

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES	
	1. Log No. ACF-PI-HS-16-05	2. Issuance Date: 12/08/2016
	3. Originating Office: Office of Head Start	
	4. Key Words: Background Check; Head Start Program Performance Standards; HSPPS; Compliance table	

PROGRAM INSTRUCTION

TO: All Head Start and Early Head Start Grantees, including Delegate Agencies

SUBJECT: Background Checks – Extension of Compliance Date and Questions

INSTRUCTION: This Program Instruction (PI) notifies programs they have until September 30, 2017 to comply with all background checks requirements at [§1302.90\(b\)](#) in the Head Start Program Performance Standards final rule. This new effective date aligns with background check requirement deadlines for systems in the Child Care and Development Block Grant (CCDBG) Act of 2014, 20 U.S.C. § 1431 et seq., 20. It also will afford programs more time to implement systems in accordance with these requirements.

We received feedback from Head Start and child care communities, as well as from states, that programs could not comply with background check requirements in [§1302.90\(b\)\(1\)](#) by November 7, 2016. Head Start programs, like child care programs, primarily rely on states to conduct and to process the types of comprehensive background checks we require in [§1302.90\(b\)\(1\)](#). Currently, states do not have procedures in place to accommodate these comprehensive background checks. However, by September 30, 2017, Congress requires states that receive CCDBG funding to implement the same set of comprehensive background checks for all child care teachers and staff. By then, we anticipate most states will have such systems in place, unless they are granted a one-year extension under the CCDBG Act. The Federal Register notice announcing this change with the full rationale can be found at <https://www.federalregister.gov/documents/2016/12/06/2016-29183/head-start-program>.

Until September 30, 2017, however, we require programs to continue to adhere to the criminal record check requirements in [Section 648A](#) of the Improving Head Start for School Readiness Act of 2007, Public Law 110-134. It requires a state, tribal, or federal criminal record check:

- That covers all jurisdictions where the grantee provides Head Start services to children;
- A state, tribal, or federal criminal record check as required by the law in the jurisdiction where the grantee provides Head Start services; or
- A criminal record check as otherwise required by federal law.

We have received many other questions about the background check provisions. Attached is a series of frequently asked questions and answers that programs can use as they design their systems to meet the new requirements by September 2017.

If you have questions regarding this PI, please contact your Regional Office.

Thank you for the work you do on behalf of children and families.

/ Blanca Enriquez, Ph.D. /

Blanca Enriquez, Ph.D.

Director

Office of Head Start

Background Checks FAQs Attachment to ACF-PI-HS-16-05

Why are four checks necessary?

Q: My State Department of Investigation includes fingerprint and clearance and a clearance through the Federal Bureau of Investigation (FBI) database. Do I still need to do a federal criminal record check with fingerprints?

A: Yes. While state and federal criminal background checks significantly overlap, they are not the same check and do sometimes include differential information. See [1302.90 \(b\)](#).

Q: If a state runs a child abuse and neglect check in their background check already, is our agency required to run an additional check through the state registry separate from the one already provided through the state and federal background?

A: While criminal record checks and Child Abuse and Neglect (CAN) registries may have some overlap (particularly in instances where there is a conviction related to child abuse or neglect), CAN registries may also include information on substantiated complaints or civil court findings. Many states do include searches of their CAN registries as a component of a background check, particularly when the individual is working with children. If the state includes a check of their CAN registry as part of their background check, an agency does not need to rerun the CAN registry check.

Q: What is the difference between the sex offender registry and a background check? Why would someone be on the registry but not have a record on the FBI or state check? Would the FBI or state be sufficient or do we need to run it through the national registry as well?

A: The difference between a sex offender registry and a criminal history records check is significant. A sex offender registry monitors and tracks sex offenders after their release into the community. A criminal history records check typically reveals whether or not a person has any arrests, convictions, outstanding warrants, and prison terms. However, a person may be ordered to register as a sex offender in cases that would not be included on a criminal history records check (e.g. as a condition for release into the community or as a part of a plea agreement). We require programs to conduct a sex offender registry check. We anticipate most programs will likely check their state's sex offender registry, but we do not prescribe which registry must be checked.

Do consultants, contractors, and school district employees need the checks?

Q: Do the new Standards require that anyone going into Head Start classrooms, including school district employees (e.g., special education paraprofessionals, substitutes, etc.), undergo a complete background check as described in 1302.90? The school district maintains personnel files on all employees, including substitutes, with fingerprint records for background checks and would like to keep these records confidential. Is this okay?

A: Agencies must conduct or obtain a complete background check for contractors, or individuals on a contract, whose activities involve contact with and/or direct services to children and families or anyone who could have unsupervised access to children and families. However, if a program works with a school district or other agency that conducts the background checks according to the requirements in 1302.90, a program could obtain confirmation that the personnel in question had the appropriate checks and were employable according to the state's disqualification factors, and the program would be meeting the requirements.

Q: The new standards specify that employees, consultants, and contractors must have the complete background check. Can you clarify how this applies to short-term program consultants or contractors who provide training and technical assistance? The majority of the consultants we are referring to are those that work with management and do not provide services to children and families. Do the criminal background checks apply to these type of consultants or contractors?

A: No, the criminal record check requirements only apply to contractors, or individuals on a contract, whose activities involve contact with and/or direct services to children and families or anyone who could have unsupervised access to children and families. However, the criminal record check requirements do apply to all employees, regardless of whether an employee has contact with and/or direct services to children and families.

What does it mean to check employees every five years?

Q: In the new standards, §1302.90(b)(5) states every five years current employees should be cleared. Do all current staff need to have two sets of fingerprints on file as of August 1, 2017, as well? Do we need to do a background check on employees who have been here longer than five years now, or should all employees be cleared every five years from now?

A: In §1302.90(b)(5), the Standards state that "a program must conduct the complete background check for each employee, consultant, or contractor at least once every five years..." This requirement on current employees is not effective until September 30, 2017, per the recently released notice in the Federal Register. Therefore, programs must ensure they conduct a complete background check on all current staff, every five years starting on September 30, 2017. This means currently employed staff would need a complete background check by September 30, 2022 and every five years after the date of each individual check. Programs may wish to stagger their approach to completing checks for current employees so that the financial obligation associated with such checks is dispersed more evenly from year to year.

Q: In the new standards, §1302.90(b)(5) states that "a program must conduct the complete background check for each employee, consultant, or contractor at least once every five years" based on the requirements in (b)(1) and (2). Does this include that the language in (b)(1) which states that "a program must conduct an interview, verify references, [and] conduct a sex offender registry check"? Specifically, are programs expected to re-interview and re-verify references of current employees when they reach the five-year mark?

A: §1302.90(b)(5) requires "a program must conduct the complete background check for each employee, consultant, or contractor at least once every five years, which must include each of the four checks listed in [1302.90 (b)(1) and (2)]." The key language here is the "four checks,"

which references the sex offender registry check, child abuse and neglect (CAN) state registry check, state or tribal criminal history check with fingerprints, and FBI criminal history check with fingerprints. There is no requirement to interview current employees and to verify references they provided before they were hired or to ask them for more references.

Q: §1302.90(b)(5) provides an exception to performing background checks for all employees every five years if "the program can demonstrate to the responsible HHS official that it has a more stringent system in place that will ensure child safety." What constitutes a "more stringent system" and how can it be demonstrated?

A: We require each program to adhere to 1302.90(b)(5), which requires background checks for all employees every five years, unless it can demonstrate to the responsible Department of Health and Human Services (HHS) official that it has a more stringent system in place that will ensure child safety. An example of a more stringent system may be one that automatically notifies a program when an employee is either arrested or convicted of an applicable offense. Initial background checks must be completed, regardless of the system that a program has in place.

How do I work within my state process for background checks to meet the new standards?

Q: My state won't provide background check results to our program because of confidentiality rules. Instead they give us a "green light" or "red light" for employing a person in an early childhood setting. Does this meet the state background check requirement in 1302.90(b)?

A: Yes. As of the new effective date of these requirements, states will be implementing the disqualification factors required under Child Care and Development Fund (CCDF). A state's "green light" or "red light" based on these disqualification factors meets the requirements in 1302.90(b).

Q: I reached out to my state bureau of investigation and they said they won't do background checks on our employees because we don't fall under the categories of institutions that can request a background check under state law. What do I do?

A: As of the new effective date of these requirements, states will be required to meet CCDF background check requirements, which include performing these checks for all child care agencies/entities that are licensed, regulated, or registered or that are eligible to receive CCDF subsidy funds. Head Start programs fall under that umbrella, and as such, Head Start programs should be able to access state background check systems at that time.