

OCFS FAQ for Legally-Exempt Providers on the New Required Comprehensive Background Clearances

Updated 9/25/2019

1. What is this about?

Due to a change in the law, legally-exempt providers, directors, employees, volunteers, and any person age 18 or older living in a home where legally-exempt Family Child Care is provided must complete a comprehensive background clearance by September 30, 2020. The law also requires comprehensive background clearances be completed no less than once every five years.

2. Are any legally-exempt providers exempt from the comprehensive background clearances?

Yes. Legally-exempt informal providers who are the grandparent, great-grandparent, aunt, uncle, or adult sibling living in a sperate residence are exempt from the comprehensive background clearance, and so are their employees and volunteers. Similarly, for family child care, if a household member is related to all the children receiving subsidized care, the related household member would be exempt from the clearance process. However, these individuals will continue to be subject to the current background screening process in place prior to the implementation of the comprehensive background check.

3. What is included in the comprehensive background clearance?

- a. New York State criminal history record check with the Division of Criminal Justice Services
- b. National criminal record check with the Federal Bureau of Investigation (FBI)
- c. National Sex Offender Registry check with the National Crime and Information Center
- d. New York State Sex Offender Registry check
- e. New York Statewide Central Register of Child Abuse and Maltreatment (SCR) check
- f. New York State Justice Center Staff Exclusion List (SEL) check
- g. For any individual residing out of New York State in the past five years the comprehensive background clearance also includes the following:
 - i. Criminal history repository for the state(s) of residence
 - ii. Sex offender registry for the state(s) of residence
 - iii. Child abuse or neglect repository for the state(s) of residence

4. How much will this cost me?

For any provider or employee, there is a \$25 fee to complete the SCR check. There are no fees for other parts of the comprehensive background check.

5. As an existing director, provider, employee, or volunteer can I continue in my role at a program?

Yes. Existing providers, employees, and volunteers may continue to work in their current roles at their current program because the existing background checks are still valid. However, those persons will need to schedule the appointment for the criminal history fingerprinting as per the OCFS schedule and complete all other requirements of the comprehensive background clearances at the same time.

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6. When do I need to complete the new comprehensive background clearance requirement?

a. Are you a NEW director, employee, or volunteer at a child care program or NEW enrollment applicant on or after September 25, 2019?

If so, you must complete the comprehensive background clearance BEFORE being present in a child care setting or being enrolled.

b. Are you a director, employee, or volunteer at an existing legally-exempt GROUP program?

Existing employees and volunteers must schedule a fingerprint appointment within seven days of their birthday (before or after). All the clearance forms (6000 series) must be completed and submitted at that same time.

Existing directors must schedule a fingerprint appointment within seven days (before or after) of their birthday or as part of the re-enrollment application, whichever occurs first.

c. Are you a provider, employee, or volunteer at an existing legally-exempt INFORMAL child care provider?

If so, you will need to schedule the appointment for the criminal history fingerprinting as per the OCFS schedule and complete all other requirements of the comprehensive background clearances at the same time.

7. Can I allow new staff or volunteers to start at my legally-exempt group program without the comprehensive clearance completed if I make sure they are always supervised?

No. The program must receive written notification that the individual is eligible PRIOR to the individual beginning at the program. The only exception is a conditional approval.

8. What is conditional approval and who can be conditionally approved?

Conditional approval only applies to individuals (new and existing) at a legally-exempt group program who identify on form OCFS-6001 that they reside or have resided outside of New York State in the last five (5) years. In order to grant conditional approval, these individuals must successfully complete the FBI check and all other New York State background check requirements. During conditional approval, the individual cannot be left unsupervised with children.

9. I re-enroll every year; will the clearance need to be done every year?

No. Once you go through this process, your comprehensive background clearances will be valid for up to 5 years, however certain parts such as the SEL and SCR would need to be repeated for a new role in child care program.

10. I work for multiple providers. Does that mean I will need to have this clearance multiple times?

Once an individual successfully completes the comprehensive background clearance requirements within New York State, their fingerprints can be associated (“waived”) to another child care program within New York State. However, anytime you join a new program, a SCR and SEL check must be completed.

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11. Can I challenge a determination by OCFS that I cannot work at a program due to my criminal history?

Yes. There is a hearing right that is available to any person who has a discretionary crime appear as part of their criminal background check if that crime has resulted in a determination that the individual is not able to be a child care provider, employee or volunteer in a child care program.

12. What happens if an individual fails to schedule the fingerprinting appointment or fails to complete all parts of the comprehensive background clearance?

For the first year of implementation of the new comprehensive background clearances, OCFS is focusing on the importance of providing technical assistance to child care programs and supporting efforts to come into compliance with the new requirements. This means programs should expect to hear from their enrollment agency on any compliance concerns and such staff will be working with the program to overcome barriers to compliance.

13. Are there additional regulatory changes we need to know about?

Yes. The new regulations issued in September 2019 make a number of changes. Additional guidance will be forthcoming. The revised regulations can be found on our website at: <https://ocfs.ny.gov/main/childcare/news/article.php?idx=1985>. OCFS will be providing technical assistance on these changes over the course of the coming year. Programs can also reach out to their enrollment agency if they have questions.

14. Who can I go to for more information about these requirements and how it affects me or my program?

Please reach out to the enrollment agency for additional information or to report any issues with the comprehensive background clearance process. OCFS has also posted this document, videos on the background check process and copies of the letters regarding implementation sent to providers on our website. Please go to <https://ocfs.ny.gov/main/childcare> for additional resources.