



Date: December 17, 2012

To: AmeriCorps Program Directors

From: Ingyr Coleman

Re: Update on Criminal Background Checks

On October 5, 2012, the Federal Register published the Corporation for National and Community Service (CNCS) Final Rule regarding National Service Criminal History Check (NSCHC) requirements for AmeriCorps, implementing expanded criminal history check (i.e. FBI check) requirements specified in the Serve America Act in 2009. The Final Rule officially becomes effective January 1, 2013, though the proposed rule has been on the books since July, 2011 and the statutory requirement date was April 21, 2011.

In anticipation of this final rule, our state provisions have required, since the 2009-10 program year, completion of a three-step background check for all members and direct program staff. (Those staff whose participation is considered an administrative or indirect cost are exempt from the background check requirements.) The three required elements are: (1) NSOPR record check; (2) Ohio BCI check; and (3) FBI fingerprint check. Our requirement at present is more stringent than the final CNCS rule, which requires the FBI check only for positions with recurring access to vulnerable populations. Therefore, Ohio AmeriCorps programs should already be in compliance with the Final Rule. That said, we are providing with this memo links to the [Final Rule](#) and a newly-revised [FAQ from CNCS](#), and urging all programs to review their existing policies and procedures to ensure they are documented and compliant. Please pay particular attention to these areas:

1. NSCHC Required Steps—Item 7.1 of the FAQ contains a very succinct checklist of the steps you must be performing *and documenting* to have a compliant procedure. You may want to consider turning this into a checklist that could be maintained in member/employee files.
2. Break in Service—Under the Final Rule the break in service, after which the NSCHC process must be repeated, has been redefined from 30 days to 120 days. This should greatly assist programs with members wanting to serve multiple terms.
3. Timing of Elements—The NSOPR must be completed before start of service under your grant. Completed means conducted, cleared, and documented with dated printout. The BCI and FBI checks must be initiated by the start of service. Initiated means one step more than getting permission to conduct the checks. (See FAQ Item 7.8).
4. Accompaniment or “Physical Presence”—Through 12/31/2012 if you have members or staff with pending BCI and/or FBI checks, they must be accompanied in performing their duties until one of the results is received. Starting on 01/01/2013, accompaniment must continue until both results are received. In other words, for any member or staff for whom you have only one of the results as of January 1st, you must re-initiate the accompaniment process. Be sure you have in place a mechanism to document the accompaniment in some manner, as this will be tested in audit. (See FAQ Items 7.19 and 7.20). Note: The Final Rule replaces the term “Accompaniment” with the term “Physical Presence” to better convey that the intent is more than simple supervision. It also provides that the accompanying party may be (1) someone who has already cleared the

NSCHC process; (2) a family member or guardian of the vulnerable individual(s); or (3) a person authorized by the “nature of his or her profession” to have recurring access with vulnerable populations, such as a teacher or medical professional.

5. Self-Certification of No Murder Conviction—See Item 1.9 of the FAQ. Currently serving individuals who began work or started service prior to October 1, 2009 must self-certify that they do not have a murder conviction and grantees must save that certification to the individual’s file. A simple, signed attestation statement is all that is necessary.
6. Use of Designated State Repository—At the request of the FBI, the Final Rule dictates that FBI checks must be initiated through the state “central record repository”, which in Ohio means the Bureau of Criminal Investigation (BCI) of the Attorney General’s Office. You may use any of the WebCheck providers listed on the Attorney General/BCI website. Note: As of January 1, 2013, BCI is requiring all providers to participate in National Webcheck, so all should be able to provide both BCI and FBI checks from the same electronic fingerprints.
7. Site Supervisors as Covered Positions—See Item 3.1 and 3.14 of the FAQ. The Final Rule specifies that “covered positions” are those which receive a living allowance, stipend, ed award or salary through a program funded under a CNCS grant. CNCS interprets this as any position funded from the grant or counted as match, including in-kind match provided by a partner agency. If your site supervisors meet this test they are *considered program staff and are subject to the same NSCHC requirements as staff in your own organization* that provide services to your AmeriCorps project. If site supervisors are volunteers or their compensation is *not claimed as match*, then they are *not* considered covered individuals and need not have the three-step background check.

We have not specifically monitored for site supervisor background checks in the past, but will be doing so this year. Please be sure that you review your policies and procedures in this area and immediately address any self-discovered non-compliance. Note that if you are relying on background checks of site supervisors as performed by their own employers, or on the basis of their professional licensure, your practice is most likely not compliant (particularly in the area of documentation) . Please read carefully Section 10 of the FAQ and the CNCS online instructions regarding the [Alternate Search Procedure](#) (ASP) and submit a request to our office before 12/31/2012 if you feel you can justify your current practice or a modification thereof. Otherwise, you need to initiate an NSCHC on all covered site supervisors before 12/31/2012. Of course, another alternative would be to submit a budget revision to remove any partner site supervisor time from your match and identify other sources.

We realize there is a lot of information here and are committed to helping our programs make whatever changes are necessary to assure compliance. [Additional resources](#) are available from CNCS and we will address this topic again as part of the conference call scheduled for January 16, 2013. In the meantime, please refer any questions to me.