

# Senior Corps Virtual Conference 2014

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**Session:** National Service Criminal History Checks

**Speakers:** Kinza Ghaznavi, Grants Management Specialist



**This session will begin shortly.**

# National Service Criminal History Checks

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# Live Session Features

## Ask your questions throughout: chat feature

- Throughout this live session, chat in your questions as they arise
- Chat questions will be addressed at the end of the presentation

# **INDIVIDUAL IN A COVERED POSITION**

## **BUDGET**

**Anyone receiving a salary, stipend, living allowance and/or education award is a covered position subject to the National Service Criminal History Check requirements.**

**An individual in a covered position may be paid wholly from federal share, wholly from matching dollars, or from a mixture of federal and non-federal funds.**

**The excess column in a SeniorCorps budget is not considered in determining covered positions for the National Service Criminal History Check requirements.**

**For fixed amount grants you would look at the individuals performing the activities described in the grant application.**



# INELIGIBLE TO SERVE OR WORK

Anyone who **refuses** to undergo the Check is ineligible.

Anyone who makes a **false statement** in connection with a program's inquiry concerning their individual's criminal history is ineligible.

Anyone listed, or required to be listed, on a **sex offender** registry is ineligible.  
(November 23, 2007)

Anyone convicted of **murder** as defined and described in 18 U.S.C. § 1111 is ineligible.\*  
(October 1, 2009)

*\*Although murder became an ineligibility offense in 2009, no one with this conviction can work present day even if they were hired prior to the effective date of the statute.*

# NATIONAL SEX OFFENDER PUBLIC WEBSITE (NSOPW)

APPLIES TO **ALL** INDIVIDUALS IN A COVERED POSITION (BOTH TYPES)

The requirement to conduct the nationwide US Department of Justice National Sex Offender Public Website (NSOPW) Check (<http://www.nsopr.gov/>) became effective with the November 23, 2007 regulations. This is a name based check. This is public information. No fees are charged.

## WHEN

This must be completed (conducted, cleared, documented with dated printout/screenshot) BEFORE the start of service or employment. Individuals in covered positions cannot begin counting hours until this check is cleared.

## HOW

You are required to perform the NSOPW check until all State registries are cleared. The result will indicate whether or not any individual State systems were inoperable during that search. If the check was less than complete, you must re-check the NSOPW to rule out the possibility that the applicant may be registered in the State(s) system(s) that was not connected to the NSOPW system when you performed the first check.

Or you may supplement the first NSOPW check by directly checking the State registry that is down by visiting the state registry website. Do not limit the search by doing the Advanced search. Do not enter a zip code, state or other limiting criteria.

Results of a nationwide NSOPW check is a dated screenshot or print out of the results of the search.

You must document the adjudication and resolve all hits before the start of work or service. That result should be annotated to document who confirmed that any hits are not the same individual as the candidate you are checking.



# STATE REPOSITORY CHECK(S)

These checks must be obtained from the CNCS designated state repository. You must check both the State of residence and the State of service. The State of residence is determined at the time of application.

## WHEN

These checks must be initiated no later than the start of service. Any service hours accrued prior to initiation are ineligible.

[https://www.nationalserviceresources.gov/files/table-of-designated-state-repositories-and-alternates-3-26-14\\_3.pdf](https://www.nationalserviceresources.gov/files/table-of-designated-state-repositories-and-alternates-3-26-14_3.pdf)



# FBI FINGERPRINT CHECKS

Programs must get their FBI fingerprint check through the designated State repository.

## WHEN

Must be initiated no later than the start of service. Any service hours accrued prior to initiation are ineligible.

## DEPARTMENTAL ORDERS (DO)

Anyone following a different method for obtaining the FBI check must submit a formal Alternate Search Procedure (ASP) request to CNCS for approval. For example, the *Departmental Orders method*:

There are two ways to obtain a departmental orders method FBI check. First is to use ink cards to fingerprint an individual and submit an application requesting the individual's FBI rap sheet. The application for this is available on the FBI website. This returns results in about 12 weeks.

The second option is to hire a FBI approved channeler (a type of vendor) to do electronic fingerprinting for the application to the FBI. This returns results in about 24-48 hours.

[https://www.nationalservicerresources.gov/files/memo\\_obtainingfbifingerprintchecks\\_final\\_201402020.pdf](https://www.nationalservicerresources.gov/files/memo_obtainingfbifingerprintchecks_final_201402020.pdf)



# TWO TYPES OF COVERED POSITIONS

## **NO RECURRING ACCESS OR EPISODIC ACCESS**

Episodic access is access that is not a regular, scheduled, and anticipated component of an individual's position.

## **RECURRING ACCESS TO VULNERABLE POPULATIONS**

The ability on more than one occasion to approach, observe, or communicate with, an individual, through physical proximity or other means, including but not limited to, electronic or telephonic communication.

## **VULNERABLE POPULATIONS**

- Children age 17 and under
- Individual aged 60 and over
- Individuals with disabilities

# FINAL RULE

Determine whether the position has recurring access to vulnerable populations or not.

If access is **episodic** or **not** recurring, then for all individuals who started on or after 4/21/2011:

- Component 1: Programs must complete the NSOPW check before the start of work/service.
- Component 2: For all individuals in a covered position, **EITHER** the state (state of residence AND state of service) **OR** the FBI check must be initiated no later than the start of work/service.

If access is **recurring**, then for all individuals who started on or after 04/21/2011 and continued their service past 12/31/2012:

- Component 1: Programs must complete the NSOPW check before the start of work/service.
- Component 2: The State (state of residence AND state of service) check must be initiated no later than the start of work/service.
- Component 3: The fingerprint-based FBI check must be initiated no later than the start of work/service.
- Accompaniment is required while results for component 2 or 3 are pending. Accompaniment can cease if either Component 2 or 3 cleared.

## ACCOMPANIMENT

Accompaniment must be performed while checks are pending. An individual is accompanied when he or she is in the physical presence of a person cleared for access to a vulnerable population. Accompaniment may cease when the results of either the State(s) or FBI component has cleared.

# OVERVIEW OF THE PAST RULES

**November 2007** - The NSCHC applied only to individuals (e.g. grant staff and volunteers/members) in the Foster Grandparent Program, Senior Companion Program and other CNCS funded program with recurring access to vulnerable populations (excluding RSVP).

Programs were only conducting two components – the NSOPW and the State checks (FBI checks could be used to substitute for State checks if desired).

Accompaniment was required while results for State checks were pending.

**October 2009**, the covered positions to which the NSCHC applied expanded to all national service participants receiving a salary, stipend, and/or education award, as well as staff (including new RSVP staff), regardless of contact with a vulnerable population.

Programs were only conducting two components – the NSOPW and the State checks (FBI checks could be used to substitute for State checks if desired).

## **April 21, 2011 – December 31, 2012 (GAP Period)**

Anyone who started on or after this date and completed their service by the end of 2012 needed only two components – the NSOPW and the State checks (FBI checks could be used to substitute for State checks if desired).

[https://www.nationalservicerresources.gov/files/chc\\_effective\\_dates\\_1\\_2\\_14.pdf](https://www.nationalservicerresources.gov/files/chc_effective_dates_1_2_14.pdf)



# EFFECTIVE JANUARY 1, 2013 REACH BACK

1. Those grandfathered in because the rule did not apply to their position and thus never had a State or FBI check must self-certify that they do not have a murder conviction. Grantees must keep that certification in the individual's file. This is not needed if the individual cleared a state or FBI check since 10/01/2009. Programs should check results of those who did undergo a state or FBI check during this period to ensure there were no murder convictions.
2. Those grandfathered in were also required to conduct a nationwide NSOPW if this rule did not previously apply to their position.

## BREAK IN SERVICE

The number of days used to calculate a **break in service** was extended, retroactive to 04/21/2011 from 30 to 120 days. For SeniorCorps this means termination and/or inactive status depending on the definition of these terms in your policies and procedures.

## SUPPLEMENTING CHECKS

If an individual has a change in staff position on or after 01/01/2013 and will be having recurring access to vulnerable populations in their new position then he/she's criminal history check must be supplemented with any missing checks (e.g. the FBI check). This applies even with a break in service less than 120 days



# ASSESSING VENDORS

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Which **component** will you use the vendor for?

Will the vendor use the **correct source**?

Does the vendor **limit data** to 7 years?

Does the vendor maintain the **results**?

<https://www.nationalserviceresources.gov/files/fact-sheet-vendors-final-9-13-12.pdf>

Vendor products may address all or some of the components of the National Service Criminal History Check. If the vendor's product deviates from the National Service Criminal History Check procedures, an ASP is required.

Note: that Social Security searches, Credit reports, Motor Vehicle reports and other common vendor offerings are not relevant to the National Service Criminal History Check. Your organization may choose to purchase these options for other reasons. Subject to state and federal civil rights and nondiscrimination laws, your organization has the discretion to identify additional eligibility criteria based on other offenses.



# ALTERNATE SEARCH PROCEDURE (ASP)

## What to Include in Your Request for an ASP:

Identify the specific element(s) of the requirements that you would vary from.

Describe the alternative process/system you plan to use to conduct a criminal history check.

If prohibited by state law, attach a copy of the statute or prohibition along with a legal analysis from either the Attorney General or legal counsel. Please submit where applicable a rejection letter from the CNCS designated repository.

Perform accompaniment for those with recurring access to vulnerable populations while ASP decision is pending. You may cease accompaniment if the result of either the state check(s) of FBI is cleared.

**Requesting an ASP :** Complete and submit the ASP submission form on the Knowledge Network.  
Email your completed request to [ASPRequests@cns.gov](mailto:ASPRequests@cns.gov) and copy your Program and Grants Officers.



# FBI EXEMPTIONS

## cost prohibitive

- Provide a detailed analysis of costs and burden as they compare to an increase in fees from a 2-component to a 3-component check.

- Submit a legal opinion from your legal counsel or the Attorney General in your State on the Statute prohibiting you from accessing the FBI check and/or a rejection letter from the designated state repository (if applicable).

good cause

prohibited by law

Perform **accompaniment** for those with recurring access to vulnerable populations while decision is pending.

# DOCUMENTATION

- Verify identity** through government-issued photo identification
- Get **written consent** from candidates (staff, Senior Companions, Foster Grandparents) to perform checks
- Document candidate's understanding** that his or her position is contingent on the results of the NSCHC
- When going through a vendor for state checks document that the data is from CNCS-approved sources.
- Document initiation of State(s) and FBI checks** no later than the first day of work or service.
- Document **accompaniment** while checks are pending when service or work involves vulnerable populations.
- Document **receipt date** when check results are cleared for the State(s) and FBI checks.
- Document that you **considered the results** of the check components.
- Maintain the results of the Check components: NSOPW, State(s), FBI\***

<https://www.nationalservicerresources.gov/files/nschc-documentation-checklist.pdf>

# DISCUSSION AND QUESTIONS

## All Things NSCHC

<https://www.nationalservicerresources.gov/national-service-criminal-history-check-resources>

## Effective Dates

[https://www.nationalservicerresources.gov/files/chc\\_effective\\_dates\\_1\\_2\\_14.pdf](https://www.nationalservicerresources.gov/files/chc_effective_dates_1_2_14.pdf)

## Alternate Search Procedure (ASP)

<https://www.nationalservicerresources.gov/files/asp-request-guidance-and-form-3-1-13.doc>

## NSCHC Online Course

[http://learning.nationalservicerresources.org/pluginfile.php/27536/mod\\_resource/content/1/chc/chc.htm](http://learning.nationalservicerresources.org/pluginfile.php/27536/mod_resource/content/1/chc/chc.htm)

## Questions

[CriminalHistoryCheckQuestions@cns.gov](mailto:CriminalHistoryCheckQuestions@cns.gov)

