



2011
AmeriCorps
State and National Meeting

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Criminal History Checks

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NO RECURRING ACCESS – 2 Part Check

- National Sex Offender Public Registry
 - Nationwide search using www.nsopr.gov
 - Performed before start of service/work
- 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

- National Sex Offender Public Registry
- Statewide criminal history registry/registries
- 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



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		Date Covered Individual Hired or Service Began											
Identify the covered individuals in each program:	Recurring Access to vulnerable populations	Before Nov. 23, 2007*			Nov. 23, 2007 – Sept. 30, 2009			Oct. 1, 2009 – April 20, 2011			On or after April 21, 2011		
		N	S	F	N	S	F	N	S	F	N	S	F
AmeriCorps State & National	Yes	✓			✓	✓		✓	✓		✓	✓	✓
	No							✓	✓		✓	✓	

N = NSOPW; S = State registry check; F = FBI fingerprint check

* This applies to individuals who were enrolled or employed as of November 23, 2007, but were hired or enrolled prior to that date.



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Covered Individual

Individuals receiving either a

- salary,
- stipend,
- living allowance,
- or earning a national service education award

through programs receiving assistance (grants) through the Corporation's national service laws and programs, are covered by the National Service Criminal History check rules, unless identified by the Corporation as not a covered program or individual.

Covered programs include, but are not limited to:

- AmeriCorps State, including full-cost fixed amount programs
- AmeriCorps National, including full-cost fixed amount programs



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Testing to determine coverage:

- individuals listed on your funded grant budget (Both CNCS and Grantee Share)
- individuals listed on the expenditure report (FFR) (Both CNCS and Grantee Share)
- For grants without budgets (Fixed amount) individuals serving or working under the grant are covered.

Pay attention to:

- Changes you make after the budget is approved
- Matching contributions involving in-kind value on budget



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Covered Individual

Mitigate risk by:

- Label position descriptions as “having access” or “not having access” to vulnerable populations
- Inform employees/participants of their determinations
- Describe in PD individual’s foreseeable recurring access
- Periodically review determinations
- Determine if partner performs compliant checks or might be ASP suitable
- Establish clear contract-based expectations, particularly around access to timing of the checks and access to records



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National Service Criminal History Check Position Type Coverage

	Employees	Participants	Sub-Grants	Site Supervisors and Similar	Volunteers	Program Beneficiaries
AmeriCorps State Programs	Covered	Covered	Covered	Covered	Not Covered	Not Covered
AmeriCorps National Direct Programs						
AmeriCorps Fixed Price Awards and Sub-awards						
AmeriCorps Education Award Programs	Not Covered	Covered	Not Covered	Not Covered		
AmeriCorps Commission Administrative	Varies *	N/A	Not Covered	Covered		
AmeriCorps Commission PDAT and Disability	Not Covered	N/A	Not Covered	Covered		



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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 & 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



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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 all checks **prior** to 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** at all times by someone who has cleared a criminal history check.



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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 primary 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



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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

Prime national direct and State commissions must clear ASP requests from sub-awardees to the Corporation!



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Updates

- State of Residence (Interpretation change)
- Enrollment (Reinforcement of definition)
- FBI Channelers (New resource)
- Vendor ASPs (Approach)
- Regulations
- Updated FAQs



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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.



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Enrollment (Reinforcement of definition)

“Enrollment” is the date when a covered individual begins employment or service under a national service program. For example:

- Member service contract start date
- New employee on-board start work date

Enrollment is not the date 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!



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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 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.



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Vendor Alternate Search Protocols

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
- Addressing the most common states requested for use of vendors
- Determining if a portable model is possible
- 7-year and similar limits on depth of adjudication continues to be problem



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Alternate Search Protocol Request Samples – VENDOR DENIED

- **Request: Use of vendor performing state and nationwide checks**
 - **Decision:** Denied. Rationale:
 - Few, or no details provided on how checks performed
 - Names of governmental information sources vague or conflicting terminology
 - Limitation to how many years of data provided
 - Limited to only one or a few counties checked
 - Requested vendor has been asked about in the past and details never provided
- **Request: Use of a university's vendor performing both sex offender and criminal history checks**
 - **Decision:** Denied. Rationale:
 - Vendor not using NSOPR
 - Vendor's sex offender sources less than all States, territories and Tribes
 - Vendor limits reports to last 7 years of records



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Alternate Search Protocol – VENDOR APPROVED

- **Request: Use of vendor in lieu of California DOJ checks when denied access to CA DOJ (does not address FBI checks)**
 - **Decision:** Approved, detailed proposal with conditions provided:
 - College age and younger candidates only
 - Checking all counties of residence throughout the US
 - Checking all statewide official repositories where candidates lived
- **Request: Use of State university vendor for summer only program, vendor had not been approved when use requested outside of university system**
 - **Decision:** Approved, rationale and conditions:
 - Proof provided that State police checks taking 6+ weeks in an 8 week program
 - Deference to State government university choices
 - College age and younger candidates, only when checked through university contract



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Regulations

- **Status of Final Regulations** – anticipate publication no earlier than final weeks of 2011
- **Public Comments** – about 150 received
- **Too Costly / Other Good Cause Exemptions** – undetermined as to how far CNCS will pre-define the criteria
- **“Gap” period** – **Anticipate that the final rule will include a blanket, good cause exception: An otherwise 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.**
- **Compliance deadline** - **Anticipate that final rule will set 60 days after publication as deadline for enhanced checks to have been initiated.**
- **ASPs expand to include exemption, not just alternate protocol.**



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Updated FAQs

- Delayed, anticipate release in October 2011
- Numerous clarifications and edits
- Balance between “as is” current regulations and upcoming regulations
- Some improvements in designated statewide repository resource IDs



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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.



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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.**



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Tools and Resources

- **Social Networking:** Follow us on Twitter <http://twitter.com/IDtheCriminal>
- **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:**
ASPRequests@cns.gov
Kim Hammonds,
Office of Grants Management,
khammonds@cns.gov, or 202.606.6968



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Discussion and Questions

Questions: CriminalHistoryCheckQuestions@cns.gov