

# **Corporation Enforcement of Criminal History Check Compliance**

## **October 2011**

**Requirements.** The Corporation established regulations related to criminal history checks for covered individuals in national service programs on November 23, 2007 and revised them effective October 1, 2009 based on the Kennedy Serve America Act. New draft regulations implementing enhanced checks related to required FBI fingerprint checks were published for comment on July 6, 2011. We are seeing an increasing number of findings in OIG audits, on site visits and through routine monitoring that national service criminal history checks are not being conducted as required. This document describes the Corporation's enforcement policies when we find non-compliance with the requirements. Herein, "service" means performing service or program work under any national service program while in a covered position.

**Common Findings.** Programs allowed covered individuals to start service or work before the program performs the NSOPR. They have also allowed covered individuals unaccompanied access<sup>1</sup> to vulnerable populations before the criminal history check results from state repositories or FBI were completed. In some cases, the state and FBI checks are being initiated after the individuals start service or work.

### **CONSEQUENCES**

**NSOPR.** Covered individuals cannot serve or work before the program completes the NSOPR. There is no allowance or exception to the NSOPR check and having a cleared individual accompany the individual has no bearing on the requirement to conduct the check prior to service. Any hours the individual serves before they are documented as clearing an NSOPR nationwide check cannot be counted towards service.

The Corporation will disallow the hours and apply the same policies in these cases we apply to other shortages of hours that result in improperly certified education awards and ineligible stipends or living allowances. If the problem is widespread or we determine the program was negligent, the program will be required to pay the Corporation for the full amount of any associated grant-funded program costs (e.g., stipends, salaries, living allowance) and the National Service Trust for any earned education award. If we determine the program was not negligent or the problem was an isolated lapse, the program will be required to pay only the portion of the stipend, salary or living allowance and education award earned before the NSOPR results were established. If a covered individual fails to clear the NSOPR check, all associated hours and costs are unallowable. Programs that allow covered individuals to serve before the NSOPR is completed will be considered out of compliance and will need to take immediate corrective action.

**Criminal History Checks.** Because of the time it takes to receive results of state repository and FBI fingerprint-based checks, individuals may start service before the program receives the results, but they cannot have access to vulnerable populations unless they are accompanied at all times by someone who has cleared a criminal history check. If programs fail to comply with requirements to commence the check prior to service or to accompany the individual prior to completion of the check, the Corporation will disallow the service hours and apply the same policies in these cases as we apply to other shortages of hours that result in improperly certified education awards and ineligible stipends, salaries or living allowances.

Programs that allow covered individuals to have unaccompanied access to vulnerable populations before the state repository and FBI check results are received, or do not initiate the state repository and FBI checks before starting service or work, will be considered out of compliance and will need to take immediate corrective action.

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<sup>1</sup> Currently accompaniment must be performed by someone who has cleared a check for access to the vulnerable population. Once the new regulations are final we will be able to permit a wider range of persons to perform accompaniment, i.e. parent, guardian, medical professional.