

**OCFS FAQ for Legally-Exempt Providers on the New
Required Comprehensive Background Clearances
Updated 2/11/2020**

1. What is this about?

Due to a change in the law, non-relative legally-exempt providers and their directors, employees, volunteers, and any person age 18 or older living in a home where legally-exempt Family Child Care is provided who is not related in any way to all children in care must complete a comprehensive background clearance by September 30, 2020. The law also requires these comprehensive background clearances be repeated 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 separate residence are exempt from the comprehensive background clearance, and so are their employees, volunteers, and adult household members. Similarly, for non-relative 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 background screening process in place prior to the implementation of the comprehensive background check. Last, household members at in-home programs will be exempt from all background check-related requirements.

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:
 - 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. Individuals working or volunteering at a program prior to September 25, 2019, may continue in that role at that program because the existing background checks are still good until September 30, 2020. 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 prior to September 30, 2020.

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

a. Are you a NEW employee or volunteer starting at an enrolled legally-exempt group child care program on or after September 25, 2019?

Effective February 7, 2020, once you have completed your fingerprinting appointment and submitted your fingerprinting receipt and current medical form to the program, you may begin to work or volunteer, but you must be supervised by a person who has been fully cleared until the Office notifies you and the program that you are eligible to care for children based on the results of your comprehensive background check.

b. Are you a NEW director starting work at an enrolled legally-exempt group child care program on or after September 25, 2019?

If so, you must complete the comprehensive background clearance BEFORE beginning at the program.

c. Are you a new employee, volunteer, or adult family child care household member not related in any way to all children in care starting at an enrolled legally-exempt informal program on or after September 25, 2019?

If so, you must complete the comprehensive background clearance BEFORE beginning at the program.

d. Are you a new applicant for enrollment submitted on or after September 25, 2019?

You, and all other required individuals at your program, must complete the comprehensive background clearance BEFORE being enrolled.

e. Were you an existing operator, director, employee, or volunteer at a legally-exempt program prior to September 25, 2019?

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

Existing operators and directors must schedule a fingerprint appointment within seven days (before or after) of their next birthday or as part of the re-enrollment application, whichever occurs first. The 6000 series must also be completed and submitted at that same time.

f. Were you an existing provider, employee, volunteer, or adult family child care household member not related in any way to all children in care at a legally-exempt INFORMAL child care provider prior to September 25, 2019?

If so, you will need to schedule the appointment for the criminal history fingerprinting prior to re-enrollment 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?

As of February 7, 2020, employees and volunteers who were new on or after September 25, 2019 may begin once they complete their fingerprinting appointments and submit a fingerprint receipt and current medical form to the program. These individuals must be supervised at all times by a person who has been fully cleared until the Office notifies the person and the program that the person is eligible to care for children based on the results of the comprehensive background check.

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8. 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, and you would need to repeat the entire process if you separate from a role at a child care program for more than 180 days.

9. 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 NYS, their fingerprints can be associated (“waived”) to another child care program within NYS. However, anytime you join a new program, a SCR and SEL check must be completed.

10. 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, director, employee or volunteer in a child care program.

11. 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.

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

Yes. The regulations issued in September 2019, and modified in February,2020 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/daycare_regulations.asp. 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.

13. 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 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.

14. If I am an existing legally-exempt group program director, employee, or volunteer, how far in advance can I schedule my fingerprint imaging appointment that is to occur within seven days of my birthday?

Fingerprint imaging appointments may be scheduled up to 45 days in advance of the appointment window.

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15. I resided outside of the country in the past five years; do the “interstate” checks apply to other countries?

Out-of-state clearance provisions apply to other US states, US Commonwealths and US territories. There is no requirement to check for a person’s criminal history from other countries. Please note that the District of Columbia, US Virgin Islands, Guam, Commonwealth of Northern Mariana Islands, American Samoa, and Puerto Rico are all included in the “interstate” check for the purposes of the comprehensive background clearance. Therefore the “interstate” clearance provisions will apply to persons who have resided in the District of Columbia, US Virgin Islands, Guam, Commonwealth of Northern Mariana Islands, American Samoa and/or Puerto Rico in the past five years.

16. I am a legally-exempt provider transitioning to a licensed/registered provider, do I need to redo the comprehensive background clearances? What about my other household members?

Once an individual successfully completes the comprehensive background clearance requirements within NYS, the clearance requirements can be associated (“waived”) to another child care program within NYS provided that the individual has not separated from their role in a childcare program within NYS for a period of more than 180 consecutive days. A legally-exempt provider who has completed the comprehensive background check and later transitions to a licensed/registered provider will need to complete a new SCR and SEL. Household members must also complete a new SCR and SEL, and for those individuals associated with the program that were exempt from the comprehensive background check process based on their or the provider being related to all children in care, the full check will need to be completed.

17. I have been cleared to work at Provider ABC but now want to work at Provider DEF. Do I need to redo the comprehensive background check? Can I work at Provider DEF while my results are pending?

Once an individual successfully completes the comprehensive background clearance requirements within NYS, the clearance requirements can be associated (“waived”) to another child care program within NYS, provided that the individual has not separated from their role in a childcare program within NYS for a period of more than 180 consecutive days. However, anytime an individual joins a new program, a new SCR and SEL must be completed. The individual can begin in the new program while the SCR and SEL clearances are in process.

18. What should I do if I feel that the results of the background check are taking an extensive amount of time?

It is not anticipated that the comprehensive background checks will take a long time to complete, provided that the required documentation packet is completed with accurate information. However, if you feel that the process is taking an unusually long time, please contact your enrollment agency.

19. Am required to provide my Social Security number (SSN) at my fingerprint imaging appointment?

If you have been issued an SSN, you must provide it at the fingerprint imaging appointment. An SSN is not required for those who have not had one issued to them.

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20. If I am an existing legally-exempt provider, director, employee, or volunteer, am I required to submit a medical statement?

A medical statement (OCFS-6004) is a new requirement for legally-exempt group program employees and volunteers. New employees and volunteers at legally-exempt group programs must submit a copy of a current medical form to the program before beginning work. New and existing directors of legally-exempt group programs will need to submit a copy of this form to the enrollment agency at the time they complete the comprehensive background check. Existing employees and volunteers at legally-exempt group programs will be required to submit this form when completing the comprehensive background check in accordance with the schedule issued by OCFS for existing employees and volunteers. This requirement does not apply to informal child care providers.

21. When the required clearance forms are completed, where are they to be submitted?

Employees and volunteers of legally-exempt group programs must submit the completed forms to the director, who will then forward the relevant documents to the enrollment agency. For legally-exempt group programs, the existing director must send all the completed forms, including the medical form to the enrollment agency at the time they complete the comprehensive background check. New directors must submit the completed forms including the medical form to the enrollment agency at the time of hire. Informal child care providers, employees, volunteers and relevant household members should submit the forms to the enrollment agency. Copies of all forms should be maintained on site.

22. Is there a fillable PDF version of the 6000 series forms?

The PDF versions are not fillable. However, the individual forms in WORD are fillable.

23. What if a current/existing staff member is unavailable and cannot follow the birthday schedule?

OCFS asks that individuals make every effort to complete comprehensive background clearance requirements in accordance with the schedule that has been set forth by the Office. All individuals are required to complete comprehensive background check requirements by September 30, 2020. Throughout this time, OCFS is committed to partnering with programs to assist with compliance. Programs are encouraged to reach out to their enrollment agent in extenuating circumstances for guidance and technical assistance.

24. What will the comprehensive background check clearance letter look like?

Programs will receive a comprehensive background clearance letter for all required individuals which indicates whether the individual is eligible or ineligible to work in child care.

25. How long is the process to get the clearance letter- provided all the documentation has been submitted?

It is not anticipated that the comprehensive background checks will take a long time to complete, provided that the required documentation packet is completed with accurate information. However, if you feel that the process is taking an unusually long time for completion, please contact your enrollment agency.

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26. Can New York City legally-exempt child care providers choose which vendor to use for fingerprinting?

No. Legally-exempt programs must be fingerprinted by Identogo. Legally-exempt providers and staff can call 1-877-472-6915 or go to <https://uenroll.identogo.com/workflows/15441V> to schedule a fingerprint appointment. For more information, see a Dear Provider letter that was sent to legally-exempt informal providers: <https://ocfs.ny.gov/main/childcare/letterstoproviders/2019/Dear-Provider-Sep2019-LE-Provider.pdf> and a Dear Provider letter that was sent to legally-exempt group providers: <https://ocfs.ny.gov/main/childcare/letterstoproviders/2019/Dear-Provider-Sep2019-LE-Group.pdf>.

27. What clearance fees are legally-exempt child care providers responsible for?

Legally-exempt programs will have to pay the \$25 SCR fee for providers and employees. Programs subject to the background checks process imposed by NYC Department of Education (DOE) and NYC Department of Investigation (DOI) will be subject to those fees, as applicable.