

**NATIONAL SERVICE CRIMINAL HISTORY CHECK  
FREQUENTLY ASKED QUESTIONS – Updated December 11, 2014**

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The National Service Criminal History Check (NSCHC) is a screening procedure established by law to protect the beneficiaries of national service. Since November 23, 2007, the Corporation for National and Community Service (CNCS) regulations have required grantees to perform the NSCHC on people with recurring access to a vulnerable population. Vulnerable populations include children 17 years of age or younger, persons age 60 and older, or people with disabilities.

Starting October 1, 2009, our regulations require grantees to check any person receiving a living allowance, stipend, national service education award, or salary through a program receiving CNCS funds, regardless of their level of contact with a vulnerable population.

Starting January 1, 2013 our regulations require grantees to conduct and document a NSCHC that includes a fingerprint-based FBI criminal history check on people in covered positions who begin work, or who start service, on or after April 21, 2011, and who have recurring access to vulnerable populations. Individuals in covered positions include Senior Companions (SCP), Foster Grandparents (FGP), AmeriCorps State and National participants, and other participants, volunteers, or staff funded under a CNCS grant. The effective date of the October 5, 2012 published rule is January 1, 2013.

These FAQs will be updated periodically. Please check back for updates. You can also subscribe to the list entitled: Criminal History Checks for National Service Programs on the CNCS home page at <http://www.nationalservice.gov/> by clicking next to the red envelope at the middle top of the page, where it says *Sign up for email updates*.

**Useful Links**

See 45 C.F.R. § 2540.201 [[https://www.nationalserviceresources.gov/files/fedregister\\_final\\_rule\\_oct\\_5\\_2012.pdf](https://www.nationalserviceresources.gov/files/fedregister_final_rule_oct_5_2012.pdf)].

## National Service Criminal History Check

### 1.1 What is a National Service Criminal History Check (NSCHC)?

CNCS regulations require its grantees to conduct an NSCHC on people who work or serve in covered positions. A covered position is a position in which a person receives a living allowance, stipend, education award, salary, through a national service program.

All NSCHCs must include two components:

- A nationwide name-based check of the National Sex Offender Public Website (NSOPW). The NSOPW is a centralized system that identifies people who are registered as sex offenders in states, territories, or with many federally recognized Tribes
- Either a name- or fingerprint-based search of the statewide criminal history registry in the candidate's state of residence and in the state where the person will serve or work; OR a fingerprint-based FBI check.

For people with recurring access to vulnerable populations, programs must conduct an NSCHC with three components:

- A nationwide name-based check of the NSOPW
- Either a name- or fingerprint-based search of the statewide criminal history registry in the candidate's state of residence and in the state where the person will serve or work; AND
- A fingerprint-based FBI check.

### 1.2. What is the definition of vulnerable populations?

Vulnerable populations include children age 17 or younger, persons age 60 and older, and/or people with disabilities. People with disabilities are defined as having a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

### 1.3. What is the definition of recurring access?

Recurring access is defined as “the ability on more than one occasion to approach, observe, or communicate with a person, through physical proximity or other means, including but not limited to, electronic or telephonic communication.” (45 C.F.R. § 2510.20).

### 1.4. What is episodic access?

Recurring access is typically a regular, scheduled, and anticipated component of a person's service activities. Episodic access is typically NOT a regular, scheduled, and anticipated component of a person's service activities. If access to vulnerable populations is episodic, the grantee is not required to conduct both the state criminal history check component and the fingerprint-based FBI criminal history check component of the NSCHC. They can opt to conduct either the state or FBI check. A grantee does not need CNCS approval to use the “episodic access” exception to the NSCHC requirements.

Episodic access is not defined by a specific number of contacts. In other words, if a grantee does not anticipate that a person will have access to vulnerable populations; the NSCHC requirements will not apply after access occurs some specific number of times, but will apply once the access becomes regular, scheduled and anticipated.

If episodic access becomes unexpectedly regular or frequent, a grantee should re-evaluate its initial determination of episodic access and take appropriate action. In the majority of cases, it will be clear whether or not access to vulnerable populations is a regular, scheduled, and anticipated component of a person's service activities. Nevertheless, CNCS recommends that grantees specifically address contact with vulnerable populations in each position description, service agreement, or similar document describing a person's service activities.

### 1.5. Is a background check the same as an NSCHC?

No. Background checks can mean many different things and have many different components, many of which may not be relevant to the NSCHC. For example, credit reports and interviews with personal references are examples of background checks that are not relevant to the NSCHC.

### 1.6. What is the connection between the NSCHC and our regular screening policies and procedures?

The NSCHC is only part of the overall applicant screening process which every grantee must develop. Grantee policies must, at minimum, include screening methods and eligibility criteria. Additionally, the applicant screening process must address how

you will handle any circumstances unique to your program. This process may include interviews and personal reference checks. Grantees may develop written policies and procedures that meet CNCS requirements and also address circumstances unique to your program. Grantee policies that do not reflect the minimum standards and requirements require an approved ASP.

### **1.7. I am being told that my organization is not eligible to receive a criminal history check because we are clearing people for employment. What do I do?**

You should provide the following explanation: An NSCHC is not a check to approve employment; it is to clear a person to serve in a national service grant program. You may employ someone but they may be prohibited from serving in a CNCS grant program. If you continue to be blocked from access to the required checks, contact CNCS regarding an ASP.

### **1.8. When the state registry offers name-based or fingerprint-based check options for searching for state criminal history information, what should I consider when making a choice?**

Either check is acceptable as long as you ensure that the type of check you select is a statewide, all-offense, all-records search. Some states offer abbreviated checks that return limited types of offenses (e.g. felony-only searches) or search only a limited number of records. Such searches are not acceptable.

Name-based record checks use biographic information (name, date of birth, gender, and social security numbers). This is not the most reliable way of obtaining a criminal history record. Name-based checks can result in false positives (records that are falsely attributed to the person) or false negatives (records belonging to the person are not identified), consuming staff time to verify. Fingerprint-based searches use unique fingerprints and are the most reliable method of obtaining criminal history records.

## **2. Programs Covered by the Law and Regulations**

### **2.1. Which grantees, staff, and national service participants are required to comply with the NSCHC requirements?**

All programs receiving grants under CNCS's national service laws and people receiving either a salary, stipend, living allowance, or earning a national service education award through those programs, are covered by the NSCHC rules. Programs that have people in covered positions include, but are not limited to:

- AmeriCorps State Grants, including full-cost fixed amount grants
- AmeriCorps National Grants, including full-cost fixed amount grants
- AmeriCorps Planning Grants
- Foster Grandparent Program Grants (including participants receiving stipends and fixed cost program staff)
- Learn and Serve America Grants
- Non-profit Capacity Building Grants
- Martin Luther King Day of Service Grants
- RSVP grant-funded staff (does not include RSVP volunteers)
- School Turnaround AmeriCorps Grants
- Senior Companion Program Grants (including participants receiving stipends and fixed cost program staff)
- Senior Demonstration Program Grants
- September 11th Challenge Grant
- Social Innovation Fund Grants
- Summer of Service Grants
- VISTA grant funded staff (VISTA volunteers undergo checks conducted by CNCS)
- Volunteer Generation Fund Grants

## **2.2. What programs and people are not required to comply with NSCHC requirements?**

A few grant types, because they do not fund an activity meeting CNCS's definition of a program, are not covered. Also, some people are not covered, because they do not receive the types of payment specified in the law.

Non-covered grant types:

- AmeriCorps State Commission Support grants

Individuals not required to conduct a NSCHC:

- Staff of AmeriCorps Fixed Price Education Award Programs (EAPs)
- Staff paid with indirect costs
- Recipients of Summer of Service awards
- RSVP volunteers
- Non-stipended Senior Companions
- Non-stipended Foster Grandparents
- VISTA volunteers
- Citizens who benefit from service, but are not providing service (a/k/a beneficiaries)
- Contractors delivering goods or services to a program for a fee
- Community volunteers with no affiliation or attachment to the program, and no financial remuneration

## **2.3. Do the NSCHC requirements apply to national service participants in EAPs, full-cost fixed-amount programs, and other fixed-amount grants?**

Yes. All fixed-amount grant programs must conduct checks on members because members receive National Service Education Awards.

## **2.4. Do the NSCHC requirements apply to staff of EAPs, full-cost fixed-amount programs, and other fixed-amount grants?**

EAP and Professional Corps fixed-amount programs are not required to conduct checks on their employees or partner's staff because the small amount of Federal support per member does not establish a nexus between the Federal assistance awarded and the payment of salaries using grant funds. However, the funding provided to a full-cost, fixed-amount program is sufficient to contribute towards the full range of program costs including salaries. Therefore the NSCHC requirements apply to individuals performing program activities under a full-cost fixed amount grant. Examining the funded grant application narrative wherein the program's activities are described will assist in identifying covered positions. Please note this applies to SeniorCorps fixed amount grants too. Please see FAQ 2.5. <https://www.nationalserviceresources.gov/files/faqs.pdf>.

## **2.5. Do the NSCHC requirements apply to Senior Corps fixed-amount grants?**

Yes, Senior Corps fixed amount grantees must conduct checks on Foster Grandparents and Senior Companions who receive a stipend under the grant. In addition, while fixed amount grants do not have an approved budget, they must also conduct checks on staff. You must use your CNCS funded grant application to identify staff that are performing program activities under the grant and must therefore undergo a NSCHC.

## **2.6. Does the requirement to conduct a NSCHC pass through to sub-recipients and partners (e.g., sub-grants; stipends; MOUs, etc.)?**

Yes, as with all grant program provisions, law and regulations, the requirement to perform the NSCHC applies to any subrecipients or partners implementing a covered national service program. This requirement applies no matter how large or small the dollar amount of the sub-award, or whether the costs are covered by federal or non-federal matching funds.

## **3. Individuals Subject to a National Service Criminal History Check**

### **3.1. What is a Covered Position?**

If you are serving or employed by a national service program and receive a living allowance, stipend, national service education award, or salary your position is covered, regardless of:

- Type of service
- Access to vulnerable populations
- Whether a salary or stipend is paid with grant funds or match.

See FAQ 2.3, 2.4, 2.5 for covered positions in fixed amount grants.

### **3.2. How can we determine if a staff person or national service participant is covered or not?**

You can most easily identify covered people using the on the budget or expenditure report test. Covered positions are usually, but not always, listed on the program's approved grant budget. If the position is listed on the budget, it passes the "on the budget" test and is covered. Sometimes a covered position may be added to the budget without requiring a formal budget amendment. In this case, covered positions are identified by using the expenditure report test. If the cost of the payment is included in the federal or matching program costs reported for the program or its sub-awards on the Federal Financial Report, then the person is in a covered position.

Please note: That Senior Corps grants have an excess column on their budget. Individuals receiving a salary or stipend exclusively from this column are not covered positions for the purposes of National Service Criminal History Checks. If, however, the same individual received any percentage of salary or stipend from the federal or match share of the budget they are a covered position and must undergo the appropriate checks. If monitored, it is the responsibility of the grantee to produce both past and current documentation to show that no federal or match funds have been spent to support the volunteer and/or employee.

### **3.3 How can we determine if a staff person or national service participant in a fixed-amount grant with no budget or FFR is in a covered position?**

If your program is exempt from submitting budgets or financial reports, examine the funded grant application narrative that describes program activities. Staff or national service participants carrying out the grant-funded activities or administering the program are in covered positions.

### **3.4. How do we know if our employees are subject to the NSCHC requirements?**

The NSCHC requirements cover employees whose positions are associated in part or in whole with a CNCS grant, either as CNCS share or the grantee share. Therefore, not only are your direct employees covered, but so are your partners' and sub-awardees' employees if they are assigned to perform program activities and you are including their pay as matching funds.

To identify employees who are covered, determine if he/she is or will be receiving compensation (e.g., salary, wage, living allowance, stipend) for performing program activities. Keep in mind that there are a variety of ways that costs may be listed, including single positions, grouped position types, or lump-sums for sub-award-supported activities. See FAQ 2.3, 2.4, 2.5 for covered positions in fixed amount grants.

### **3.5. What NSCHC is required for a person in a covered position whose access to vulnerable populations is limited to people who, themselves, are in a covered position?**

The NSCHC three component requirement for people with recurring access to vulnerable populations applies to the person providing service **to** vulnerable populations, not providing service **with** vulnerable populations. Only the two component NSCHC is required if the person's recurring access to vulnerable people is limited to those who are, themselves, serving in covered position, including RSVP staff who does not have recurring access to the beneficiaries served by the RSVP volunteers' service. Grantees must make an informed decision about whether a person in a covered position is providing service to a vulnerable population. The grantee should ask, whether a reasonable person, based on the totality of the circumstances, would determine that the population served by the person was a vulnerable population.

### **3.6. We pay our staff using an hourly wage, are they therefore exempt from the NSCHCs because they do not receive a salary?**

No. For the purposes of the NSCHC, an hourly wage is equivalent to a salary. A person who receives an hourly wage directly attributable to the grant must have the NSCHC conducted.

### **3.7. Why don't the NSCHC rules cover community volunteers who are recruited by national service grantees?**

The NSCHC only applies to people who receive a national service education award, stipend, living allowance, or salary from CNCS. Community volunteers do not receive this kind of compensation.

### **3.8. What is unique about checks required for participants in the VISTA and NCCC programs?**

NCCC is a federally-conducted program, where the selection of participants is made by federal personnel and the internal screening procedures are conducted through an arrangement with the U.S. Office of Personnel Management. Therefore, sponsor organizations and site placements are not required to perform the NSCHC on NCCC participants.

VISTA is also a federally-conducted program where federal personnel retain the authority to approve the selection of participants and criminal history check screening procedures are performed by CNCS personnel. Therefore, VISTA sponsor organizations are not required to perform the NSCHC on VISTA participants.

However, programs funded through a VISTA program grant are subject to the criminal history check rules. The grantee must perform the NSCHC on grant-funded employees working for the program. Such as employees of the VISTA sponsor who serve as VISTA program supervisors and receive part or all of their salary from the VISTA program grant.

**3.9. The NSCHC requirements for people in covered positions with recurring access to vulnerable populations apply to those 18 and older. How do we apply this to minors who are not 18 at the start of service, but who will turn 18 during their term of service?**

Programs must conduct the NSOPW, the state check(s), and the FBI check components of the NSCHC for a person who will turn 18 during their term of service if the person in the covered position will have recurring access to vulnerable populations. Accompaniment is required while state check(s) and FBI check components are pending. For guidance on accompaniment, please read FAQ 7.16, 7.17, 7.18 and 16.1. For guidance on the timing of the checks, please see FAQ 3.21.

For individuals who will not be 18 or older during their term of service, you are required to conduct the NSOPW and either the State check(s) or the FBI check components. If these individuals will have recurring access to vulnerable populations, accompaniment is required until the State check(s) or FBI check component (whichever you chose to do) has been cleared.

If state law prohibits you from conducting checks on individuals under 18, you must request an ASP from CNCS.

**3.10. Do we have to conduct the NSCHC on people who are living outside of the United States at the time they apply for a covered position?**

Yes. In addition to an NSOPW check, the person's last state of residence in the United States, as well as the state where the program operates, must be checked. If the person never lived in the United States, then only the state where he or she will be serving is required to be checked.

**3.11. Do we have to conduct the NSCHC on administrative staff whose time is allocated to the program indirectly?**

No. You are not required to conduct the NSCHC on staff whose time is allocated to the program as part of an indirect cost rate pool or similar agreement. These people hold positions that are not identified on the grant budget, and their work is of a generic, indirect nature usually serving the entire organization. However, grantees are encouraged to develop a prudent criminal history check policy addressing indirect cost pool administrative staff appropriate to their program design and populations

**3.12. Is a NSCHC required of contractors?**

In most cases, no. Consultants or contractors are not subject to NSCHCs if they do not receive a salary through the program. However, see the next FAQ 3.13 for Social Innovation Fund programs.

**3.13. Are contractors in the Social Innovation Fund program covered positions?**

SIF programs will have covered and not covered positions among their contractors as a result of their program design. Contractors performing program activities such as client services (transportation, training, peer navigation, patient education and support, mobile engagement teams, etc.) are covered positions for the purpose of the NSCHC. Contractors providing generally administrative services that are not central to the program supported under the grant are not covered. SIF grantee program staff must make an assessment of the assignment of the contractor to determine if the contractor will perform program activities. If you need further assistance in making the determination you should contact your SIF program officer.

**3.14 Are contractors or subgrantees in the Volunteer Generation Fund (VGF)'s mini-grants covered positions?**

Volunteer Generation Fund programs may have both covered and not covered positions among their contractors and subgrantees as a result of their program design. Contractors or subgrantee staff performing program activities leading to volunteer generation (positions that are leading volunteer recruitment and management, training of nonprofit staff on recruitment, etc.) are covered positions for the purpose of the NSCHC.

Contractors and subgrantee staff providing general services that are not central to the program and volunteer generation (web design, PR and media functions, etc.) supported under the grant are not covered.

VGF grantee program staff must make an assessment of the assignment of the contractor or subgrantee to determine if the individual will perform program activities. If you need further assistance in making the determination you should contact your VGF program officer.

**3.15. Does the requirement to conduct a NSCHC on staff apply to state commission staff?**

Usually, no. Because the intent of the law is to establish requirements at the program operation level and commissions usually do not directly operate or assign staff to perform national service program activities, commission employees are usually not covered positions. However, commission staff may require a NSCHC if assigned to perform program activities. This guidance applies to a state commission regardless of whether the commission is a state governmental entity or an independent, incorporated non-profit.

**3.16. What about employees of partner organizations with staff who supervise members or volunteers?**

You must apply the same test used to identify employees working in covered positions to your partners' employees. If the federal or grantee matching share of your grant is part of the salaries paid to these people, then they are working in covered positions and must have a NSCHC. If a partner's employees are not identified in the grant budget and their associated compensation is not claimed as matching share expenditures, then the supervisors are not in covered positions. Please see FAQs 2.4 and 2.5 for fixed amount grants.

**3.17. Our program design involves job training and job creation, and we pay wages to people who are in training and initial phases of gainful employment. Are these beneficiaries of the program covered?**

No. Even though the beneficiaries receive a form of financial benefit as part of the program's design, the positions are not covered because the benefit is the result of securing employment, which is a program outcome rather than a program activity. A person who receives some financial benefit through a national service program but who is not otherwise engaged in program activities is not considered to be in a covered position.

**3.18. Should my program perform checks on people who are otherwise not required to have the NSCHC? Will my grant cover the cost?**

Your program may choose to conduct NSCHCs on people in non-covered positions as an effective risk management tool. You may include this as a program operating cost or volunteer support expense in your grant budget proposal.

**3.19. What happens when someone leaves one program and begins service in another?**

If a participant or employee leaves a grantee or subgrantee program and begins service with a different grantee or subgrantee program, with or without a break in service, the program accepting the employee or participant must conduct a new NSCHC.

For grantees with multiple programs, you do not have to conduct a new NSCHC on a person unless there is a break in service exceeding 120 days or the person is moving from a covered position without recurring access to vulnerable populations to a covered position with recurring access to vulnerable populations. Changing service site locations without a break in service greater than 120 days does not trigger the requirement for a new check.

**3.20 What happens when a Senior Corps project relinquishes a grant and it is awarded to a replacement sponsor?**

When a Senior Corps sponsor relinquishes a grant and that grant is awarded to a replacement sponsor, the volunteers' criminal history checks may be transferred to the new sponsor along with the volunteer files. The new sponsor is not required to recheck the volunteers. The new sponsor is, however, responsible for ensuring that the checks that were conducted comply with the applicable regulations.

**3.21. When must programs conduct the NSCHC?**

A program must conduct the NSCHC the first time a person is a candidate for a covered position. The results of the NSOPW must be documented and reviewed prior to the person beginning work or starting service. A person may not be hired or enrolled, or begin service or employment, without first having cleared the NSOPW component of the NSCHC. For participants who are serving a consecutive term of service within the same program, and are moving from a position with access to vulnerable populations, the NSCHC components for people serving vulnerable populations must be added to their existing cleared criminal history check. A consecutive term of service means that there is no break in service exceeding 120 days.

The criminal history information components (State checks and FBI checks) of the NSCHC must be initiated no later than the start of service or work.

**3.22. If I conduct the NSCHC, then the applicant defers service for a year, do I have to conduct a new NSCHC?** If a program design includes deferring or delaying the start of service as a normal option, candidates who have been selected and have cleared their NSCHC may defer or delay their start of service without undergoing a new NSCHC. Service delay or deferral is permitted up to one (1) year, but the approved program design must include this option. CNCS recommends that programs develop a written policy on how to handle the NSCHC for people who defer service.

**3.23. Our program receives thousands of applications for a few hundred positions. Performing NSCHCs on everyone who applies for a position or to serve can be very burdensome and expensive. Is there a better way to manage this workload?** You are only required to conduct the NSCHC on suitable candidates. Therefore, if you receive a large volume of applications, but screen many of them out as unsuitable for other reasons (e.g., unqualified, incomplete applications, not eligible due to citizenship, etc.), you may perform a NSCHC on only the candidates to whom you intend to make a conditional offer for a covered position. Your program's NSCHC policy and procedures should identify the point at which applicants will be checked.

**3.24 When must I supplement checks?** For individuals who serve consecutive terms of service it is not necessary to redo the NSCHC if the break in service does not exceed 120 days and if the original check is a compliant check for the covered position in which the individual will be serving. However, if an individual originally does not have recurring access to vulnerable populations, but will have access in the new position, the grantee must conduct additional required checks. You must retain documentation of the original check results. This applies to individuals whose service began on or after April 21, 2011 and changed positions after 1/1/2013.

#### 4. National Sex Offender Public Website

##### 4.1. How does the NSOPW check work?

The NSOPW is an Internet-based system operated by the U.S. Department of Justice. The system gathers data from all participating state-level sex offender registries plus those operated by Guam, Puerto Rico, the District of Columbia, and Tribal Governments. The NSOPW is also known as the National Sex Offender Public Registry, NSOPR (<http://www.nsopr.gov>).

##### 4.2. May I use Advanced Search on the NSOPW website to search for particular states?

You must conduct a nationwide search of the NSOPW. A standard search provides nationwide data. Do not use the Advanced Search feature, which limits the geographic scope of the search.

##### 4.3. If the FBI check captures crimes that are also identified on the sex offender registry, why is CNCS requiring separate checks of the NSOPW?

The National Sex Offender Public Website produces immediate results while it may take several weeks or more to receive the FBI results. In addition, states are only required to report serious offenses to the FBI. Therefore, it is possible that a person could be convicted of a crime and required by a state court to register on that State's sex offender system but not be entered in the FBI's fingerprint database as having committed a sex offense.

##### 4.4. What do I do if I find a person listed on the NSOPW who has the same name as an applicant?

In these situations, you must conduct a more in-depth inquiry to determine whether the person who appears on the NSOPW is your applicant or is someone with the same name. Compare the registered offender's photograph from the NSOPW to the candidate's photo identification or check in person. The statewide criminal history search will also provide helpful information to determine whether or not the candidate is the person on the registry.

##### 4.5. Do I need to check all names that the person has ever gone by, for example, a maiden name?

No, you are only required to check a person's current legal name, as shown on their government identification. Of course, it is prudent and easy to check any other names that the person has used.

#### **4.6. How do I document an NSOPW check?**

You must retain a record of the NSOPW search and associated results either by printing the screen(s) or by some other method that retains paper or digital images of the NSOPW checks, inclusive of the date record for when the search was performed. Please see Blanket ASP section for more on vendor search for the NSOPW.

#### **4.7. What steps should I take if I discover that a state's sex offender registry site is inoperative when I am conducting the NSOPW check?**

You are required to perform the NSOPW check until all state registries are cleared. The result will indicate whether or not any state systems were inoperative during that search. If the check is not complete, you must re-check the NSOPW before the person starts service 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. You may also supplement the first NSOPW check by checking the state registr(ies) that are out of service. You should pay special attention to the applicant's state of residence and state of service.

### **5. Statewide Criminal History**

#### **5.1. How do I find out which statewide criminal record repository/repositories to check?**

CNCS has designated specific registries in each state and most territories. See <https://www.nationalserviceresources.gov/national-service-criminal-history-check-resources> for a list of CNCS-designated state repositories and alternatives.

#### **5.2. We operate a nationwide program that places people in many states. Must we check each person against their state of residence in addition to every state in which we operate?**

Nationwide programs do not need to check more than two statewide repositories for a candidate. You must check the statewide repository for the state where the applicant resided upon application and the statewide repository for the state where the person will be assigned to work or serve.

#### **5.3. How far back do state repositories maintain data and how many years must I check?**

You must obtain data as far back as the designated statewide criminal history repository provides criminal history information. Many for-profit vendors limit the data that they provide, even if obtained from the designated repository, to the last seven years to ensure that they do not violate state laws that limit the release of criminal history check information for employment purposes. Such searches do not meet CNCS's requirements.

#### **5.4. Does an FBI check satisfy the state criminal registry check requirement?**

Sometimes. For people in covered positions who were hired or enrolled prior to April 20, 2011, an FBI fingerprint check will satisfy the state criminal registry record check. On and after April 21, 2011, whether or not the fingerprint-based FBI check satisfies the state criminal registry check depends on whether the person in the covered position has recurring access to vulnerable populations.

If the person does have recurring access to vulnerable populations, then the fingerprint-based FBI check must be obtained in addition to the state check(s). If the person does not have recurring access to vulnerable populations, a fingerprint-based FBI check will satisfy the state check(s) requirement. An FBI check does not satisfy the requirement to search the NSOPW.

### **6. Federal Bureau of Investigation Criminal History Records**

#### **6.1. How do I obtain the FBI check?**

The required method for obtaining the FBI check is through the CNCS-designated state repository. If the repository does not offer the FBI check please see FAQ 6.2 for the departmental orders method option or section 11.1 for a time limited Exemption

## **6.2 What are Department Orders (DO) FBI checks? Do I need an ASP for this?**

If you are requesting checks directly from the FBI you are using the departmental orders (DO) method. Yes, an ASP is required unless you fall under the blanket ASP described in section 16.

See the instructions on the FBI website: <http://www.fbi.gov/about-us/cjis/criminal-history-summary-checks/submitting-a-criminal-history-summary-request-to-the-fbi>.

DO checks do not link an individual's name to the prints that were screened and results are returned to the individual or designated third party. For this method, you must ensure chain of custody. One way is to ask that the individual open the result in front of a selecting official for your program.

If no Criminal History Summary is on file, the result will indicate that there is no prior arrest data on file at the FBI for the fingerprints submitted. If there is a Criminal History Summary on file, the individual will receive a summary or "rap sheet."

## **6.3. Is there any news about an agreement with CNCS and the FBI to offer National Service participants or programs free or reduced price checks?**

There is no agreement between CNCS and the FBI to provide national service participants or grantees with free or reduced-price checks.

## **6.4. Are we allowed to negotiate with state and local law enforcement to obtain checks at reduced cost?**

We have been informed that in some cases programs have been able to negotiate with state and local law enforcement to help them obtain checks at reduced cost, and encourage grantees to initiate these discussions.

## **6.5. What does it mean to adjudicate an FBI criminal history check?**

The FBI will only send results to an Authorized Recipient (AR), and those ARs are not authorized to provide others with the source records also known as "rap sheets." Instead, they adjudicate the records by examining them for the types of offenses that you are looking for. Therefore, programs must either determine the adjudication criteria used by the AR or establish an adjudication agreement with an AR, to ensure that convictions for offenses which would make a person ineligible for the program are identified.

## **6.6. May I have CNCS's Originating Agency Identifier (ORI) number to give to my state repository?**

CNCS does not have an ORI number. ORI numbers are issued to states, not to federal agencies.

In an October 31, 2011 memorandum, the FBI advised all state repositories that they must designate either an existing ORI number to classify NSCHCs under the Serve America Act, or request a unique ORI number form from the FBI to use for NSCHCs <https://www.nationalserviceresources.gov/files/fbi-memo-to-state-repositories-on-serve-america-act-oct-31-11.pdf>.

## **7. How do we conduct a NSCHC?**

### **7.1. What steps are required to conduct the NSCHC?**

The regulations require that you:

- Verify identity against government photo identification
- Obtain written authorization from the person to perform the check
- Document understanding that selection is subject to the checks
- Determine the types of checks required and from where they are to be obtained;
- Pay for the checks
- Perform the NSOPW check before service/work begins
- Initiate the criminal history information check(s) no later than the start of service/work

- Provide opportunity for review of findings
- Keep the information confidential
- Accompany those with pending checks when in contact with vulnerable populations
- Maintain the results of the checks
- Document that you verified identity and conducted the required checks
- Document that you considered the results of the checks.

Any variance from the required procedure requires CNCS approval of an ASP.

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

### **7.2. What does the term gap period refer to?**

It refers to the period of time between April 21, 2011, and December 31, 2012 during which the requirements of 45 C.F.R. § 2540.203(b) [[https://www.nationalservicerresources.gov/files/fedregister\\_final\\_rule\\_oct\\_5\\_2012.pdf](https://www.nationalservicerresources.gov/files/fedregister_final_rule_oct_5_2012.pdf)] was effective.

### **7.3. What is special about the gap period?**

Individuals who started service on or after April 21, 2011 require the NSOPW and either the state registry component OR the FBI component, not both, if they have recurring access to vulnerable populations and if they completed their service before January 1, 2013.

### **7.4. How far in advance of participation in a program should we conduct the search?**

Programs may start conducting the NSCHC from the point of application to when the candidate begins to work or serve in a National Service program. The regulations require the NSOPW component to be performed **before** the start of service/employment, and the criminal history search(es) **initiated** no later than when they are enrolled or hired to begin service/work.

### **7.5. What is the definition of “initiating” the criminal history search?**

Initiating the criminal history search is one step more than getting permission to conduct the checks. This could, for example, include fingerprinting, mailing requests to obtain checks to the state repository, or having official forms for obtaining the required checks filled out by candidates. You must be able to document how and when checks were initiated. You must have policies and procedures outlining how you initiate checks and apply them consistently.

### **7.6. Can we use pre-existing background checks?**

You may use background checks performed under standards other than those specified by CNCS if you obtain approval for an ASP from CNCS. If your program routinely encounters candidates with pre-existing checks (e.g., teachers who have already had a criminal history check as part of their state licensing), you may describe the circumstances in a written request for consideration.

### **7.7. Some of our employees have not been in covered positions but we conducted checks on them anticipating they might one day be assigned to such duties. Do we have to re-check them once they are officially assigned?**

If you performed a compliant check on or after November 23, 2007, there is no need to perform a new check if that person starts working in a covered position as long as he or she has not had a break in employment since the check was performed. You are required to maintain the results of the check.

### **7.8. Do we have to conduct a NSCHC every year for each participant?**

No. The NSCHC is required only once for any person who applies to work or serve in a covered position. If there is a break in service greater than 120 days, then the entire NSCHC must be performed again.

### **7.9. Does administrative leave, sick leave, summer breaks, or not actively working with a client constitute a break in service?**

No. A break in service means that a person is no longer providing service through or receiving salary from a program. Temporary interruption of work or service without termination of employment or expiration of the agreement under which

service is being provided is not a break in service.

#### **7.10. How do I verify the identity of an applicant?**

You must require the applicant to produce a government-issued photo identification card.

#### **7.11. What types of documents are considered to be government-issued photo identification cards?**

Government-issued photo identification cards include, but are not limited to, state drivers' licenses, non-driver photo IDs issued by state Department of Motor Vehicles, and federally-issued photo IDs, including official passports or a Native American Tribal ID from a federally-recognized tribal government.

#### **7.12. The regulations require us to check *“the state in which the person resides at the time of application.”* To comply, do we check the state for the candidate's legal residence or home of record, or where they physically lived when they applied to serve?**

The state where a candidate resides is the location that the person considers his or her place of residence at the moment in time that he or she applies to serve or work. Generally, that will also be the candidate's home of record and legal residence, but it may not be. There is no measure of how long the person has resided at a location that a program is required to validate to establish the correct state of residence to check. Even a single day as a resident meets the test for place of residence. Programs may mitigate risk by also checking candidates' legal residence or home of record, but to exclusively use some other criteria the program should seek a written approval from CNCS.

#### **7.13. What state or states must we check for a college student who is attending school and living in a state that is not his or her normal residence?**

A person applying to serve or work who is enrolled full-time in college is deemed to be residing in the state where he or she lives for the purpose of attending the school without regards to whether or not that home is on- or off-campus, and whether or not that home is in the same state as the college is located. Programs may not opt to use any other basis for identifying the student's residence state, e.g., such as the student's family home. To use any other criteria to determine a college student's state-of-residence requires CNCS approval of an alternate search procedure (ASP). The state to check does not change because a student is on semester or summer break temporarily residing elsewhere, and there is no test needed to measure duration of residence while attending school.

#### **7.14. What are the consequences of non-compliance with the NSCHC requirements?**

In addition to incurring potential liability, CNCS grantees who do not comply with the requirements risk loss of CNCS funding and disallowed costs attributable to the people on whom checks were not performed. Further, if a grantee enrolls or hires a person who should have been deemed ineligible, CNCS will disallow costs attributable to the ineligible person, including the Education Award.

#### **7.15. Why doesn't the rule prohibit a person from serving until the criminal registry results are received?**

While the rule prohibits the start of service or employment until a person has been checked against the NSOPW, because statewide and FBI criminal registry check results often take weeks or longer to receive, the rules do not prohibit a person from serving/working while those checks are pending. However, the person may not have unaccompanied access to vulnerable populations while waiting for the results of the state or FBI criminal registry checks. Individuals with pending checks must at all times be in the physical presence of someone who has been cleared for such access.

#### **7.16. What is accompaniment and how do we document it occurred?**

A person is accompanied when he or she is in the physical presence of a person cleared for access to a vulnerable population. One possible way to document accompaniment is to indicate on the covered person's timesheet who accompanied during the access, on what dates and hours, and have the person who performed the accompaniment incrementally sign off attesting to the accuracy of the documentation. You should have policies and procedures clearly describing your accompaniment guidelines and documentation procedures.

#### **7.17. Must the person providing accompaniment have NSCHC clearance, or would some other type of clearance be accepted?**

An employee or representative of a placement site may provide accompaniment if that person's clearance was established

under the placement site's rules. For example, if a participant is to serve in a nursing home, accompaniment can be provided by any staff the nursing home has cleared for access. Parents and guardians of the individual in a vulnerable population may also provide accompaniment as appropriate for the program design. If the person providing accompaniment is a covered position on a CNCS grant then they must be cleared by CNCS NSCHC requirements in order to be qualified for access and serve as an accompanier.

**7.18. Does a person in a covered position need accompaniment if the NSOPW check and one of the other checks (either state(s) or FBI) result has been received? Must we wait for the results of all NSCHC components to end accompaniment?**

Accompaniment is required for people in covered positions with recurring access to vulnerable populations until one of the other check results have been received. Please see Blanket ASP section for guidance on Accompaniment.

**7.19. What if an applicant refuses to consent to an NSCHC?**

An applicant who refuses to consent to the NSCHC is not eligible to serve in a covered position.

**7.20. What if an applicant makes a false statement regarding his/her criminal record?**

A false statement made in connection with an NSCHC disqualifies the person to work or serve in that national service program. Programs collecting criminal history information directly from the applicants are encouraged to clearly explain to applicants the consequences of a false statement.

**7.21. If we de-select a person for an AmeriCorps position based on criminal history, can we refill that position?**

The refill policy applies. Programs that have fully enrolled their awarded member slots are allowed to replace any member who terminates service before completing 30 percent of his or her term. A fully enrolled grantee that seeks to re-fill a position after the 30 percent cut-off may seek an exception by writing to CNCS's AmeriCorps office.

**7.22. We had to fingerprint the same candidate three times. It seems the candidate's fingers are scarred and the prints are not readable. What options do we have?**

Most importantly, you should document the effort. If you are working through a state repository, the repository will have a protocol to validate identification and perform a name-based FBI check after several failed fingerprint attempts. Work with the repository to use such a protocol and then document the process and results.

The FBI website has a FAQ that also addresses this question, although they do not say anything about using a name-based search instead. <http://www.fbi.gov/about-us/cjis/criminal-history-summary-checks/faqs>. If you are working outside of the state repository system to obtain FBI checks, there are no FBI-sanctioned methods for obtaining a name-based FBI check. In this case, you must contact the state repository to use its system, or if prohibited from accessing the state repository system. See Blanket ASP section for more information on rejected prints

## **8. How to Document a NSCHC**

**8.1. The regulations require us to retain the results. What documents constitute results?**

The results of an NSOPW check will be a dated screen printout of an executed, nationwide search. If these paper-based results indicate name-based hits, they should be marked to record documentation that you have verified the candidate as not among the registered sex offenders identified through the nationwide name-based NSOPW search. Please also see the Blanket ASP section for more information on vendor search of the NSOPW.

The results of a state repository criminal history check will vary by state. Some states will release a "rap sheet" listing all arrests and offenses, while others may provide a summary record reflecting cleared/not cleared based on screening criteria specific to that state. You must become familiar with the type of information provided in the result issued by the state you are checking, and retain that document as the result of the state level check.

The FBI check results will come in one of two forms. If the candidate obtains his/her own record from the FBI, it will either

be a “no record found” result indicating that the person’s fingerprints were not found in the FBI system or a rap sheet type result listing all reported offenses.

If the FBI check is obtained through a state repository or other authorized recipient (AR), then the result will be an adjudicated results summary, indicating pass/fail or similar based on the AR’s screening criteria; the rap sheet will not be provided. Programs should become informed on the screening criteria used since more often than not, the criteria are more restrictive than CNCS requires.

Take note that many state repositories provide checks which may either always, or as an option at higher cost, include an FBI record check (sometimes at no additional cost). Therefore, it is critical to first establish a clear, documented understanding of the type of check results being obtained.

**8.2. The results we receive do not appear to be actual criminal history records but rather summaries and conclusions on the person’s suitability. Should we ask the repository for the detailed record?**

State repositories issue either “rap sheets” or summary, adjudicated results. Adjudicated results typically present a “cleared,” “not cleared,” “undetermined” or similar summary result. You should contact the repository to obtain a list of disqualifying offenses and explanations for what the responses mean. If someone does not clear, you must determine if the disqualifying offense was one that CNCS uses to determine eligibility, or if it is an offense that your program considers to be disqualifying. Unless the FBI is releasing the NSCHC result directly to the person, FBI checks released to our grantees by state repositories and other authorized governmental bodies are always adjudicated summary results, and never rap sheets.

**8.3. May we retain only electronic records rather than paper files?**

There is no rule requiring criminal history check records to be paper-based. Scanned images of criminal history check results and the associated documents may be retained rather than paper documents. A program using an electronic record system should ensure that it meets all expectations for verifiable and auditable records. Given the critical nature of the date when the NSCHC was performed or initiated, the program should ensure that any record, paper or electronic, clearly and without doubt, establishes when the checks were performed, by whom, and from where the information was obtained.

**8.4. What if my state either doesn’t allow my program to maintain the results of the criminal history checks or limits the amount of time that results can be maintained?**

The regulations require you to retain the NSOPW and criminal history information results. If state law prohibits or limits you in retaining this documentation, please follow the instructions in the blanket ASP on maintaining alternative results.

**8.5. How should we store, secure, and file the results of the NSCHC?**

NSCHC information should be maintained in a secure location under the control of an authorized records custodian, with access permitted only to people who have an official need to review the information.

**8.6. Must I store NSCHC records at the service site or can I centralize the records at our headquarters?**

Records may be stored at any secure location as long as they are accessible for timely routine use by the program, as well as for oversight and monitoring by CNCS without undue cost or delay.

**9. Results that Prohibit Individuals from Serving**

**9.1. What would make someone ineligible to serve?**

Anyone listed, or required to be listed, on a sex offender registry is ineligible to serve. Anyone convicted of murder is ineligible to serve. Anyone who refuses to undergo the NSCHC is ineligible to serve. Anyone who makes a false statement in connection with a program’s inquiry concerning the person’s criminal history is ineligible to serve.

If the NSCHC returns results other than those above, the grantee has the discretion, subject to any federal civil rights law and state law requirements, to decide whether or not the results of a criminal history background check disqualify the candidate from service. Grantees should consider the factors set forth in the EEOC's guidance under Title VII ([http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)), including the nature and gravity of the offense, the time that has passed since the conviction or completion of the sentence, and the nature of the position. Grantees should have written policies on their disqualification criteria and be consistent in how those criteria are applied.

In addition, grantees should be aware of federal reentry policy, which seeks to minimize unjustified collateral consequences on formerly incarcerated people. Participation in national service programs funded by CNCS could aid the successful reentry of formerly incarcerated people into society. Therefore, barriers to participation in national service programs for those formerly incarcerated people who are not statutorily ineligible to serve should be minimized as much as possible without putting program beneficiaries at genuine risk.

### **9.2. What if a criminal registry check discloses a criminal conviction?**

You should give the applicant the opportunity to correct any inaccurate information and then make a judgment about whether to accept the applicant. Convictions for murder or for an offense that requires listing on the state's sex offender registry are automatically disqualifying.

### **9.3. Why is CNCS disqualifying sex offenders and people convicted for murder but not those convicted of other crimes?**

The Serve America Act established that those registered or required to be registered on a state sex offender registry or National Sex Offender Public Website and those convicted of murder are ineligible to serve. Programs should exercise their own judgment in deciding whether, and to what extent, other types of offenses may make a person ineligible to serve.

### **9.4. What does it mean to be required to be listed on a sex offender registry?**

In some situations, a person may have been convicted of an offense and ordered by the court to register as a sex offender, but he or she has failed to register. Since the NSOPW check only identifies people who have registered, the person's criminal history information must also be used to identify any offenses for which a candidate was required to register under state law, but failed to do so.

### **9.5. My program involves people with criminal histories. Is there anything additional that I must do?**

In situations where an ex-offender applies to serve or work, officials may take into consideration the type of service or program activity, the specific crime committed by an applicant, and the various supervisory levels that exist to manage risks associated with an ex-offender's participation in the program. However, murder and any offenses that require registration on a sex offender registry are disqualifying offenses without exception.

### **9.6. Does the rule prohibit service or working on the basis of an arrest?**

The requirements do not disqualify on the basis of arrest. In certain states there are legal constraints on how an arrest record may be considered, and some statewide criminal repositories do not include arrest information in the records they release. Grantees should recognize that they have a dual status under the Civil Rights Act of 1964, depending on the nature of their relationship with a candidate.

Grantees, as recipients of federal financial assistance, must comply with the Civil Rights Act of 1964 and its implementing regulations, which prohibit discrimination in CNCS-funded programs and activities, including the selection and placement of volunteers and members, on the basis of race, color, and national origin. Grantees, as employers, must also comply with Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment decisions. The Equal Employment Opportunity Commission (EEOC) has issued guidance explaining when consideration of arrest and conviction records violates Title VII. See [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

As the EEOC guidance outlines, grantees should be mindful that arrests alone are mere allegations, and that actual criminal convictions (where there has been a formal adjudication by a finder of fact), or actual evidence of conduct underlying an arrest, are the relevant indicators of a person's fitness, or in some cases, eligibility, to serve with, or work for, a CNCS grantee. Grantees should ensure that their screening practices are narrowly tailored in a manner that complies with these federal nondiscrimination requirements, in addition to applicable state laws governing the consideration of criminal history records.

## 10. Alternative Search Procedure (ASP)

### 10.1. Are there reasons why I might seek an ASP approval?

Yes. If you wish to vary from any of the procedures required by the regulations and are making a case for substantially equivalent procedures or data you must obtain a written ASP approval from CNCS. If **prohibited by state law** to comply with CNCS requirements, attach a copy of the statute or prohibition along with a legal analysis from either the Attorney General or legal counsel. When appropriate, please submit a rejection letter issued to you from the CNCS designated repository.

### 10.2. How do I request an ASP approval from CNCS?

CNCS maintains instructions for requesting an ASP on the Knowledge Network website under “National Service Criminal History Check Resources” <https://www.nationalserviceresources.gov/national-service-criminal-history-check-resources> Please complete and submit the form included in the guidance as part of your submission. Please review the blanket ASP section before submitting your request.

### 10.3. How long does an ASP approval last?

The ASP is approved as long as the program’s design and procedures and CNCS’ policies and procedures remain unchanged, even if the program operates under subsequent grants funding the same program. If the ASP approval is limited then it will be specified in the ASP determination from CNCS.

### 10.4. Can other programs use my ASP approval?

No. ASPs are program-specific and not portable between different programs. ASPs approved for a national program are not portable to a similar program funded at the state level. If a circumstance develops where an ASP can apply to more than one program, our approval will be explicit in identifying where the ASP can be used.

### 10.5. Before the FBI check requirements went into effect on April 21, 2011, we obtained an ASP permitting us to rely upon checks performed by a partner site, and also a vendor’s checks. Is that ASP still valid?

It depends. The existing ASP approval you received was based on a test of substantially equivalent information, using regulations in effect prior to April 21, 2011. Once the FBI check became a requirement in April 2011, the measure of substantially equivalent for programs with recurring access to vulnerable populations changed. If the program has such access, and the approved ASP does not include obtaining FBI information, then a revised ASP must be requested.

## 11. FBI Exemptions

### 11.1. Under what circumstances may programs apply for an exemption from the FBI check?

CNCS may approve exemptions from the FBI check if the entity demonstrates to CNCS’s satisfaction (1) that the cost to the grantee is prohibitive; (2) that the entity is not authorized, or is otherwise unable, under state or federal law, to access the national criminal history background check system of the FBI; or (3) that there is sufficient justification for CNCS to exempt the grantee from the requirement for good cause.

Exemptions requests must be submitted using the same procedure as ASP requests. Please complete and submit the Exemption form as part of your submission.

## 12. Schools that Perform Criminal History Checks

### 12.1. A school is performing the checks for us. Is there anything else we need to do?

You must determine how the school, whether private or public, and/or its state licensing authority, are performing background or criminal history checks. If the types of checks and the procedures being used meet CNCS requirements, then your only obligation is to ensure that you and CNCS have access to the records for oversight and monitoring purposes.

If the procedures do not fully meet CNCS’s requirements, or you and CNCS would not have access to the records, you must request an alternative search procedure (ASP). For example, a school may not be checking both the state of residence and the

state where the program operates, or the school may issue a clearance letter to the program rather than providing the actual check results. See Blanket ASP section for more information on clearances.

Programs should take note that you cannot pass along the responsibility to make a written determination that you have checked photo identification and considered the results of the checks in selecting a person to serve or work under your national service program. Only a program's officials with selection authority may establish that required written documentation.

**12.2. My program works with a school that conducts some or all of the components of the NSCHC on its employees and volunteers (including national service participants), but doesn't permit outside parties to review the results of the criminal history check. How can we satisfy the documentation requirements if we are not permitted to review these results?**

Your program will need to address how you have established assurance, as well as documentation, that the checks performed by the school ensured that only eligible people were selected. The request will also need to describe why results could not be reviewed. For example, state law might prohibit examination of the results by third parties. See Blanket ASP section for more information on clearances.

### 13. For-profit Vendors

**13.1. I purchase criminal history checks from a vendor. Do I need to request an ASP?**

The use of vendors is not prohibited, but you bear the risk if a check conducted by a vendor does not meet CNCS requirements. It is your responsibility to fully understand what checks your vendor conducts and what sources it uses for criminal history information. If you are using a vendor to perform the sex offender NSOPW search, the vendor must use [www.NSOPW.gov](http://www.NSOPW.gov) as its source. See Blanket ASP section for more information on NSOPW searches by a vendor.

Many vendors conduct less than statewide checks (e.g., county-of-residence checks), and characterize those single county checks as superior to state repository searches; however they do not meet NSCHC requirements. If your vendor isn't using CNCS recognized repositories, you may not use them to satisfy the CNCS state check requirements.

**13.2. What should I be looking for when considering a vendor that meets CNCS' requirements for the NSCHC?**

We have developed a Factsheet on Vendors that should help guide you in evaluating services a vendor offers against our requirements, as well as the detail you should provide when submitting an ASP request involving vendors. Please find that guidance here: <https://www.nationalserviceresources.gov/national-service-criminal-history-check-resources>.

**13.3. Does CNCS maintain a list of "approved" background check vendors?**

CNCS does not approve or disapprove commercial entities that provide background or criminal history checks. If you wish to use a commercial provider, you must ensure that the vendor will meet all NSCHC requirements. If any component of the search or procedures varies from the regulations, a valid search has not been conducted.

**13.4. Why doesn't CNCS maintain a list of approved background check vendors?**

Commercial providers typically offer a menu of services, and the client can purchase one or more services that may or may not meet CNCS's standards. Therefore, there is no way for CNCS to predict or ensure which services a grantee will procure.

In addition, vendor services may change at any time and many vendors do not have access to the designated statewide systems. We have also found that many vendors limit their reports to seven to 10 years of information and that limitation does not meet the NSCHC requirements. Given the highly variable nature of the services provided by commercial providers and prohibitions against the government endorsing one commercial entity over another, it is unlikely that CNCS will develop a list of approved commercial background and criminal history check providers.

### 14. Costs

**14.1. The cost of conducting an NSCSC can be a financial burden for a program. Can CNCS pay for these checks?**

The total cost of conducting the NSCHC is an allowable program operating cost (called a "volunteer support expense" in

Senior Corps programs) and should be included in the budget. Programs should project all components of cost such as fingerprinting, notarization, mailing, and state repository and FBI fees.

**14.2. Is it permissible for programs to use current year grant funds to pay NSCHC costs for members who will be enrolled in the next program year? If not, may programs defer the costs and charge them to the new grant year (as budgeted) even if the expense was incurred prior to the project start date?**

NSCHC costs are allowable costs which are not required to be associated with a particular program year. The funds a program has budgeted to perform checks are not limited to performing them for a particular period. They can be used to perform checks on anyone who is a person in a covered position who needs the NSCHC at that moment in time. The costs are allocable to the program at that moment in time because checks are required upon application to serve/work. Waiting for a future budget to start the checks is not an option, and incurring the cost today and posting it against a future date would be improper accounting.

**14.3. The preamble to the October 5, 2012 Final Rule states that programs may not charge an applicant for the cost of conducting the NSCHC. Does this mean that we can't charge an applicant and later reimburse him or her for this cost?**

Programs are permitted to ask a candidate to pay for the checks as long as the program reimburses the applicant for the cost of conducting the check. Except under very limited circumstances (for example, where programs have traditionally charged all volunteers for this cost) programs may not charge applicants for any of the component costs of conducting criminal registry checks. Senior Corps explicitly does not permit charging candidates for the NSCHCs.

## 15. Other

**15.1. I have heard that some non-profit organizations that work with children might be eligible to obtain FBI fingerprint checks at low cost through the Child Safety Pilot. Is that true?**

As of March 31, 2011, MENTOR is no longer administering FBI checks through SafetyNET. Please refer to <http://apps.mentoring.org/safetynet/> for the latest information. At this time, CNCS does not know of any similar resources.

**15.2. Why doesn't CNCS procure a national criminal check company to provide a standardized service to all grantees?**

The variation in criminal codes and criminal history procedures among states means that, for now, a uniform national approach is not feasible.

## 16. Blanket ASPs

### 16.1 Accompaniment

This applies to all programs and projects with individuals in covered positions with recurring access to vulnerable populations. For individuals in covered positions for whom a NSCHC requires both state and FBI components, the program may elect to cease accompaniment of the individual when it has received results clearing the individual through either the state component or the FBI component. The program does not need to receive results from both components before electing to cease accompaniment. Please note, an individual may not serve or work in a covered position prior to completing the nationwide NSOPW search component

### 16.2 Clearance letters in lieu of actual results

If your program partners with an organization that conducts some or all of the components of the Check on your program's employees and/or national service participants, but doesn't permit your organization to review the results, then your program can satisfy the documentation requirements of the Check by entering into a written agreement with the organization conducting the Check components.

The agreement must specify that any individual who is registered, or required to be registered, on a sex offender registry or was convicted of murder will not be cleared to participate in the program, even if the organization's policy may, under some circumstances (e.g. through an appeal process), allow it.

The organization that conducts the components can then issue clearances to your program based on your selection criteria. Copies of the clearance decisions provided to your program are grant records and you must maintain them for compliance purposes.

The program must ensure that the required check components not conducted by the organization are conducted by the program (e.g. NSOPW).

### **16.3 Rejected Fingerprints Outside of the State Repository Process**

If your program does not currently have access to obtain the FBI check through the designated state repository AND is obtaining the fingerprint FBI check through the departmental orders method, then after two separate requests, as per the standard set by state repositories, resulting in rejected fingerprints by the FBI you may cease your attempts to clear the individual through the fingerprint-based FBI check. You must maintain documentation of your attempts to obtain the check and the rejection letters from the FBI as grant record.

The individual must still clear the nationwide NSOPW and the state check components of the NSCHC.

### **16.4 Prohibited by State Law from Maintaining Results or Sharing Results**

If state law prohibits you from maintaining results of the State and/or FBI check and/or your program is prohibited from sharing the result with an oversight agency, you must do the following to comply with NSCHC requirements: You must document that you are prohibited by state law from maintaining results and/or prohibited from sharing those results. You must maintain a memo in the individual's file, in lieu of the results, which must indicate, at a minimum:

- the name and address/website of the source you used for the Check components,
- the date of initiation,
- the date that results were received on each component,
- whether the person has been cleared or not for service based on their results, and
- the name and signature of the person who reviewed the results of each check component and the date on which they conducted the review.

The NSOPW check is not covered under this approval. You must maintain the dated results of the nationwide NSOPW for each individual in a covered position.

### **16.5 Departmental Order (DO) FBI checks**

If the state central record repository denied your organization's request to obtain or access FBI checks, your program may satisfy the requirement to obtain the finger-print based FBI component by obtaining FBI checks through the departmental order (DO) process. See FAQ 6.2 on guidance for the DO check.

You must maintain a copy of the denial letter from the state repository as a grant record for compliance purposes.

Please note: using the DO process to satisfy the finger-print based FBI component for reasons other than the state central record repository denying your request to obtain or access FBI checks still requires that you submit an ASP request to CNCS.

### **16.6 Vendor Reports as Results for the NSOPW**

If you use a vendor to search the NSOPW.gov website, you must

- 1) ensure that the vendor performs a nationwide search of NSOPW.gov and has a procedure to obtain individual state data if the state's data is temporarily unavailable from NSOPW.gov;
- 2) maintain the report of the NSOPW.gov check provided by the vendor to document the timely completion of the NSOPW.gov component; and
- 3) if your vendor does not provide copies of the screenshots or printouts from NSOPW.gov result, your contract with the vendor must specify that no person who is registered or required to be registered as a sex offender will be considered to have cleared the check.