



Early Learning Division | 775 Summer St NE, Suite 300, Salem, OR 97301

Phone: 503-373-0066 | Fax: 503-947-1955

Acting Director Ellen Wheatley  
Office of Child Care  
Administration for Children and Families  
370 L' Enfant Promenade SW  
Washington DC, 20447

18 April 2017

Dear Acting Director Wheatley,

Oregon is requesting waivers to allow additional time to implement federal requirements in two areas of the 2016-2018 Child Care and Development Fund state plan. There are two waiver requests. The first waiver request would extend the implementation deadline for a portion of 658E(c)(2)(D) Plan Section 2.3.1 Website for Consumer Education from November 19, 2017 to September 30, 2018. The second waiver request would extend the implementation deadline for 658H(b) Plan Section 5.3.1 Criminal Background Checks, from September 30, 2017 to September 30, 2018.

**658E(c)(2)(D) CCDF State Plan Section 2.3.1**

Provision for which the state seeks relief:

**Oregon is seeking relief from the required timeframe to implement a portion of section 2.3.1 (658E(c)(2)(D)) Monitoring and Inspection Reports.** ....The plan shall include certification that the State, not later than 1 year after the State has in effect the policies and practices described in subparagraph (K)(i), will make public by electronic means, in a consumer-friendly and easily accessible format, organized by provider, the results of monitoring and inspection reports.....

***How the waiver from this provision will, by itself, improve the delivery of child care services in the state:***

The waiver will improve the delivery of child care services by ensuring that the implementation process to post the results of the monitoring inspections and reports is conducted in a manner that supports the Early Learning Division policies embracing the equity lens. Parents, providers and children need the website information to be accurate with appropriate and uniform language, so there is no perception of bias or inconsistency in reporting. The waiver will improve consistency, equity, fairness and accessibility in the delivery of child care services the state is charged to provide.

***Certify that the health, safety, and well-being of children served through assistance received through CCDF will not be compromised as a result of the waiver:***

The law requires monitoring and inspection reports be posted on the website. Currently, histories of valid complaints are posted on the website, with public access to full compliance history of providers through contact with the Office of Child Care Compliance unit. Current practices provide for transparency of information and full disclosure of monitoring and inspection reports. We are asking for temporary relief for the electronic portion of the requirement.

***Describe conflicting or duplicative requirements preventing effective delivery of child care services to justify the waiver; extraordinary circumstances, such as natural disaster or financial crisis; or an extended period of time for a State legislature to enact legislation to implement the provision of the Act.***

OREGON DEPARTMENT OF EDUCATION

Kate Brown, Governor



Oregon will require an extended period of time to enact legislation and to promulgate rule to implement this provision of the Act. Oregon's current statutes do not provide the Early Learning Division Office of Child Care the authority to maintain a website that provides the information required under federal law on child care facilities. HB 2260, has been introduced and is moving through the legislative process, and will allow the Office of Child Care to maintain a website, provide information on child care facilities and allow the Office of Child Care general authority to maintain records electronically. Additionally, family child care homes in the state are covered by collective bargaining agreements that will need to be modified in order to meet the requirements of the Act.

**658H(b) CCDF State Plan Section 5.3.1**

Provision for which the State seeks relief:

**Oregon is seeking relief from the required timeframe to implement 658H(b) 5.3.1 of the CCDF state plan Criminal Background Checks.**

***How the waiver from this provision will, by itself, improve the delivery of child care services in the state:***

The waiver will improve the delivery of child care services in Oregon by providing additional time for child care providers currently serving Oregon's children, the ability to complete the FBI Fingerprint background check. Implementing a September 30, 2017 deadline for individuals with a current approved two year enrollment in Oregon's Central Background Registry that extends beyond the date required in the Act, could cause immediate interruption in a providers' ability to provide care to children. The waiver will ensure continuity of care for children by providers currently employed or in the business of caring for children. The waiver will also allow the federal Office of Child Care further opportunity to assist Oregon in accessing the National Crime Information Center (NCIC) database which is currently only available to law enforcement agencies or to approve the use of FBI Fingerprint checks as acceptable proof that the NCIC information was obtained.

***Certify that the health, safety, and well-being of children served through assistance received through CCDF will not be compromised as a result of the waiver:***

This waiver is to extend the time for individuals currently enrolled in our background system time to complete the FBI fingerprint process.

Currently, Oregon statute requires individuals associated with child care facilities have a background check every two years. The Early Learning Council approved rules for the Office of Child Care to begin FBI fingerprint background checks on all subject individuals beginning January 1, 2017 who are new or renewing enrollments in Oregon's Central Background Registry. The Department of Human Services also began FBI Fingerprinting for all license exempt child care. Checks of Oregon child abuse and neglect registry and national sex offender registries are also conducted. Individuals must pass a background check before they are allowed unsupervised access to children. Individuals enrolled in the Central Background Registry are also subject to a quarterly Law Enforcement Data System scan where any new crimes or arrests are discovered with appropriate action taken.

The health, safety and well-being of children is a priority in Oregon's child care system and children served will not be compromised as a result of the waiver.

***Describe conflicting or duplicative requirements preventing effective delivery of child care services to justify the waiver; extraordinary circumstances, such as natural disaster or financial crisis; or an extended period of time for a State legislature to enact legislation to implement the provision of the Act.***



Oregon will require an extended period of time to enact legislation and to promulgate rule to implement provisions contained in this section of the Act. Oregon's current statutes do not provide the Early Learning Division Office of Child Care the authority to fingerprint all subject individuals or conduct the FBI check and out of state checks required under federal law. HB 2259 was introduced and is moving through the legislative process and authorizes the Office of Child Care to conduct the criminal records checks in other registries and databases in order to comply with federal law. The bill will also allow for the Office of Child Care to run FBI fingerprint and other checks on those currently enrolled in Oregon's Central Background Registry in order for all subject individuals to meet the federal requirements by September 30, 2018. Oregon will need to go back and conduct FBI Fingerprint checks on approximately 4500 individuals currently enrolled in background registries as well as conduct out of state child abuse and neglect checks and criminal checks.

The National Crime Information Center (NCIC) database (which includes the National Sex Offender Registry) is for exclusive use of law enforcement entities at this time. The Oregon State Police and the FBI Criminal Justice Information System (CJIS) Services Advisory Policy Board do not consider the Early Learning Division Office of Child Care a law enforcement entity who has direct access to the National Crime Information Center. Further, the Office of Child Care was informed that without a change in CJIS policy at a federal level, individuals conducting background checks within the Office of Child Care would never be granted access to NCIC, and that the relevant information from the NCIC is already contained in the FBI Fingerprint check that are currently in place. This is a duplicative requirement that may prevent child care and early care and education professionals from working in Oregon and seriously disrupt the effective delivery of child care services if a waiver is not granted. The State is asking for the federal Office of Child Care to clarify their expectation with regard to the NCIC requirement and how the information contained in this data system does not duplicate information already provided by the FBI.

#### **658H(b) 5.3.1 Background Checks Implementation Plan**

The following outlines Oregon's efforts to comply with the background check requirements. The first section articulates the requirements that are met and the table shows the status of unmet requirements and the steps and activities planned to come into compliance with the requirements by September 30, 2018.

Requirements implemented:

- Background checks apply for each child care staff member including prospective child care staff, and each household member over 18
- Providers submit a request every 5 years.
- Child care staff members cannot be employed by a provider receiving CCDF if they refuse a background check; make materially false statements in connection with the background check; are registered or required to be registered on the State or National Sex Offender Registry; have been convicted of a felony consisting of: murder, child abuse or neglect, crimes against children, spousal abuse, crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or subject to an individual review, at the State's option, a drug-related offense committed during the preceding 5 years; or have been convicted of a violent misdemeanor committed as an adult against a child.
- The State conducts the background checks as quickly as possible and does not exceed 45 days after the child care provider submitted the request.



- Provide the results of the background check in a statement that indicates whether the staff member is eligible or ineligible, without revealing specific disqualifying information. If the staff member is ineligible, the State will provide information about each disqualifying crime to the staff member.
- Fees for background checks – Fees do not exceed the costs of processing applications and administering a criminal background check for processing and administration.
- Transparency - The State ensures that policies and procedures for conducting criminal background checks are published on the State’s website.
- Appeals process - The State has a process for a child care staff member to appeal the results of their background check to challenge the accuracy and completeness.
- Privacy considerations – The Lead Agency does not publicly release the results of individual background checks.
- All FBI fingerprint checks use Next Generation Identification.

<b>Unmet Requirement:</b>				
<b><i>Conduct a state criminal and sex offender registry in the State where the staff member resides and each state where the staff member has resided over the past 5 years.</i></b>				
<b>Task/Activity</b>	<b>Start date</b>	<b>End date</b>	<b>Agency responsible</b>	<b>Partnering agency</b>
Obtain statutory authority to obtain information from registries. HB 2259	1/5/17	7/1/17	ELD	
Revise CBR rules after legislation passes	6/1/17	12/30/17	ELD	
Develop a process to check criminal and sex offender registry in states not included in current Oregon State Police channeled FBI checks.	Started	6/30/18	ELD/DHS	Other states
Research each state’s process for obtaining necessary information.	Started	1/30/18	ELD/DHS	
Develop MOU with states for required checks	1/1/18	3/30/18	ELD/DHS	Other states
Develop staff training	1/1/18	3/30/18	ELD/DHS	
Staff training on new rules and procedures	3/30/18	4/30/18	ELD/DHS	
Conduct required out of state checks on individuals	4/30/18	9/30/18	ELD/DHS	
<b>Unmet Requirement:</b>				
<b><i>Conduct a check of the State child abuse and neglect registry in the State where the staff member resides and each State where the staff member has resided over the past 5 years</i></b>				
<b>Task/Activity</b>	<b>Start date</b>	<b>End date</b>	<b>Agency responsible</b>	<b>Partnering agency</b>
Obtain statutory authority to obtain information from registries. HB 2259	1/5/17	7/1/17	ELD	
Revise CBR rules after legislation passes	6/1/17	12/30/17	ELD	
Work with DHS Adam Walsh unit to share information to access other state’s information	10/1/2016	3/30/17	ELD/DHS	DHS
Develop MOU’s with states that require it	1/1/18	3/30/18	ELD/DHS	Other States
Develop staff training	1/1/18	3/30/18	ELD/DHS	
Staff training on new rules and procedures	3/30/18	4/30/18	ELD/DHS	
Conduct out of state checks	4/30/18	9/30/18		





Unmet Requirement:				
<b>Conduct a check of the National Crime Information Center (run by the FBI);</b>				
Task/Activity	Start date	End date	Agency responsible	Partnering agency
Pursue access to National Law Enforcement Telecommunications System and access to National Crime Information Center.	Started	6/30/18	ELD/DHS	Oregon State Police, FBI and Federal Office of Child Care
Unmet Requirement:				
<b>Conduct an FBI fingerprint check using Next Generation Identification</b>				
Task/Activity	Start date	End date	Agency responsible	Partnering agency
Pursue legislative changes to remove 2 year background check requirement from statute and allow FBI checks for providers currently in the Central Background Registry	4/15/2016	6/30/2017	ELD/DHS	
Send letter to subject individuals enrolled in the CBR between September 30, 2016 and December 30, 2016 (approximately 5000), requiring compliance with the new law within 90 days of receipt of the letter from the Office of Child Care, or Department of Human Services	9/1/17	3/1/18	ELD/DHS	
Complete backlog of FBI checks for current enrollees	12/1/17	6/30/18	ELD DHS	
Unmet Requirement:				
<b>Conduct a check of the National Sex Offender Registry.</b>				
Task/Activity	Start date	End date	Agency responsible	Partnering agency
Pursue access to National Law Enforcement Telecommunications System and access to the National Crime Information Center/National Sex Offender Registry.	Started	6/30/18	ELD/DHS	Oregon State Police, FBI and Federal Office of Child Care
Obtain statutory authority to obtain information from registries. HB 2259	1/5/17	7/1/17	ELD	

We appreciate your consideration and approval of a waiver to extend the timeline for implementation of these requirements.

Sincerely,



David Mandell  
Acting Early Learning System Director  
Early Learning Division  
Oregon Department of Education

OREGON DEPARTMENT OF EDUCATION

Kate Brown, Governor

