

Title: National Service Criminal History Check Guide to Enforcement Action

Date posted: February 28, 2020

Unique identifier: CNCS 019

Topic: National Service Criminal History Checks

Summary: This guide to National Service Criminal History Check Enforcement Action (Guide) describes what constitutes National Service Criminal History Check (NSCHC) noncompliance, potential administrative consequences for noncompliance, and how and when to implement specific administrative corrective action or enforcement for NSCHC noncompliance.

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.



National Service Criminal History Check Guide to Enforcement Action

Effective July 1, 2019

Contents

I. PURPOSE2

II. INELIGIBILITY.....2

III. NSCHC COMPLIANCE2

IV. ADMINISTRATIVE REMEDIES AND ENFORCEMENT FOR NONCOMPLIANCE3

 COST-BASED DISALLOWANCE4

 MANUAL HOLD4

 OTHER ADMINISTRATIVE REMEDIES5

 GUIDE TO ENFORCEMENT ACTIONS AND REMEDIES.....6

V. IDENTIFICATION OF NONCOMPLIANCE AND DETERMINATION OF REMEDY.....7

 IDENTIFICATION OF NONCOMPLIANCE.....7

 ALTERNATIVE SEARCH PROCEDURE PARTICIPATION7

I. PURPOSE

This guide to National Service Criminal History Check Enforcement Action (Guide) describes what constitutes National Service Criminal History Check (NSCHC) noncompliance, potential administrative consequences for noncompliance, and how and when to implement specific administrative corrective action or enforcement for NSCHC noncompliance.

This Guide applies solely to administrative enforcement related to NSCHC-noncompliance findings identified through oversight and monitoring, such as: Improper Payment Elimination and Recovery Improvement Act (IPERIA) sampling, Office of Inspector General audits, reviews or investigations, site visits, and desk reviews. The Guide does not change the legal requirements for the NSCHC, nor does it prevent CNCS or CNCS-OIG from pursuing other civil or criminal enforcement or preventive remedies available by law.

The Guide will be used by monitoring officials of the Corporation for National and Community Service (CNCS). The Guide uses the term “monitoring officials” to collectively refer to this group of CNCS individuals (excluding personnel of the Office of Inspector General) and the term “recipients” to refer to CNCS prime grant recipients and subrecipients, unless specifically differentiated. CNCS requires all prime grantees to implement this Guide for NSCHC disallowance.

CNCS will also refer and abide by this document in circumstances where grant recipients appeal determinations of NSCHC noncompliance.

II. INELIGIBILITY

With respect to criminal histories, an **ineligible** individual (42 USC 12645g(c)) is anyone who (1) is registered or required to be registered on a sex offender registry; (2) has been convicted of murder (as defined in 18 U.S.C. § 1111); (3) refuses to consent to NSCHCs; or (4) makes a false statement in connection with his or her NSCHC.

Ineligible individuals are barred from working or serving in a covered position on a grant-funded program. All costs associated with an ineligible individual will be disallowed, even in instances where an ineligible individual was serving but the recipient documented accompaniment. Costs include any salary/stipend/living allowance (as applicable), FICA, and education award. These requirements apply whether the associated costs were paid with Federal funds or with matching funds.

If CNCS is made aware of an ineligible individual that the recipient failed to report, CNCS may place the grant’s funding on manual hold and/or take additional action.

CNCS employees will, without delay, notify the Office of Inspector General, the Office of the Chief Risk Officer, and the Office of the General Counsel of suspected instances of ineligibility arising from disqualifying criminal histories.

III. NSCHC COMPLIANCE

NSCHC is a screening procedure established by law to protect the beneficiaries of national service. NSCHC involves three types of criminal history checks:

- Nationwide name-based check of the National Sex Offender Public Website (NSOPW). The NSOPW (<https://www.nsopw.gov/>) is a centralized system that identifies people who are registered as sex offenders in states, territories, and with many federally-recognized Tribes.
- Name- or fingerprint-based search of the statewide criminal history registry in the candidate’s state of residence and in the state where the person will serve or work.
- Fingerprint-based FBI check.

Individuals in covered positions **without** recurring access to vulnerable populations must undergo the following checks:

- A nationwide name-based check of the National Sex Offender Public Website (NSOPW), AND
- Either a name- or fingerprint-based search of the statewide criminal history registry in the candidate's state of residence and in the state where the person will serve or work; OR
- A fingerprint-based FBI check.

Individuals in covered positions **with** recurring access to vulnerable populations must undergo the following checks:

- A nationwide name-based check of the NSOPW,
- Either a name- or fingerprint-based search of the statewide criminal history registry in the candidate's state of residence and in the state where the person will serve or work; AND
- A fingerprint-based FBI check.

For more detailed information about the required elements of the checks referenced above, see <https://www.nationalservice.gov/resources/criminal-history-check>

A compliant NSCHC consists of the following elements:

- All required components (NSOPW, State(s), and/or FBI) were completed and on file (§2540.206);
- All required components (NSOPW, State(s), and/or FBI) were conducted on time (§2540.204);
- All required components (NSOPW, State(s), and/or FBI) were conducted through sources authorized by CNCS (§2540.203);
- NSOPW is complete (all States, Territories, and participating Indian Tribes were reporting when the search was performed) (§2540.203);
- First and Last Name on NSOPW check matches the name on the government-issued photo identification (NSCHC Using NSOPW and State Repository and NSCHC Using Fieldprint and Truescreen Manuals)
- NSOPW, State(s), FBI checks adjudicated (§2540.206);
- Documentation that the individual's identity was verified using a government-issued photo identification (§2540.206);
- Documentation of consent from the candidate to conduct State and FBI checks and share results (§2540.205);
- Documentation of the candidate's understanding that the national service position is contingent upon the organization's review of the individual's NSCHC component results, if any (§2540.205);
- Documentation that the candidate understands his or her ability to review and challenge the factual accuracy of the result before action is taken to exclude the candidate from the position (§2540.205); and,
- Documented accompaniment for the duration of the accompaniment period¹, as applicable (§2540.204).

IV. ADMINISTRATIVE REMEDIES AND ENFORCEMENT FOR NONCOMPLIANCE

Noncompliance refers to a situation in which an individual in a covered position is eligible to serve, but the recipient did not fully comply with all NSCHC requirements.

Remedies and enforcement actions will apply to the grant(s) on which noncompliance is identified. CNCS will disallow costs and may engage in other enforcement activities with respect to a prime recipient if the prime recipient or its subrecipients are found to be out of compliance with NSCHC requirements and the prime recipient has not correctly applied disallowance and/or has failed to identify and correct noncompliance prior to CNCS's monitoring of the prime recipient. If the noncompliant grant recipient has other CNCS grants, CNCS will expand

¹ Accompaniment occurs during work or service while state check(s) or FBI check components are pending. A person is accompanied when an individual in a covered position is in the physical presence of a person who is cleared for access to a vulnerable population. Prior to January 1, 2020, accompaniment can cease when the state check(s) or FBI check results returned, and the individual is eligible and cleared to work or serve (Pre-Approved ASP Ceasing Accompaniment: <https://www.nationalservice.gov/ASPE exemptionsGuidance>). As of January 1, 2020, accompaniment ceases when both the state check(s) and FBI check results are returned, and the individual is eligible and cleared to work or serve.

the NSCHC review as applicable. CNCS may also direct the prime grant recipient to expand the scope of the review.

The remedies and enforcement actions in this section apply solely to those taken administratively by CNCS. Nothing in this Guide is intended to limit any other available civil or criminal enforcement measures, which may be pursued in addition to the administrative remedies herein. The remedies and enforcement actions below may be applied singly or in combination, depending on the type of noncompliance found.

COST-BASED DISALLOWANCE

Cost-based disallowance refers to the disallowance of costs associated with an eligible individual's work or service during the period of noncompliance, including salary/stipend/living allowances (as applicable) and FICA. Where costs were paid with matching funds, the disallowance of those matching costs may also result in disallowance of the related Federal funds.

Cost-based disallowance will be applied to noncompliance. In general, the cost of disallowance will not exceed six months; however, if the period of work or service is less than six months or the period of noncompliance is less than six months, the cost will be adjusted to coincide with the period of service, work, or period of noncompliance. Moreover, CNCS may disallow costs for more than six months, if facts and circumstances support that a different period of disallowance will further CNCS's compliance objectives.

Cost-based disallowance will not include the disallowance of AmeriCorps member hours. The actual expenditures that shall be considered for disallowance for each noncompliant file appear below. These cost categories reflect substantive grant costs. The maximum disallowance amount of the federal share cannot exceed the value of the federal awarded amount.

Cost Reimbursement Grants:

- Salary/stipend/living allowance (as applicable) and FICA during the period of noncompliance for which costs are disallowed.

Fixed Amount Grants:

- AmeriCorps State and National members: For each noncompliant member, a share of the cost/MSY proportional to the period of noncompliance for which costs are disallowed.
- Staff: For each noncompliant staff member, a share of the cost/MSY proportional to the period of noncompliance for which costs are disallowed. The maximum disallowance amount of the federal share cannot exceed the value of the federal awarded amount.

MANUAL HOLD

In response to NSCHC noncompliance, specifically circumstances that require corrective action to be taken, CNCS may place grant funds on manual hold review or restriction of funds until the grant recipient demonstrates that it has satisfactorily implemented required corrective action, which may include conducting NSCHC using the CNCS-approved contract with Truescreen and Fieldprint. CNCS may use either of these remedies as it deems appropriate.

A manual hold may include a manual review of expenses prior to reimbursement or a full restriction of grant funds.

- 1) Manual Hold Review (2 CFR §200.338): This includes a review of expenses by CNCS staff prior to the release of funds. The inspection/review of reimbursement or advance requests submitted by a grant recipient is performed prior to the release of funds to the grantee to ensure that all fund requests are necessary, allowable, allocable, and reasonable with Uniform Guidance regulations and grant terms and conditions.

- 2) Restrictions of Funds (2 CFR §200.338): This action will prevent a grant recipient from accessing Federal funding from CNCS. For these cases, a letter to Health and Human Services Payment Management System will be processed and forwarded to HHS and the CNCS grant funds will be inaccessible to the recipient.

Manual hold review or restrictions of federal grant funds will be applied to the specific grant(s) on which NSCHC noncompliance is identified. For NSCHC noncompliance identified on a State Commission subrecipient, the Commission will be directed, to the extent possible, to apply the manual hold review or restriction of funds to the noncompliant subrecipient. NSCHC noncompliance detected in multiple State Commission subrecipients may result in a manual hold review or restriction of funds against the State Commission. For non-Commission direct grant recipients, including Social Innovation Fund grantees, manual hold review, or restriction of funds will be applied against the direct grant.

OTHER ADMINISTRATIVE REMEDIES

CNCS will employ other administrative remedies as deemed appropriate. These other administrative remedies include:

Remedy	Definition	Example
Grant Suspension	A grant suspension includes a hold on all grant activities, including participant service, and funding (2 CFR §200.338).	Grant suspension may be used in response to NSCHC noncompliance. Grant suspension may also be applied in cases of noncompliance for zero-dollar grants.
Grant Termination	Grant termination refers to the ending of the award, in whole or in part, at any time prior to the planned end of period of performance (Grant and Cooperative Agreement Terms and Conditions, Section III.O; 2 CFR §200.339).	Grant termination may be used in response to NSCHC noncompliance. Grant termination may also be applied in cases of noncompliance for zero-dollar grants. Suspension may precede termination proceedings; not all suspensions will result in termination.
Required Use of CNCS-Approved Contract with Truescreen and Fieldprint	CNCS has contracted with Fieldprint, Inc., (Fieldprint) to provide FBI fingerprint-based checks and Truescreen to provide State and National Sex Offender Public Website (NSOPW) checks to recipients.	A grant recipient at which NSCHC noncompliance is found may be required to establish accounts through the CNCS contracts with Truescreen and Fieldprint and recheck noncompliant and other files through these vendors, if not already completed through the vendor. Recipients may also be required to use these vendors to conduct NSCHC for the remainder of the grant period (2 CFR §200.338, §200.207).
Impact Future Awards	Noncompliance with NSCHC may be considered as a factor in the agency's future funding determinations (2 CFR §200.205).	CNCS may consider NSCHC noncompliance part of its awarding considerations for future funding.

GUIDE TO ENFORCEMENT ACTIONS AND REMEDIES

CNCS response to NSCHC noncompliance will conform to the chart below. CNCS reserves the right to impose enforcement actions and remedies at its discretion in accordance with applicable laws. In instances of egregious, pervasive, systemic noncompliance of any element, CNCS reserves the right to impose all available remedial measures.

As noted above, noncompliance with NSCHC may also be considered as a factor in the agency's funding determinations and may impact an organization's future grant awards.

In applicable cases, based on facts and circumstances, CNCS may suspend or terminate the grant in response to NSCHC noncompliance.

Nature of Noncompliance	Enforcement Action and Remedy (as applicable)
Missing NSCHC component (NSOPW, State(s), and/or FBI); Name-based NSCHC conducted on a name other than the government-issued photo identification Noncompliant NSCHC source NSOPW incomplete (missing state, territory, or Indian country) Individuals requiring accompaniment were not accompanied as required	<ul style="list-style-type: none">• Corrective action to cure deficiency and ascertain eligibility;• Cost-based disallowance;• Accompaniment until NSCHC delinquency cured;• Manual hold review or restriction of funds pending completion of corrective action;• Required use of CNCS-approved contract with Truescreen and Fieldprint (if not already used) for rechecks of all NSCHCs and for remainder of grant period. If vendors already used, rechecks required for noncompliance other than lateness.
Late NSCHC component (NSOPW, State(s), and/or FBI) Grant recipient did not review results and document the individual is cleared to serve (NSOPW, State(s), and/or FBI)	<ul style="list-style-type: none">• Corrective action to cure deficiency and ascertain eligibility;• Cost-based disallowance;• Required use of CNCS-approved contract with Truescreen and Fieldprint (if not already used) for rechecks of all NSCHCs and for remainder of grant period. If vendors already used, rechecks required for noncompliance other than lateness.
Missing documentation of consent from the candidate to conduct State and FBI checks and share results Missing documentation of understanding from the candidate that the national service position is contingent upon the organization's review of the individual's NSCHC component results, if any Missing documentation that the candidate understands his or her ability to review and challenge the factual accuracy of the result before action is taken to exclude the candidate from the position	<ul style="list-style-type: none">• Corrective action to cure deficiency;• Manual hold review or restriction of funds pending completion of corrective action;• Required use of CNCS-approved contract with Truescreen and Fieldprint (if not already used) for rechecks of all NSCHCs and for remainder of grant period. If vendors already used, rechecks required for noncompliance other than lateness.

V. IDENTIFICATION OF NONCOMPLIANCE AND DETERMINATION OF REMEDY

IDENTIFICATION OF NONCOMPLIANCE

CNCS monitoring officials conducting NSCHC review will conduct a file review. For grant recipients with fewer than 25 individuals serving or working in covered positions, during the period of assessment monitored, CNCS monitoring officials conducting NSCHC review will conduct a file review consisting of 100% of these files. A period of assessment is the period of grant activity being reviewed for compliance, which is specified in advance by CNCS or other reviewers.

For grant recipients with more than 25 individuals serving or working in covered positions, CNCS monitoring officials conducting NSCHC review will conduct a review consisting of 25 files or 10% of the files for currently working or serving individuals in covered positions for the period of assessment monitored, whichever is greater. If the first sample of NSCHC files are compliant, the monitoring official may elect to conclude his or her NSCHC review. If noncompliance is detected within the review of files for those who worked or served during the period of the assessment, the remainder of files from the period being monitored must be reviewed. CNCS may direct the prime grant recipient, as applicable, to conduct the expanded scope review.

Applicability of the 2014 Assessment Period and 2018-2019 Exemption Period

For grantees who participated in the 2014 Assessment Period, correction of erroneous checks completed during this period will not incur cost disallowance for previous noncompliance. The application of this assessment period can be found at: <https://www.nationalservice.gov/CHCAssessmentPeriod>

Disallowance of costs and other enforcement for noncompliance is subject to the 2018-2019 Exemption Period. The application of this exemption can be found at <https://www.nationalservice.gov/documents/2018/2018-exemption-period>

ALTERNATIVE SEARCH PROCEDURE PARTICIPATION

Until December 31, 2019, grant recipients may use existing approved and pre-approved Alternative Search Procedures (ASPs) to conduct NSCHC. However, where a recipient or subrecipient has not complied with the terms of its applicable ASP or the Exemption Period, the full range of remedies will apply to any NSCHC noncompliance.

Starting January 1, 2020, CNCS will post pre-approved ASPs that may be used by CNCS here: <https://www.nationalservice.gov/resources/criminal-history-check>. NSCHCs conducted in accordance with the terms of an approved ASP at the time an ASP is active will remain compliant after the expiration of the ASP. Checks conducted on January 1, 2020 and after that follow expired ASP/Exemption processes will be considered noncompliant.