

Serve Wisconsin National Service Criminal History Check Policy Effective January 1, 2013

The Corporation for National and Community Service (the Corporation) has issued the final rule for implementation of the Serve America Act requirement for FBI fingerprint checks for AmeriCorps members and grant-funded staff with access to vulnerable populations. The final rule was published in the Federal Register, Vol. 77, No. 194, Page 60922, Friday, October 5, 2012, and is effective January 1, 2013.

On December 27, 2012, the Corporation also issued the following notice regarding members/staff with access to vulnerable populations:

*CNCS has approved an Alternative Search Procedure (ASP) to continue its current policy on accompaniment beyond January 1, 2013. This ASP applies to all programs and projects with individuals in covered positions with recurring access to vulnerable populations. This means that for individuals in covered positions for whom a National Service Criminal History Check requires both state and FBI components (2540.203(b)), the program or project 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. This temporary extension of CNCS's current policy will continue until further notice. **Please note, an individual may not serve or work in a covered position prior to completing the nationwide NSOPW search component (2540.204, .206).***

The Corporation's Interim Final Rule including Serve America Act changes to criminal history check requirements was published in the Federal Register, Vol. 74, No. 174, Page 46495, September 10, 2009. The Corporation's previous Final Rule on criminal history checks was published in the Federal Register, Vol. 72, No. 164, Page 48574, Friday, August 24, 2007. These rules amend National and Community Service Act of 1990 and the Domestic Volunteer Service Act of 1973 and AmeriCorps regulations.

The Serve Wisconsin National Service Criminal History Check Policy incorporates the Corporation's final rule of 2007, interim final rule of 2009, the final rule effective January 1, 2013, and the above noted ASP issued December 27, 2012, in their entirety, with the exception that the Corporation's requirements related to FBI fingerprint checks was made effective and applicable to Serve Wisconsin's funded programs beginning April 21, 2011. Serve Wisconsin's policy also adds the required Wisconsin Circuit Court Access (WCCA) check for AmeriCorps Members.

Scope

- The Corporation's guidance states that "the National Service Criminal History Check eligibility criteria apply to individuals in covered positions." A covered position is a position in which the individual receives an education award or a Corporation grant-funded living allowance, stipend, or salary. Therefore, the new criminal history check requirements cover **all** AmeriCorps State and National members who start service on or after April 21, 2011, and **all** grant-funded employees who begin work on or after April 21, 2011. Prior to April 21, 2011, Serve Wisconsin's Criminal History Check Policy applied to **all** AmeriCorps State and National members enrolled on or after October 1, 2009, and **all** grant-funded employees hired on or after October 1, 2009. "Grant-funded" includes funding through Grantee Share/match. The requirements also cover employee applicants of Full-Time Fixed Amount programs.
- National Service Criminal History Checks determine eligibility.
- Eligibility is a controlling determination on allowable versus unallowable costs.
- Ineligible individuals serving or working for a program are likely to have associated costs (living allowance, education award, salary, etc.) questioned during audit, and corrective action required during Corporation oversight.

Required Criminal History Check

There are **four** types of search requirements:

1) State Criminal History Registry – Applies to all AmeriCorps Members and Grant-Funded

Employees: A search (by name or fingerprint) of the state criminal history registry for the state in which the program operates and the state in which the applicant resides at the time of application. For the purpose of Corporation requirements, an individual applying to serve or work who is an enrolled full-time college student is deemed to be residing in the state where he/she lives for the purpose of attending the school without regard to whether or not that home is on- or off-campus, and whether or not that home is in the same state as the college is located.

- In Wisconsin, this is the State Department of Justice check. Information is available at <http://www.doj.state.wi.us/dles/cib/crimback.asp>.
- For other state's criminal history registries, go to https://www.nationalserviceresources.gov/files/table-of-designated-state-repositories-and-alternates-3-26-14_3.pdf.

2) National Sex Offender Public Registry (NSOPR) – Applies to all AmeriCorps Members and Grant-Funded Employees:

This can be found at www.nsopw.gov. The NSOPR search must be nationwide in order to meet this requirement. If any of the databases (jurisdiction's data availability) is down, offline, or otherwise unavailable, the NSOPR check is incomplete until all databases (jurisdictions) are checked. The NSOPR check shall include checks of the applicant's current legal name, any previous names, and any aliases by which the applicant has been known. **NOTE: An individual may not serve or work in a covered position prior to completion of the nationwide NSOPR search component.**

3) FBI Fingerprint Check – Applies to all AmeriCorps Members and Grant-Funded Employees who will have recurring access to vulnerable populations (children age 17 or younger, individuals age 60 and older, and/or individuals with disabilities): Serve Wisconsin offers programs the option of obtaining FBI fingerprinting services through an existing statewide state government contract or programs can use an alternate means of obtaining FBI fingerprint checks.

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.

4) Wisconsin Circuit Court Access (WCCA) – Applies to all AmeriCorps Members: Serve Wisconsin also **requires** a check of WCCA system. This can be found at <http://wcca.wicourts.gov/index.xsl>. This requirement is only for AmeriCorps members, not grant-funded employees. **An individual may not serve as an AmeriCorps member prior to completion of the WCCA check.**

Additional Guidance

- For both AmeriCorps members and grant-funded employees, if the FBI fingerprint check is required, that check may be underway while the individual serves or works. If **both** the state criminal history check and FBI fingerprint check are pending, access to vulnerable populations (children age 17 or younger, individuals age 60 and older, or individuals with disabilities) can only occur when the individual with the pending check is accompanied by (1) an authorized grantee representative who has previously been cleared for such access; (2) a family member or legal guardian of the vulnerable individual; or (3) an individual authorized by the nature of his or her profession to have recurring access to the vulnerable individual, such as an education or medical professional. Accompaniment is a higher standard than supervision in that it requires the individual with recurring access to vulnerable populations to be in the physical presence of the accompanying individual.

Each instance of accompaniment must be documented, including the date, time, location and name of person who provided accompaniment. One possible way 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. The program should have policies and procedures clearly describing the program's accompaniment guidelines and documentation procedures.

As noted previously, for individuals in covered positions for whom a National Service Criminal History Check requires both state and FBI components, the 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.

Since the criminal history check is a determinant of eligibility and of allowability of costs, it may very well be in the program's best interest to have all criminal history checks completed prior to a member beginning to serve or grant-funded employee beginning to work.

- **For both AmeriCorps members and grant-funded employees, the NSOPR check must be completed and documented before start of service or employment.**
- **Disqualification of Applicants, Currently Serving Members, and Currently Working Grant-Funded Staff:** Individuals are ineligible for a covered position (enrolled member or employee of the program) if they have committed a **sex offense for which they have to be registered**, or if they were **convicted of murder**, as defined and described in section 1111 of title 18, United States Code.
- An individual who refuses to consent to a State criminal registry check or FBI fingerprint check, or who makes a false statement in connection with a grantee's inquiry concerning the individual's criminal history, is not eligible to work in an AmeriCorps grant-funded position (including those supported with claimed match) or to serve as an AmeriCorps member.
- The Corporation recommends that the grantee specifically address contact with vulnerable populations in each position description, service agreement, or similar document describing an individual's service activities.
- The Corporation may approve an alternative search procedure to cover situations where a state law in some manner prohibits or inhibits you from following the process or performing the required checks.

Required Procedures

- Verification of applicant's identity, prior written authorization, an opportunity to correct inaccurate results, and confidentiality.
- Programs must be able to show that they conducted the required criminal history check for each covered individual and that they considered the results.
- No covered individual may have unaccompanied access to vulnerable individuals (children age 17 or younger, individuals age 60 and older, or individuals with disabilities) until the results of his or her FBI fingerprint check or state criminal history check have been reviewed and verified by the program.
- Programs must keep the actual, dated results of the criminal history checks in separate and secure files. For the NSOPR, results of the check are dated screen shots or print outs of the results of the nationwide search. The NSOPR result should be annotated to document who confirmed that any hits are not the same as the candidate being checked.
- Programs are required to use Serve Wisconsin's Criminal History Check Procedure Verification Form to document compliance with these requirements for AmeriCorps members and grant-funded employees.

Costs

- The cost of conducting criminal history checks is an allowable cost, reimbursable with grant funds.
- Member and employee applicants do not assume the cost of criminal history checks, unless the Corporation has given written permission to do so.

Second, Third, or Fourth Term of Service

- A program must conduct a state criminal registry check, NSOPR check and, if applicable, FBI fingerprint check the first time an individual applies to a covered position in an AmeriCorps State program, but a new 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, a new check is required.

In addition, if a previous term of service with less than 120 days break of service was for a position without recurring access to vulnerable populations and the subsequent term of service will be with access to vulnerable populations, an FBI fingerprint check must be completed.

Reinforce Importance of Effective Screening and Supervision for All Programs

- Criminal background checks are only one part of an effective screening process that also includes best practices in interviewing applicants, checking references and employment history, and checking motor vehicle history for individuals who will have driving responsibilities.

For more information

- Go to <http://www.nationalservice.gov/build-your-capacity/grants/criminal-background-check-requirements> to view the Corporation's Criminal Background Check Requirements Web page.