

National Service Criminal History Checks

A Discussion on the Current State of Affairs

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AmeriCorps Grantee Meeting

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Objectives

- Quick review of who, what, when
- Understanding what triggers the need for approval of an alternate search protocol (ASP)
- Identifying the most common stumbling blocks for compliance with the Corporation's background check regulations
- Information sharing best practices including how the FBI's background checks fit into the requirements
- Discuss what the future holds and answer your questions

“Who” broken down (Covered Position)

The Individual

- Receives grant funded remuneration (from either Corporation or matching)
 - Stipends or living allowance
 - Salary/pay

or

- Serves as, or will serve as, a Senior Companion or a Foster Grandparent (employees mentioned elsewhere)

Their Role Involves

- Children (17 or younger)
or,
- Older Persons (60 plus)
or,
- Individuals with disabilities
and,
- Recurring access

“Recurring Access” broken down

- Ability on more than one occasion to:
 - Approach or,
 - Observe or,
 - Communicate
- Physical proximity or other means (phone/electronic included)

“Searches” Broken down

Statewide Criminal

- State of residence upon application to serve, **plus**,
- State where program operates (Nationwide programs need only search state where individual primarily serves)

Sex Offender Search

- Web based (www.nsopr.gov)
- No cost
- Extracts data from state sex offender registries
- Individual who is registered, or required to be registered, must be deemed unsuitable for covered position
- No waiver / no alternate sources except checking every state individually

“When” Broken down

Sex Offender Search

- Upon application
- Viable applicants
 - May follow screening
 - May follow training if training prior to enrollment & no exposure to vulnerable populations
- Must be completed and documented before (1) any access to vulnerable populations, supervised or unsupervised, and (2) start of service or grant-funded employment

Statewide Criminal

- Initiated no later than upon enrollment or hiring
- May be underway while individual serves or works
- If check is pending, access must be supervised in person by a cleared individual at all times

“Procedures” Broken down

Processes Steps You Must Have

- Internal controls covering the seven procedural requirements found in the regulations
- Internal controls covering the documentation you must retain

Written Documentation You Must Establish or Have Access to:

- That you performed Identity checks;
- That you performed both types of background checks;
- Copies of the background checks themselves; and,
- That you considered the results of the checks in selecting the individual

It's all about eligibility to serve or be employed ...

An individual who **refuses to consent** to a State criminal registry check, or who makes a false statement in connection with a grantee's inquiry concerning the individual's criminal history, is not eligible to serve in a covered position.

AmeriCorps: Any individual who is registered, or required to be registered, on a State sex offender registry is deemed unsuitable for, and may not serve in, a position covered by suitability criteria

Senior Companions & Foster Grandparents: Any individual who is registered, or who is required to be registered, on a State sex offender registry is deemed unsuitable for, and may not serve in, a position as a Senior Companion / Foster Grandparent or as a Senior Companion / Foster Grandparent grant-funded employee

What is an ASP?

- ASP = “alternate search protocol”
- Use of any background check records source that varies from the two specific types of checks (NSOPR sex offender and statewide criminal) identified in the regulations
- Any background check policy or process/approach that omits or varies from the requirements identified throughout the regulations

What constitutes a variance from the two types of required checks?

Background checks must include NSOPR sex offender and statewide criminal history checks:

- Failing to directly check the National Sex Offender Public Registry (www.nsopr.gov) would be a variance – the Corporation does not approve other sources unless they either link into the NSOPR or perform state-by-state checks of every NSOPR source state sex offender database – grantee must establish that this happens
- Using something other than a state's statewide criminal history repository – there is only one official repository per state – if you vary from the required source system, you must identify the alternate system in detail and explain why it is providing you with substantially equivalent information

What constitutes variance from the required processes?

Differing from a requirement such as:

- Checking background prior to enrollment as a member (clearance = eligibility);
- Verification of identity through photo identification and document it;
- Obtain written authorization for statewide criminal history check;
- Document his/her understanding that selection is contingent on check;
- Offer opportunity to review and challenge accuracy of the check;
- Provide confidentiality safeguards;
- Escort anyone without a completed check by those with checks;
- Document that the checks were performed;
- Maintain results of the checks (accessible for review upon demand);
- Document selection was based on consideration of background check;
- Use grant or other funds to pay for the checks, members do not pay; or
- Prohibition by state law to follow the process in any manner; and,
- any variance from any other requirement...

What have been the most common reasons for needing an ASP?

- Use of a public school district system for background checks when the school's process does not fully comply with the Corporation's requirements or you have not determined if it does or does not comply
- Use of a vendor to perform background checks when the vendor does not fully comply with the Corporation's requirements
- Misunderstanding the regulations causing an ASP request when none was necessary

Use of a public school district to perform background checks...

- If you have verified that the school system performs the required checks and follows all of the procedures, no ASP is needed
- For any school system that is not performing checks that fully meet the regulations, or following the required process, or you don't know, an ASP must be requested
- An ASP will be approved by the Office of Grants Management for all public school system requests without the need to define how the school performs their checks, but grantee must still:
 - Have access to the records for placement site performance oversight
 - Provide access to the records to the Corporation for monitoring and audit
 - Document in writing that the checks were performed and that they were used in reaching a selection decision (eligibility for members)
 - Follow the regulations for grant-funded staff who didn't undergo the schools' checks or who work in other environments with vulnerable populations

Best Practice: An ASP request to use a public school system should:

- Identify the school system(s) involved;
- Clearly have established that they are public schools with their own background check processes;
- Explain that AmeriCorps members must go through the school's background checks and identify when that happens during the time a member is managed by the grantee;
- Affirm that as grantee you will document that each member was checked by the school system and that your selection decision considered that check;
- Establish policy that in no instance may a member listed or required to be listed on a sex offender registry be permitted to serve; and,
- Confirm that you have access to records to confirm that checks are being performed and the Corporation will have access to records for oversight and audit.

Use of a vendor to perform background checks...

- If you have verified that the vendor performs the required checks (for the state(s) that you need to check) and follows all of the procedures, no ASP is needed
- Use of a background check vendor that is not performing checks that fully meet the regulations, or following the required process, requires an ASP approval form the CNCS Office of Grants Management
- As of the date of this conference only one vendor has confirmed that they check the same statewide system required by the regulations, and that confirmation was for 14 states.
- An ASP to use a vendor's alternate checks and processes will only be approved when you are able to establish that the vendor provides checks and processes that are substantially equivalent to those required by the regulations.
- If a vendor is approved, you must still have documentation in writing that the checks were performed, and they were used in reaching your selection decision and you must have access to the background check records to perform your oversight and provide the Corporation with access for monitoring and audit.

Best Practice: An ASP request to use a vendor should:

- Identify the vendor and their web site along with as much detailed information that describes the checks they perform
- Clearly, in detail, identify the data resources that the vendor uses
- Avoid ambiguity such as references to “national background check databases” that are not specifically identified
- Specify the checks and/or processes that your ASP request applies to – if something is not specified, the required process or check is not considered part of the ASP and presumed to be followed
- Confirm and specify that you have access to records to confirm that checks are being performed, and the Corporation will have access to records for oversight and audit

Summary on Alternate Search Protocol Request Process

- Hard copy to:
Attn: Alternative Criminal History Search Request
Office of Grants Management
1201 New York Ave. NY
Washington, DC 20525
- eMail to:
AlternateBackgroundCheck@cns.gov
- You will receive a receipt letter from CNCS via eMail with tracking number; if no letter received, contact us to confirm receipt
- Decisions take 10 to 90 days
- Commonly a provisional approval is given first with follow-on questions

Common Stumbling Blocks for Compliance

Not Realizing You Need an ASP

- A vendor's marketing "hype" might imply a compliant check is performed but it is not
- Colleagues have told you that who you are using is an "approved" vendor – CNCS does not approve vendors
- One grantee's ASP approval does not extend to another grantee, every circumstance is unique
- You were not aware that using a school district requires an ASP approval
- ASP process can be tedious because you must be precise on the data sources and successfully articulate why the alternate checks are substantially equivalent

Common Stumbling Blocks for Compliance Using Incorrect Statewide Background Check Sources

- Only one official source per state and that source is always a state agency
- Some states only permit the supervising site to obtain the information, intermediaries are prohibited from obtaining the checks
- Obtaining results from statewide check agencies can be time consuming and higher cost

Common Stumbling Blocks for Compliance

Vendor's Frequently Limit Data To the Last 7 Years

- Many vendors limit their data to the last 7 years of information
- No vendor or grantee has successfully explained or justified the limitation

Common Stumbling Blocks for Compliance

Similar Sounding Data Sources

- System names and acronyms that sound like National Sex Offender Public Registry may not be the same as the required system
- The NSOPR found at www.nsopr.gov is the only official approved source for sexual offender data check
- The FBI's sexual offender identifier / data file is not the NSOPR

Common Stumbling Blocks for Compliance

FBI Check = Statewide But Not NSOPR

- An FBI fingerprint-based background check meets the requirement for statewide checks of the individual's residence state and the state where the program operates
- An FBI fingerprint-based background check does not meet the requirement to conduct a check of the National Sex Offender Public Registry (NSOPR)
- The FBI's sexual offender data identifier / data file is not the same as the NSOPR

Common Stumbling Blocks for Compliance Staff in Covered Positions Funded by the Grant

- The staff identified on a grant budget, both federal and non-federal share funded, must undergo background checks if they are in covered positions*
- Grant budgets must identify all key staff
- Education Award Only grants do not have “grant-funded staff” and therefore while members must undergo the background checks, employees of a grantee solely operating under an EAP grant (fixed amount per member) are not required to have a check done on their employees, that is, there are no covered employees funded by the Corporation’s grant

*Since a grantee may freely shift the funding of a position between federal and non-federal shares, the determinative questions are, is the position covered? Is the position on the grant? Should the position be on the grant?

Best Practices

Use of State Agencies Offering Equivalent Statewide Data

- Some states offer the same statewide data through multiple state agencies
- If you believe an alternate agency is offering the same data as the official source, request an ASP
- CNCS is working on methods to identify and share cross-agency sources; so far only identified for New York statewide searches
- CNCS state offices can assist in analyzing each state's unique situation regarding their source agencies and the databases that they use

Best Practices

Use of FBI National Criminal History Checks

- Some grantees have been able to establish accounts to run checks through the FBI's national criminal history system
- Some grantees are requiring their candidates to obtain their own checks from the FBI – suggested approaches they are using:
 - Design a process spelling out every step to be taken to both candidates and to staff handling the process
 - Develop helpful tools such as a standard cover letter, have a supply of payment forms, and so forth for candidates to use
 - The FBI web site indicates they accept personal checks but not accurate; only money orders or credit cards
 - Establish controls to log and mail the requests from the grantee office so you know what has been requested (results go to the individual)
 - Official fingerprint cards on proper card-stock are difficult to obtain and some fingerprint locations do not allow the use of regular paper stock
- May not be fast enough for members and volunteers, may only work for employees (can take up to 90 days)

Best Practices

Identifying a Vendor that Complies with Corporation Regulations (No ASP Needed)

- **Is there a list of third-party vendors already approved by the Corporation?**

No. The Corporation does not anticipate approving or endorsing specific background check vendors. In addition to the legal issues that might rise from a government agency approving vendors, the Corporation believes attempting to maintain vendor approvals given that services offered can change rapidly is not feasible.
- **What guidance can the Corporation provide for working with third-party vendors for criminal history checks?**

Grantees who would like to use a third-party vendor should ensure that the vendor:

 1. is familiar with the Corporation's regulations;
 2. performs the two components of the required checks [National Sex Offender Public Registry check (NSOPR) and the State criminal registry searches];
 3. follows the procedures described in the regulations, including allowing the grantee and the Corporation access to the records; and,
 4. makes a clear commitment under contract to perform specific services that would meet the Corporation's requirements.
- We strongly advise grantees to ensure that they differentiate between a vendor's marketing information which may be general and non-specific, versus the vendor's specific commitment to perform a background check process. Some vendors indicate they conduct national searches, but those national searches are not conducted by reviewing each state's criminal registry repository and, therefore, do not meet the Corporation's requirements.

Best Practices

Identifying a Vendor that Likely Requires an ASP Approval from the Corporation

If one or more of these indicators are present you likely need an ASP review:

- Some of the process steps found in the regulations are not being followed
- Access to the records for oversight and audit is not possible
- Official statewide sources and/or the NSOPR is not being checked
- Statewide checks that refer to only counties being checked are likely not statewide
- There are limits on how far back the data goes
- The search is name-based but your state requires a fingerprint-based search
- You are not provided with the identify of the repositories that are being searched
- There is reference to a proprietary database

Resources

<http://nationalservicerresources.org/criminal-history>

- FAQs
- Regulations
- Instructions on how to request an alternate search protocol
- Staff screening Tool Kit, 3rd Edition

General questions: AlternateBackgroundCheck@cns.gov

ASP status questions: Douglas Godesky, Office of Grants Management
dgodesky@cns.gov or 202.606.6967

Staff Screening

Third Edition

TOOL KIT



Nonprofit
Risk Management
Center



State Criminal History Record Repository Addresses

ALABAMA

Department of Public Safety
2720 A.W. Gordon Park Drive
Montgomery, AL 36102
Phone: 334-395-4332 FAX: 334-395-4338
www.dhcr.state.al.us/dhc

ALASKA

Department of Public Safety
P.O. Box 111206
Juneau, AK 99811-1200
Phone: 907-463-4338 FAX: 907-595-2762

AMERICAN SAMOA

Office of the Commissioner
Department of Public Safety
P.O. Box 1886 (Central Police Station,
Fagotoga, American Samoa)
Pago Pago, American Samoa 96799
Phone: 9-011-684-6333 FAX: 9-011-684-
6333-5113

ARIZONA

Arizona Department of Public Safety
P.O. Box 4438 (2120 West Roosevelt Boulevard)
Phoenix, AZ 85005-6438
Phone: 602-223-2480 FAX: 602-223-2932
[www.dps.state.az.us/reports/criminalhistory/
default.asp](http://www.dps.state.az.us/reports/criminalhistory/default.asp)

ARKANSAS

Arkansas Crime Information Center
One Capitol Mall, 4C-200
Little Rock, AR 72201
Phone: 501-682-2222 FAX: 501-682-7444
www.asp.state.ar.us/

CALIFORNIA

California Department of Justice
Criminal Justice Information Services Division
4949 Broadway, Room 1332
Sacramento, CA 95832
Phone: 916-227-3844 FAX: 916-227-3879
caaj.state.ca.us/links/pints/index.htm

COLORADO

Crime Information Center
Department of Public Safety
Colorado Bureau of Investigation
699 Riping Street, Room 3800
Denver, CO 80215
Phone: 303-239-4224 FAX: 303-233-8336
www.cbirecordcheck.com/index.asp

CONNECTICUT

Bureau of Identification
Department of Public Safety
1111 Country Club Road
Middletown, CT 06457
Phone: 860-685-8322 FAX: 860-685-8341
www.state.ct.us/dps/IDB.htm

DELAWARE

State Bureau of Identification
Delaware State Police
P.O. Box 430, (1467 North Dufort Highway)
Dover, DE 19903
Phone: 302-739-3872 FAX: 302-739-3888
www.state.de.us/dsp/IDB.htm

DISTRICT OF COLUMBIA

Records Department
Metropolitan Police Department
380 Indiana Ave., NW, Room 3054
Washington, DC 20001
Phone: 202-727-5516 FAX: 202-727-3896
mpdc.dc.gov/arc/reports/
police/relations/ships

FLORIDA

Criminal Justice Information Systems
Florida Department of Law Enforcement
P.O. Box 1489 (2331 Phillips Rd., 32180)
Tallahassee, FL 32302-1489
Phone: 909-410-7100 FAX: 899-410-7123
www.fdc.state.fl.us/BackgroundCheck/

GEORGIA

Georgia Crime Information Center
Georgia Bureau of Investigation
P.O. Box 379748
Doraville, GA 30037-0748
Phone: 404-244-2601 FAX: 404-244-2706
www.state.ga.us/gbi/crimhist.html

GUAM

Superior Court of Guam
Guam Judicial Center
120 West O'Brien Drive
Hagatna, GU 96910
Phone: 671-475-3270

HAWAII

Criminal Justice Data Center
Department of the Attorney General
Kokamea's Building, Room 101
465 South King Street
Honolulu, HI 96813
Phone: 808-587-5159 FAX: 808-587-5189
www.state.hi.us/hajdc/crimhistory.htm

IDaho

Bureau of Criminal Identification
Idaho State Police
P.O. Box 708 (700 S. Stratford Drive, 83642)
Meridian, ID 83448
Phone: 208-884-7150 FAX: 208-884-7193
www.idp.state.id.us/identification/
crime_history/index.html

ILLINOIS

Division of Administration
Illinois State Police
P.O. Box 19468 (125 E. Monroe, Room 401)
Springfield, IL 62794-9468
Phone: 217-783-2635 FAX: 217-524-5794
[www.ip.state.il.us/crimrec/illshome.htm](http://ip.state.il.us/crimrec/illshome.htm)

INDIANA

Indiana State Police
Records Division
IN Government Center, Third Floor
100 North Senate Avenue
Indianapolis, IN 46204
Phone: 317-232-8265 FAX: 317-232-8852
www.in.gov/isp/3

IOWA

Division of Criminal Investigation
Iowa Department of Public Safety
Wallace State Office Building
Des Moines, IA 50319
Phone: 515-281-6138 FAX: 515-243-6297
[www.state.ia.us/government/dps/dci/
crimhist.htm](http://www.state.ia.us/government/dps/dci/crimhist.htm)

KANSAS

Kansas Bureau of Investigation
5620 Southwind Tyler Street
Topeka, KS 66612-9857
Phone: 785-296-8208 FAX: 785-296-8781
www.kcrecokansas.org/ksbi/info_rcd.htm

KENTUCKY

Kentucky State Police
Records Section
1250 Louisville Road
Frankfort, KY 40601
Phone: 502-227-8724 FAX: 502-227-8734
www.kentuckystatepolice.org/ksj.htm#R

LOUISIANA

Bureau of Criminal Investigation
Office of State Police
P.O. Box 44634 (265 South Foster, 70006)
Baton Rouge, LA 70896
Phone: 225-925-6995 FAX: 225-923-7803
www.lsp.org/lsbo_support.html#formal

MAINE

State Bureau of Identification
Maine State Police
35 Hospital Street
Augusta, ME 04333
Phone: 207-624-7069 FAX: 207-624-7088
www.msp.state.me.us/PCB/

MARYLAND

Criminal Justice Information System-Central
Repository
Maryland Department of Public Safety
& Correctional Services
P.O. Box 32788
Pikesville, MD 21288-2788
Phone: 410-754-4391 FAX: 410-693-4446 Toll
free: 1-800-795-0811
www.dpscs.state.md.us/cjis/centralrepository

MASSACHUSETTS

Massachusetts Criminal History Systems Board
200 Arlington Street, Suite 2200
Chelsea, MA 02150
Phone: 617-660-4608 FAX: 617-660-4613
www.state.ma.us/chr/sb/

MICHIGAN

Criminal Justice Information Center
Michigan Department of State Police
General Office Building
7150 Hank Drive
Lansing, MI 48915
Phone: 517-322-3511 FAX: 517-322-8655
[www.michigan.gov/msp/0,1667,7-123-
1389_1376_8311_...06.html](http://www.michigan.gov/msp/0,1667,7-123-
1389_1376_8311_...06.html)

The Future – Serve America Act

- Effective October 1, 2009
- Includes all AmeriCorps members and FGP/SCP volunteers, as well as FGP, SCP, RSVP, and L & S grant-funded staff
- All participants in these programs are now “covered individuals” removing “recurring access to vulnerable populations” criterion
- Adds conviction for “murder” (as defined in title 18 U.S.C, Section 1111) as a disqualifying offense
- Directs the Attorney General to conduct a feasibility study concerning the efficiency and effectiveness of criminal history checks
- As of April 21, 2011, any covered individual who meets the “recurring access to vulnerable populations” criterion must undergo NSOPR check, State criminal history check, and FBI fingerprint check
- Corporation may grant exceptions for (1) episodic volunteers; (2) if an organization is not authorized by State or Federal law to conduct FBI check; (3) if cost is prohibitively expensive; or (4) for good cause

Questions?
