



National Service Criminal History Checks 101 Basics

Office of Grants Management
Douglas Godesky, Senior Grants Officer
Kinza Ghaznavi, Grants Management Specialist



Financial and Grants Management Institute
April 24 - 25, 2012



Welcome . . .

- Introduction of trainer and CNCS staff
- Program types represented
 - Senior Corps, AmeriCorps, SIF, NCB, 9/11, MLK
- Questions
 - As we go . . . ask clarifying questions and provide your experiences
 - Questions at the end as time permits



Serve America Act establishes the Requirement for national service criminal history checks

- 42 USC 12645g. “**SEC. 189D. CRIMINAL HISTORY CHECKS**”
- “(a) IN GENERAL – Each entity selecting individuals to serve in a position in which the individuals receive a living allowance, stipend, national service educational award, or salary **through a program receiving assistance under the national service laws**, shall, subject to regulations and requirements established by the Corporation, conduct criminal history checks for such individuals”
- “*Through a program*” means that the law covers a broader pool of individuals than just those who are paid with Federal dollars
- “*under the national service laws*” covers all of the Corporation’s grant funded programs, unless identified as excluded through Corporation policy



Covered Individual

- Individuals receiving either a
 - salary
 - stipend
 - living allowance
 - or earning a national service education award
- Unless identified by the Corporation as not a covered program or individual
- A covered individual may be paid wholly from Federal share, wholly from matching dollars, or from a mixture of Federal and non-Federal funds
 - The source of the funds has no impact on the status of an individual as covered or not covered



Vulnerable Population

- Children age 17 and younger
- Persons age 60 and older
- Individuals with disabilities



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 CFR 2510.20)
- This requirement is not limited to contact during service delivery activities, it includes any work or function that a covered individual may be assigned to perform through the national service program



Covered Individual

□ **Testing to determine coverage:**

- Positions (e.g., program coordinator; host site supervisor, etc.) listed on your funded grant budget under Federal, State, and/or Grantee Share (matching)
- Positions whose salary, stipend or similar are included on the expenditure report (FFR) as Federal, State and/or Grantee Share (matching)
- For grants without budgets (fixed-amount) individuals serving or working through the grant-funded program are covered

If someone is paid through the program, either by the grantee or by a partner organization to perform program activities and the value of that person's compensation is on the grant budget or the value is included in reported expenditures, then that person is a covered individual

□ **Pay attention to:**

- Changes you make after the budget is approved
- Expenditures you might include to meet an unanticipated shortage of matching share contribution

Recurring Access

NO RECURRING ACCESS

2 Part Check

1. National Sex Offender Public Registry
 - Nationwide search using www.nsopr.gov
 - Performed before start of service/work
2. Statewide criminal history registry
 - State of residence plus State where they will work or serve
 - Must use designated Statewide repositories or obtain alternate approvals
 - FBI checks may substitute for one or both States
 - Must initiate NLT start of work or service

RECURRING ACCESS

Heightened 3 Part Check

1. National Sex Offender Public Registry
2. Statewide criminal history registry/registries
3. FBI nationwide Criminal History Record Information (CHRI)
 - CHRI may be self-obtained or adjudicated result from authorized recipient, e.g., state repository
 - Obtaining FBI check does not substitute for the required one or two statewide repository checks



Federal Compliance Requirements

1. NSOPR check completed before service/work begins
2. Criminal history check(s) initiated no later than the start of service/work
3. Verify identity with government photo identification
4. Obtain written authorization prior to initiating checks
5. Document understanding that selection is subject to the checks
6. Determine where the checks must be obtained from
7. Pay for the checks
8. Provide opportunity for review of findings
9. Keep information confidential
10. Accompaniment while checks are pending when in contact with vulnerable populations
11. Maintain the results of the checks
12. Document that you verified identity and conducted the checks
13. Document that you considered the results of the checks



Criminal History Checks – Timing

- Perform and document NSOPR check **prior** to start of service/work
 - 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

- **Initiate** State and FBI checks **no later than the** start of service/work
 - Members can start service while checks are pending. But they cannot have access to vulnerable populations unless they are **accompanied** (defined as physical presence) at all times by someone who has cleared a criminal history check



Documentation You Must Create and Retain

1. Maintain the results of the checks
 2. Document that you verified identity and conducted the checks
 3. Document that you considered the results of the checks
- Results of NSOPR checks are dated screen prints of the results of the NSOPR nationwide search. That result should be annotated to document who confirmed that any hits are not the same persons as the candidate you are checking.
 - Results of the criminal information records are the actual criminal history rap sheets, or an adjudicated result from the official state repository or an FBI authorized recipient. To retain anything else in lieu of the actual results, such as a clearance letter from a school, requires approval of an alternate search procedure.



Episodic Access

(Upcoming new regulations only)

- **Access that is not**
 - a regular,
 - scheduled, and
 - anticipated component
- of an individual's position description

For covered individuals with episodic access to a vulnerable population the program is not required to conduct the heightened check on the individual.

- **Mitigate risk by:**
 - Label position descriptions as “having access” or “not having access” to vulnerable populations
 - Inform employees/participants of their determinations
 - Periodically review determinations



Alternate Search Protocol

If the answer is “yes” to all of the following ...

- ❑ Are the correct required sources used? (NSOPR, States, and FBI)
- ❑ Are the checks performed on the required timeline?
- ❑ Is there access to check results for oversight & monitoring?
- ❑ Are the results coming from the designated source for a state? (A school or partner declaration is not an official check result, requires an ASP)
- ❑ Are all requirements found in regulations followed?
- ❑ Is anything permitted that conflicts with requirements?

... then the checks are “compliant” and there is no need for an ASP

... does not matter if performed by primary grantee or partner

... if one or more “no” answers, then an ASP is needed



Alternate Search Protocol

Pay attention to:

- ❑ Defining exactly what variance you are seeking
- ❑ Offering an alternative that is substantially equivalent
- ❑ Providing proof, when appropriate
- ❑ Providing evidence to support equivalency claims
- ❑ Providing technical details when systems are involved
- ❑ Perform accompaniment while ASP is pending



State of Residence (Interpretation change)

- 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 time he/she applied to serve or work
 - For the purpose of the Corporation’s requirements, a student is deemed to be residing in the state in which the college is located even if it is not the student’s home of record
- Previously, advice was to check state of legal residence as state-of-residence



Enrollment for the purpose of CHC (Reinforcement of definition)

- “Enrollment” is the date when a covered individual begins employment or service under a national service program
For example:
 - Member service agreement start date
 - New employee on-board start work date
- Enrollment is not the day that a program enters a member name into the AmeriCorps Portal
- *No later than the enrollment date, the National sex offender registry check must be completed, and State and FBI checks must have been initiated!*



FBI Channelers (New resource)

- FBI now permits channelers to take electronic fingerprints, provide rap sheets (or no record found) results:
 - Go to: <http://www.fbi.gov/about-us/cjis/background-checks>
- **How to Request a Copy of Your Record**

The FBI offers two methods for requesting your FBI Identification Record or proof that a record does not exist.

Option 1: Submit your request directly to the FBI

Option 2: Submit to an FBI-approved Channeler, which is a private business that has contracted with the FBI to receive the fingerprint submission and relevant data, collect the associated fee(s), electronically forward the fingerprint submission with the necessary information to the FBI CJIS Division for a national criminal history record check, and receive the electronic record check result for dissemination to the individual



Vendor

Alternate Search Protocols (ASP)

- The current situation for ASP requests involving the proposed use of a commercial vendor to perform the checks:
 - Backlogged but they are the current priority
 - 7-year and similar limits on depth of adjudication continues to be problem
 - Lack of supporting technical details on the alternate sources continues to be a problem



Regulations

- ❑ **Status of Final Regulations** – anticipate publication no earlier than May 2012 with a 60 or 90 day effective date thereafter
- ❑ **Compliance deadline** – Anticipate that final rule will set either 60 or 90 days after publication as the deadline for enhanced checks to have been initiated
- ❑ **After publication ASPs expand to include exemption** – not just alternate search procedures
- ❑ **Cost Prohibitive/State/Federal Law Prohibits Access to FBI Checks/Other Good Cause Exemptions** – undetermined as to how far CNCS will pre-define the criteria
- ❑ **Extended “Gap” period** – Anticipate that the final rule will include a blanket, good cause exception: An covered individual who was hired by, or enrolled in, a program on, or after, April 21, 2011, and then departed the program before the effective date of the regulation (TBD), is not subject to the heightened search requirement
- ❑ **During this “Gap” accompaniment can cease if the results of one of the following checks have been cleared: State(s) or FBI**



Common Compliance Findings (What not to do...)

- Programs allowed covered individuals to start service or work **before the program performs the NSOPR**
- Programs allowed covered individuals **unaccompanied** access to vulnerable populations before the criminal history information results from state repository or FBI checks were completed
- State and FBI checks are being **initiated** after the individuals start service or work



Consequences

- If program fails to comply, the Corporation will disallow the service hours and apply the same policies in these cases as we apply to improperly certified education awards and ineligible stipends, salaries or living allowances
 - If the problem is widespread or 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 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 and other checks were initiated



Tools and Resources

- **Visit the Resource Center**

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

- Regulations
- FAQs and Alerts
- Instructions on how to request an ASP
- Fact Sheets, e.g., FBI checks

- **ASP submission and status questions:**

Please note submissions for State subgrantees must come through the State Commission and will not be accepted by CNCS directly

- ASPRequests@cns.gov
- Kim Hammonds
Office of Grants Management
khammonds@cns.gov, or 202.606.6968



Questions?

CriminalHistoryCheckQuestions@cns.gov

Open

Wrap Up

Evaluation