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# National Service Criminal History Background Checks: The Basics Through the Challenges

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Corporation for  
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# Session Objectives

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- Discussion of the basics
- Discussion of the challenges
- Questions



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# Discussion of the basics – why, who, what, when, how . . .



# Basics: **Why** are individuals checked?

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The law and regulations require it . . .

- To bar participation of sex offenders and murders
- To protect the integrity of national service programs
- To protect the populations we all serve

. . . as a standard for eligibility of members and employees



# Basics: **Who** gets checked?

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- Anyone who will receive the following through a national service program:
  - Living allowance or stipend
  - National Service Education Award
  - Salary



# Living Allowance or Stipend

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- **Anyone who will receive a living allowance or stipend . . .**
  - AmeriCorps members
  - Foster Grandparents
  - Senior Companions
  - Learn & Serve participants
  
- . . . and any others receiving stipends through a CNCS grant-funded national service program**



# Education Awards

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- **Anyone who will receive a National Service Education Award . . .**
  - AmeriCorps members
  
- . . . **through a program receiving assistance under the national service laws**
  - Awards by any other name are not included, e.g., Summer of Service Award

# Salary

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## Anyone who will receive a salary . . .

### □ **Your employees**

- Employees whose salary is allocated as a direct cost
- Indirect cost pool employees not covered
- Individuals who are identified on the grant budget, either Federal or non-Federal (matching) share

### □ **Your Partners' employees**

- Site supervisors, trainers, and similar positions
- All those Identified on the grant and sub-award budgets
- Includes in-kind employee positions identified on the budgets
- Does not include non-salaried, in-kind time donated by individuals



# Common Stumbling Block: Identifying Positions “On the Budget”

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- ❑ Covered positions are those paid from either Federal share or non-Federal share (match) as identified on the grant and sub-award budgets
- ❑ Grant and sub-award budgets should identify prime grantee and partners' employees performing required or program-designed activities (e.g., site supervisors)
- ❑ Shifting positions between federal share and matching does not exempt a position from coverage
- ❑ Multiple positions budgeted as “lump sum” all on one budget line are still covered positions
- ❑ Positions identified on sub-award budgets are covered; applies to all sub-awards performing program activities
- ❑ Contractors providing services are not covered individuals (do not receive a salary)

# Basics – **What** gets checked?

**This is a two part check!**

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- **National Sex Offender Public Registry**

- Also called the National Sex Offender Public Website or NSOPW

***and***

- **Statewide Criminal History**

- For the state where the individual resides at the time of application, ***and***
- The state where he or she will serve



# National Sex Offender Public Registry

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- ❑ Name based
- ❑ No charge to search on web
- ❑ Must use the nationwide search
- ❑ Must document with printout of result
- ❑ Must complete and resolve “hits” before enrollment
- ❑ May perform search multiple times if one or more states not functional (risk mitigation)



# Statewide Criminal History

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- Cost
  - Vary significantly by state
  - May be separate charges for fingerprinting services
- Multiple states
  - State of residence
  - State where service will be performed
- Name vs. fingerprint varies by state
- Must use the CNCS designated sources for each state
- Must retain original results from each source
- **Must identify disqualifying offenses:**
  - **Murder**
  - **Any that should result in registration on state sex offender list**



## Basics – **When** are the checks performed?

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### □ **NSOPR**

- No earlier than application
- No later than enrollment

### □ **Statewide criminal history**

- Initiate no later than enrollment
- Must accompany candidate while pending if they are to be in contact with vulnerable population



# Basics –

## How do programs perform the checks?

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**There are 10 required elements. Variance requires an alternate search protocol (ASP):**

1. Verify identity
2. Obtain prior written authorization
3. Document understanding of contingent selection
4. Provide opportunity for review
5. Safeguard information
6. Accompany individuals with pending statewide checks
7. Document identity was verified/checks performed
8. Maintain results of the checks
9. Document that selection was based on results
10. Program pays for the costs of the check



# Core Principle: Prime Grantees are Accountable . . .

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- . . . to monitor their subgrantees regarding compliance with criminal history check law and rule
- . . . to ensure that criminal history checks are properly documented
- . . . to review alternate protocol requests and ensure ASPs receive CNCS approval before use
- . . . for the impact of missing or improperly performed national service criminal history checks



# Who is a prime grantee?

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- ❑ A state commission
- ❑ A national direct
- ❑ Any federal grant recipient who then sub-awards to other organizations to achieve program objectives



# Why is Compliance Important from a Business Perspective?

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- ❑ Non-compliance = ineligible members & employees
- ❑ Ineligible individuals = questioned costs
- ❑ Questioned costs = potential debt / payback of grant and Trust awards



## What are the greatest non-compliance risks?

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- **Effective dates** – Did the program start performing national service criminal history checks when they should have?
  - November 23, 2007 – if program had recurring access to a vulnerable population; or
  - October 1, 2009 – all others



# Compliance risks . . .

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- **Records Retention** – Is the program obtaining, establishing and retaining all required records, including the criminal history report from the state repository?



# Compliance risks . . .

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- **Alternate Search Protocol (Procedural)**
  - If the program is doing something different with respect to the 10 required procedures, or not using the designated statewide repositories or the FBI as the source of the criminal history data, have they obtained an ASP from the CNCS?



# Compliance risks...

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- **Alternate Search Protocol (Sources of Records)**
  - If the program is using any source other than the statewide criminal history repositories designated by the CNCS, have they obtained an ASP from the CNCS, including your endorsement?
- Applies to the use of:
  - School systems
  - Commercial vendors
  - Screening authorities (other than National Center for Missing and Exploited Children (no approval needed))



# What is a prime grantee's role regarding Alternate Search Protocols?

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- Any ASP for your subgrantee must first receive your review and endorsement as a prime grantee
- Prime grantees need to be aggressive in identifying inadequately detailed or flawed requests – the request needs to clearly explain why the alternate methods should be considered “substantially equivalent”
- Programs operating under both state commissions and national directs will be processed under their national direct relationship first
- Decisions are sent to the prime grantee, designated as applicable to only the specific program making the request



# What should a prime grantee be doing now?

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- ❑ Keeping up with CNCS FAQs and regulations
- ❑ Educating subgrantee
- ❑ Enhancing oversight / monitoring protocols including developing checklists
- ❑ Reviewing member and employee files
- ❑ Looking for ASP situations where no ASP has been approved
- ❑ Conferencing with the CNCS to address any unique challenges you face
- ❑ Using tools provided on the Resource Center



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# Discussion of the **challenges** – and how to deal with them . . .

# Challenge – Learning Curve

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## □ **The CNCS is:**

- Dealing with law and regulations that are new with respect to application and interpretation
- Handing requests that each tends to involve unique circumstances
- Updating FAQs frequently and offering T/TA conference calls

## □ **Grantees and subgrantees are:**

- Dealing with regulations that are new to them
- Forming requests to use alternate procedures involving their own unique circumstances
- Reaching out to your grants and program officers with your questions



# Challenge – Failing to Perform the Required Checks

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- Applicants who do not undergo National Service Criminal History Checks will not be eligible to serve in a covered position
- Applicants who refuse to undergo checks are not eligible to serve or be employed
- If you do not conduct the required checks on covered individuals, you are enrolling and employing individuals who have not passed regulation-based eligibility criteria; you may have to pay back CNCS funds if identified

# Challenge – Effective Dates

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- **From November 23, 2007 forward, coverage for anyone with recurring access to a vulnerable population**
  - Existing employees & members should have received NSOPR check in 90 days
  - Applicants to be new employee or new member should have received NSOPR check, plus statewide criminal history checks if selected
  
- **From October 1, 2009 forward, coverage for anyone newly hired or enrolled no matter what activity they perform**
  - No retroactive requirement; existing members, employees, partner staff, and similar existing staff were not covered
  - Applicants to be new employee or new member should have received NSORP check, plus statewide criminal history checks if selected to serve
  - New programs and partners fully subject to the checks



# Challenge – Access to Data from a Designated Repository

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- ❑ Some states only permit supervising sites to obtain criminal history information; intermediaries may be prohibited from obtaining the checks
- ❑ Some states only provide data when the activity involves a vulnerable population
- ❑ Obtaining results from designated state agencies can be time consuming, require fingerprints, and involve fees and related costs



# Challenge – Site Partner Resistance

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- Some sites may resist additional criminal history checks on their employees who are covered by the requirements
  - Ask for an alternate check approval if the partner's checks are believed to be substantially equivalent
- Partners' employees (on the budget) who were performing program activities prior to October 1, 2009, are not required to undergo new checks

# Challenge – FBI Checks

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- While an FBI fingerprint-based background check meets the requirement for statewide checks of the individual's residence state and the state where the program operates and we have been hearing positive experience from grantees using them . . .
  - Only public agencies or designated organizations can receive FBI check results, or an individual can request their own FBI record
  - An FBI fingerprint-based check does **NOT** include the required NSOPR check - the FBI's sexual offender data identifier / data file is not the same as an NSOPR check
  - There are specific procedures to follow if the request to the FBI involves payment from, or results going to, someone other than the individual who is asking to see their own FBI records

# Best Practice: Self-directed FBI Checks

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- Some grantees are requiring their candidates to obtain their own checks from the FBI at [www.fbi.gov/hq/cjisd/fprequest.htm](http://www.fbi.gov/hq/cjisd/fprequest.htm)
- These grantees:
  - Design a process in detail for candidates and staff to follow
  - Develop tools such as a standard cover letter and keep a supply of payment, fingerprint and other forms on-hand
  - Establish controls to log and mail the requests from the grantee office to track requests and responses
- Challenges:
  - Official fingerprint cards on card-stock are difficult to obtain; some fingerprint locations do not allow regular paper stock
  - The FBI web site indicates they accept checks but they only accept money orders or credit cards
  - If payment is by someone else, or the results are going to someone else, must follow procedures



# Challenge – Volume of Applicants

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- Some large programs may have hundreds or even thousands of applicants. How do we deal with the resources needed to perform all of those checks?
  - You only have to check viable applicants
  - Your process should define when applicants are considered viable and therefore subject to the checks
  - NSOPR has to be completed before enrollment
  - Statewide criminal history can be done prior to enrollment, or started no later than enrollment



# Challenge – Pre-existing Background Checks

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- Any checks obtained prior to application to serve or application to be employed would require a full national service criminal history check (two part)
- If your program routinely encounters applicants with existing checks, you may describe the circumstances in an ASP request for consideration by CNCS

# Challenge – Record Retention

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## □ NSOPR

- You must retain a record of the NSOPR search and associated results either by printing the results or by some other method that retains the digital images of the checks and results

## □ Criminal History

- Unless prohibited by State law, you must keep the criminal history report from the reporting agency
- If prohibited by state law, you must obtain an ASP to not retain the records - you will have to design a process that retains some documentation that the check was performed even if the actual record can not be retained

# Challenge – Prohibitive State Agencies

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- Some states, such as California, limit access to criminal history records
- What should I do if I cannot access the designated state repository?
  - Work with your state office or commission to navigate the rules
  - Determine if your placement sites can perform the checks
  - If the restriction cannot be overcome, develop an Alternate Search Protocol (ASP), or consider other sources such as the Center for Missing and Exploited Children or the FBI
  - Gather evidence that you are prohibited from obtaining the checks
  - Explain why your proposed alternative is substantially equivalent or better than the designated source



# Challenge – **School System** Partners

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- If a school system is performing checks that fully meet the regulations (NSOPR, designated statewide sources, up to two states, 10 steps, etc.), and compliance can be checked, an ASP is not needed
- If the public school district is not performing compliant checks, an ASP will be approved without the need for you to define where they get their data from, but you will need to ensure that the 10 steps and access for compliance checking is permitted, or propose alternate solutions that are substantially equivalent
- If a private or non-public school is not performing compliant checks, then you must identify their entire process as well as the sources for their data to obtain an ASP



# Challenge – Vendors

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- If the vendor performs the required checks and follows all of the procedures, no ASP is needed (so far, no vendor's services presented to CNCS have met this criteria for all 50 states)
- If the vendor performs checks that vary from the regulations, even slightly, you must get an approved ASP



# Sub-challenge – Background Checks are Not Necessarily Criminal History Checks

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- ❑ Most vendors perform background checks but not all vendors perform statewide criminal history checks
- ❑ Credit checks, SSN traces, alias checks, and similar are not statewide criminal history checks
- ❑ Buyer beware, identify and verify that you are buying the services that are required or have enough detail from the vendor to justify an alternate search protocol



# Sub-challenge – 7 Year Data Limits

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- ❑ Many vendors limit their data to the last 7 years of information
- ❑ Vendors' explanation has been that some states prohibit giving out information beyond 7 years
- ❑ A few states do limit data to 7 years. In other states, the 7 year limit is likely unacceptable
- ❑ For some programs, 7 years can work if all candidates are young enough where 7 years logical – request an ASP

# Challenge –

## What is an Alternate Search Protocol (ASP)

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- Any alternate process—a criminal history check policy or process that varies from the requirements identified in the regulations— must be approved by the CNCS
- Some examples of variance from the regulations:
  - Omitting one of the 10 steps
  - Using a source other than the designated repository
  - Documenting checks with a “cleared” or “not cleared” response rather than retaining the full record, if the sources are not approved under an ASP to provide only a pass/fail type record



# Challenge –

## Not Realizing You Need an ASP

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- ❑ A vendor's marketing "hype" might imply a compliant check is performed, when it is not
- ❑ Colleagues have told you that who you are using is an "approved" vendor. The CNCS does not approve vendors; it approves alternate processes
- ❑ One grantee's ASP approval does not extend to another grantee. Every circumstance is unique, and each grantee must obtain an ASP for its own particular circumstances
- ❑ The use of a school to perform the checks requires an ASP approval (unless they are performing compliant checks)

# Overcoming Challenges

## How to Form an ASP Request

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- ❑ Provide all grant numbers to which the ASP applies
- ❑ Clearly identify and describe the source(s) of the data
- ❑ Avoid ambiguity such as references to “national background check databases” or “super check” that are not explained in detail
- ❑ Specify how your alternate process varies from the regulations
- ❑ Confirm that you and CNCS will have access for oversight and audit
- ❑ If you are a subgrantee to a prime grantee, your request must come to us through the prime grantee – they are responsible for ensuring compliance



# Where to Send an ASP Request

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- eMail submissions to:  
AlternateBackgroundCheck@cns.gov
  - Be careful to use the correct email address
  - Watch for receipt letter with log number
  
- A receipt letter will be sent from CNCS by eMail with a tracking number
  
- Decisions take 10 to 90 days and often involve the CNCS asking more questions



# The Future

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- Beginning April 21, 2011, any covered individual who meets the “recurring access to vulnerable populations” criterion must undergo NSOPR check, State criminal history check, and an FBI fingerprint check
- CNCS may grant exceptions for
  1. episodic volunteers
  2. if an organization is not authorized by State or Federal law to conduct FBI check
  3. if cost is prohibitively expensive; or
  4. for good cause



# Support Efforts Underway

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- CNCS working with the FBI to see if there is a way for programs to go directly to the FBI for criminal history information
- We are making regular updates to the FAQs
- CNCS is participating in the FBI's compact association of state criminal history repositories to educate the states, and negotiate solutions

# Tools and Resources

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- **Resource Center**
  - <http://nationalservicerresources.org/criminal-history>
  - FAQs, regulations
  - Instructions on how to request an ASP
  - Staff screening Tool Kit, 3rd Edition
- **18 USC Section 1111** (Definition of murder)
- **General and grant-specific questions:**  
[AlternateBackgroundCheck@cns.gov](mailto:AlternateBackgroundCheck@cns.gov)
- **ASP status questions:** Kim Hammonds, Office of Grants Management, [khammonds@cns.gov](mailto:khammonds@cns.gov), or 202.606.6968



# Questions?

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Open Discussion

Wrap Up

Evaluation