

Corporation for National and Community Service

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(2) An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance.

(3) A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual.

(4) A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(5) A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that—

(i) Will supplant the hiring of employed workers; or

(ii) Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(6) A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any—

(i) Presently employed worker;

(ii) Employee who recently resigned or was discharged;

(iii) Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;

(iv) Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) Employee who is on strike or who is being locked out.

[59 FR 13808, Mar. 23, 1994, as amended at 70 FR 39607, July 8, 2005]

§ 2540.110 Limitation on use of Corporation funds for administrative costs.

(a)(1) Not more than five percent of the grant funds provided under 45 CFR 2516, 2517, 2519, and 2521 for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any

subgrant will be subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs the Corporation will approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to five percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of five percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Utilize such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

(b) Costs attributable to administrative functions as well as program functions should be prorated between administrative costs and program costs.

[63 FR 18133, Apr. 14, 1998]

Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants

§ 2540.200 Which entities are required to comply with the National Service Criminal History Check requirements in this subpart?

The National Service Criminal History Check is a requirement for entities that are recipients or subrecipients of the following grants:

(a) Operational grants provided by AmeriCorps State and National;

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- (b) Foster Grandparent Program Grants;
- (c) Retired and Senior Volunteer Program Grants;
- (d) Senior Companion Program Grants;
- (e) Senior Demonstration Program Grants that receive funding from CNCS;
- (f) Martin Luther King, Jr. Day of Service Grants;
- (g) September 11th Day of Service Grants;
- (h) Social Innovation Fund Grants;
- (i) Volunteer Generation Fund Grants;
- (j) AmeriCorps VISTA Program Grants;
- (k) AmeriCorps VISTA Support Grants.

[86 FR 11146, Feb. 24, 2021]

§ 2540.201 Which individuals require a National Service Criminal History Check?

(a) A National Service Criminal History Check must be conducted for individuals in covered positions. Individuals in covered positions are individuals selected, under a CNCS grant specified in 2540.200, by the recipient, subrecipient, or service site to work or serve in a position under a CNCS grant specified in § 2540.200:

- (1) As an AmeriCorps State and National member, as described in 42 U.S.C. 12511(30)(A)(i);
 - (2) As a Foster Grandparent who receives a stipend;
 - (3) As a Senior Companion who receives a stipend; or
 - (4) In a position in which they will receive a salary, directly or reflected as match, under a cost reimbursement grant.
- (b) A National Service Criminal History Check is not required for those individuals listed in paragraph (a) of this section who are under the age of 18 on the first day of work or service in a covered position.
- (c) A National Service Criminal History Check is not required for individuals whose activity is entirely included in the grant recipient's indirect cost rate.

[86 FR 11147, Feb. 24, 2021]

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§ 2540.202 What eligibility criteria apply to an individual for whom a National Service Criminal History Check is required?

An individual shall be ineligible to work or serve in a position specified in § 2540.201(a) if the individual—

- (a) Refuses to consent to a criminal history check described in § 2540.204;
- (b) Makes a false statement in connection with a criminal history check described in § 2540.204;
- (c) Is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry; or
- (d) Has been convicted of murder, as defined in 18 U.S.C. 1111.

[86 FR 11147, Feb. 24, 2021]

§ 2540.203 May a grant recipient or subrecipient or service site establish and apply suitability criteria for individuals to work or serve in a position specified in this subpart?

Grant recipients and subrecipients, or service sites, may establish suitability criteria, consistent with state and Federal Civil Rights and non-discrimination laws, for individuals working or serving in a position specified in § 2540.201(a). While members may be eligible to work or serve in a position specified in § 2540.201(a) based on the eligibility requirements of § 2540.202, a grant recipient, subrecipient, or service site may determine that an individual is not suitable to work or serve in such a position based on criteria that the grant recipient or subrecipient or service site establishes.

[86 FR 11147, Feb. 24, 2021]

§ 2540.204 What are the components of a National Service Criminal History Check?

(a) Unless CNCS approves a waiver under § 2540.207, for each individual in a position specified in § 2540.201, grantees or subgrantees must, obtain:

- (1) A nationwide check of the National Sex Offender Public website through *NSOPW.gov*;
- (2) A check of the State criminal history record repository or agency-designated alternative for the individual's State of residence and State of service; and

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(3) A fingerprint-based check of the FBI criminal history record database through the State criminal history record repository or agency-approved vendor.

(b) One way for grant recipients or subrecipients to obtain and document the required components of the National Service Criminal History Check is through the use of agency-approved vendors.

[86 FR 11147, Feb. 24, 2021]

§ 2540.205 By when must the National Service Criminal History Check be completed?

(a) The National Service Criminal History Check must be conducted, reviewed, and an eligibility determination made by the grant recipient or subrecipient based on the results of the National Service Criminal History Check *before* a person begins to work or serve in a position specified in § 2540.201(a).

(b) If a person serves consecutive terms of service or employment with the same organization in a position specified in § 2540.201(a) and does not have a break in service or employment longer than 180 days, then no additional National Service Criminal History Check is required, as long as the original check complied with the requirements of § 2540.204. If a National Service Criminal History Check was not conducted on a person because they were under the age of 18 at the time they began their prior term(s) of service or employment in a covered position, pursuant to § 2540.201(b), a National Service Criminal History check must be conducted prior to the individual beginning a subsequent term of work or service for which the person is 18 years of age or older at the start of work or service.

(c) Persons working or serving in positions specified in § 2540.201(a) prior to May 1, 2021, who continue working or serving in a position specified in § 2540.201(a) on or after November 1, 2021, must have a National Service Criminal History Check conducted, reviewed, and an eligibility determination made by the grant recipient or subrecipient based on the results of the National Service Criminal History Check completed in accordance with

this part. For these people, the National Service Criminal History Check must be completed no later than November 1, 2021.

[86 FR 11147, Feb. 24, 2021]

§ 2540.206 What procedural steps are required, in addition to conducting the National Service Criminal History Check described in this subpart?

(a) In addition to conducting the National Service Criminal History Check described in § 2540.204, grant recipients or subrecipients must:

(1) Obtain a person's consent before conducting the state and FBI components of the National Service Criminal History Check;

(2) Provide notice that selection for work or service for a position specified in § 2540.201(a) is contingent upon the organization's review of the National Service Criminal History Check component results;

(3) Provide a reasonable opportunity for the person to review and challenge the factual accuracy of a result before action is taken to exclude the person from the position;

(4) Take reasonable steps to protect the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant;

(5) Maintain documentation of the National Service Criminal History Check as grant records; and

(6) Pay for the cost of the NSCHC. Unless specifically approved by CNCS under § 2540.207, the person who is serving or working in the covered position may not be charged for the cost of any component of a National Service Criminal History Check.

(b) CNCS-approved vendors may facilitate obtaining and documenting the requirements in paragraphs (a)(1) through (5) of this section.

[86 FR 11147, Feb. 24, 2021]

§ 2540.207 Waiver.

CNCS may waive provisions of §§ 2540.200 through 2540.206 for good cause, or for any other lawful basis. To request a waiver, submit a written request to NSCHC Waiver Requests, 250 E Street SW, Washington DC 20525, or

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send your request to
NSCHCWaiverRequest@cns.gov.

[86 FR 11148, Feb. 24, 2021]

§ 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 member is a qualified individual with a disability.

(b) Any Corporation assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) An individual with responsibility for the operation of a project that receives Corporation assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with Corporation funds. This provision does not apply to the employment (with Corporation assistance) of any staff member of a Corporation-supported project who was em-

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ployed with the organization operating the project on the date the Corporation grant was awarded.

(d) Grantees must notify all program participants, staff, applicants, and beneficiaries of:

(1) Their rights under applicable federal nondiscrimination laws, including relevant provisions of the national service legislation and implementing regulations; and

(2) The procedure for filing a discrimination complaint with the Corporation's Office of Civil Rights and Inclusiveness.

[59 FR 13808, Mar. 23, 1994, as amended at 73 FR 53760, Sept. 17, 2008]

§ 2540.215 What should a program participant, staff members, or beneficiary do if the individual believes he or she has been subject to illegal discrimination?

A program participant, staff member, or beneficiary who believes that he or she has been subject to illegal discrimination should contact the Corporation's Office of Civil Rights and Inclusiveness, which offers an impartial discrimination complaint resolution process. Participation in a discrimination complaint resolution process is protected activity; a grantee is prohibited from retaliating against an individual for making a complaint or participating in any manner in an investigation, proceeding, or hearing.

[73 FR 53760, Sept. 17, 2008]

§ 2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted programs eligible for family and medical leave?

(a) *Participants in State, local, or private nonprofits programs.* A participant in a State, local, or private nonprofit program receiving support from the Corporation is considered an eligible employee of the program's project sponsor under the Family and Medical Leave Act of 1993 (29 CFR part 825) if—

(1) The participant has served for at least 12 months and 1,250 hours during the year preceding the start of the leave; and

(2) The program's project sponsors engages in commerce or any industry or activity affecting commerce, and

employs at least 50 employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.

(b) *Participants in Federal programs.* Participants in Federal programs operated by the Corporation or by another Federal agency will be considered Federal employees for the purposes of the Family and Medical Leave Act if the participants have completed 12 months of service and the project sponsor is an employing agency as defined in 5 U.S.C. 6381 *et seq.*; such participants therefore will be eligible for the same family and medical leave benefits afforded to such Federal employees.

(c) *General terms and conditions.* Participants that qualify as eligible employees under paragraphs (a) or (b) of this section are entitled to take up to 12 weeks of unpaid leave during a 12 month period for any of the following reasons (in the cases of both paragraphs (c)(1) and (2) of this section the entitlement to leave expires 12 months after the birth or placement of such child): (1) The birth of a child to a participant;

(2) The placement of a child with a participant for adoption or foster care;

(3) The serious illness of a participant's spouse, child or parent; or

(4) A participant's serious health condition that makes that participant unable to perform his or her essential service duties (a serious health condition is an illness or condition that requires either inpatient care or continuing treatment by a health care provider).

(d) *Intermittent leave or reduced service.* The program, serving as the project sponsor, may allow a participant to take intermittent leave or reduce his or her service hours due to the birth of or placement of a child for adoption or foster care. The participant may also take leave to care for a seriously ill immediate family member or may take leave due to his or her own serious illness whenever it is medically necessary.

(e) *Alternate placement.* If a participant requests intermittent leave or a reduced service hours due to a serious illness or a family member's sickness, and the need for leave is foreseeable based on planned medical treatment,

the program, or project sponsor may temporarily transfer the participant to an alternative service position if the participant: (1) Is qualified for the position; and

(2) Receives the same benefits such as stipend or living allowance and the position better accommodates the participants recurring periods of leave.

(f) *Certification of cause.* A program, or project sponsor may require that the participant support a leave request with a certification from the health care provider of the participant or the participant's family member. If a program sponsor requests a certification, the participant must provide it in a timely manner.

(g) *Continuance of coverage.* (1) If a State, local or private program provides for health insurance for the full-time participant, the sponsor must continue to provide comparable health coverage at the same level and conditions that coverage would have been provided for the duration of the participant's leave.

(2) If the Federal program provides health insurance coverage for the full-time participant, the sponsor must also continue to provide the same health care coverage for the duration of the participant's leave.

(h) *Failure to return.* If the participant fails to return to the program at the end of leave for any reason other than continuation, recurrence or onset of a serious health condition or other circumstances beyond his or her control, the program may recover the premium that he or she paid during any period of unpaid leave.

(i) *Applicability to term of service.* Any absence, due to family and medical leave, will not be counted towards the participant's term of service.

§ 2540.230 What grievance procedures must recipients of Corporation assistance establish?

State and local applicants that receive assistance from the Corporation must establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance from the Corporation.

A grievance procedure may include dispute resolution programs such as mediation, facilitation, assisted negotiation and neutral evaluation. If the grievance alleges fraud or criminal activity, it must immediately be brought to the attention of the Corporation's inspector general.

(a) *Alternative dispute resolution.* (1) The aggrieved party may seek resolution through alternative means of dispute resolution such as mediation or facilitation. Dispute resolution proceedings must be initiated within 45 calendar days from the date of the alleged occurrence. At the initial session of the dispute resolution proceedings, the party must be advised in writing of his or her right to file a grievance and right to arbitration. If the matter is resolved, and a written agreement is reached, the party will agree to forego filing a grievance in the matter under consideration.

(2) If mediation, facilitation, or other dispute resolution processes are selected, the process must be aided by a neutral party who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the matter through a mutually achieved and acceptable written agreement. The neutral party may not compel a resolution. Proceedings before the neutral party must be informal, and the rules of evidence will not apply. With the exception of a written and agreed upon dispute resolution agreement, the proceeding must be confidential.

(b) *Grievance procedure for unresolved complaints.* If the matter is not resolved within 30 calendar days from the date the informal dispute resolution process began, the neutral party must again inform the aggrieving party of his or her right to file a formal grievance. In the event an aggrieving party files a grievance, the neutral may not participate in the formal complaint process. In addition, no communication or proceedings of the informal dispute resolution process may be referred to or introduced into evidence at the grievance and arbitration hearing. Any decision by the neutral party is advisory and is not binding unless both parties agree.

(c) *Time limitations.* Except for a grievance that alleges fraud or criminal activity, a grievance must be made

no later than one year after the date of the alleged occurrence. If a hearing is held on a grievance, it must be conducted no later than 30 calendar days after the filing of such grievance. A decision on any such grievance must be made no later than 60 calendar days after the filing of the grievance.

(d) *Arbitration—(1) Arbitrator—(i) Joint selection by parties.* If there is an adverse decision against the party who filed the grievance, or 60 calendar days after the filing of a grievance no decision has been reached, the filing party may submit the grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) *Appointment by Corporation.* If the parties cannot agree on an arbitrator within 15 calendar days after receiving a request from one of the grievance parties, the Corporations Chief Executive Officer will appoint an arbitrator from a list of qualified arbitrators.

(2) *Time Limits—(i) Proceedings.* An arbitration proceeding must be held no later than 45 calendar days after the request for arbitration, or, if the arbitrator is appointed by the Chief Executive Officer, the proceeding must occur no later than 30 calendar days after the arbitrator's appointment.

(ii) *Decision.* A decision must be made by the arbitrator no later than 30 calendar days after the date the arbitration proceeding begins.

(3) *The cost.* The cost of the arbitration proceeding must be divided evenly between the parties to the arbitration. If, however, a participant, labor organization, or other interested individual prevails under a binding arbitration proceeding, the State or local applicant that is a party to the grievance must pay the total cost of the proceeding and the attorney's fees of the prevailing party.

(e) *Suspension of placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this chapter, such placement must not be made unless the placement is consistent with the resolution of the grievance.

(f) *Remedies.* Remedies for a grievance filed under a procedure established by a

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recipient of Corporation assistance may include—

(1) Prohibition of a placement of a participant; and

(2) In grievance cases where there is a violation of nonduplication or non-displacement requirements and the employer of the displaced employee is the recipient of Corporation assistance—

(i) Reinstatement of the employee to the position he or she held prior to the displacement;

(ii) Payment of lost wages and benefits;

(iii) Re-establishment of other relevant terms, conditions and privileges of employment; and

(iv) Any other equitable relief that is necessary to correct any violation of the nonduplication or nondisplacement requirements or to make the displaced employee whole.

(g) *Suspension or termination of assistance.* The Corporation may suspend or terminate payments for assistance under this chapter.

(h) *Effect of noncompliance with arbitration.* A suit to enforce arbitration awards may be brought in any Federal district court having jurisdiction over the parties without regard to the amount in controversy or the parties' citizenship.

Subpart C—Other Requirements for Recipients of Corporation Assistance

§ 2540.300 What must be included in annual State reports to the Corporation?

(a) *In general.* Each State receiving assistance under this title must prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this chapter and the status of the national and community service programs in the State that receive assistance under this chapter. A State's annual report must include information that demonstrates the State's compliance with the requirements of this chapter.

(b) *Local grantees.* Each State may require local grantees that receive assistance under this chapter to supply such information to the State as is necessary to enable the State to complete

the report required under paragraph (a) of this section, including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(c) *Availability of report.* Reports submitted under paragraph (a) of this section must be made available to the public on request.

§ 2540.310 Must programs that receive Corporation assistance establish standards of conduct?

Yes. Programs that receive assistance under this title must establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

§ 2540.320 How are participant benefits treated?

Section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)) shall apply to the programs conducted under this chapter as if such programs were conducted under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

§ 2540.330 Parental involvement required

(a) *Consultation Requirement.* Programs that receive assistance under the national service laws shall consult with the parents or legal guardians of children in developing and operating programs that include and serve children.

(b) *Parental Permission.* Programs that receive assistance under the national service laws must, before transporting minor children, provide the children's parents or legal guardians with the reason for the transportation and obtain the parent's or legal guardian's permission for such transportation, consistent with State law.

[74 FR 46507, Sept. 10, 2009]