

National Service Criminal History Check (NSCHC) Guidance Requirements and Definition of Terms

The NSCHC is a screening procedure established by law to protect the beneficiaries of national service. The requirements apply to anyone receiving a salary, stipend, living allowance or education award (regardless of their level of contact with a vulnerable population) on a CNCS grant. The source of the funds whether federal or matching does not matter. For fixed amount grants, with no budgets, the persons identified in the grant application for the described program activities are considered covered positions. The Check is required only once for any individual who applies to work or serve in a covered position in a CNCS-funded program. If there is a break in service greater than 120 days, then the entire Check must be performed again.

All covered position checks must include two components:

1. A nationwide name-based check of the National Sex Offender Public Website (NSOPW) which consists of a web-based check of a centralized system that identifies individuals who are registered as sex offenders in States, territories, or with many federally recognized Tribes; and
2. 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 individual will serve or work; OR a fingerprint-based FBI check.

For individuals in covered positions with recurring access to vulnerable populations the statutory requirement is for programs to conduct a Check with three components:

1. A nationwide name-based check of the National Sex Offender Public Website (NSOPW), which consists of a web-based check of a centralized system which identifies individuals who are registered as sex offenders in States, territories, or with many federally recognized Tribes; and
2. 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 individual will serve or work;
3. **AND** a fingerprint-based FBI check.

The NSOPW must be **completed** before the individual begins work or service. The state and/or FBI checks must be **initiated** before the individual begins work or service. If the individual has access to vulnerable populations, **accompaniment** is required until the program receives the results of either the state check or the FBI check. An individual is accompanied when he or she is in the physical presence of a person cleared for access to a vulnerable population. Accompaniment must be documented. One possible way to document accompaniment is to indicate on the covered individual's timesheet who did the accompaniment, on what dates, hours, and have the individual who performed accompaniment sign off attesting to the accuracy of the documentation. You should

have policies and procedures clearly describing your accompaniment guidelines and documentation procedures.

If an individual has a change in position or returns for a consecutive term and will be having recurring access to vulnerable populations in the new position, the existing 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.

There are four categories under which a program must **always deny** an individual work or service under a CNCS national service program, as follows:

1. Anyone listed, or required to be listed, on a sex offender registry is ineligible to serve.
2. Anyone convicted of murder as defined and described in 18 U.S.C. § 1111 is ineligible to serve.
3. Anyone who refuses to undergo the Check.
4. Anyone who makes a false statement in connection with a program's inquiry concerning the individual's criminal history.

Effective Dates of the Regulations

All staff and national service participants must have completed an NSOPW regardless of when they started work or service. Some staff may have NSOPW checks (e.g. RSVP staff) conducted after they started working because they were not required to have a check at the time of employment. However, everyone should now have an NSOPW dated no later than January 1, 2013.

Staff and national service participants without access to vulnerable populations hired before 10/1/09 were not required to conduct a state check, however as of 1/1/13 these individuals were required to self-certify that they did not have a murder conviction.

Staff and national service participants hired after 10/1/09 had to have either a state or FBI check regardless of access to vulnerable populations.

Staff and national service participants hired after April 21, 2011 with access to vulnerable populations had to have both a state and an FBI fingerprint check.

Guidance When Considering Results

With the exception of sex offender and those convicted of murder (see above), grantees have 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 an individual 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), 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 they apply those criteria to all individuals.

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

Definition of Terms

An organization that receives its funding grant directly from the Corporation is considered a **prime grantee**. Prime grantees submit requests for ASPs directly to the Corporation for themselves and their subgrantees.

A **subgrantee** of a prime grantee that believes it can not comply with the regulations or that its current procedures are equivalent or better, must submit a request to the prime grantee organization. Subgrantee requests should not be submitted directly to the Corporation. Prime grantees determine if they will or will not endorse the request and forward such requests to the Corporation.

Initiation the state or FBI check is one step more than getting permission to conduct the checks. This could include fingerprinting, mailing requests to obtain checks to the State repository, having forms for checks filled out by candidates, etc. 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.

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

Vulnerable populations include children age 17 or younger, persons age 60 and older, and/or individuals with disabilities. "Individuals with disabilities" has the same meaning given to the term in the Rehabilitation Act in 29 U.S.C. § 705(20)(B), and includes any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Recurring access is defined as "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."

Episodic access to vulnerable populations is not a regular, scheduled, and anticipated component of an individual'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 Check. Episodic access is not determined by a specific number; it does not depend on the individual having less than a specific number of incidents of access. Instead it depends on whether the individual does not have regular, scheduled and anticipated access to vulnerable populations. If incidental access becomes unexpectedly regular or frequent, a grantee should re-evaluate its initial determination of episodic access and take appropriate action. CNCS recommends that grantees specifically address contact with vulnerable populations in each position description, service agreement, or similar document describing an individual's service activities.