

**§ 2540.205**

**45 CFR Ch. XXV (10–1–13 Edition)**

receipt of results from state registry or FBI criminal history checks as long as the individual is not permitted 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 an appropriate individual, as described in § 2540.205(g) of this chapter.

(b) *Consecutive terms.* If an individual serves consecutive terms of service in a covered position and does not have a break in service that exceeds 120 days, then no additional National Service Criminal History Check is required, as long as the original check is a compliant check for the covered position in which the individual will be serving or working following the break in service. If your program or project is designed with breaks in service over 120 days, but less than 180 days between consecutive terms, you may request approval for a break in service of up to 180 days before a new National Service Criminal History Check is required. Your request must describe the overall program design, explain why the longer period is reasonable, and demonstrate that you have established adequate risk management controls for the extended break in service.

[77 FR 60932, Oct. 5, 2012]

**§ 2540.205 What procedures must I follow in conducting a National Service Criminal History Check for a covered position?**

You are 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 nationwide 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 Titles VI and VII of the Civil Rights Act of 1964 (and the Corporation's implementing 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 authorized 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.

[77 FR 60932, Oct. 5, 2012]

**§ 2540.206 What documentation must I maintain regarding a National Service Criminal History Check for a covered position?**

You must:

(a) Document in writing that you verified 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,

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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.

[77 FR 60933, Oct. 5, 2012]

### **§ 2540.207 When may I follow an alternative search procedure or be exempted from a requirement in conducting a National Service Criminal History Check for a covered position?**

(a) *Alternative search procedure.* (1) If you submit a written request to the Corporation's Office of Grants Management, the Corporation will consider approving an alternative search procedure:

(i) If you demonstrate that you are prohibited or otherwise precluded under state law from complying with a Corporation requirement relating to the National Service Criminal History Check, or

(ii) If you can obtain substantially equivalent or better information through an alternative search procedure.

(2) The Office of Grants Management will review the alternative search procedure to ensure that it:

(i) Verifies the identity of the individual; and

(ii) Includes a search of an alternative criminal database that is sufficient to identify the existence or absence of criminal offenses.

(b) *Exceptions to Criminal History Check requirements for individuals with recurring access to vulnerable populations.* (1) *Exception that does not require prior Corporation approval—Episodic Access.* (i) For the purposes of this section, an individual's access to a vulnerable population is considered to be episodic in nature if the service is not a regular, scheduled, and anticipated component of the individual's position description.

(ii) You are not required to conduct the fingerprint-based FBI criminal history check on individuals in covered positions with recurring access to vulnerable populations, as described in § 2540.203 of this chapter, when the individual's access to a vulnerable popu-

lation is episodic in nature or for a 1-day period.

(iii) No prior approval is required from the Corporation for you to apply this exception. You must make and document a determination that the individual's access to vulnerable populations is episodic, as defined by paragraphs (b)(1)(i) and (ii) of this section.

(2) *Exceptions that require prior approval of the Corporation.* You are not required to conduct the fingerprint-based FBI criminal history check on individuals in covered positions with recurring access to vulnerable populations, as described in § 2540.203 of this chapter, if you demonstrate and the Corporation determines in writing that:

(i) Complying with § 2540.203(b)(2)(iii) of this chapter is cost-prohibitive;

(ii) You are not authorized, or are otherwise unable, under state or federal law, to access the national criminal history background check system of the FBI; or

(iii) That you are exempt from the requirement in § 2540.203(b)(2)(iii) of this chapter for good cause.

[77 FR 60933, Oct. 5, 2012]

### **§ 2540.208 Under what circumstances may participants be engaged?**

A State may not engage a participant to serve in any program that receives Corporation assistance unless and until amounts have been appropriated under section 501 of the Act (42 U.S.C. 12681) for the provision of AmeriCorps educational awards and for the payment of other necessary expenses and costs associated with such participant.

[59 FR 13808, Mar. 23, 1994. Redesignated at 72 FR 48582, Aug. 24, 2007]

### **§ 2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?**

(a) An individual with responsibility for the operation of a project that receives Corporation assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or