

# Managing Challenges in the Criminal History Check Process

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**Agenda:**

| <b>Section</b>               | <b>Time</b>      |
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| Introduction                 | <b>2 minutes</b> |
| Live Session Features        | <b>3 minutes</b> |
| Alternative Search Process   | <b>8 minutes</b> |
| ASP Success Stories          | <b>5 minutes</b> |
| ASP Q & A                    | <b>5 minutes</b> |
| Documentation                | <b>8 minutes</b> |
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| Wrap Up                      | <b>2 minutes</b> |

## Talking Points

### Intro

- In this session, we'll take a look at challenges that may arise in the criminal history checks process and strategies to resolve those challenges. We'll also share some tools that can help you navigate the process and assure your program is compliant with criminal history check requirements.
- Criminal history checks are a critical to protecting the beneficiaries of your program and ensuring your organization retains its grant funds. Failure to comply with the CNCS criminal history check may result in loss of grant funds.
- Please note that all the tools we share today are samples and can be tailored to the needs of your particular program.
- All tools are available for download in the virtual conference library under the criminal history checks tab and will be available on the Knowledge Network following the conference.

### Live Session Features

- We recognize that each program faces unique challenges in the criminal history check process, and thus we want to be sure to address any specific questions you may have. Throughout this live session, chat in your questions as they arise. The facilitator will respond to as many questions as possible at the end of each section of the session.
- Questions not addressed during this live session will be posted to the criminal history checks message boards.

### Alternative search process [Display: ASP Requests]

#### Need an Intro

If for some reason a program cannot comply with the requirements in the Corporation's Criminal History Check regulations or can offer a substantially equivalent procedure in place of a requirement, it may seek approval from CNCS to use an Alternative Search Procedure, commonly referred to as an ASP. Though ASPs are more commonly requested concerning FBI checks, ASPs are also necessary for state checks if an alternate search protocol is required. There are several different types of requests that you can make for an ASP, including:

- Maintain alternative results –
  - If an alternative agency runs checks and provides grantees with only clearance letters rather than full reports (the alternative agency must use CNCS approved sources).
  - If the volunteer/staff check has previously been accepted by a CNCS approved source. For example, Teach for America has criminal history check requirements that align with those of CNCS and thus an existing check for a TFA teacher could be used to enable CNCS service, as long as the individual didn't have a break in employment/service over 120 days.
- Use a substantially equivalent process – if the program believes its procedures differ from but are substantially equivalent to or better than the Corporation's required procedures.
  - **Please note:** ASP requests to use alternative sources for checks are no longer accepted by CNCS. Only sources approved by CNCS may be used.
- Use the departmental order process for the FBI check - a list of pre-approved channelers can be found here: <http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/fbi-approved-channelers>
- Exemptions – Exemptions may be requested for various reasons, such as conflict with state law or an inability to cover the cost. Exemptions are requested using the same ASP process. However, the resulting response from CNCS will not have the longevity of a typical ASP request. Typically, requests for exemptions will need to be requested each year, while ASPs regarding alternate procedures will last multiple years.
  - Example: If a state repository does not conduct FBI checks, CNCS may offer a one year exemption for that check.

Timeline: The ASP process can be lengthy (potentially up to several months) due to the research CNCS needs to complete to ensure a sufficient check is performed. It is a best practice to check in regularly via email with CNCS to stay updated on the progress of your ASP request.

While you await a decision regarding your ASP, staff and/or volunteers can serve as long as they are accompanied by another volunteer or staff member that has already completed the criminal history check process. Accompaniment can cease when results are received from the state(s) check or FBI check. However, it is important to note that if the volunteer or staff member does not ultimately pass the check, any funds used to compensate them for their time cannot be charged to CNCS.

### **Success Stories**

With the right tools and support you can expertly manage your ASP. Let's take a look at a state that did just that.

**Massachusetts example:** Many grantees in the state of MA encountered an issue when they found the designated state repository did not provide FBI checks. Therefore, many grantees were out of compliance with the Criminal History Check Rule. Grantees in the state of MA raised this issue to their state office and were instructed to complete an exemption from the FBI Check requirement.

To provide written documentation that the designated state repository did not provide the FBI Checks, as required by the ASP form, the MA state office coordinated with the MA designated state repository. Grantees obtained a letter from the designated captain in charge stating that the MA State Repository does not provide the FBI Checks. The MA grantees submitted the letter and their request for exemption to the ASP email address and the exemptions were approved by CNCS. This approval signaled that the requirement to conduct an FBI check could be waived for one year. Grantees must complete this process yearly, including requesting an updated letter from the designated state repository stating that it does not provide FBI checks.

During this process, a representative at the state repository was designated as the point of contact for grantees moving forward. Each year, grantees are able to contact this point person directly to see if the repository will be able to provide the FBI check. If not, grantees are then provided an updated letter stating that the repository is not able to provide the FBI check.

This partnership between the MA programs, the MA state office and the repository has allowed MA grantees to complete the exemption process efficiently each year and ensure their programs are compliant.

**New Jersey example:** Many grantees in the state of NJ encountered the challenge that their designated state repository, the NJ State Police, did not provide FBI checks. Therefore, many of the NJ grantees were out of compliance with the Criminal History Check Rule. Grantees in the state of NJ were instructed to complete an Alternative Search Procedure (ASP).

The ASP request requires written documentation from the designated state repository that it does not provide the FBI Checks, however, the designated state repository in NJ would not provide such written documentation. NJ grantees raised this issue to the NJ state office to seek advice.

The NJ State Office called the designated state repository to confirm that it did not provide FBI Checks. The NJ State Office contacted CNCS Headquarters to advise that no NJ grantees would be able to secure written documentation since the designated repository did not provide FBI Checks.

CNCS Headquarters accepted ASPs with documentation of attempts to secure FBI checks from the designated state repository. Based on this guidance, many NJ grantees were able to successfully submit ASPs and use FBI approved channels to conduct their checks.

NJ grantees were able to successfully navigate this challenge through close coordination and communication with the NJ State Office.

### **ASP Q&A**

*Answer participant questions regarding the ASP process.*

## Documentation [Display: Assurances and Authorizations Checklist]

This time we'll start with a success story. When the Pennsylvania state office staff found that grantees in PA were struggling with documenting criminal history checks. To address this issue, one of the PA program offices designed a checklist to store with each volunteer file. The checklist had space to record the dates the criminal history checks were initiated and completed. The checklist was paired with an additional form that each volunteer is required to sign with the following assurances and authorizations:

- authorizes the program to conduct the criminal history check on the volunteer
- noting that the volunteer understands that selection into the program is contingent upon review of the criminal history check results
- noting that the volunteer understands that he/she will have an opportunity to review and challenge the results of the check
- noting that the volunteer understands that he/she must be accompanied by an authorized representative or wait to serve until the criminal history check is completed

This checklist serves as a reminder that the criminal history check process goes beyond initiation of the check. It's critical that you are able to provide documentation not only that all your volunteers have been cleared, but also that you followed all the necessary steps along the way. To help you do so, we've created a similar checklist of items for each volunteer file. The last page of the checklist also includes a resource to help you determine which checks are necessary for each of your staff/volunteers. Please take a moment to review it now.

*[Walkthrough each section of the sample checklist and when to complete it]*

- Verification of applicant identity (includes documentation of ID number)
- Documentation of authorization to perform the check
- Documentation of the necessary permissions to review the check
- Documentation of check initiation and receipt of check results
- Type of documentation required for each check
- Flowchart illustrating which check is required based on date volunteer began service

One item that is not included in this checklist, but is an important part of documentation, is accompaniment. Individuals with pending state or FBI checks (service cannot begin until NSOPW check is complete) who are in contact with a vulnerable population must be physically accompanied at all times by someone who has been cleared for such access. To document accompaniment, be sure to include who did the accompaniment, on what dates, hours, and have the individual who performed accompaniment incrementally sign off attesting to the accuracy of the documentation. A best practice for consistently collecting all of this information is to add a column to your program's timekeeping document for an accompanier to verify that they accompanied the volunteer on that date. As well, you should have policies and procedures clearly describing your accompaniment guidelines and documentation procedures.

Once you implement this checklist system, you'll want to make sure managers are keeping up with their checklists. An effective strategy for doing so is to conduct periodic checklist audits by sampling a few volunteer files and making sure the checklists are up to date.

## Documentation

*Answer participant questions regarding required documentation.*

## Managing Report Issues

### What to do when the background check reveals previous offenses?

Your process for handling checks will vary depending on how your source presents the check results. When you

submit a criminal history check, the source will typically present results in one of two ways:

1. Pass/fail
2. A full list of the individual's record

Pass/fail - For sources that provide a pass/fail determination, you agree to their standards of clearance when you agree to use the source to run your checks. You can at that time add any additional exclusions that you wish if you feel the source is missing a standard that is important to your program. However, these additional exclusions must be documented and communicated to the volunteer in writing. For instance, if your volunteers will be responsible for driving in your program, you may decide to add a DUI as a disqualifying standard. Beyond any additions you make, you'll need to make sure the standards of clearance minimally meet CNCS requirements (matching on FBI and State and disqualification for sexual offenses and murder). Before you begin the check, it is a best practice to share your policies and procedures with the volunteer so they know the criteria they are going to be evaluated against. Once the check is processed, you must comply with the determination of eligibility that is made. Thus, it is important to review the standards of clearance before the check is initiated.

At this point in the process, you'll need to speak with the volunteer and share the check results and your decision regarding their eligibility. If the volunteer takes issue with the results of their check, they can take discuss their results with the source of the check, such as the state repository.

Full list – For sources that provide a full list of the individual's record, the source will not make a determination about the eligibility of the volunteer to serve. Instead, you will be responsible for interpreting the list of arrests and convictions and determining if the volunteer is eligible. Your determination of eligibility needs to be based on your documented clearance policy. This ensures all volunteers are evaluated fairly and consistently. For instance, if you receive check results that include a DUI, you can't use that conviction as reason to disqualify a volunteer unless you have that offense listed as a disqualifying offense in your clearance policy. Additionally, you cannot disqualify a volunteer based on pending charges and you should periodically check on resolution of pending charges. Only a conviction can warrant disqualification.

The list of convictions may include vague terminology that is difficult to understand. To determine if the list includes a disqualifying offense according to your programs clearance policy, you'll need to make sure you fully understand the terms used. A good approach is to reach out to your local police department to get clarity.

At this point in the process, you'll need to speak with the volunteer and share the results of the check and your decision regarding of his or her eligibility. During this conversation, you need to give the volunteer the opportunity to refute the findings. If there is any information in the results that the applicant claims is incorrect, you can decide at that point to reconsider your decision regarding eligibility.

In these conversations, you'll need to refer to your program's clearance policy to determine if the results warrant exclusion from service. As well, be careful to tailor your inquiries about the volunteer's personal history so they are as specific as possible. This will help the volunteer respond directly and honestly. For example, don't ask questions such as, "do you have a record?" The volunteer may not intend to give a false statement in response to this question, but they may not be sure what is considered part of their record or how long their record extends in the past.

- Example of an offense that you may decide to disregard: Criminal history checks may reveal offenses that occurred under laws that have since been altered or offenses that are considered irrelevant, such as a speeding ticket.

### **What do I do if fingerprints can't be read?**

Most importantly, your program should document its efforts to obtain the fingerprints. For instance, the date you took the fingerprints, the organization that was used, and written documentation from the facility stating that the fingerprints were un-readable

The state repository will have a protocol to validate identification and perform a name-based FBI check after several failed fingerprint attempts. The project needs to work with the repository to use such a protocol and then document the process and results.

Outside of the state repository system, there are no FBI sanctioned methods for obtaining a name-based FBI check in lieu of fingerprints.

### **Managing Report Issues Q&A**

*Answer participant questions.*

### **Wrap up**

Thank you for your time and thoughtful questions. Criminal history checks are a critical part of keeping our beneficiaries safe and ensuring your program retains your grant funding.

Please remember to visit [insert booths and other activities] for additional criminal history check discussion and resources.