Reviewed</i>	<a href="#"><u>A-05-19-00016</u></a>	4/29/2020
<i>New Hampshire’s Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 21 of 30 Providers Reviewed</i>	<a href="#"><u>A-01-18-02504</u></a>	4/3/2020
<i>New Mexico’s Monitoring of Childcare Providers Generally Ensured Provider Compliance With State Criminal Background Check Requirements at 30 Childcare Providers Reviewed</i>	<a href="#"><u>A-06-19-07001</u></a>	2/19/2020
<i>Georgia’s Monitoring of Childcare Providers Ensured Provider Compliance With State Criminal Background Check Requirements</i>	<a href="#"><u>A-04-19-03580</u></a>	2/12/2020
<i>Tennessee’s Monitoring Ensured Compliance With Criminal Background Check Requirements at 28 of the 30 Childcare Providers Reviewed</i>	<a href="#"><u>A-04-19-02023</u></a>	1/15/2020

<i>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</i>	<a href="#">A-05-19-00015</a>	8/23/2019
<i>New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers</i>	<a href="#">A-02-17-02011</a>	1/8/2019
<i>Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<a href="#">A-09-17-01003</a>	9/19/2018
<i>Colorado Implemented Many New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<a href="#">A-07-17-06076</a>	9/17/2018
<i>Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<a href="#">A-04-18-03578</a>	7/27/2018
<i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<a href="#">A-01-18-02500</a>	7/9/2018
<i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<a href="#">A-05-17-00047</a>	6/4/2018

**APPENDIX C: DISTRICT OF COLUMBIA’S IMPLEMENTATION STATUS OF CCDF CRIMINAL BACKGROUND CHECKS**

<b>Criminal Background Check Requirements</b>	<b>Implementation Status as of 9/30/2018</b>	<b>OIG Analysis of the District’s Implementation Status (Includes a Review of District Laws, Regulations, and Guidance)</b>
FBI Criminal History Fingerprint Check 45 CFR § 98.43(b)(1)	Implemented	DCMR Title 5A, Chapter 1, §§ 132, 133, and 135
NCIC’s National Sex Offender Registry 45 CFR § 98.43(b)(2)	Implemented	DCMR Title 5A, Chapter 1, §§ 132, 133, and 135
In-State Criminal Registry 45 CFR § 98.43(b)(3)	Implemented	DCMR Title 5A, Chapter 1, §§ 132, 133, and 135
In-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	DCMR Title 5A, Chapter 1, §§ 132, 133, and 135
In-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	DCMR Title 5A, Chapter 1, §§ 132, 133, and 135
Inter-State Criminal Registry 45 CFR § 98.43(b)(3)	Implemented	DCMR Title 5A, Chapter 1, §§ 132, 133, and 135
Inter-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	DCMR Title 5A, Chapter 1, §§ 132, 133, and 135
Inter-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Not Implemented	Received Waiver through September 30, 2021

## **APPENDIX D: FEDERAL AND DISTRICT 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)).

“Child care 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 child care 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)).

“Child care 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 National Sex Offender Registry for child care staff members or prospective staff members (45 CFR § 98.43(b)(2)).

According to Federal regulation, 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) which the child care staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

### **DISTRICT REGULATIONS**

When child care providers are preparing to apply to be part of the CCDF program, they attend a licensing orientation during which they receive information and instructions for submitting an application. Each provider submits the application, an application fee, and other required materials, such as fingerprints for the criminal background check. Once a child care provider

has submitted a request for a prospective employee's criminal background check, that prospective staff member may begin to work for the provider if the prospective staff member is supervised at all times by an individual with a qualifying background check result within the 3-year period before the date of the provider's criminal background check request.

District regulations state that all early learning providers must submit fingerprints for background checks. The fingerprints enable the FBI fingerprint check and allow the following registries to be checked:

- the NCIC's National Sex Offender Registry,
- the State criminal and sex offender registries for every State in which the individual resided during the preceding 5 years,
- the State child abuse and neglect registries for every State in which the individual resided during the preceding 5 years; and
- the Child Protection Register (run by CFSA).

The background check results, excluding the in-State Child Protection Register results, are sent to DCHR for review. DCHR staff reviews the results and decides whether the individual should be cleared to work in an early learning program. Once DCHR completes this review, it sends the results to the State agency.

The Child Protection Register results are sent directly to either the individual or the child care provider based upon the individual's preference indicated on the Child Protection Register form. The child care provider is responsible for receiving the results, either directly from CFSA or from the individual, and uploading them to the provider's Facility Profile page in the Division of Early Learning Licensing Tool. On April 11, 2019, DCMR section 4-1302.03(a-1) was updated to allow CFSA to release to the State agency Child Protection Register results received after October 2002 if CFSA receives a signed and notarized consent form from the individual whose records are to be released (DC Law 22-294, § 402).

The State agency reviews the results of all of the background checks, including the Child Protection Register, and determines the suitability of the individual. The State agency then sends a Notice of Suitability Letter to the child care provider letting its officials know whether the individual is cleared to work in child care. If the individual is found to be eligible, the clearance is active for 3 years. If the background check results show that the individual has a criminal history that includes a disqualifying crime, the State agency issues a Notice of Suitability Letter to the individual and the child care provider indicating that the individual is ineligible to work with children.

Every licensed child care provider receives monitoring visits to ensure that it continues to meet licensing and health and safety requirements. These visits are conducted by a State agency licensing specialist. Providers receive one announced visit and one unannounced visit each

year. Additional visits may happen at any time. During these visits, the licensing specialist conducts several checks, including inspecting the environment and checking that staff, children, and the facility have all required documentation. For staff, the State agency reviews background check documentation for all new employees and household members plus at least 25 percent of the remaining employees.

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

<b>Provider Number</b>	<b>Provider Type</b>	<b>Number of Individuals Reviewed*</b>	<b>Number of Individuals Missing One or More Required Criminal Background Checks</b>
1	Child Development Home	1	0
2	Child Development Home	3	0
3	Child Development Home	3	0
4	Child Development Home	3	0
5	Child Development Home	2	0
6	Child Development Home	3	0
7	Child Development Home	2	0
8	Child Development Home	9	0
9	Child Development Home	7	0
10	Child Development Home	3	0
11	Child Development Home	1	0
12	Child Development Home	2	0
13	Child Development Home	3	0
14	Child Development Home	1	0
15	Child Development Home	2	0
<b>Totals for Child Development Homes</b>		<b>45</b>	<b>0</b>
16	Child Development Center	28	1
17	Child Development Center	9	0
18	Child Development Center	129	0
19	Child Development Center	72	20
20	Child Development Center	26	14
21	Child Development Center	12	9
22	Child Development Center	48	6
23	Child Development Center	8	0
24	Child Development Center	40	3
25	Child Development Center	16	0
26	Child Development Center	47	0
27	Child Development Center	10	2
28	Child Development Center	29	0
29	Child Development Center	11	0
30	Child Development Center	11	0
<b>Totals for Child Development Centers</b>		<b>496</b>	<b>55</b>
<b>Combined Totals for Child Development Homes and Centers</b>		<b>541</b>	<b>55</b>
* The term "individuals" refers to the number of employees and household members included in our audit.			



## APPENDIX F: STATE AGENCY COMMENTS<sup>18</sup>



October 18, 2021

Nicole Freda, Regional Inspector General for Audit Services  
Department of Health and Human Services  
Office of Inspector General  
Office of Audit Services, Region III  
801 Market Street, Suite 8500  
Philadelphia, PA 19107-3134

Dear Ms. Freda,

This letter serves as the response from the District of Columbia's Office of the State Superintendent of Education (OSSE) to the U.S. Department of Health and Human Services, Office of Inspector General (OIG) draft report *The District of Columbia's Monitoring Did Not Ensure Child Care Provider Compliance With Criminal Background Check Requirements at 7 of 30 Providers Reviewed*, Report Number A-03-20-00252. We would like to thank OIG and its staff and partners for their professionalism and responsiveness during the monitoring process.

OIG found the District's monitoring process did not ensure provider compliance related to criminal background checks for 7 of the 30 child care providers (55 of the 541 individuals requiring background checks) reviewed. Also, OIG found by not ensuring that all individuals who supervised or had routine unsupervised contact with children passed all criminal background checks, the State agency potentially jeopardized the safety of children at these child care providers.

OSSE requests that the language for the overall finding that OSSE potentially jeopardized the safety of children at these child care providers be revised. While OSSE agrees that a robust background check system is critical to ensuring the safety and well-being of children in care, and that there are many opportunities for improvement, as identified by the audit, the characterization of the risk in this finding does not take into account that a vast majority (94.5%) of the individuals identified in the report had, in fact, completed at least 1 of the 5 criminal background check components required by 45 CFR § 98.43 (c) (4).<sup>1</sup> Thus, in keeping

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<sup>1</sup> 45 CFR § 98.43 (c) (4) states "A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after completing either the check described at paragraph (b)(1) or (b)(3)(i) of this section in the State where the prospective staff member resides. Pending completion of all background check components in paragraph (b) of this section, the staff member must be supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within the past five years."

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<sup>18</sup> **OIG Note:** We redacted text in this appendix because it is personally identifiable information.

with the aforementioned requirement, OSSE ensured that 52 of 55 of the individuals identified above had completed either an FBI fingerprint check or a comprehensive search of State criminal databases where the child care staff member resides and each State where such staff member resided during the preceding five years. All remaining components were completed, and suitability letters issued by OSSE, during the audit.

The fact that most of the staff were subject to at least one robust background check mitigates the potential risk identified by OIG in this finding. Therefore OSSE respectfully requests that the language of this finding reflect that OSSE’s process generally ensures provider compliance with requirements related to criminal background checks but that increased monitoring and access to data is needed to strengthen this process.

Below, please find OSSE’s responses to OIG’s recommendations.

**Recommendation No. 1** *[OSSE should] continue to take actions to pursue Notice of Suitability Letters for all individuals identified, and, specifically, conduct all required child abuse and neglect background checks for the three individuals we reviewed who did not have the required checks at the time of our review and whose background checks were not resolved during our audit;*

**Response** OSSE concurs with this recommendation. OSSE has completed all components of the required criminal background checks for the three individuals missing suitability letters. The results are listed below, and the suitability letters for these individuals are included as attachments.

Facility	Staff Name	Results	Date Letter Issued
[REDACTED]	[REDACTED]	Suitable	6/17/2021
[REDACTED]	[REDACTED]	Suitable	8/31/2021
[REDACTED]	[REDACTED]	Suitable	8/25/2021

**Recommendation No. 2** *[OSSE should] work with District legislators to enable CFSA to send Child Protection Register background check results directly to the State agency without requiring a signed and notarized consent form from the individual whose records are to be released;*

**Response** OSSE concurs with this recommendation. OSSE is working with the District of Columbia Department of Human Resources (DCHR) to modify the existing Memorandum of Agreement (MOU) to ensure that OSSE receives Child and Family Services (CFSA) intra-state Child Protection Registry check through the DCHR system.

OSSE is also working on proposing a legislative solution for intra-state Child Protection Registry checks.

**Recommendation No. 3** *[OSSE should] remind its child care licensing specialists to follow up with child care providers to ensure all Child Protection Register background check results are uploaded to the provider's Facility Profile page in the Division of Early Learning Licensing Tool in a timely manner.*

**Response** OSSE concurs with this recommendation. OSSE will implement the following corrective actions to ensure all child development facilities are complying with the criminal background check provisions:

- Amend the Child Care Licensing Manual to clarify checking for 100% of staff suitability letters during all inspections;
- Retrain child care licensing staff to ensure all suitability letters are being reviewed during all inspections;
- Retrain criminal background check staff to ensure renewal communications are issued timely and follow up is completed;
- Request additional staff for the criminal background team; and
- Create a communication plan for reminding child development facilities of requirements for new hires and renewing criminal background checks.

OSSE is working on building an integrated modernized early learning system which will allow for a more streamlined process for criminal background check data management as well as provider notifications.

OSSE will also propose legislative changes and changes to the licensing regulations to ensure compliance with the Child Care and Development Block Grant (CCDBG).

Should you or your staff have any additional inquiries, please contact Eva Laguerre, NRPC, Director, Licensing & Compliance, Division of Early Learning, OSSE at (202)741-5942 or [Eva.Laguerre@dc.gov](mailto:Eva.Laguerre@dc.gov).

Sincerely,



Christina Grant  
State Superintendent of Education

Enclosures as stated.

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1050 First St. NE, Washington, DC 20002 • Phone: (202) 727-6436 TTY: 711 • [osse.dc.gov](http://osse.dc.gov)