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Topic: National Service Criminal History Check (NSCHC) Frequently Asked Questions (FAQ)

Summary: This provides guidance to follow NSCHC requirements and protect beneficiaries of national service.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

NSCHC Frequently Asked Questions



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Introduction

National Service Criminal History Check (NSCHC) is a screening procedure established by law to protect the beneficiaries of national service. This guidance must be followed per the NSCHC requirements (45 CFR 2540.200 -- .207). You may face enforcement remedies, including financial consequences, if you deviate from the requirements.

The Corporation for National and Community Service’s (CNCS) NSCHC requirements are baseline screening procedures, in terms of both screening criteria and safeguarding. Organizations working with vulnerable populations should institute a holistic framework for safeguarding beneficiaries of service. Safeguarding is broader than screening, as it includes additional actions you can take to ensure the health and safety of beneficiaries. Safeguarding includes procedures that provide clear steps on what to do to limit the risk to beneficiaries, it assigns roles and responsibilities and documents policies and procedures, and it complies with the process for investigating complaints. CNCS will periodically update these FAQs.

1.0 Regulations, Effective Dates, and NSCHC Components

1.1 How have the NSCHC requirements changed over time?

Since November 23, 2007, CNCS regulations have required recipients to perform the NSCHC on individuals who have recurring access to a vulnerable population. Vulnerable populations include children 17 years of age or younger, persons age 60 and older, or people with disabilities.

On October 1, 2009, CNCS statutes expanded the requirements to check any person receiving a living allowance, stipend, national service education award, or salary through a grant recipient receiving CNCS funds, regardless of their level of contact with a vulnerable population.

Finally on January 1, 2013, CNCS issued regulations to fully implement the 2009 statutory changes that required a fingerprint-based FBI criminal history check for those individuals in covered positions who have recurring access to vulnerable populations.

1.2 What is the murder self-certification requirement?

On April 21, 2009, the Edward M. Kennedy Serve America Act was signed into law. The Act expanded the requirements of the National Service Criminal History Check and specified that an individual convicted of murder is ineligible to serve in a covered position.

A final rule implementing the requirements of the National Service Criminal History Check went into effect on January 1, 2013. This rule clarified that a person with a murder conviction serving in or employed in a covered position as of January 2, 2013, regardless of when the individual first started serving, could not continue serving or working in any covered position. Individuals convicted of murder were immediately removed from service or grant-funded employment in a covered position.

Individuals currently serving or working in covered positions who began work or started service prior to October 1, 2009 were asked to self-certify that they have not been convicted of murder, as defined by 18 U.S.C. § 1111.

1.3 What does the term gap period refer to?

The gap period is the period of time between April 21, 2011 and December 31, 2012 during which the requirements of 45 C.F.R. § 2540.203(b) were effective. If an individual started in a covered position on or after April 21, 2011 and completed work or service before December 31, 2012, then only a two-part check was required.

1.4 Is a background check the same as an NSCHC?

No. Background checks can mean many different things and have many different components, many of which may not be relevant to the NSCHC. For example, credit reports and interviews with personal references are examples of background checks that are not relevant to the NSCHC. In addition, not all background checks include all the necessary components of the NSCHC.

1.5 I am told that my organization is not eligible to receive a criminal history check because we are clearing people for employment. What do I do?

You should provide the following explanation: An NSCHC is required for a person to serve in a CNCS grant program. It is not a check to approve employment. You may employ someone, but they may be prohibited from serving in a CNCS grant program. Contact your CNCS Program Officer or Grants Officer immediately if you are not permitted to conduct required checks.

2.0 Covered Individuals

2.1 How can we determine if a staff person or national service participant, in a fixed-amount grant with no budget or FFR, is in a covered position?

Staff or national service participants who carry out the grant-funded activities or administer the grant are in covered positions. If you are exempt from submitting budgets or financial reports, you should examine the activities in the funded grant application's narrative to determine the covered positions.

2.2 What about employees of partner organizations who supervise members or volunteers?

You must apply the same test used to identify employees working in covered positions to your partners' employees. If CNCS or recipient matching share of your grant is part of the salaries paid to these people, then they are working in covered positions and must have an NSCHC. If a partner's employees are not identified in the grant budget and their associated compensation is not claimed as matching share expenditures, then those employees are not in covered positions.

2.3 Do hourly-wage staff (i.e. not salaried) need to undergo the NSCHC?

Yes. The NSCHC requirements do not change based on whether an individual is paid hourly or salaried. A person who receives an hourly wage directly attributable to the grant must have the NSCHC conducted.

2.4 I'm a VISTA sponsor who receives a VISTA support (S&T) or program grant. I use part of the CNCS federal share of the VISTA grant to pay staff salaries. Do I have to conduct an NSCHC for my staff whose salary is fully or partially funded from the "CNCS Share" of the VISTA grant?

Yes. You're required to do an NSCHC for all staff whose salary is fully or partially funded from the "CNCS Share" of a VISTA grant, and you can use VISTA grant funds from the CNCS Share of the VISTA grant to pay for the checks.

2.5 I'm a VISTA sponsor who receives a VISTA support (S&T) or program grant. The "Grantee Share" column of my grant budget reflects staff salaries. Do I have to conduct an NSCHC for staff whose salaries are reflected solely on the "Grantee Share" column of the VISTA grant budget and paid entirely from non-CNCS funds?

No, you don't have to do an NSCHC for staff whose salaries are reflected solely on the "Grantee Share" column of the VISTA grant budget and paid entirely from non-CNCS funds. VISTA grants do not require the sponsor to provide a specified level of matching funds in order to be eligible to spend the federal funds. Amounts reflected in the "Grantee Share" are for informational purposes.

2.6 A former VISTA member has been selected in a covered position in our national service program for which an NSCHC is required. Do we need to conduct a new NSCHC on this individual?

Yes, you must conduct a completely new NSCHC. The criminal history checks that CNCS does for VISTA members are not transferable to grant recipient organizations to satisfy the NSCHC requirements for people who work or serve in a covered position.

2.7 What NSCHC is required for a person in a covered position whose access to vulnerable populations is limited to people who, themselves, are in a covered position (i.e. both people are serving in covered positions and one person is a member of a vulnerable population)?

The NSCHC three-component requirement for people with recurring access to vulnerable populations applies to the person who is providing service to vulnerable populations, not providing service with vulnerable populations. Only the two-component NSCHC is required if the person's recurring access to vulnerable people is limited to those who are, themselves, serving in a covered position. This includes an RSVP staff member who does not have recurring access to the beneficiaries served by the RSVP volunteers' service. Recipients must make an informed decision about whether a person in a covered position is providing service to a vulnerable population. The recipient should ask, whether a reasonable person, based on the totality of the circumstances, would determine that the population served by the person was a vulnerable population.

2.8 Why don't the NSCHC rules cover community volunteers who are recruited by national service recipients?

The NSCHC only applies to people who receive a national service education award, stipend, living allowance, or salary under a grant from CNCS. Community volunteers do not receive this kind of compensation.

2.9 Do we have to conduct the NSCHC on people who are living outside of the United States at the time they apply for a covered position?

Yes. In addition to an NSOPW check, you must check the records in the person's last state of residence in the United States, as well as in the state where the individual serves or works. If the person never lived in the United States, then you are only required to check the records in the state where he or she will be serving or working.

2.10 Do we have to conduct the NSCHC on administrative staff whose time is allocated to the grant indirectly?

No. You are not required to conduct the NSCHC on staff whose time is allocated to the grant as part of an indirect cost rate pool or similar agreement. These people hold positions that are not identified on the grant budget, and their work is of a generic, indirect nature usually serving the entire organization. However, recipients are encouraged to develop a prudent criminal history check policy that addresses indirect cost pool administrative staff, appropriate to their program design and populations.

2.11 Our program design involves job training and job creation, and we pay wages to people who are in training and initial phases of gainful employment. Are these beneficiaries of the program covered?

No. Even though the beneficiaries receive a form of financial benefit as part of the program's design, the positions are not covered because the benefit is the result of securing employment, which is a program outcome rather than a program activity. A person who receives some financial benefit through a national service grant but who is not otherwise engaged in grant activities is not in a covered position.

2.12 Should my program perform checks on people who are otherwise not required to have an NSCHC? Will my grant cover the cost?

Your program may choose to conduct NSCHCs on people in non-covered positions as an effective first step in prevention and safeguarding. You may include this as a grant operating cost or volunteer support expense in your grant budget proposal. Please note that access to FBI checks through Fieldprint is limited to those individuals in covered positions who are required by law to undergo a National Service Criminal History Check.

2.13 What happens when a Senior Corps project relinquishes a grant and it is awarded to a replacement sponsor?

The volunteers' criminal history checks may be transferred to the new sponsor with the volunteer files. The new sponsor is not required to recheck the volunteers if those files are complete and compliant. However, they must ensure that the checks met applicable regulations and correct any noncompliance they identify.

2.14 Is the recipient program required to conduct a second NSCHC on an applicant who defers service for a year?

Candidates who are selected and have cleared their NSCHC may defer or delay their start of service without undergoing a new NSCHC. Service delay or deferral is permitted for up to one (1) year, but the approved program design must include this option. CNCS recommends that programs develop a written policy on how to handle NSCHC for people who defer service.

2.15 Our program receives thousands of applications to serve. Performing NSCHCs on everyone who applies for a position or to serve can be very burdensome and expensive. Is there a better way to manage this workload? Your program's NSCHC policy and procedures should identify the point at which applicants are checked. (FBI and State checks for FGP and SCP stipended volunteers must be initiated before participation in pre-service orientation. Such volunteers are already accruing hours toward their stipends. A NSOPW check must be complete before accruing any hours.)

2.16 Does administrative leave, sick leave, summer breaks, or not actively working with a client constitute a break in service?

No. A break in service means that a person is no longer providing service through or receiving salary from a CNCS funded program.

3.0 Ineligible Individuals

3.1 What does it mean to be required to be listed on a sex offender registry?

In some situations, a person may have been convicted of an offense and ordered by the court to register as a sex offender, but he or she did not register. Since the NSOPW check only identifies people who have registered, programs must also use candidates' criminal history information to check for any offenses for which the candidate was required to register under state law, but did not. Individuals who are required to be listed on sex offender registry are ineligible to serve/work on CNCS grants.

3.2 My program involves people with criminal histories. Is there anything additional that I must do?

In situations where an ex-offender applies to serve or work, officials may take into consideration the type of service or program activity the applicant would do, the specific crime they committed, and the various

supervisory levels that exist to manage the risks associated with an ex-offender's participation in the program. However, murder and conviction of any offenses that require registration on a sex offender registry are disqualifying offenses without exception.

3.3 If we de-select a person for an AmeriCorps position based on criminal history, can we refill that position? The refill policy applies. Recipients should consult the guidance in the Terms and Conditions referencing re-fill policy and changes in member positions.

4.0 When to Conduct an NSCHC

Best Practice: It is a best practice to conduct and complete all checks before individuals begin work or service.

4.1 How far in advance of participation in a recipient program should we conduct the NSCHC?

Recipients may start conducting the NSCHC from the point of application to when the candidate begins to work or serve in a national service program. The regulations require that the NSOPW component be completed before a person starts service/employment, and that the state and FBI checks be initiated no later than the first day that hours are accrued, including pre-service orientation/training. It is a best practice to conduct and complete all checks before individuals begin work or service. Recipients using Truescreen to should refer to the Truescreen ASP for information on the timing of completion of those checks.

4.2 When must I supplement checks?

You must supplement checks anytime there is a change from episodic/no access to recurring access to vulnerable populations. When moving from a position that doesn't have recurring access to vulnerable populations to a position that does have recurring access to vulnerable populations, grant recipients must conduct the appropriate missing check(s). For example, if the member had a state of service and state of residence check conducted, the grant recipient would also need to conduct the FBI check if the member was moving into a covered position that had recurring access to vulnerable populations.

5.0 How to Conduct an NSCHC

5.1 How do I verify the identity of an applicant?

You must require the applicant to produce a government-issued photo identification card.

5.2 What types of documents are considered to be government-issued photo identification cards?

Acceptable forms of government-issued photo identification cards include, but are not limited to:

- state drivers' licenses
- non-driver photo IDs issued by states' Departments of Motor Vehicles (including the IDNYC, an ID issued through a New York City program)
- federally-issued photo IDs, including official passports or a Native American Tribal ID from a federally-recognized tribal government.
- Certificate of naturalization
- Certificate of citizenship
- Government employee photo ID (city, county, state or federal)
- US military or military dependent photo ID
- US Permanent resident card/alien registration receipt card (Green Card)

- Employment authorization document card
- Trusted traveler IDs (including valid Global Entry, FAST, SENTRI, and NEXUS cards)
- DOD common access cards

5.3 My government issued photo identification card does not comply with the REAL ID Act of 2005 and may have “not for official purposes” or “not for federal purposes” printed on them. Can such identification cards be used for NSCHC?

Yes, any driver’s license or identification card issued by a state is valid for the purposes of CNCS’s NSCHC regulations, even if the phrase “not for official purposes” or “not for federal purposes” is printed on it.

5.4 The cost of conducting an NSCHC can be a financial burden for a recipient. Can CNCS pay for these checks?

The total cost of conducting the NSCHC is an allowable program operating cost (called a “volunteer support expense” in Senior Corps programs) and should be included in the budget. Recipients should project all cost components such as fingerprinting, notarization, mailing, and state repository and FBI fees.

5.5 Are recipients allowed to use current year grant funds to pay NSCHC costs for members who will be enrolled in the next program year? If not, may recipients defer the costs and charge them to the new grant year (as budgeted) even if the expense was incurred prior to the project start date?

NSCHC costs are allowable costs that are not required to be associated with a particular program year. The funds that a recipient has budgeted for checks are not limited to use during a particular period. They can be used to perform checks on any person in a covered position who needs the NSCHC at that moment in time. The costs are allocable to the recipient at that moment in time because checks are required upon application to serve/work. Waiting for a future budget to start the checks is not an option, and incurring the cost today and posting it against a future date would be improper accounting.

5.6 Programs cannot charge an applicant for the cost of conducting the NSCHC. Does this mean that we can’t charge an applicant and later reimburse him or her for this cost?

Programs are permitted to ask a candidate to pay for the check(s), as long as the program reimburses the applicant for the cost of conducting the check(s). Except under very limited circumstances (for example, where programs have traditionally charged all volunteers for this cost) programs may not charge applicants for any of the component costs of conducting criminal registry checks. Senior Corps explicitly does not permit charging candidates for the NSCHCs.

5.7 Do we have to conduct an NSCHC every year for each participant?

No. The NSCHC is required only once for any person who applies to work or serve in a covered position. However, if a person has a break in service longer than 120 days, then the entire NSCHC must be done again.

5.8 Why doesn’t the rule prohibit a person from serving until the criminal registry results are received?

It is a best practice to conduct and complete all checks before individuals begin work or service. The rule prohibits the start of service or employment until a person has been checked against the NSOPW.. While a program is waiting for the results of the state or FBI criminal registry checks, a person may not have unaccompanied access to vulnerable populations. Individuals with pending checks must at all times be in the physical presence of someone who has been cleared for such access.

5.9 Must the person who provides accompaniment have NSCHC clearance, or would some other type of clearance be accepted?

An employee or representative of a placement site may provide accompaniment if that person's clearance was established under the placement site's rules. For example, if a participant is to serve in a nursing home, they may be accompanied by any staff the nursing home has cleared for access. Parents, spouses and guardians of a person in a vulnerable population may also provide accompaniment, as appropriate for the program design. If the person who provides accompaniment is in a covered position on a CNCS grant, then they must be cleared by CNCS NSCHC requirements in order to be qualified for access and serve as an accompanier.

5.10 Some of our employees have not been in covered positions but we conducted checks on them anyway, anticipating they might one day be assigned to such duties. Do we have to re-check them once they are officially assigned?

If you performed a compliant check on or after November 23, 2007, there is no need to perform a new check when that person starts working in a covered position, as long as he or she has not had a break in employment since the check was performed. You are required to maintain the results of the check. If you only conducted some of the required components of the check, you must supplement the pre-existing checks with the additional required components.

6.0 Documentation for NSCHC Requirements

6.1 May we retain only electronic records rather than paper files?

There is no rule requiring criminal history check records to be paper-based. You may save scanned images of criminal history check results and the associated documents, rather than paper documents. A program using an electronic record system should make sure that it meets all expectations for verifiable and auditable records. Given the critical nature of the date when the NSCHC was performed or initiated, the program should make sure that any record – whether paper or electronic – clearly and without doubt establishes when the checks were performed, by whom, and from where the information was obtained.

6.2 How should we store, secure, and file the results of the NSCHC?

NSCHC information should be maintained in a secure location under the control of an authorized records custodian. Only people who have an official need to review the information should have access to the records.

6.3 Must I store NSCHC records at the service site, or may I centralize the records at our headquarters?

Records may be stored at any secure location, so long as they are accessible for timely routine use by the recipient, and for oversight and monitoring by CNCS, without undue cost or delay.