

Criminal History Check Requirements for Retired & Senior Volunteer Program (Excerpt from Final Rule)

Agency: Corporation for National and Community Service

Action: Final rule

Summary: To implement the Serve America Act, the Corporation for National and Community Service (CNCS) proposed amendments to its National Service Criminal History check regulation on July 6, 2011. This final rule adopts the proposed amendments, clarifies several requirements, and makes minor technical corrections. The amendments require CNCS grantees to conduct and document a National Service Criminal History Check that includes a fingerprint-based FBI criminal history check on individuals in covered positions who begin work, or who start service, on or after April 21, 2011, and who have recurring access to children 17 years of age or younger, to persons age 60 and older, or to individuals with disabilities. Individuals in covered positions include Senior Companions (SCP), Foster Grandparents (FGP), AmeriCorp State and National participants, and other participants, volunteers, or staff funded under a CNCS grant.

Dates: This final rule is effective January 1, 2013.

Supplemental Information:

In 2009, Congress amended the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) (NCSA) with the Serve America Act (Pub. L. 111-13) (SAA). The SAA codified CNCS's regulatory National Service Criminal History Check requirements and expanded the categories of positions covered by the criminal history check requirements. Under the SAA, on or after October 1, 2009, any entity that selects an individual to serve in a position in which the individual receives a living allowance, stipend, national service education award, or salary through a program receiving assistance under the national service laws must conduct a criminal history check on that individual. Individuals in covered positions now include grant-funded staff serving in any CNCS-funded national service program, including RSVP, LSA, Non-profit Capacity Building, and the Social Innovation Fund (SIF) grant programs.

The SAA also required that after April 21, 2011, individuals in covered positions with recurring access to vulnerable populations must have a fingerprint-based FBI criminal history check conducted as part of the National Service Criminal History Check.

The SAA specified separate National Service Criminal History Check requirements for individuals in covered positions with recurring access to vulnerable populations. Beginning April 21, 2011, entities that select individuals to serve in covered positions who

are 18 or older and who will have recurring access to children age 17 or younger, individuals age 60 or older, or individuals with disabilities must conduct for each individual: (1) A nationwide check of the National Sex Offender Public Website; (2) a search of the state criminal registr(ies) in the state in which the individual in a covered position will be working and the state in which the individual resides at the time of application; and (3) an FBI fingerprint-based criminal history check. The SAA created limited exceptions to this special rule.

What procedures must RSVP follow in conducting a National Service Criminal History Check for a covered position?

RSVP is responsible for following these procedures:

- (a) Verify the individual's identity by examining the individual's government-issued photo identification card, such as a driver's license.
- (b) Obtain prior, written authorization from the individual for the State registry check, for the FBI criminal history check, and for the appropriate sharing of the results of the checks within the program. Prior written authorization from the individual is not required to conduct the national NSOPW check;
- (c) Document the individual's understanding that selection into the program is contingent upon the organization's review of the individual's National Service Criminal History Check component results, if any;
- (d) Ensure that screening practices comply with federal civil rights laws, including Title VI and VII of the Civil Rights Act of 1964 (and the Corporation's implanting regulations under Title VI);
- (e) Provide a reasonable opportunity for the individual to review and challenge the factual accuracy of a result before action is taken to exclude the individual from the position;
- (f) Provide safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant; and
- (g) Ensure that an individual, for whom the results of a required state or FBI criminal history registry check are pending, is not permitted to have access to children age 17 years or younger, to individuals age 60 years or older, or to individuals with disabilities without being in the physical presence of:
 - (1) Your authorization 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, because of his or her profession, to have recurring access to the vulnerable individual, such as an education or medical professional.
- (h) Unless specifically approved by the Corporation, you may not charge an individual for the cost of any component of a National Service Criminal History Check.

What documentation must RSVP maintain regarding a National Service Criminal History Check for a covered position?

RSVP must:

- (a) Document in writing that you verify the identity of the individual in a covered position by examining the individual's government-issued photo identification card, and that you conducted the required checks for the covered position; and
- (b) Maintain the results, or a results summary issued by a State or Federal government body, of the NSOPW check and the other components of each National Service Criminal History Check, unless precluded from doing so by State or Federal law or regulation. You must also document in writing that an authorized grantee representative considered the results of the National Service Criminal History Check in selecting the individual.