

**COMMENT DUE DATE: January 15, 2024**

**Date: December 15, 2023**

**Dianna Cooper, Programs Manager II  
Holli Kyker, Programs Administrator  
Brandi Smith, Policy Specialist**

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It is important that you provide your comments regarding the **draft copy** of policy by the comment due date. Comments are directed to \*STO.LegalServices.Policy@okdhs.org. The proposed policy is **PERMANENT**.

**SUBJECT:**

**CHAPTER 2. ADMINISTRATIVE COMPONENTS**

Subchapter 46. Office of Background Investigations

Part 2. Child Care Services

340:2-46-5 [AMENDED]

**(Reference WF 24-2B)**

**SUMMARY:**

The proposed amendments to Chapter 2 of Subchapter 46 are to: (1) implement policy changes as recommended during Office of Background Investigations (OBI) policy review process; and (2) make changes to improve the clarity of rules.

**Permanent rulemaking approval is requested.**

**LEGAL AUTHORITY:**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 901 C.F.R. § 28; National Child Protection Act/Volunteers for Children Act (NCPA/VCA), 404.1 O.S. § 10; and 45 C.F.R. § 98.43(e)(1).



OKLAHOMA DEPARTMENT OF HUMAN  
SERVICES



Rule Impact Statement

**To:** Programs administrator  
Legal Services - Policy

**From:** Dianna Cooper  
Office of Background Investigations  
Office of Inspector General

**Date:** July 24, 2023

**Re: CHAPTER 2. ADMINISTRATIVE COMPONENTS**  
Subchapter 46. Office of Background Investigations  
Part 2. Child Care Services  
340:2-46-5 [AMENDED]  
**(Reference WF 24-2B)**

**Contact:** Dianna Cooper, Programs Manager II, 405-208-3273

**A. Brief description of the purpose of the proposed rule:**

**Purpose.**

The proposed amendments to Chapter 2 of Subchapter 46 are to: (1) implement policy changes as recommended during Office of Background Investigations (OBI) policy review process; and (2) make changes to improve the clarity of rules.

**Strategic Plan Impact.**

The proposed amendments achieve Oklahoma Human Services (OKDHS) goals by providing consistency in the delivery of services across the state and continuing to improve transparency and accountability. The proposed amendments align with state and national fingerprint requirements, as well as the federal regulations related to background checks for child care programs.

**Substantive changes.**

Subchapter 46. Office of Background Investigations  
Part 2. Child Care Services

Oklahoma Administrative Code (OAC) 340:2-46-5 is amended to: (1) exclude a state name-based search; (2) exclude a national name-based search; and (3) remove the five-business day time frame for consistency with the Child Care Development Block Grant (CCDBG), Section 98.43(e)(1) of Title 45 of the Code of Federal Regulations (45 C.F.R. § 98.43(e)(1)), related to processing background checks for licensed child care programs.

**Reasons.**

Creating rules that align with Oklahoma State Bureau of Investigation (OSBI), Federal Bureau of Investigation (FBI), and the federal Office of Child Care are needed for consistency and transparency.

**Repercussions.**

Failure to amend OAC 340:2-46-5 conflicts with what is allowed by OSBI, FBI, and federal requirements. The proposed amendments will comply with state and federal requirements.

**Legal authority.**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); 901 C.F.R. § 28; National Child Protection Act/Volunteers for Children Act (NCPA/VCA), 404.1 O.S. § 10; and 45 C.F.R. § 98.43(e)(1).

**Permanent rulemaking approval is requested.**

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the Agency from any private or public entities:** The classes of persons most likely to be affected by the proposed amendments, but without financial costs, are licensed child care facilities including public or private child care residential facilities, child-placing agencies, child care centers, community hope centers, part-day programs, out-of-school time programs, day camps, drop-in programs, programs for sick children, family child care homes, or large family child care homes providing either full-time or part-time care for children away from their own homes.
- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons most likely to benefit by the proposed amendments are licensed child care facilities including public or private child care residential facilities, child-placing agencies, child care centers, community hope centers, part-day programs, out-of-school time programs, day camps, drop-in programs, programs for sick children, family child care homes, or large family child care homes providing either full-time or part-time care for children away from their own homes. The proposed amendments will benefit Oklahoma's workforce and the children of Oklahoma.
- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all**

**fee changes and, whenever possible, a separate justification for each fee change:** There is no anticipated economic impact of the proposed amendments for licensed child care facilities, including public or private child care residential facilities, child-placing agencies, child care centers, community hope centers, part-day programs, out-of-school time programs, day camps, drop-in programs, programs for sick children, family child care homes, or large family child care homes providing either full-time or part-time care for children away from their own homes.

- E. The probable costs and benefits to the Agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the Agency:** The proposed rules have no projected financial loss or gains since OKDHS meets requirements to receive federal dollars from the CCDBG.
- F. A determination whether implementation of the proposed rule will have an impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:** The proposed rules do not have an economic impact on any political subdivision, nor will the cooperation of any political subdivisions be required in implementation or enforcement of the rules. Proposed amendments provide clarification of inquiry and consistent interpretation of background investigation processes.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** There are no anticipated adverse effects on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.
- H. An explanation of the measures the Agency has taken to minimize compliance costs and a determination whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** The proposed rules will have no adverse compliance costs. They fully comply with state and federal mandates.
- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:** The proposed rules are intended to comply with state and federal mandates, thereby increasing consistency of regulations. They will continue to contribute to Oklahoma's workforce and the safety of children.
- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:** Failure to amend the

proposed rules may result in continued inconsistency and inefficiency between state and federal requirements.

**K. The date the rule impact statement was prepared and, if modified, the date modified: Prepared July 24, 2023; modified August 2, 2023.**

## SUBCHAPTER 46. OFFICE OF BACKGROUND INVESTIGATIONS

### PART 2. CHILD CARE SERVICES

#### **340:2-46-5. Background investigations process for child care programs**

Issued 1-31-18 Revised 9-14-24

##### (a) **Fingerprint process.** ■ 1

(1) **Background check review packet.** The Oklahoma Department of Human Services (~~DHS~~)(OKDHS) makes background check review packets available to individuals and child care programs. ■ 2 & 3

(2) **Fingerprint rejections.** When low quality fingerprints, as determined by the Oklahoma State Bureau of Investigation (OSBI) ~~and/or~~, the Federal Bureau of Investigation (FBI), or both make it impossible for the national crime information databases to provide results, a ~~state and/or~~ national name-based search may be authorized. ■ 4

(3) **Fingerprint exceptions.** When ~~DHS~~ OKDHS Office of Background Investigations (OBI) receives a written request for a fingerprint exception from an individual, who has a severe physical condition precluding the individual from being fingerprinted, a ~~state and/or national~~ name-based search may be authorized. Individuals that resided outside of Oklahoma within the past five years must provide a name-based search from the state where they resided. ■ 5

##### (b) **Background check process.** ■ 1

###### (1) **Background check review requests.**

(A) Upon receipt of completed Form 19MP006E, Background Check Review Request, or an electronic background check request, OBI conducts a background check review. ■ 6

(B) Upon receipt of an incomplete Form 19MP006E, or an electronic background check request, OBI sends the program notification of an incomplete request. ■ 7

###### (2) **Background check review results.**

(A) OBI processes ~~complete~~ background check requests ~~by the:~~

(i) ~~close of the fifth DHS business day after receipt~~ within the time allowed under federal regulations; or

(ii) next ~~DHS-business~~ OKDHS-business day for new programs in application status.

(B) OBI disseminates the:

(i) background check results;

(ii) criminal history record information (CHRI), when applicable; and

(iii) dispute resolution documents, when applicable. ■ 8

##### (c) **Criminal history records dispute process.** ■ 1

(1) **Dispute rights.** When state and national CHRI are disseminated, OBI notifies individuals of the right to dispute the completeness and accuracy of the CHRI. ■ 9 & 10

(2) **Reasonable time.** Individuals are given a reasonable time to dispute CHRI, prior to a final employment determination. ■ 11

(d) **Five-year reassessment.** Programs must obtain a background check on required individuals every five years, per applicable Child Care Services (CCS) Licensing requirements.

(e) **Record of Arrest and Prosecution (RAP) RAP Back process.** ■ 1

(1) **RAP Back notifications.** RAP Back is a notification from OSBI or FBI of subsequent arrests or prosecutions of individuals, who have had the CCS fingerprint-based national criminal history checks. OBI submits a request to the state repository to stop sending RAP Back on individuals, who:

(A) are ineligible to be associated with any program; and

(B) have not been associated with a program for two or more years.

(2) **RAP Back criminal history review results.** Upon receipt of RAP Back, OBI reviews the notification to determine if the record reflects arrests or prosecutions. OBI simultaneously disseminates RAP Back results to the:

(A) programs with which the individual was last associated; and

(B) CCS, when criminal history restrictions and prohibitions are involved. ■ 12

(3) **Public record information.** When OBI becomes aware of additional arrests, charges, or convictions, OBI validates the information through public records and processes a new background check result.

(f) **Qualified entity (QE) standards.**

(1) **Agreement compliance.** OBI maintains QE standards for ~~DHS~~ OKDHS according to the user agreement with OSBI.

(2) **QE status.** QE status may be achieved by a:

(A) program;

(B) general administrative office (GAO) on behalf of one or more programs; and

(C) temporary hiring agency (THA) used for child care substitutes. ■ 13

(3) **Dissemination to a QE.** OBI only disseminates national CHRI to a program, GAO, or THA identified as a QE that has written consent from the fingerprinted individual.

■ 14

(4) **Audits.** OBI periodically audits QEs to verify compliance with standards. ■ 15

(5) **Violations.** When QE standards violations are:

(A) identified during an audit, OBI follows the audit process; or

(B) reported by individuals, OBI conducts an investigation. ■ 16

(6) **QE status termination.** The QE status may be terminated, when the QE:

(A) no longer meets QE criteria including following the QE agreement;

(B) does not cooperate with the audit process or an investigation; or

(C) does not correct QE standards violations within an agreed upon time and manner.

(g) **Restricted Registry referrals.** When OBI determines an individual meets criteria for the Restricted Registry, per Oklahoma Administrative Code 340:110-1-10.1(b)(1) through (5), the information is forwarded to Restricted Registry staff. ■ 17

(h) **Out-of-state inquiries.** OBI coordinates background check inquiries when requested by an out-of-state agency.

**INSTRUCTIONS TO STAFF 340:2-46-5**

**Issued 1-31-18 Revised 9-14-24**

1. Oklahoma Department of Human Services (DHS) (OKDHS) Publication No. 11-38, Licensing Records Office - A Guide to Background Investigations, provides additional information for the processes identified in this Section.
2. The Office of Background Investigations (OBI) develops and maintains background check review packets that include:
  - (1) DHS OKDHS Publication No. 11-38;
  - (2) Form 19MP006E, Background Check Review Request;
  - (3) Federal Bureau of Investigation (FBI) fingerprint cards; and
  - (4) a current list of fingerprint vendors.
3. OBI maintains a list of approved fingerprint capture and submission locations. Participating law enforcement agencies are approved for fingerprint capture only.
4. Upon receipt of a rejected fingerprint notice, the individual is notified to resubmit the fingerprints. ~~OBI may authorize Oklahoma State Bureau of Investigation (OSBI) and national name-based criminal history searches.~~ A second fingerprint rejection may require the individual to be fingerprinted at the Oklahoma State Bureau of Investigation (OSBI). If the FBI rejects the fingerprints, the FBI may provide a national name-based search.
5. OBI requests a fingerprinting exception from the DHS OKDHS Director or designee. Upon authorization, OBI ~~requests~~ conducts an OSBI name-based criminal history search.
6. (a) Complete background check review requests include:
  - (1) submission of fingerprints, including a daily report from the live scan vendor; and
  - (2) out-of-state criminal history records, when applicable.
 (b) OBI, searching by all known names, unless conducted within the last 90-calendar days conducts a:
  - (1) ~~reviews~~ review of criminal history records received;
  - (2) ~~conducts a~~ Restricted Registry, also known as Joshua's List, search;
  - (3) ~~conducts a~~ Community Service Worker Registry search;
  - (4) ~~conducts a~~ Nontechnical Services Worker Abuse Registry search;
  - (5) ~~conducts a~~ docket search of Oklahoma State Courts Network (OSCN);
  - (6) ~~conducts a~~ docket search of On Demand Court Records (ODCR);
  - (7) ~~conducts an online search~~ online of Oklahoma Department of Corrections (DOC) records;
  - (8) ~~conducts a~~ DOC sex offender registry search;
  - (9) ~~conducts a~~ DOC Mary Rippy violent offender registry search; and
  - (10) ~~conducts a~~ national sex offender registry search.
 (c) When the individual has lived outside of Oklahoma within the past five years, OBI conducts a:
  - (1) ~~reviews~~ review of criminal history records received for each state where the individual resided;
  - (2) ~~conducts a~~ sex offender registry check for each state where the individual resided; and
  - (3) ~~conducts a~~ child abuse and neglect registry search for each state where the individual resided.



- (d) OBI staff conducts searches listed in (b) and (c) of this Instruction and conducts searches for any Record of Arrest and Prosecution (RAP) Back received on all five-year reassessments.
7. An incomplete background check result is disseminated, when:
- (1) Form 19MP006E or an electronic background check request, is incomplete; or
  - (2) the individual submitted fingerprints, but OSBI and national criminal history records were not received within 30-calendar days of submission.
8. (a) Preliminary results are disseminated when a complete request from the program was received but the OSBI and national criminal history records were not received. Preliminary results include the individual's fingerprint submission date.
- (1) A ~~30-day~~ 30-calendar preliminary notice is disseminated when the OSBI and national criminal history records were not received within 30-calendar days of the issuance of the preliminary result.
  - (2) A notice of invalid preliminary results is disseminated when the OSBI and national criminal history records were not received within 60-calendar days of the issuance of the preliminary results, unless required actions were taken by the individual.
- (b) Restricted background check results are disseminated when:
- (1) a complete background check review request is received from the program;
  - (2) the OSBI and national criminal history records or a five-year reassessment request are received; and
  - (3) the individual has a restricted offense, per applicable Child Care Services (CCS) Licensing requirements.
- (c) Prohibited background check results are disseminated when:
- (1) a complete background check review request is received from the program;
  - (2) the OSBI and national criminal history records or a five-year reassessment request are received; and
  - (3) the individual has a prohibited offense, per applicable CCS Licensing requirements.
- (d) Complete background check results are disseminated when:
- (1) a complete request is received from the program;
  - (2) the OSBI and national criminal history records are received; and
  - (3) no restricted or prohibited offenses occurred.
- (e) Five-year reassessment background check results are disseminated when:
- (1) a complete five-year reassessment request is received from the program; and
  - (2) no restricted or prohibited offenses occurred.
9. Individuals are notified of the right to dispute the criminal history record information (CHRI) regardless of criminal history restrictions or prohibitions identified on the record.
10. When Form 07LC111E, Criminal History Records Dispute Resolution Documents, and attached certified documents are received, OBI:

- (1) reviews the documents;
  - (2) updates the information in the Background Investigation Determination System (BIDS) database;
  - (3) updates the background check results when the documents reflect criminal history restrictions or prohibitions; and
  - (4) disseminates the documents and updated background check results to the programs identified on Form 07LC111E, when applicable.
11. Licensed child care programs make final employment determinations for program personnel.
12. (a) When the record reflects arrests or prosecutions, OBI:
- (1) reviews the RAP Back for potential criminal history restrictions or prohibitions;
  - (2) confirms the programs with which the individual was associated;
  - (3) disseminates:
    - (A) an incomplete RAP Back result when additional information is required to determine if an individual is restricted or prohibited;
    - (B) a complete RAP Back result when the charges do not reflect a restriction or prohibition; or
    - (C) a restricted or prohibited background check result when an individual has a restricted or prohibited offense; and
  - (4) updates the information in the BIDS database.
- (b) OBI tracks arrests through disposition and then follows the procedures listed in (a)(1) – (4) of this Instruction.
13. Programs are considered a qualified entity (QE), when:
- (1) a license number is assigned;
  - (2) Form 07LC112E, Qualified Entity Application and Agreement, is completed by the current owner or responsible entity and is on file with OBI;
  - (3) the owner or responsible entity, QE contact, and authorized recipient listed on Form 07LC112E have a complete background check review and have received the OBI-approved access and review training; and
  - (4) the QE status has not been terminated.
14. (a) A general administrative office (GAO) must be a QE in order to receive fingerprint results directly from OBI for individuals other than the owner or responsible entity.
- (b) A temporary hiring agency (THA) must be a QE in order to receive fingerprint results from OBI. Licensed child care programs may accept the complete background check results from an individual associated with the THA.
15. (a) OBI informs the QE contact identified on Form 07LC112E of the need to complete an audit survey within 15-calendar days of receipt of the audit survey in order to maintain QE status.
- (1) When the program does not return a completed survey within 15-calendar days, OBI sends an initial certified letter providing the program an 15 additional 15-calendar days to submit a completed survey.
  - (2) When the program does not return a completed survey after an initial certified letter is sent, OBI sends a second certified letter notifying the

program that the QE status will be terminated after 10-calendar days from receipt of the letter, unless a completed survey is returned.

(3) When a completed survey is not received within 10-calendar days of the second certified letter, a recommendation of termination of the QE status is made to OBI and CCS management staff.

(4) When the program does not return a completed survey and upon approval of the recommendation, OBI sends a termination letter by certified mail confirming the termination of the program's QE status.

(5) A copy of the termination letter is sent to the CCS designee, and OBI enters the audit information into the OBI database.

(b) Upon receipt of a completed audit survey, OBI informs the program of:

(1) any QE standards violations by completing the corresponding section of the form and returning it to the program; and

(2) needed completion of an acceptable plan of correction within 15-calendar days in order to maintain QE status.

(A) When the program does not return a completed plan of correction, OBI sends an initial certified letter providing the program an additional 15-calendar days to respond.

(B) When the program does not return a completed plan of correction after a certified letter is sent, OBI sends a second certified letter notifying the program that the QE status will be terminated after 10-calendar days from receipt of the letter, unless a completed plan of correction is returned.

(C) When a completed plan of correction is not received within 10-calendar days of the second certified letter, a recommendation of termination of the QE status is made to OBI and CCS management staff.

(D) When the program does not return a completed plan of correction and upon approval of the recommendation, OBI sends a termination letter by certified mail confirming termination of the program's QE status.

(E) A copy of the termination letter is sent to the CCS designee and OBI enters the audit information into the OBI database.

16. In response to reports of suspected violations, OBI:

(1) conducts an investigation that may include personnel and collateral interviews and a visit to the facility;

(2) discusses the findings and develops an acceptable plan of correction with the program, when applicable;

(3) notifies the program that QE standards violations may result in termination of the program's QE status;

(4) verifies completion of the plan of correction;

(5) documents all information on Form 19MP007E, Office of Background Investigations Contact and Supplemental Information;

(6) maintains copies of forms and documents related to the investigation; and

(7) sends the findings to the child care program.

17. OBI provides Restricted Registry staff with:

(1) Form 19MP006E or electronic background check request;

- (2) CHRI results;**
- (3) OSCN records;**
- (4) ODCR records;**
- (5) DOC offender lookup results; and**
- (6) public sex offender registry search results.**