



Published: July 15, 2024

Re: Public Comments with OTCC responses regarding *Draft Rules on FBI CBC*

May 1 – 30, 2024: Public Comment period for *Draft Rules on FBI CBC*

June 18, 2024: Public comments reviewed by OTCC Rules Committee. Responses were drafted to address each public comment received.

July 8, 2024: Public comment responses were reviewed by the OTCC Executive Committee with minor edits suggested. OTCC Executive Committee voted to publish the responses on the OTC Rulemaking Webpage.

- **Comments on rules on FBI CBCs**

1. Public Comment received 5.6.24: I am absolutely opposed to the proposition of this unnecessary excessive oversight for this Practice Compact. Therapists are already overburdened w/ national certification, state licensing, specialty certifications and continuing education expenses. Many of which are no longer being reimbursed by employers as it is. This is just another way for an additional third party organization to prey on and receive funds from workers. There is no indication whatsoever that this additional layer of policing is remotely needed in our profession. Our OT practice is already mandated by our National Board (NBCOT) and individual state licensing boards. All of these certification and licensing boards require attestations, fees, and ever increasing continuing ed requirements at every renewal. There are formal complaint systems already established for reporting any unprofessional conduct with ALL of these organizations. There are also formal complaint processes with every employer, hospital, or clinic that employs OTs. It is extremely unlikely that the limited number of annual complaints either the state or national level is at all indicative of a need for FBI level background checks. All employers hiring OT's as well as national and regional traveling therapist agencies are also already running their own background, credit, and reference checks regularly. What data (if any) do you actually have on the prevalence of VALID practice act violations that have actually occurred within the last 5-10 years that would warrant such unnecessary oversight ?? Show me some actual data, please. This proposition does not appear to be indicated and would not provide any further 'protection' than the systems that are already in place. Strongly opposed.

- **Response:** FBI CBCs are required for OT Compact applicants in their home state. Some states may require FBI CBCs for all OT licensees whether seeking OT Compact privileges or not. The OTCC does not have the authority to alter the Compact legislation, which requires FBI CBCs, enacted by Compact states. The FBI Criminal Background Check Implementation Rule is guidance developed to assist member states when they join the Occupational Therapy Licensure Compact and clarifies the requirement to utilize a criminal background check through the Federal Bureau of



Investigations outlined in the model legislation (Section 3.A.5). As of the timing of this response, the FBI prohibits sharing of CBC results across entities. The FBI CBC is performed in the applicant's home state, and that state has the authority to determine eligibility for the applicant's Compact participation. The Compact does not require FBI CBCs to be conducted in remote states where the applicant is seeking privileges to practice.

2. Public Comment received 5.7.24: A situation that actually would help OTs in limiting their annual expenses, make working easier across the country, and promote job mobility, where the FBI BGCs would be warranted: Have ONE single National Organization responsible for it all and fund that organization so it can do the extra work (like NBCOT). END State Licensure Requirements altogether !! Then a Federal/National-level BGC would be useful. (Even in that situation, employers would still continue w/ their own background and credit checks.)
  - **Response:** The primary purpose of the Compact is to increase efficiency and reduce the economic and regulatory burden for individuals who desire to practice across jurisdictional lines in order to increase access to competent care. The Compact allows for occupational therapists and occupational therapy assistants who hold a license in their home state to obtain a compact privilege in other Compact member states. The OT/OTA does not need to go through the traditional licensure application process in each state. Applicants only need to obtain an FBI CBC in their home state. The compact privileges will have the same expiration date as the OT/OTAs home state license. The OT/OTA is only responsible for the home state license continuing competency. All of this results in a reduction of fees and requirements and expedites the licensing process.
3. Public Comment received 5.8.24: As a traveling occupational therapist, I am frequently applying for licensure in other states. Most require fingerprinted background checks to be performed. I have found that this is often the most time consuming portion of the application process; not to mention how it usually tends to be a logistical nightmare, especially when you are working full time. If the implementation of this ruling means the elimination of the repetition of background checks for each state, and ensures that one background check will suffice for all states, as long as the licensee passes the original check, then I wholeheartedly support this as a clinician, as I know it will give back time that would otherwise be lost trying to figure out how to get fingerprints sent across states. Thank you so much for your time and listening to my support regarding this ruling.
  - **Response:** The OTCC appreciates this comment and support. The goal of the OT Compact is to streamline the licensing process allowing professionals the benefit of having a simplified way to provide their patients access to safe, reliable, and diverse care. The OT Compact reduces paperwork, wait times, and addresses delays often experienced through traditional licensing processes. As such, OT professionals are



only required to maintain one, home-state license in a Compact state to be eligible and apply for Compact privileges to practice in other states.

4. Public Comment received 5.23.24: In Section 5 of the Compact language, *Obtaining a New Home State License by Virtue of Compact Privilege*, the following is stated:
  - *B. If an Occupational Therapist or Occupational Therapy Assistant changes Primary State of Residence by Moving between two Member States:*
    - *2. Upon receipt of an application for obtaining a new Home State license by virtue of compact privilege, the new Home State shall verify that the Occupational Therapist or Occupational Therapy Assistant meets the pertinent criteria outlined in Section 4 via the Data System, without need for primary source verification except for:*
      - *A. an FBI fingerprint based criminal background check if not previously performed or updated pursuant to the applicable Rules adopted by the Commission in accordance with Public Law 92-544;*

According to this, the Rule of FBI CBCs may need to include a time period after which the FBI CBC must be updated in the event an OT or OTA moves to a new home state. If this is the case, how would the therapist and the new home state know whether a new background check is required or not?

- **Response:** The Rules Committee has not yet addressed this section of the model legislative language. At this time, there are no rules that identify time periods to update a criminal background check.
5. Commissioner comments from OTCC Committee meetings: Concern that this phrase “in accordance with state law” in the second paragraph of section 3.1 (of FBI CBC draft rule) might empower state entities that perform FBI CBCs to not comply: Results of the criminal background check shall be reviewed solely by the member state in accordance with state law.
    - **Response:** The Rules Committee suggests striking the non-substantiative language “in accordance with state law” in Section 3.1 of the FBI CBC draft rule.

For more information, please peruse the [OT Compact Frequently Asked Questions Webpage](#).