# CV Supplemental Information on Staff Criminal History Checks

This information is to assist with understanding the requirements for conducting compliant Criminal History Checks (CHC) for program or site partner staff. It contains select portions of the *CNCS Criminal History Check FAQs* (link below) which pertain specifically to staff, but in many cases these pertain to members as well. CNCS uses the term ‘covered position’ to refer to anyone connected to an AmeriCorps program (staff and members) who is required to have a compliant background check. This document is intended to help you understand who is ‘covered’ and who is not with regards to your program and partners. CaliforniaVolunteers’ Contract Exhibit ‘H’ outlines the requirements and official CV policy. It is included at the end of this document for reference.

**As you read these please keep in mind that CV as a Commission, has requirements that exceed that of CNCS in both the scope and the timing of checks: CV does not distinguish regarding work or service with ‘vulnerable populations’ and thus requires that ALL 3 CHECKS (State, FBI and NSOPW.gov) be performed, results considered and a clearance decision made and documented PRIOR to the individual performing grant activities chargeable to the grant.** This document, as well as additional CV CHC resources, can be found on CV’s website at Grantee Central.

**All excerpts below are from the 2016 CNCS National Service Criminal History Check FAQs: www.nationalservice.gov/resources/criminal-history-check**

## Who exactly is considered to be in a ‘covered position’ (ie. needs all 3 CHC checks done prior to any time served or time charged to an AmeriCorps grant)

**[CV Note: please note that 3.1, 3.2, 3.4 and 3.16 below, which explicitly state the need to have CHCs for partner staff whether grantee or match-funded, have been included since the 2013 FAQs created when the Final Rule came into effect – this is not something new]**

**3.1. What is a Covered Position?** If you are serving or employed by a national service program and receive a living allowance, stipend, national service education award, or salary your position is ‘covered’, regardless of:

• Type of service

• Access to vulnerable populations

• Whether a salary or stipend is paid with grant funds or reported as match.

**3.2. How can we determine if a staff person or national service participant is covered or not?** You can most easily identify people in ‘covered positions’ using the ‘on the budget’ or expenditure report test. Covered positions are usually, but not always, listed on the program’s approved grant budget. If the position is listed on the budget, it passes the “on the budget” test and is covered. Sometimes a covered position may be added to the budget without requiring a formal budget amendment. In this case, covered positions are identified by using the expenditure report test. If the cost of the payment is included in the federal or matching program costs reported for the program or its sub-awards on the Federal Financial Report, then the person is in a covered position.

**3.3 How can we determine if a staff person or national service participant in a fixed-amount grant with no budget or FFR is in a covered position?** If your program is exempt from submitting budgets or financial reports, examine the funded grant application narrative that describes program activities. Staff or national service participants carrying out the grant-funded activities or administering the program are in covered positions.

**3.4. How do we know if our employees are subject to the NSCHC requirements?** The NSCHC requirements cover employees whose positions are associated in part or in whole with a CNCS grant, either as CNCS share or the grantee share. **Therefore, not only are your direct employees covered, but so are your partners’ and subawardees’ employees if they are assigned to perform program activities and you are including their pay as matching funds**. To identify employees who are covered, determine if he/she is or will be receiving compensation (e.g., salary, wage, living allowance, stipend) for performing program activities. Keep in mind that there are a variety of ways that costs may be listed, including single positions, grouped position types, or lump-sums for sub-award-supported activities. See FAQ 2.3, 2.4, 2.5 for covered positions in fixed amount grants.

**3.16. What about employees of partner organizations with staff who supervise members or volunteers?** You must apply the same test used to identify employees working in covered positions to your partners’ employees. If the federal or grantee matching share of your grant is part of the salaries paid to these people, then they are working in covered positions and must have a NSCHC. If a partner’s employees are not identified in the grant budget and their associated compensation is not claimed as matching share expenditures, then the supervisors are not in covered positions. [This is also known as ‘the budget test’] Please see FAQs 2.4 and 2.5 for fixed amount grants.

FAQ 2.3, 2.4, 2.5 for covered positions in fixed amount grants.

**3.11. Do we have to conduct the NSCHC on administrative staff whose time is allocated to the program indirectly?** No. You are not required to conduct the NSCHC on staff whose time is allocated to the program as part of an indirect cost rate pool or similar agreement. These people hold positions that are not identified on the grant budget, and their work is of a generic, indirect nature usually serving the entire organization. However, grantees are encouraged to develop a prudent criminal history check policy addressing indirect cost pool administrative staff appropriate to their program design and populations.

**7.7. Some of our employees have not been in covered positions but we conducted checks on them anticipating they might one day be assigned to such duties. Do we have to re-check them once they are officially assigned?**

If you performed a compliant check on or after November 23, 2007, there is no need to perform a new check if that person starts working in a covered position as long as he or she has not had a break in employment since the check was performed. You are required to maintain the results of the check.

**7.8. Do we have to conduct a NSCHC every year for each participant?**

No. The NSCHC is required only once for any person who applies to work or serve in a covered position. If there is a break in service greater than 120 days, then the entire NSCHC must be performed again.

**7.9. Does administrative leave, sick leave, summer breaks, or not actively working with a client constitute a break in service?**

No. A break in service means that a person is no longer providing service through or receiving salary from a program. Temporary interruption of work or service without termination of employment or expiration of the agreement under which service is being provided is not a break in service.

**2.6. Does the requirement to conduct a NSCHC pass through to sub-recipients and partners (e.g., sub-grants; stipends; MOUs, etc.)?** Yes, as with all grant program provisions, law and regulations, the requirement to perform the NSCHC applies to any sub-recipients or partners implementing a covered national service program. This requirement applies no matter how large or small the dollar amount of the sub-award, or whether the costs are covered by federal or non-federal matching funds.

**Important CV Note:** Compliant checks for site partner staff who are in ‘covered positions’ as defined above, can be a challenge. **While many partners will have performed background checks as part of a hiring process, rarely does this include the needed NSOPW.gov check.** Programs should therefore conduct this check (which is free and does not require the individual’s permission) prior to those individuals performing grant-funded activities. The printouts can be maintained in a file, along with the CHC verification forms. [Also, when relying on your partner’s CHC, be sure to see 16.2 below regarding ‘partners performing checks’].

## 4. National Sex Offender Public Website

**4.1. How does the NSOPW.gov check work?** The NSOPW is an Internet-based system operated by the U.S. Department of Justice. The system gathers data from all participating state-level sex offender registries plus those operated by Guam, Puerto Rico, the District of Columbia, and Tribal Governments. The NSOPW is also known as the National Sex Offender Public Registry, NSOPR (<http://www.nsopr.gov>)

[For further information on how to properly conduct this check, see the full CHC FAQs section 4]

What about volunteers? While checks are not required of volunteers, mitigating risk by running them can be good practice and is an allowable expense:

**3.18. Should my program perform checks on people who are otherwise not required to have the NSCHC? Will my grant cover the cost?** Your program may choose to conduct NSCHCs on people in non-covered positions as an effective risk management tool. You may include this as a program operating cost or volunteer support expense in your grant budget proposal.

**3.7. Why don’t the NSCHC rules cover community volunteers who are recruited by national service grantees?** The NSCHC only applies to people who receive a national service education award, stipend, living allowance, or salary from CNCS [sic: whether match or grantee]. Community volunteers do not receive this kind of compensation.

## What about changing programs or sites?

**3.19. What happens when someone leaves one program and begins service in another?** If a participant [sic: AC member] or employee leaves a grantee or subgrantee program and begins service with a different grantee or subgrantee program, with or without a break in service, the program accepting the employee or participant must conduct a new NSCHC.

**For grantees with multiple programs, you do not have to conduct a new NSCHC on a person unless there is a break in service exceeding 120 days** or the person is moving from a covered position without recurring access to vulnerable populations to a covered position with recurring access to vulnerable populations. Changing service site locations without a break in service greater than 120 days does not trigger the requirement for a new check.

## California Prohibits Sharing the Results

CNCS has a pre-approved ‘Alternative Search Procedure (ASP)’ for our situation in California. Please carefully read the information below, and use the *CV NSCHC Verification Form* (available on Grantee Central) to document the check process.

**4. Prohibited by State Law from Maintaining Results or Sharing Results**

**[From *Current Pre-Approved ASPs\_Jan 2016*]**

If state law prohibits your organization from maintaining results of the state or FBI checks, or your organization is prohibited from sharing the results with an oversight agency, including CNCS, you must do the following to comply with the NSCHC requirements:

1. You must document that you are prohibited by state law from maintaining results and/or prohibited from sharing those results.
2. You must maintain a memo in the individual’s file, in lieu of the results, which must indicate, at a minimum: The source (for example, website URL, name, address, etc.) used for the check;
3. The date you initiated each check component;
4. The date you received results of each component;
5. Whether the person has been cleared or not for service based on the component results; and
6. The name and **signature** of the person who reviewed the results of each check component and the **date**

on which they conducted the review.

This approval does not cover the NSOPW check. You must maintain the dated results of the nationwide NSOPW for each individual in a covered position.

[CV note: California Law Penal Code Sections 11105 and 13300 prohibits sharing actual results with others, including CaliforniaVolunteers and the Corporation for National and Community Service. The *CV NSCHC Verification Form* (available on Grantee Central) was created to allow documentation of checks as outlined above. CV requires use of this form or a program’s own form which meets these same requirements.]

## What about partners or HR performing checks?

This is also covered as a Pre-Approved Alternative Search Procedure (ASP). CV has a template resource for this.

**Clearance letters in lieu of actual results** If your program partners with an organization that conducts some or all of the components of the Check on your program’s employees and/or national service participants, but doesn’t permit your organization to review the results, then your program can satisfy the documentation requirements of the Check by entering into a written agreement with the organization conducting the Check components.

The agreement must specify that any individual who is registered, or required to be registered, on a sex offender registry or was convicted of murder will not be cleared to participate in the program, even if the organization’s policy may, under some circumstances (e.g. through an appeal process), allow it.

The organization that conducts the components can then issue clearances to your program based on your selection criteria. Copies of the clearance decisions provided to your program are grant records and you must maintain them for compliance purposes. The program must ensure that the required check components not conducted by the organization are conducted by the program (e.g. NSOPW.gov).

## Schools the Perform Criminal History Checks

[*CV Note: Since the Cal DOJ and California Ed Code don’t allow maintaining the actual check results for later review, please refer to the previous page. CV has a template letter to modify for use in the cases below, along with the* CV NSCHC Verification Form *for documentation of the checks*.]

**12.1. A school is performing the checks for us. Is there anything else we need to do?**

You must determine how the school, whether private or public, and/or its state licensing authority, are performing background or criminal history checks. If the types of checks and the procedures being used meet CNCS requirements, then your only obligation is to ensure that you and CNCS have access to the records for oversight and monitoring purposes. The school may issue a clearance letter to the program rather than providing the actual check results. (see 2. above)

If the procedures do not fully meet CNCS’s requirements, you must request an alternative search procedure (ASP). Guidance on how to submit a request is available on CNCS’ Knowledge Network under the heading **Alternative Search Procedures (ASPs) and Exemptions**.

Programs should take note that you cannot pass along the responsibility to make a written determination that you have checked photo identification and considered the results of the checks in selecting a person to serve or work under your national service program. Only a program’s officials with selection authority may establish that required written documentation.

**12.2. My program works with a school that conducts some or all of the components of the NSCHC on its employees and volunteers (including national service participants), but doesn’t permit outside parties to review the results of the criminal history check. How can we satisfy the documentation requirements if we are not permitted to review these results?**

Your program will need to address how you have established assurance, as well as documentation, that the checks performed by the school ensured that only eligible people were selected. The request will also need to describe why results could not be reviewed. For example, state law might prohibit examination of the results by third parties. See ASPs #2 and #4 in the document named “Current Pre-Approved ASPs” on CNCS’ Knowledge Network for more information on clearances issued by partners.

**What about Using Vendors?**

[*Be especially careful if using a vendor. They often limit how far back the criminal data goes or don’t properly conduct the NSOPW.gov check and aren’t compliant. See the* ***NSCHC Vendors Guide*** *on CV Grantee Central for more detail.*]

**NSOPW Compliance using a Vendor Report**  **[From *Current Pre-Approved ASPs\_Jan 2016*]**

If you use a vendor to search the NSOPW.gov website, you must 1) ensure that the vendor performs a nationwide search of NSOPW.gov and has a procedure to obtain individual state data if the state’s data is temporarily unavailable from NSOPW.gov; 2) maintain the report of the NSOPW.gov check provided by the vendor to document the timely completion of the NSOPW.gov component; and 3) if your vendor does not provide copies of the screenshots or printouts from NSOPW.gov result, your contract with the vendor must specify that no person who is registered or required to be registered as a sex offender will be considered to have cleared the check.

*Following is* ***Exhibit H,*** *outlining CV’s policy for required CHC checks. It is used during contracting to obtain the Legal Applicant organization’s assurance that your AmeriCorps program’s criminal history check policies and procedures satisfy all requirements.*

**National Service Criminal History Checks (NSCHC) Certification**

Exhibit H: Criminal History Checks Certification

**Purpose:** This form is to verify that the criminal history check policies and procedures of the legal applicant entity for the program named below are in compliance with all Corporation for National and Community Service (CNCS) and CaliforniaVolunteers (CV) requirements.

**Instructions:** The legal applicant should review theNational Service Criminal History Checks (NSCHC) requirements listed below and provide assurance that your AmeriCorps program’s criminal history check policies and procedures satisfy all requirements. A signed original of this form must be submitted to CV along with the complete contract package.

Note: CV strongly recommends use of the *CV National Service Criminal History Check (NSCHC) Steps Checklist* and *California AmeriCorps State National Service Criminal History Check Verification Form* to ensure all requirements are properly met and documented (both forms are available on CV Grantee Central).

**Required Criminal History Check Components for all “Covered Positions”[[1]](#footnote-1) (staff and AmeriCorps applicants):**

1. Nationwide[[2]](#footnote-2) name-based National Sex Offender Public Registry Check using NSOPW.gov; **and**

2. Statewide Criminal History RegistryCheck in the State of residence[[3]](#footnote-3) **and** in the State where the individual will serve or work **AND**

3. FBI National Fingerprint-based Check

All checks must be conducted and any results considered according to Program and CV policy, with the individual cleared prior to the start of service and/or time on the grant.  **This includes anyone listed on the budget whether grantee or match funded.**

**CV requirements are that the legal applicant**:

1. Follow all CNCS requirements outlined in 45 CFR §§ 2540.200 – 2540.207 and CNCS’ most recent *NSCHC FAQs*; and
2. Follow CVs’ definition that since all programs/grantees serve and/or enroll vulnerable populations, all covered staff and potential AmeriCorps members must complete the **State, FBI and NSOPW.gov** checks; and
3. Recheck the NSOPW.gov nationwide search prior to the start of each term of service for all returning AmeriCorps members; and
4. Ensure all required checks are completed, results are considered and the individual is cleared prior to becoming an AmeriCorps member eligible to earn hours and/or a staff person beginning work on an AmeriCorps grant; and
5. Appropriately documents the checks process and retains a verification form and NSOPW.gov results in each staff/member file; and
6. Has a written policy and procedures in place, which at a minimum addresses requirements 1-5.
7. Ensure one staff member be trained annually in National Service Criminal History Checks using CNCS’ training module and maintain the resultant training certificate (per AC Terms and Conditions).

On behalf of **[LEGAL APPLICANT ENTITY NAME]** I have assessed and verified that **[PROGRAM NAME]** has met all CV National Service Criminal History Check requirements.I understand that **[LEGAL APPLICANT NAME]** must produce documents demonstrating compliance with these requirements to CV within 48 hours upon request, and that this is also included as part of CV’s Member File review process.

1. A “covered position” is a position in which an individual serving or employed receives a living allowance, stipend, national service education award, or salary through a program receiving a grant under the national service laws. **Coverage is not dependent on the type of service the individual is performing, the individual’s access to vulnerable populations, or whether the grantee or sub-grantee programs are using federal share or grantee matching share funds to pay the individual, including salary or stipends which may be counted as matching contributions [as defined by CNCS in most recent FAQs].** **If they are included in your budget, they must have all checks done**. See 45 CFR § 2540.201 [http://www.nationalservice.gov/sites/default/files/resource/fedregister\_final\_rule\_oct\_5\_2012.pdf]. [↑](#footnote-ref-1)
2. An “Advanced Search” of geographic region will not satisfy this requirement. All states that make up the nationwide NSOPR database must be checked before the check is considered complete. Use of a vendor for this check is often not compliant. (See CNCS’ NSCHC FAQs regarding Vendors). [↑](#footnote-ref-2)
3. The State where a candidate “resides” is the location where the individual has made a home which he/she considers to be his/her place of residence at the moment in time that he/she applied to serve or work. College students must be handled differently. 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 regards 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. Programs may not opt to use any other basis for identifying the student’s residence state, e.g., such as the student’s family home. The state to check does not change because a student is on semester or summer breaks temporarily residing elsewhere, and there is no test needed to measure duration of residence while attending school [as defined by CNCS in most recent NSCHC FAQs]. [↑](#footnote-ref-3)