

Corporation for National and Community Service

§ 2540.200

(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]

45 CFR Ch. XXV (10–1–23 Edition)

§ 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