

**NATIONAL SERVICE CRIMINAL HISTORY CHECK  
FREQUENTLY ASKED QUESTIONS – Updated November 30, 2012**

**Sections and Topics**

- 1..... **National Service Criminal History Check**
- 2..... **Programs Covered by the Law and Regulations**
- 3..... **Individuals Subject to a National Service Criminal History Check**
- 4..... **National Sex Offender Public Website**
- 5..... **Statewide Criminal History**
- 6..... **Federal Bureau of Investigation Criminal History Records**
- 7..... **How to Perform a National Service Criminal History Check**
- 8..... **How to Document a National Service Criminal History Check**
- 9..... **Results that Prohibit Individuals from Serving**
- 10..... **Alternative Search Procedure**
- 11..... **FBI Exemption**
- 12..... **Schools that Perform Criminal History Checks**
- 13..... **For-profit Vendors**
- 14..... **Costs and Compliance Risks**
- 15..... **Other**

The National Service Criminal History Check (CHC) 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) has had regulations setting requirements for grantees to perform a National Service Criminal History Check (“Check”) on individuals with recurring access to a vulnerable population. On October 1, 2009, regulations went into effect implementing Section 189D of the National and Community Service Act of 1990, as amended by the Serve America Act, expanding the positions subject to the Check to include any individual receiving a living allowance, stipend, national service education award, or salary through a program receiving assistance under the national service laws, regardless of their level of contact with a vulnerable population.

To implement the Serve America Act, CNCS proposed amendments to its National Service Criminal History Check regulation on July 6, 2011. The final rule was published on October 5, 2012 ([http://www.nationalserviceresources.org/files/fedregister\\_final\\_rule\\_oct\\_5\\_2012.pdf](http://www.nationalserviceresources.org/files/fedregister_final_rule_oct_5_2012.pdf)). CNCS grantees must conduct and document a Check that includes a fingerprint-based FBI criminal history check on individuals in covered positions who begin work, or who start service, on or after April 21, 2011, and who have recurring access to children 17 years of age or younger, to persons age 60 and older, or to individuals with disabilities. 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, 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.*

## National Service Criminal History Check

### 1.1. **What is a National Service Criminal History Check? [UPDATE]**

A National Service Criminal History Check has components established by law and regulation that CNCS grantees must conduct on individuals in covered positions. A covered position is one in which an individual receives a living allowance, stipend, education award, salary, through a national service program. See 45 C.F.R. § 2540.201 [[http://www.nationalserviceresources.org/files/fedregister\\_final\\_rule\\_oct\\_5\\_2012.pdf](http://www.nationalserviceresources.org/files/fedregister_final_rule_oct_5_2012.pdf)].

All covered position checks must include two components:

- √ 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
- √ 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: **[UPDATE]**

- √ 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
- √ 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;
- √ **AND** a fingerprint-based FBI check.

### 1.2. **What is the definition of vulnerable population?**

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.

### 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, an individual, 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? [UPDATE]**

Episodic access 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. However, the grantee must conduct the other components of the National Service Criminal History Check, as described in § 2540.203(b)(2)(i)-(ii) or under an approved ASP. A grantee does not need CNCS approval to use the "episodic access" exception to the Check requirements for individuals in covered positions with recurring access to vulnerable populations described in § 2540.203(b)(2)(iii).

Episodic access is not determined by a specific number. In other words, if a grantee does not anticipate that a member will have access to vulnerable populations, the need to meet the National Service Criminal History Check requirements for individuals in covered positions with access to vulnerable populations would not materialize after a specific number of incidents of access occur, but would once the access becomes regular, scheduled and anticipated. If incidental access becomes unexpectedly regular or frequent, a grantee should re-evaluate its initial determination of

episodic access and take appropriate action. CNCS expects that in the majority of cases, it will be clear whether or not access to vulnerable populations is a regular, scheduled, and anticipated component of an individual's service activities. Nevertheless, 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.

**1.5. Is a background check the same as a National Service Criminal History Check?**

No. The term background check could mean many different things and have many different components, many of which may not be relevant to the National Service Criminal History Check. For example, credit reports and interviews with personal references. The National Service Criminal History Check requires the components specified in 45 C.F.R. § 2540.203. See FAQ 1.1. .

**1.6. Are grantees required to perform the checks in a particular manner?**

Please see FAQ 7.1 *What steps are required to perform the checks?* The Check required by CNCS is only part of the overall applicant screening process which every grantee must develop. Grantee policies must, at minimum, include the 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 criminal history check policies and procedures that meet CNCS's rules and address how any unique circumstances that your program faces are to be handled. Grantee policies that do not reflect the minimum standards and requirements set out in CNCS's regulations require approval of an alternative search procedure (ASP) under 45 CFR §§ 2540.207.

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

You should provide the following explanation: A National Service Criminal History Check is not a check to approve employment; it is to clear someone to perform service under a national service grant program, it is not a check to reach an employment decision. You may employ someone but they may be prohibited from working under a CNCS grant program. If you continue to be blocked from access to the required checks, contact CNCS regarding an alternate search procedure (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 an abridged system of records. Such searches are not acceptable.

Name-based record checks use biographic information (name, date of birth, sex 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 are falsely attributed to the individual) or false negatives (records belonging to the individual are not identified), consuming staff time to verify hits. Fingerprint-based searches use the unique prints of the person and are the most reliable method of obtaining criminal history records. State agencies may offer discounts for non-profit and volunteer organizations.

**1.9. When the regulations change, are the requirements retroactive? Do we need to conduct a new Check on individuals already serving or working to meet the new requirements? [UPDATE]**

The Check conducted on individuals in covered positions has always been based on the rule in effect at the time the individual started service or began work with the program.

Please note the following:

**April 21, 2011**

The final rule applies to individuals serving in covered positions who start serving under a national service program on or after **April 21, 2011**.

### **Supplementing Checks for Consecutive Terms of Service with a break in service less than 120 days**

For individuals who serve consecutive terms of service, it is not necessary to perform an additional National Service Criminal History Check 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. For example, if an individual serves an original term in a covered position with no recurring access to vulnerable populations, but will be serving the consecutive term in a covered position with recurring access to vulnerable populations, the grantee must ensure that any additional National Service Criminal History Check components required for the consecutive-term position is conducted (e.g. the fingerprint-based FBI check). You would not have to re-check the NSOPW and the National Service Criminal History Check component that the individual already cleared in their first term of service, as long as you are able to maintain documentations of the official check results. This applies for currently serving individuals who have a break in service after 12/31/2012.

### **NSOPW for individuals in covered positions who started work or service prior to October 1, 2009**

In addition, for any individual currently working or serving in a covered position, you must ensure that you have already completed a nationwide NSOPW check.

### **Individuals convicted of murder must be removed from their covered positions.**

The final rule further reiterates the statutory requirement that a person with a murder conviction may not serve or work in a covered position. Any person with a murder conviction must be removed from service or employment under the grant immediately. Currently serving individuals who began work or started service prior to October 1, 2009 must self-certify that they do not have a murder conviction and grantees must save that certification to the individual's file.

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

### **2.1. Which grantees and individuals are covered by CNCS's National Service Criminal History Check requirements?**

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

- AmeriCorps State, including full-cost fixed amount programs
- AmeriCorps National, including full-cost fixed amount programs
- Learn and Serve America
- Senior Companion Program
- Foster Grandparent Program
- Social Innovation Fund
- Non-profit Capacity Building
- Martin Luther King Day of Service
- Summer of Service (only grant funded staff)
- RSVP grant funded staff (does not include RSVP volunteers)
- VISTA grant funded staff (VISTA volunteers undergo checks conducted by CNCS)

### **2.2. What programs and individuals are not covered by CNCS's requirements for criminal history checks? [UPDATE]**

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

Non-covered grant types are:

- AmeriCorps State Administrative (unless performing work or funding a program)
- AmeriCorps State PDAT
- AmeriCorps State Disability

Individuals not covered are:

- Staff under AmeriCorps Fixed Price EAP type awards (Education Award Program)
- Staff whose compensation is only claimed within indirect grant 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 National Service Criminal History Check requirements apply to AmeriCorps Education Award Programs (EAP), Full Cost Fixed Amount programs, and other fixed amount grants? [UPDATE]**

Yes. EAP and other fixed amount grants must conduct checks on members because members receive National Service Education Awards. EAP and Professional Corps EAP 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 requirement to conduct checks apply to individuals performing program activities under a full-cost fixed amount grant who receive a salary or stipend.

**2.4. Does the requirement to perform a National Service Criminal History Check 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 requirements to perform the checks apply 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 shares.

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

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

A covered position is a position in which an individual serving or employed receives a living allowance, stipend, national service education award, or salary through a program receiving a grant under the national service laws. Coverage is not dependent on the type of service the individual is performing, the individual's access to vulnerable populations, or whether the grantee or sub-grantee programs are using federal share or grantee matching share funds to pay the individual, including salary or stipends which may be counted as matching contributions.

Programs can most easily identify covered individuals using the "on the budget" and "expenditure report" tests. Positions held by covered individuals or associated salary or stipends are usually, but not always, listed on the program's approved grant budget. Sometimes, a covered individual may be added to a program's operating budget at a time when a federally approved grant budget amendment is unnecessary; therefore, individuals in covered positions must also be identified by using the expenditure report test. The expenditure report test involves examining the program's federal financial reports (FFR). If the cost of the payment paid to the individual was, or will be, included in the federal or matching share program costs reported for the program or its sub-awards, then the individual is in a covered position.

For grant types such as full-cost, fixed-amount AmeriCorps programs where the program is exempted from submitting budgets or financial reports, the test is to examine the funded grant program application narrative wherein the program's activities are described. Individuals performing the described program implementation activities and administering the program are individuals in covered positions subject to the requirements.

3.2. **How do we know if our employees are subject to the Check requirements?**

The 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 work and you are including the compensation paid to them as matching funds.

To identify employees who are covered individuals, determine if he/she is or will be receiving compensation (e.g., salary, wage, living allowance, stipend) for performing program activities. Review your program's operating budget to identify federal and non-federal share amounts projected for individuals performing program activities. Keep in mind that there are a variety of ways that costs for individuals working under a program are depicted on a grant budget, for example, listing individual positions, grouping position types, or listing lump-sums for sub-awarded activities.

It is important to project all of the positions that will be needed to run the program and fulfill matching requirements since they must all be reported as expenditures, and thus would be covered positions. If a covered position is omitted from a grant or operating budget early on, and is later added, the associated claimed costs would not be allowable if the Check was not performed when the individual began work or started service under the grant. Note that since full-cost, fixed-amount programs do not have a federally approved grant budget or submit financial reports, you must use your program's records, including operating budget and your accounting system to identify all individuals in covered positions based on whether or not they are performing program work as described in your funded grant application.

3.3. **What Check is required for an individual in a covered position whose access to vulnerable populations is limited to individuals who, themselves, occupy a covered position? [UPDATE]**

The National Service Criminal History Check requirements for individuals who have recurring access to vulnerable populations should be applied based on the individual providing service **to** vulnerable populations, not providing service **with** vulnerable populations. Grantees must make a reasoned and factually informed decision about whether an individual 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 individual was a vulnerable population. What that means is an individual in a covered position does not need the check under 45 C.F.R. § 2540.203(b) if the recurring access to a vulnerable population is limited to individuals who are, themselves, serving in covered positions.

3.4. **What Check is required for an individual in a covered position whose access to vulnerable populations is limited to individuals who, themselves, are colleagues? [UPDATE]**

The National Service Criminal History Check requirements for individuals who have recurring access to vulnerable populations should be applied based on the covered individual providing service to vulnerable populations, not providing service with vulnerable populations. Grantees must make a reasoned and factually informed decision about whether an individual 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 individual was a vulnerable population. What that means is an individual in a covered position does not need the check under 45 C.F.R. § 2540.203(b) if the recurring access to a vulnerable populations is limited to individuals who is a coworker of the individual in a covered position.

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

No, for the purposes of the Check, an hourly wage is equivalent to a salary. An individual who receives an hourly wage directly attributable to the grant must have the Check conducted.

**3.6. Why don't the National Service Criminal History Check rules cover community volunteers who are recruited by national service grantees?**

The Serve America Act (SAA) and CNCS's regulations establish coverage only for individuals who have an identifiable connection to CNCS associated with receiving financial compensation of the types identified in the SAA (i.e. a national service education award, stipend, living allowance, or salary). Community volunteers do not have this required connection. Consequently, while members and other covered individuals may supervise community volunteers, there is no CNCS requirement to perform the Check on those community volunteers.

**3.7. What is unique about checks required under 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 Check 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, sponsor organizations are not required to perform the Check on VISTA participants. However, programs funded through a VISTA program grant are subject to the criminal history check rules ([http://www.nationalserviceresources.org/files/VISTA\\_Sponsor\\_Fact\\_Sheet.pdf](http://www.nationalserviceresources.org/files/VISTA_Sponsor_Fact_Sheet.pdf)). The grantee must perform the Check on grant-funded employees working for the program (e.g., employees of the VISTA sponsor who serve as VISTA program supervisors and receive part or all of their salary from the VISTA program grant).

**3.8. Are minors subject to the National Service Criminal History Check?**

Yes, anyone, no matter his or her age, who applies to serve in a covered position must have the Check conducted and be eligible to serve or work. When your program conducts the Check on a minor, you may receive a "sealed" response. That response should be kept as documentation that the check was conducted.

**3.9. The Check requirements for individuals in covered positions with recurring access to vulnerable populations applies 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? [UPDATE]**

Programs must conduct a Check with the components specified in 45 C.F.R. § 2540.203(b) for those individuals who are not 18 at the start of service, but who will turn 18 during their term of service, if the individual in the covered position will have recurring access to vulnerable populations. An individual's age has no effect on the timing requirements of the Check specified in 45 C.F.R. § 2540.204.

**3.10. Do programs have to conduct the Check on individuals 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 individual's last State of residence in the United States, as well as the State where the program operates, must be checked. If the individual never lived in the United States, then only the State where he or she will be serving is required to be checked. Programs are strongly encouraged, but not required, to obtain criminal history information from other relevant sources the individual's residential history may indicate is prudent.

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

No. You are not required to conduct the Check on staff whose time is allocated to the program as part of an indirect cost rate pool or similar agreement. These individuals 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 served.

**3.12. Is a National Service Criminal History Check required on my consultants and contractors?**

No. Consultants or contractors are not subject to Checks if they do not receive a salary through the program.

**3.13. Does the requirement to conduct a National Service Criminal History Check on staff apply to State commission staff?**

Usually, no. Because the intent of the law and CNCS's National Service Criminal History Check regulations was 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 individuals in covered positions. However, such assignments have been made in the past, and therefore, commission staff may require a Check if assigned to perform national service program duties. This guidance applies to a State commission regardless of whether the commission is a State governmental entity or an independent, incorporated non-profit.

**3.14. What about employees of organizations who supervise members or volunteers placed to serve in their organizations?**

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 individuals, then they are working in covered positions and must have a Check. If a partner's employees contributing time as supervisors 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. Note that because full-cost, fixed amount programs do not have federally approved grant budgets or submit financial reports, you must use your program's records including the operating budget to identify all individuals in covered positions based on whether or not they are performing program work as described in your funded grant application.

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

No. Even though the beneficiaries receive a form of financial benefit as part of the program's design, they are not in covered positions because the benefit is the result of securing employment, which is a program outcome rather than program work or service. An individual who receives some financial benefit through a national service program but who does not otherwise perform any service or work to implement the program is not an individual in a covered position.

**3.16. Should my program perform checks on individuals who are otherwise not required to have the Check?**

Your program may choose to conduct Checks on individuals in non-covered positions as an effective risk management tool, and may include this as a program operating cost (or volunteer support expense) in your grant budget proposal.

**3.17. What happens when someone leaves one program and begins service in another? [UPDATE]**

If a participant or employee leaves a grantee program (or in the case of commissions, the subgrantee) 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 Check on the individual. For grantees with multiple programs, you do not have to conduct a new Check on individuals unless there is a break in service exceeding 120 days or they are moving from a covered position without recurring access to vulnerable populations to a covered position with recurring access to vulnerable populations. If a covered position changes from no access to vulnerable populations to recurring access to vulnerable populations, then the program must clear the individual through the Check required by 45 C.F.R. § 2540.203(b) by adding any missing State or FBI check components. Changing service site locations without a break in service greater than 120 days, while remaining under the same program, does not trigger the requirement for a new check.

**Senior Corps Project Relinquishments**

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.

**3.18. How often must programs conduct a National Service Criminal History Check on an individual? [UPDATE]**

A program must conduct the Check the first time an individual is a candidate for a covered position. The results of the NSOPW must be reviewed prior to the individual beginning work or starting service. 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 Check components in 45 C.F.R. § 2540.203(b) must be added in to their existing cleared criminal history check. A consecutive term of service means that there is no break in service exceeding 120 days.

**3.19. If I conduct the Check on an applicant, then the applicant defers service for a year, do I have to conduct a new Check?**

If a program's design recognizes deferring or delaying the start of service as a normal option, candidates who have been selected and cleared their Check components may defer or delay their start of service without undergoing a new Check. Service delay or deferral is permitted up to one (1) year, but the approved program design must recognize this option. CNCS recommends, however, that programs develop a written policy on how to handle the Check for individuals who defer service.

**3.20. Our program receives thousands of applications for a few hundred positions. Performing checks 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 need only perform the Check on suitable candidates. Therefore, if you receive a large volume of applications, but screen many of them as unsuitable for other reasons (e.g., unqualified; incomplete applications; not eligible due to citizenship; etc.), you may perform a Check on only the ones to whom you intend to make a conditional offer for a covered position. Your program's Check policy and procedures should identify the point at which applicants will be checked.

Under no circumstances may an individual be hired or enrolled, or begin service or employment, without first having cleared the NSOPW component of the Check. The criminal history information component of the Check must be initiated no later than the start of service or work.

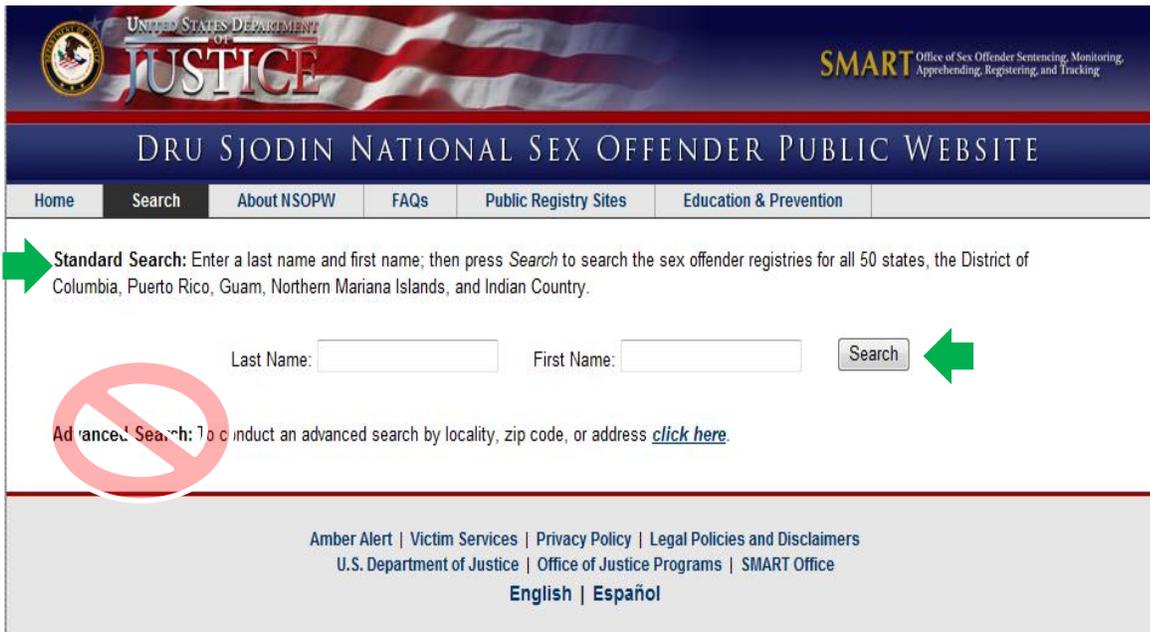
**3.21. What should I pay attention to if I add covered individuals to the Federal or grantee share of the amended budget?**

While your program's federally approved grant budget helps you identify covered individuals, because a budget evolves during the course of program execution, the approved budget by itself is not determinative with respect to who is or is not an individual in a covered position. You may find it necessary to add additional staff and partner positions to your budget. Even if you do not add the position to your budget, if you claim the costs for that position as Federal or non-Federal share (matching), the position is a covered position and the Check should have been performed when the individual was added to the program. Performing checks after the fact does not excuse a program from being accountable for any questioned costs if the individual was not checked before he or she began to serve in the program.

#### **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 required nationwide NSOPW check must be performed on a national level. Therefore, do not use the "advanced" search feature because it requires the user to limit the search to less than nationwide. Please note: the NSOPW is also known as the National Sex Offender Public Registry, NSOPR (<http://www.nsopr.gov>). See screenshot below (taken Oct 26, 2012).



4.2. **Which State(s) should I search on the NSOPR website?**

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 what they deem to be serious offenses to the FBI. Therefore, it is possible that an individual could be convicted of a crime and required by a State court to register on that State’s sex offender system but they have not been entered into or flagged in the FBI’s fingerprint database as having committed a sex offense.

4.4. **What do I do if I find an individual 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 individual who appears on the NSOPW is your applicant or is someone with the same name. Such as a comparison of the registered offender’s photograph from the NSOPW to the candidate’s photo identification or in-person check. The statewide criminal history search will also provide information helpful for determining whether or not the candidate is the individual 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 an individual’s current legal name, as shown on their government identification. Of course, it is prudent and easy to check any other names that the individual 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. If you are unable to demonstrate that an NSOPW check was conducted, all grant costs for the member will be disallowed.

4.7. **What steps should I take if I discover that States’ sex offender registry sites are inoperative when I am conducting the NSOPW check on an applicant? [UPDATE]**

You are required to perform the NSOPW check until all State registries are cleared. The result will indicate whether or not any individual State systems were inoperative during that search. If the check was less than complete, you must re-check the NSOPW before the individual 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 supplement the first NSOPW check with by checking the State registr(ies) that are down. You should pay special attention to the applicant's state of residence and state of service. Individuals cannot begin serving under the grant until the NSOPW is completed.

## **5. Statewide Criminal History**

### **5.1. How do I find out what statewide criminal record repository/repositories to check? [UPDATE]**

CNCS has designated specific registries in each State and most territories. While many States have more than one source of criminal history information, using any source other than those designated by CNCS requires approval of an alternative search procedure (ASP) from the Office of Grants Management Director. Please visit: <http://www.nationalserviceresources.org/national-service-criminal-history-check-resources> for a list of CNCS-designated State repositories and the alternative State sources we have approved.

### **5.2. We operate a nationwide program that places individuals in many States. Must we check each individual against their State of residence in addition to every State that our program operates in?**

Nationwide programs do not need to check more than two statewide repositories for a candidate. The statewide repository for the State where the applicant resided upon application and the statewide repository for the State where the individual will predominately be assigned to serve must be checked.

### **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. It is highly unlikely that CNCS would approve an Alternate Search Procedure (ASP) searching less than all available criminal history records unless access to the designated repository is not possible or access to older records is prohibited by State law. Many for-profit vendors limit the data that they provide, even if obtained from the designated repository, to a period of the last seven years to ensure that they do not run afoul of some State laws that limit the release of criminal history check information for employment purposes. Such searches do not provide criminal history checks that meet CNCS's requirements.

### **5.4. Does an FBI check satisfy the State criminal registry check requirement? [UPDATE]**

Sometimes. For individuals 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 individual in the covered position has recurring access to vulnerable populations. If the individual does have recurring access to vulnerable populations, then the fingerprint-based FBI check must be obtained in addition to the statewide registry check(s). If the individual does not have recurring access to vulnerable populations, a fingerprint-based FBI check will satisfy the State criminal registry record 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 get the FBI check? [UPDATE]**

The preferred method of obtaining the FBI check is through the CNCS designated State repository. If the repository does not offer the FBI check, please contact your program officer and submit an ASP to use the departmental orders method. More information is available here: <http://www.nationalserviceresources.org/national-service-criminal-history-check-resources>

### **6.2. 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 offer national service participants or grantees with free or reduced-price checks. 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.

**6.3. 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 hand over 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 an individual ineligible for the program are identified as "not cleared" or equivalent.

**6.4. Can I get CNCS's ORI number to give to my state repository?**

CNCS does not have an originating agency identifier (ORI) number. ORI numbers are issued to states, not to other 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 Checks under the Serve America Act, or request a unique ORI number form from the FBI to use for our Checks (<http://www.nationalservicerresources.org/files/fbi-memo-to-state-repositories-on-serve-america-act-oct-31-11.pdf>).

**7. How to Perform a National Service Criminal History Check**

**7.1. What steps are required to perform the checks?**

The regulations require that you:

- √ verify identity against government photo identification;
- √ obtain written authorization from the individual 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 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 procedures requires CNCS approval of an Alternate Search Procedure ([ASP](#)). See [guidance found at: http://www.nationalservicerresources.org/national-service-criminal-history-check-resources](http://www.nationalservicerresources.org/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) [[http://www.nationalservicerresources.org/files/fedregister\\_final\\_rule\\_oct\\_5\\_2012.pdf](http://www.nationalservicerresources.org/files/fedregister_final_rule_oct_5_2012.pdf)] was effective.

**7.3. What is the timeframe of the gap period?**

The gap period is from April 21, 2011 – December 31, 2012.

**7.4. What is special about the gap period? [UPDATE]**

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.

From April 21, 2011 until January 1, 2013, accompaniment may cease if the results of either the FBI or State checks have cleared for the individual. On or after January 1, 2013, an individual in a covered position with recurring access to vulnerable populations must be accompanied until all required components have returned results.

**7.5. What changes when the gap period ends? [UPDATE]**

On or after January 1, 2013, an individual in a covered position with recurring access to vulnerable populations must be accompanied until all required components have returned results.

**7.6. What should I be doing in preparation for the effective date? [UPDATE]**

When the final rule is published you should identify the covered positions that started on or after April 21, 2011 that will be continuing to serve past January 1, 2013. If these positions have recurring access to vulnerable populations, they must have the 45 C.F.R § 2540.203(b) Check components (i.e., NSOPW, State(s), *and* FBI) cleared and accompaniment is required until all components have returned results. (Please see FAQ 1.1).

If you have waited to initiate the heightened check until the rule was published, then you **MUST** initiate the third component (State(s) or FBI as applicable) by January 1, 2013.

While you are waiting for results for this third component, you do not have to re-initiate accompaniment until January 1, 2013.

On January 1, 2013 if results of the third component are still pending, you are required to re-initiate accompaniment for the covered position with recurring access to vulnerable populations.

Please note that if a person falls into the gap period for their first term of service and they return for a consecutive term of service within 120 days they would have to supplement the already-completed components with whatever components are required to comply with 45 C.F.R § 2540.203(b) if they have recurring access to vulnerable populations even if they did not have it for the first term due to the gap period.

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

Programs may start conducting the Check from the point of application to work/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. There are limited circumstances where CNCS will permit the use of a pre-existing Check under and only with advanced written ASP approval from CNCS.

**7.8. What is considered initiation? [UPDATE]**

Initiation 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.

**7.9. Can we use pre-existing background checks?**

Use of background checks performed under standards other than those specified by CNCS may be used if you obtain approval for an Alternate Search Procedure (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. Please see our ASP guidance [<http://www.nationalservicerresources.org/national-service-criminal-history-check-resources>].

- 7.10. **Our organization has had a national service grant for years, some of our employees from that time were not 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? [UPDATE]**  
If an organization or a partner organization operating a national service grant program performed compliant checks on its employees on or after November 23, 2007, even the employees who were not covered individuals because they were not on the grant budget or they were not currently assigned to perform duties under the national service program, so long as the individual has not had a break in employment since the check was performed, there is no need to perform a new check if that individual becomes a covered individual (placed on the budget, etc.). You are required to maintain the results of the check.
- 7.11. **Do we have to conduct a National Service Criminal History Check every year for each participant? [UPDATE]**  
No. 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.
- 7.12. **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 an individual is no longer providing service to a program or the individual is no longer an employee receiving salary through a program. Temporary interruption of work or service without an associated termination of employment or expiration of the agreement under which service is being provided is not a break in service.
- 7.13. **How do I verify the identity of an applicant?**  
You must require the applicant to produce a government-issued photo identification card.
- 7.14. **What types of documents are considered to be government-issued photo identification cards? [UPDATE]**  
Government-issued photo identification cards include, but are not limited to, State drivers' licenses, non-driver photo IDs issued by States' Department of Motor Vehicles and Federally-issued photo IDs, including official passports; an unexpired Native American Tribal ID from a federally-recognized tribal government.
- 7.15. **The regulations require us to check the “the State in which the individual resides at the time of application.” To comply, do we check the State for the candidate’s legal residence, home of record, or where they physically lived when they applied to serve?**  
The State where a candidate “resides” is the location where the individual has made a home which he/she considers to be his/her place of residence at the moment in time that he/she applied 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 individual 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 would meet the test for where an individual has made a home. Programs may mitigate risk by also checking candidates’ legal residence or home of record, but to exclusively use some other determinative criteria the program should seek a written approval from CNCS.
- 7.16. **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?**  
College students must be handled differently. For the purpose of CNCS requirements, an individual applying to serve or work who is an enrolled full-time college student is deemed to be residing in the state where he/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 breaks temporarily residing elsewhere, and there is no test needed to measure duration of residence while attending school.

**7.17. What if a program neglects to follow the required procedures?**

In addition to incurring potential liability, CNCS grantees who do not comply with the CNCS Check requirements risk loss of CNCS funding and disallowed costs regarding the individuals on whom checks were not performed. Further, if a grantee enrolls or hires an individual who should have been deemed ineligible, CNCS will disallow costs attributable to the ineligible individual, including the Education Award. Please read our CHC Compliance Policy at <http://www.nationalserviceresources.org/national-service-criminal-history-check-resources>.

**7.18. Why doesn't the rule bar someone from serving until the criminal registry results are received?**

Individuals with pending checks in contact with a vulnerable population must be physically accompanied at all times by someone who has been cleared for such access. While the rule bars the start of service or employment until an individual has been checked against the NSOPW sex offender registry system, because statewide and FBI criminal registry check results often take weeks or longer to receive, the rules do not prohibit an individual from serving/working while those checks are pending. However, the individual may not have unaccompanied access to children age 17 and younger, persons age 60 and older, or individuals with disabilities 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.

**7.19. Must the individual providing supervised access have undergone a National Service Criminal History Check, or would some other type of clearance be accepted?**

Generally, yes, clearance for the individual providing the accompaniment would be the Check. However, accompaniment can be performed by an employee or representative of a placement site if that individual's clearance was established under the placement site's rules. For example, if a participant is to serve in a nursing home, accompaniment may be performed by anyone the nursing home has cleared for access. Parents and guardians of the vulnerable population may also perform accompaniment as appropriate for the program design. Note: accompaniment is a higher standard than supervision and that mere supervision is inadequate.

**7.20. What is accompaniment and how do we document it occurred? [UPDATE]**

An individual 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 individual's timesheet who did the accompaniment, on what dates, hours, and have the individual who performed accompaniment incrementally sign off attesting to the accuracy of the documentation. You should have policies and procedures clearly describing your accompaniment guidelines and documentation procedures.

**7.21. Does my program have to accompany an individual in a covered position 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 National Service Criminal History Check components to end accompaniment? [UPDATE]**

In all cases, service or work cannot begin before the NSOPW is complete. After January 1, 2013, accompaniment is required for individuals in covered positions with recurring access to vulnerable populations until all Check components have returned results.

**7.22. What if an applicant refuses to consent to a National Service Criminal History Check?**

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

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

A false statement made in connection with a program's inquiry concerning the individual's criminal history disqualifies the individual as ineligible 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 regarding any offense type.

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

The refill policy currently in place 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.

**7.25. A project has had to fingerprint the same candidate three times. It seems the candidate's fingers are scarred and the prints are not readable. What options does this project have?**

Most importantly, the program should document its efforts. If the program is working through a State criminal history information repository, the state repository will have a protocol to validate identification and perform a name-based FBI check after several failed fingerprint attempts. The project needs to work with the repository to use such a protocol and then document the process and results. 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/background-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 those cases, you must contact the State repository to use its system, or if prohibited from accessing the State repository system, seek approval of an ASP from the Corporation.

**8. How to Document a National Service Criminal History Check**

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

The results of an NSOPW check would 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 to not be one of the registered sex offenders identified through the nationwide name-based NSOPW search.

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 individual candidate obtains his/her own record from the FBI, it will either be a "no record found" result indicating that the individual'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. May we retain only electronic records?**

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 in lieu of 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 Check 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 where the information was obtained from.

**8.3. What if my State either doesn't allow my program to maintain the results of the criminal registry or NSOPW check 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, you must explain the circumstances and request an Alternate Search Procedure (ASP) approval from CNCS for the variance.

**8.4. What are some of the practical implications of maintaining the results of the checks in the participant's file?**

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

**8.5. Must I store National Service Criminal History Check records at the program operation location 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 by CNCS for oversight and monitoring without undue cost or delay.

**8.6. The results we receive do not appear to be actual criminal history records but rather summaries and conclusions on the individual'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 under the regulations, or if it is another offense that your program considers to be disqualifying. Unless the FBI is releasing the Check result directly to the individual where it provides the individual with his/her rap sheet or a no records found result, FBI checks released to our grantees by State repositories and other authorized governmental bodies are always adjudicated summary results, and never rap sheets.

**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 as defined and described in 18 U.S.C. § 1111 is ineligible to serve. Anyone who refuses to undergo the Check may not serve. Anyone who makes a false statement in connection with a program's inquiry concerning the individual's criminal history is ineligible to serve.

If the National Service Criminal History Check returns results that implicate criteria 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 an individual from service with the grantee.

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 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 the Corporation could 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.

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

In some situations, an individual 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 individuals who have registered, the individual'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.

9.3. **What if a criminal registry check discloses a criminal conviction?**

The program should give the applicant an opportunity to correct any inaccurate information and then make a judgment about whether to accept the individual. Convictions for murder or for an offense that requires listing on the State's sex offender registry are automatically disqualifying. See question 9.1.

9.4. **Why is CNCS disqualifying sex offenders and individuals 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 Website and those convicted of murder must be ineligible to serve. Programs should exercise their own judgment in deciding whether, and to what extent, other types of offenses may make an individual ineligible to serve. See question 9.1.

9.5. **My program involves individuals 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 that is to be conducted, 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. See question 9.1.

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

The rule 9([http://www.nationalservicerresources.org/files/fedregister\\_final\\_rule\\_oct\\_5\\_2012.pdf](http://www.nationalservicerresources.org/files/fedregister_final_rule_oct_5_2012.pdf)) does not disqualify anyone on the basis of an 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 an individual. Grantees, as recipients of federal financial assistance, must comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and its implementing regulations, 45 CFR 1203.1 et seq., which prohibit discrimination in Corporation-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, 42 U.S.C. 2000e et seq., 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 explained in the EEOC guidance, 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 an individual's fitness, or in some cases, eligibility (i.e., murder), to serve with, or work for, a Corporation 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 need an Alternate Search Procedure (ASP) approval other than wanting to search alternate criminal history repositories? [UPDATE]**

Yes, if you wish to vary from any of the specific 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**, 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 Alternate Search Procedure (ASP) approval from CNCS? [UPDATE]**

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

If you are **receiving clearance letters instead of the actual results from a partner or non-designated source/alternate**, please include a copy of the written agreement you have in place to ensure that murder and sexual offenses deem an individual ineligible to serve and that no appeals can overturn this eligibility determination for the purposes of serving/working under a National Service program.

If you are **using a vendor**, secure an analysis of the product/services as they relate to our requirements on a state-by-state basis. For vendors going to CNCS designated sources, please ensure they are not limiting their search to 7 years, but go as far back as the designated source has records. Also, ensure that if they are retaining the results on behalf of the program, that the records are accessible for monitoring and oversight purposes for the required length of time for your program. Please see CNCS Vendor guidance for more information: (<http://www.nationalserviceresources.org/national-service-criminal-history-check-resources>)

ASP-related questions or an ASP request can be submitted by email to [ASPRequests@cns.gov](mailto:ASPRequests@cns.gov) or by regular mail to CNCS’s Office of Grants Management.

**10.3. How long does an Alternate Search Procedure (ASP) approval last?**

An approved ASP is applicable to the specific program using the specific alternative procedures described in its ASP request. Generally the ASP is approved, as long as the program design and procedures remain unchanged, the ASP is valid even if the program operates under subsequent grants funding the same program. The specific duration will be specified in the ASP determination from CNCS.

**10.4. Can other programs use my Alternate Search Procedure (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 had obtained an Alternate Search Procedure (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 [UPDATE]**

**11.1. Under what circumstances may programs apply for an exemption from the FBI check? [UPDATE]**

CNCS may approve exemptions from the heightened check if the entity demonstrates to CNCS’s satisfaction (1) that the cost to the grantee of complying with 45 CFR 2540.203(b)(2)(iii) 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.

If applying based on cost, please provide a detailed analysis of costs and burden as they compare to an increase in fees from the 45 CFR 2540.203(a) components to the 45 CFR 2540.203(b) components.

If unable to get the FBI check due to State or Federal law please submit a legal opinion from your legal counsel or the Attorney General in your State on the Statute prohibiting you from accessing the FBI check.

Exemptions requests must be submitted using the same procedure as ASP requests.

<http://www.nationalserviceresources.org/national-service-criminal-history-check-resources>. Please complete and submit the form included in the guidance 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 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's 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 – these procedures would not meet our rules without an ASP. 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 an individual 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 National Service Criminal History Check 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?**

The circumstances described warrant a request to CNCS for an alternative search procedure (ASP) approval. Your ASP request would need to address how you have established assurance, as well as documentation, that the checks performed by the school ensured that only eligible individuals were selected. The request would need to describe the basis for the position that the results could not be reviewed. For example, State law might prohibit examination of the results by third parties

### **12.3. Before the FBI check requirements went into effect on April 21, 2011, we had obtained an ASP permitting us to rely upon the checks performed by a school. Is that ASP still valid? [ATTENTION]**

An ASP decision issued prior to April 21, 2011 was based on a test of whether the school's checks were providing "substantially equivalent information" based on the regulations in effect at that time. Those checks did not have to include FBI information. On April 21, 2011, the measure of substantially equivalent was expanded to include FBI information. Therefore, if the school does not obtain FBI information for each check, then either FBI checks must be obtained separately or a revised ASP requested.

## **13. For-profit Vendors**

### **13.1. I purchase criminal history checks from a vendor. Do I need to request an alternative search procedure (ASP)? [UPDATE]**

You need an ASP to use a vendor that is not checking the designated statewide criminal history registries recognized by CNCS. 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. Many vendors conduct something less than statewide checks (e.g., county-of-residence checks), and characterize those single county checks as superior to State repository searches; they are not acceptable. If your vendor isn't using CNCS recognized repositories, you will have to request approval of an ASP and explain why the results you obtain from the vendor are substantially equivalent or better than searching the repository database(s) recognized by CNCS. Please visit here to find

guidance on evaluating vendor services: <http://www.nationalserviceresources.org/national-service-criminal-history-check-resources>.

**13.2. What should I be looking for when considering a vendor that meets CNCS' requirements for the National Service Criminal History Check? [UPDATE]**

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: <http://www.nationalserviceresources.org/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 of the requirements identified in the Corporation's regulations. If any component of the search or procedures varies from the regulations, a valid Check has not been conducted. ASP approval is required to deviate from the requirements.

**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 unless a grantee commits to those services and defines them in a ASP request to CNCS. A vendor's 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 usually meet the Check 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 be able to develop a list of approved commercial background and criminal history check providers. Instead, a request to use a particular vendor's services must be considered as a program specific ASP request.

**14. Costs and Compliance Risks**

**14.1. The cost of conducting a National Service Criminal History Check can be a financial burden for a program. Can CNCS pay for these checks?**

The total cost of conducting the Check 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. However, under VISTA regulations, the Check is not an allowable cost for VISTA grant funds.

**14.2. Is it permissible for programs to use current (2010-2011) grant funds to pay these costs for members who will be enrolled in the 2011-2012 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 contract's start date (e.g. criminal history check paid for on July 1, 2011 but member enrolled on September 1, 2011)?**

Check costs are allowable costs which are not required to be associated with a particular member year, i.e., the funds a program has budgeted to perform checks are not limited to performing them for a particular member year. They can be used to perform checks on anyone who is an individual in a covered position who needs the Check 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, also incurring the cost "today" and posting it against a future date would be improper accounting. However, the Check is not an allowable cost for VISTA grant funds. While CNCS's criminal history check regulation's preamble speaks to such costs being allowable grant costs, VISTA regulations spelling out limited allowable cost take precedence over the general rules.

**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 National Service Criminal History Check. 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 initially 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. For their programs, SeniorCorps does not permit charging candidates for the Checks.

**14.4. What consequences are there for failing to perform these checks?**

Programs that fail to perform NSOPW checks, do not initiate State repository and FBI checks before starting service or work or allow covered individuals to have unaccompanied access to vulnerable populations before the State repository and FBI check results are received are considered out of compliance. Immediate corrective action is required and there may be financial consequences. Because individuals in covered positions cannot serve or work before the program completes the NSOPW check, even if accompanied, any hours an individual serves or costs incurred before they are documented as clearing a nationwide NSOPW check cannot be counted towards service. Similarly, failing to commence the required State/FBI checks no later than the start of service or failing to accompany an individual while those checks are pending will also result in the disallowance of service hours. Related costs, such as stipends or living allowances, may also be disallowed.

**14.5. Why is there a financial consequence when I discovered that the Check wasn't performed but we fixed the situation, and there was no criminal record found? [UPDATE]**

The CNCS requirements specify the types of checks to be performed and the timing of those Checks. While a criminal history check performed late or after-the-fact may reveal that an individual would have cleared had the check been performed when it was supposed to be, the law and regulations required the checks to be performed (NSOPW) or initiated (State and/or FBI) prior to the start of work or service. The National Service Criminal History Check is a screening requirement – a requirement established to ensure the safety of service beneficiaries. A screening procedure is only effective if the information gleaned from it is known in advance of service, not after service is partially or fully complete. Therefore, the consequences of non-compliance result from both when as well as how the checks are performed. For more information about consequences for non-compliance, please read the [CHC Compliance Policy](#).

**14.6. Guidance for Addressing Non-Compliance with Regulations and Requirements**

A national service program may learn that it has not complied with all Check requirements (45 CFR §§ 2510, 2540, 2551, 2552 or the terms and conditions/provisions attached to the award) through self-determination, external compliance monitoring, or CNCS audit. For more information about consequences for non-compliance, please read the [CHC Compliance Policy](#).

**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.