



NEW YORK STATE COMMISSION

AMERICORPS CRIMINAL HISTORY CHECK REQUIREMENTS

Background

The National Service Criminal History Check is a screening procedure established by law to protect the beneficiaries of national service.

The Serve America Act created statutory criminal history check requirements for CNCS' grantees. Noncompliance may lead to financial penalties for your program and expose your service beneficiaries, including children, older adults and people with disabilities, to harm.

Who is subject to the Criminal History Checks?

An Individual who is in a Covered Position. For purposes of this policy an individual who receives a stipend, salary, education award, or some other benefit listed on either the federal or grantee share.

Covered Position

An individual in a covered position may be paid wholly from federal share, wholly from matching dollars, or from a mixture of federal and non-federal dollars, or from a mixture of federal and non-federal funds. The source of the funds has no impact on the status of a position as covered or not covered.

Individuals Ineligible to Serve or Work in a Covered Position:

- Individuals listed on a sex offender registry.
- Individuals having a conviction for an offence for which sex offender registration is required.
- Individuals who refuse to consent to the criminal history background check.
- Individuals who make a false statement in connection with a program's inquiry concerning their criminal history check.
- Individuals convicted of murder as defined in section 1111 of title 18 United States Code.

Required Checks

Criminal history checks for all covered individuals:

(Two Part Check)

1. A nationwide name-based check of the National Sex Offender Public Website (NSOPW) <http://www.nsopw.gov/en-US/Search/Verification>
2. State (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 the FBI check

Criminal history checks for all covered individuals with *recurring* access to *vulnerable* populations (Three Part



Check):

1. A nationwide name-based check of the National Sex Offender Public Website (NSOPW) ,
2. State (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
3. A fingerprint-based FBI check.

"Recurring access" is defined as: the ability on more than one occasion to approach, observe or communicate (by physical proximity, phone or electronic (including email and/or social media) means with a person(s) of a vulnerable population.

"Vulnerable populations" are defined as: children under the age of 18; individuals with a disability; and persons over the age of 60.

Required Steps to Perform a Criminal History Background Check (documentation of steps must be retained in the member/staff file)

- Prior to the initiation of the criminal history checks, document that you verified the individual's identity with government-issued photo identification.
- Prior to the initiation of the criminal history checks, obtain a signed and dated written authorization from the applicant that affirms the applicant's consent to conduct the checks.
- Prior to the initiation of the criminal history checks, document the candidate understands that his/her ability to serve is dependent on the results of the checks.
- Prior to the initiation of the criminal background checks, document that the candidate understands he/she has the right to challenge the accuracy of the results of the checks.
- Determine the types of checks required and from where they are to be obtained
- Perform the NSOPW prior to the service/work.
- Initiate the State, and if required, FBI checks, no later than the start of service/work.
- Document receipt date when check results arrive.
- Document that staff reviewed and considered the results of each criminal history check (NSOPW, State, and FBI)
- Document the checks were conducted and maintain the results of the checks
- Document accompaniment while checks are pending if the member has recurring access to vulnerable populations

National Sex Offender Public Website Check (NSOPW)

The NSOPW is free Internet-based system operated by the U.S. Department of Justice. The system gathers data (name-based) from all participating State-level sex offender registries. The required nationwide NSOPW check must be performed on a national level. Therefore, the "advanced" search feature must not be used 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>)

The NSOPW check must be completed prior to the individual starting service or a grant-funded employee beginning work. For the purposes of this rule, an individual "starts service" when the individual's time begins to be credited toward their service commitment; an individual "begins work" when the individual



engages in activities chargeable to the grant. Programs 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 check, **inclusive of the date and time record** for when the search was performed and include in the member/staff file.

Any hours the individual serves before they are documented as clearing an NSOPW nationwide check cannot be counted towards service. The Corporation will disallow any program costs associated with those hours such as living allowances and education awards.

If there are individuals on the NSOPW with the same name as the candidate, programs must conduct a more in-depth inquiry to determine whether the individual who appears on the NSOPW is the candidate 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. If the NSOPW results do not include a photograph, program should compare the date of birth from the NSOPW to the candidate's date of birth on the candidate's photo identification. If it is determined that the candidate is not the individual who appears on the NSOPW, programs must document in writing (on the printed NSOPW results) who confirmed and how they confirmed that the candidate is not the one of those listed.

Programs must maintain written documentation in the member's file that an authorized program representative reviewed and considered the results of the NSOPW check in selecting the individual.

Statewide Criminal History Repository Check

The Corporation of National and Community Service (CNCS) designated the New York State Division Criminal Justice Services (NYS DCJS) and the New York State Office of Court Administration (NYS OCA) as the only two acceptable criminal registries that can provide criminal history data.

CNCS approved Go Pass (operated via a partnership between NYC Service and the NYC Department of Education) as an Alternate Source for criminal history data for individuals serving in one of the five New York City boroughs. Go Pass clearance is available for volunteers (not employees). This system documents fingerprint-based New York state-level criminal history information. Non-profits using Go Pass are not required to be based in New York City, but the individual being cleared must serve in one of the five New York City boroughs.

The statewide criminal history check must be completed for the state where the applicant resided upon application or currently resides in, and the state where the individual will be serving; for purposes of this policy, New York State. The list of CNCS designated criminal history registries for each state can be found at: <https://www.nationalserviceresources.org/files/table-of-designated-state-repositories-and-alternates-06-12-13.pdf>.

The statewide criminal background history checks must be **"initiated"** no later than the start of service/work for covered individuals. **Programs must be able to document how and when the check was initiated. This documentation must be in the member/staff file.** Any service hours accrued prior to initiation are ineligible.

"Initiation" is defined as one step more than getting permission to conduct the check. One more step could include documentation such as fingerprinting, mailing requests to obtain checks, having forms for checks filled out by candidates, dated fingerprint cards, payment invoices, etc.

Members/staff may begin service/work pending the results of the state check. If the member/staff has recurring access to vulnerable populations see the section on Accompaniment.



Results of the check:

Programs must maintain the results of the check AND maintain written documentation in the member's file that an authorized program representative reviewed and considered the results of the state check in selecting the individual.

The FBI Criminal History Check.

A FBI criminal background check is required for covered individuals that have "recurring access" to vulnerable populations. The FBI criminal background history check must be **initiated** no later than the start of service/work for covered individuals. **Programs must be able to document how and when the check was initiated. This documentation must be in the member/staff file.**

"Initiation" is defined as one step more than getting permission to conduct the check. One more step could include documentation such as fingerprinting, mailing requests to obtain checks, having forms for checks filled out by candidates, dated fingerprint cards, payment invoices, etc.. Any service hours accrued prior to initiation are ineligible.

Members/staff may begin service/work pending the results of the FBI check. If the member/staff has recurring access to vulnerable populations see the section on "Accompaniment".

Results of the check:

Programs must maintain the results of the checks AND maintain written documentation in the member's file that an authorized program representative reviewed and considered the results of the FBI check in selecting the individual.

Accessing FBI background check results:

AmeriCorps regulations require grantees submit FBI fingerprints through a state central record agency. In New York State the central record agency is NYS DCJS and the NYS OCA. However, neither the NYS DCJS, nor NYS OCA allows for the submission of fingerprints to the FBI through the agency.

In lieu of using the state central record agency, and in order to comply with the regulations, grantees must use a "Departmental Orders Method". Departmental Orders Methods include:

1. Using an FBI approved Channeler : For the list of Channelers, go to: <http://www.fbi.gov/about-us/cjis/identity-history-summary-checks/list-of-fbi-approved-channelers>.
2. Using non-law enforcement sources: The FBI can provide checks to organizations operating under federal laws designed to help protect vulnerable populations. One example is the SafetyNET program operated by MENTOR. These organizations disqualify candidates on criteria that often go beyond the Corporation's eligibility criteria.
3. Asking the individual to request his/her own FBI check: Individuals can ask the FBI for their own record. These records arrive unscreened, presenting the full FBI database.
4. Using local law enforcement agencies: Some programs work with their local law enforcement agencies to obtain FBI and statewide checks.
5. Using checks conducted by program partners: Some placement site partners (e.g., public school systems, nursing homes, etc.) may perform checks that include FBI records. (Please note: If a grantee is using the New York City Department of Education through either Go Pass or New York City Personnel Eligibility Tracking System (PETS) an ASP is not required).

Grantees that exercise the Departmental Orders Method option must obtain an Alternative Search Procedure or ASP from CNCS to use the method.



Accompaniment

Covered individuals must be accompanied (by a person cleared for access to a vulnerable population) when he or she has recurring access to vulnerable populations pending criminal history background check results.

An individual is accompanied when he or she is in the physical presence of a person cleared for access to a vulnerable population. 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. Programs must have policies and procedures clearly describing the accompaniment guidelines and documentation procedures.

Program may elect to cease accompaniment of the individual when it has received results from either the State component or the FBI component and does not need to receive results from both components before electing to cease accompaniment.

Resources and Support

The Corporation has developed resources to help programs navigate these requirements. These resources are found at: <http://www.nationalservice.gov/build-your-capacity/grants/criminal-background-check-requirements>

Cost

The cost associated with conducting Criminal History Checks is an allowable cost and reimbursable with AmeriCorps grant funds. Applicants cannot assume the cost of performing criminal history checks.

Second Year of Service

A program must conduct a Criminal History Check the first time an individual applies to a covered position in an AmeriCorps State program, but a second check is not required for an individual who is serving a consecutive term of service within the same program. A consecutive term of service means that there is no intervening break in service of more than 120 days during which the applicant did not serve in that specific program. However, if an individual applies for a second (or later) term of service with a different program (or with the same program but with a break of more than 120 days), a new Criminal History Check is required.

Requests for Approval of Alternative Criminal History Check Search Procedures

Needed when there are variances from required procedures and regulations. Programs may apply to CNCS, via the State Commission, for approval to use an alternative search procedure. Those who believe their procedures differ from yet are substantially equivalent to or better than the Corporation's required procedures similarly may apply to CNCS for approval to use alternative search procedures. Grantees with procedures that they believe follow all of the Corporation's requirements either meeting or exceeding all requirements (you will find a complete description of these requirements in the above referenced regulations), do not need to seek the Corporation's approval of an alternate search protocol