



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

October 31, 2011

TO: ALL CJIS SYSTEM OFFICERS AND STATE IDENTIFICATION BUREAU REPRESENTATIVES

RE: THE SERVE AMERICA ACT

On April 21, 2009, President Barack Obama signed the Edward M. Kennedy Serve America Act (SAA), Public Law (Pub. L.) 111-13. The SAA authorizes and expands national service programs administered by the Corporation for National and Community Service (Corporation) and requires National Service Criminal History Checks for individuals who serve in positions that receive living allowances, stipends, national service educational awards, or salaries from the Corporation. Section 1612 of the SAA added Section 189D to the National and Community Service Act of 1990, by expanding the types of programs requiring criminal history background checks. Section 1614 mandates enhanced criminal background checks for individuals in these programs who will work with vulnerable populations. Vulnerable populations include children age 17 or younger, persons age 60 and older, and individuals with disabilities. The following guidance is for states implementing access that is being made available under this new authority.

Background

The Corporation initially engaged in rulemaking concerning the requirement for grantees to conduct criminal history checks on national service participants and grant-funded staff in 2007. In that rule, the Corporation required programs to conduct National Service Criminal History Checks, consisting of a statewide search of a state's criminal registry (for both the state where the individual resided at the time of the application and the state where the individual would be serving) and a check of the Department of Justice's National Sex Offender Public Web site, on all "covered individuals." "Covered individuals" included those program staff and participants having recurring access to children, the elderly, and to individuals with disabilities. Effective October 1, 2009, the SAA expanded coverage to include all national service programs, including participants and program employees in AmeriCorps, Learn and Serve, Foster Grandparent, Senior Companion and other programs funded by the Corporation under National Service Laws. The SAA expanded background check requirements to all categories of corporation-funded individuals, including persons who do not have contact with vulnerable populations. Beginning April 21, 2011, the law requires that relevant programs conduct an enhanced National Service Criminal History Check on individuals having recurring contact with vulnerable populations. Specific details of this enhanced check are provided later in this correspondence.

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National Service Criminal History Checks for Individuals Without Recurring Access to Vulnerable Populations

The SAA provides alternate methods to accomplish the National Service Criminal History Checks for individuals who serve in positions without recurring access to vulnerable populations. The SAA requires each national service organization responsible for selecting individuals to serve in positions that receive living allowances, stipends, national service educational awards, or salaries to conduct criminal history checks of applicants (except in cases approved for good cause by the Corporation) as follows:

- Name-based search of the National Sex Offender Public Registry (NSOPR) established under the Adam Walsh Child Protection and Safety Act of 2006 (AWA); **and**
- Name-based or fingerprint-based¹ searches of both the state criminal registry or repository in which the program is operating and the state in which the individual resides at the time of the application; **or**
- FBI fingerprint-based national criminal history background check.

Therefore, an organization may opt to submit fingerprints to the FBI for a national criminal history record check in lieu of state record checks of both the state where the program is operating and the state in which the individual resides at the time of the application (if they differ) for persons whose job functions do not require recurring access to vulnerable populations.

Enhanced National Service Criminal History Checks for Individuals Working With Vulnerable Populations

The SAA also requires national service organizations that are responsible for individuals to serve in positions that receive living allowances, stipends, national service education awards, or salaries, and who, on a recurring basis², will have access to vulnerable populations, initiate enhanced criminal history record searches as follows:

- Name-based searches of the NSOPR, as established under the AWA;
- Name-based or fingerprint-based searches of both the state criminal registry or repository in which the program is operating and the state in which the individual resides at the time of the application; **and**
- FBI fingerprint-based national criminal history background check.

1 As authorized by state statute.

2 "Recurring access" is defined by 45 C.F.R. § 2510.20, 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.

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The Corporation has opted not to develop a national, centralized mechanism for conducting state and national fingerprint-based criminal history record checks for national service participants. Therefore, each national service organization must contact the state repository in the state of operation to determine if the organization can access national criminal history record information. In lieu of state statutory provisions, the following authorities may authorize fingerprint-based state and national criminal history record checks for national service organizations depending on the specific duties of the prospective position:

- National Child Protection Act, as amended by the Volunteers for Children Act (NCPA/VCA), 42 U. S. C. § 5119;
- Section 153 of the AWA³; or
- The SAA.

Background checks conducted pursuant to the NCPA/VCA and the AWA should be conducted in accordance with the procedures established by the state. Background checks generated pursuant to the SAA must comply with certain criteria, to include fingerprints submitted via the CJIS Systems Agency (CSA)/State Identification Bureau (SIB); designation of a governmental agency to receive and screen the results of the record checks; and non-dissemination of the criminal history record information outside the receiving governmental department or related governmental agencies. The CSA/SIB is responsible to ensure national service organizations are in compliance with state and federal policies, procedures and statutes. For submissions pursuant to the authority of the SAA, the following guidance is provided.

Fitness Criteria

The SAA provides that an individual shall be ineligible to serve in a position that may involve recurring access to vulnerable populations if the individual refuses to submit to a criminal history record check; makes a false statement in connection with the criminal history record check; is registered, or is required to be registered, on a state sex offender registry or the NSOPR established under the AWA; or has been convicted of murder, as described in 18 United States Code (U.S.C.) § 1111.

Fingerprint Processing Requirements

Each national service organization must coordinate with the CSA/SIB in the states of program operation/residence to establish procedures for performing state and national criminal history record checks. Each participating CSA/SIB must request a unique Integrated Automated Fingerprint Identification System (IAFIS) originating agency identifier (ORI) or designate an

³ A state's chief executive officer must formally request access from the FBI CJIS Division to invoke the provisions of Section 153 of the AWA.

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existing ORI for exclusive use under the SAA. The CSA/SIB must coordinate requests for ORI issuance, or use of a designated ORI, with the FBI CJIS Division for programming. All fingerprints submitted to the FBI CJIS Division under this authority must include the program-designated ORI and be populated with "Serve America Act" or "Serve America Act-Volunteer"⁴ as the reason fingerprinted (RFP).

Fingerprint submissions forwarded to the FBI CJIS Division under this authority should be submitted using the non-federal applicant user fee (NFUF) system type of transaction. The FBI CJIS Division will process fingerprint submissions for SAA volunteers working with vulnerable populations as defined by the NCPA/VCA, and pursuant to this authority, at the reduced rate for volunteers when the fingerprint submission is appropriately marked with "Serve America Act-Volunteer" in the reason for fingerprinting field. Additional fees may be charged for State and/or FBI CJIS Division rap back services, and for fingerprint processing by independent or contracted vendors. Please see 28, Code of Federal Regulations (CFR), Part 20, and the Federal Register, Notice of Proposed Rule Making dated June 19, 2008, for the FBI CJIS Division's most current fee schedule.

Regulatory Dissemination/Use and Challenge

CJIS System Officer's and/or SIB representative's training programs should include information about user responsibilities under the provisions of 28 CFR § 50.12, relating to the exchange of identification records. This regulation, applicable to both governmental and non-governmental authorized recipients of criminal history record information, specifically provides:

"Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials must also advise the applicants that procedures for obtaining a change, correction, or updating an FBI

⁴ For volunteers having recurring access to children, the elderly, and to individuals with disabilities, the RFP should be populated with "Serve America Act-Volunteer."

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identification record are set forth in 28 CFR § 16.34. Officials making such determinations should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and, further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.”

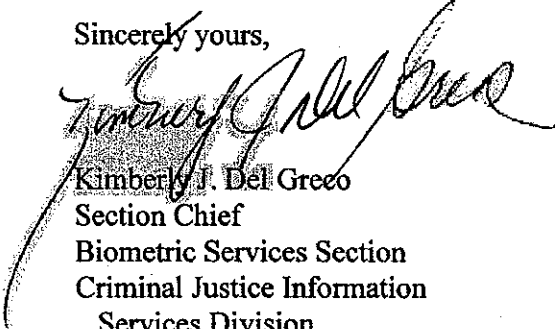
Alternative Screening Protocol (ASP)

An entity may apply to the Corporation for approval of an ASP that would relieve the entity from the requirement to conduct both the state and national checks on covered individuals with recurring access to vulnerable populations. At its discretion, the Corporation may approve an ASP if the entity demonstrates the service provided by the individual to a vulnerable population is episodic in nature or for a one-day period; the cost of complying with the program is prohibitive; the program is not authorized, or is unable under state or federal law, to access the national criminal history background check system of the FBI; or the program cannot comply with the requirement for good cause (as determined by the Corporation). “Episodic” is further defined as access that is not a regular, scheduled, and anticipated component of an individual’s position description.

Contact Information

For any questions related to the fingerprint processing, please contact Mr. Allen Wayne Nash, at (304) 625-2738, or by email at <allen.nash@leo.gov>.

Sincerely yours,



Kimberly J. Del Greco
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Biometric Services Section
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