

and New Emergency Response Act of 2006 (MINER Act) amendments to the Mine Safety and Health Act of 1977 (Mine Act), and revise Agency procedures for proposing civil penalties. MSHA requested comments on or before October 23, 2006. In addition, MSHA held six public hearings on September 26, September 28, October 4, October 6, 2006, October 17, and October 19, 2006.

At the public hearings held in Charleston, West Virginia, on October 17, and Pittsburgh, Pennsylvania, on October 19, 2006, MSHA stated that the proposed rule includes a requirement that requests for safety and health conferences be in writing. MSHA further stated that the Agency is considering adding a provision that such requests for a conference include a brief statement of the reason why each citation or order should be conferred. MSHA stated that such a change would assure that parties requesting a conference focus on the issue to be discussed at the conference. In addition, this change would help expedite the conference process by providing the District Manager with necessary information prior to conducting the conference. MSHA requested comments on such a provision.

In addition, in response to comments at each of the public hearings, MSHA clarified that the proposed deletion of the single penalty assessment would be replaced with the regular penalty assessment. Thus, under the proposed rule, all violations that are now processed under the existing single penalty provision would be processed under the proposed regular assessment formula.

MSHA is reopening the public comment period for 2 weeks so that interested parties can address the issues. MSHA welcomes comment from all interested parties.

Dated: October 23, 2006.

Richard E. Stickler,

Assistant Secretary for Mine Safety and Health.

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2522, 2540, 2551, and 2552

RIN 3045-AA44

Criminal History Checks; Senior Companions, Foster Grandparents, and AmeriCorps Program Participants

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule with request for comments.

SUMMARY: The Corporation for National and Community Service (the Corporation) proposes a regulation requiring grantees to conduct and document criminal history checks on Senior Companions and Foster Grandparents, and on AmeriCorps State/National (including Education Award Program) participants and grant-funded staff in those programs who, on a recurring basis, have access to children, persons age 60 and older, or individuals with disabilities.

DATES: To be sure your comments are considered, they must reach the Corporation on or before December 26, 2006.

ADDRESSES: You may mail or deliver your comments to Amy Borgstrom, Corporation for National and Community Service, 1201 New York Avenue, NW., Room 9503, Washington, DC 25025. You may also send your comments by facsimile transmission to (202) 606-3476. Or you may send them electronically to crimhisproposedrule@cns.gov or through the Federal government's one-stop rulemaking Web site at <http://www.regulations.gov>. Members of the public may review copies of all communications received on this rulemaking at the Corporation's Washington DC office. Due to continued delays in the Corporation's receipt of mail, we strongly encourage responses via e-mail or fax.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom at (202) 606-6930 (aborgstrom@cns.gov). The TDD/TTY number is (202) 606-3472. You may request this notice in an alternative format for the visually impaired.

SUPPLEMENTARY INFORMATION:

I. Invitation To Comment

We invite you to submit comments about these proposed regulations. To ensure that your comments have maximum value in helping us develop the final regulations, we urge you to identify clearly the specific section or

sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations. During and after the comment period, you may inspect all public comments about these proposed regulations in room 9503, 1201 New York Avenue, NW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

In addition, the Corporation is planning two conference calls in November, 2006, to obtain comments on this proposed rule. Please visit the Corporation's Web site at http://www.nationalservice.gov/about/role_impact/rulemaking.asp for information concerning the dates and times of these calls.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

Many national and community service programs are dedicated to helping children learn to read, giving children better opportunities to thrive, helping older persons maintain their independence, and otherwise serving vulnerable individuals while striving to recruit a diverse corps of participants. With this commitment comes the responsibility to safeguard the well-being of program beneficiaries, including the effective screening of staff, participants, and volunteers. This responsibility is principally determined by State law, and the standard of care required may vary from one State to another. Organizations carrying out national and community service programs are well-advised to establish and regularly review their screening and supervision practices as measured against the applicable standard of care under State law.

There is a growing awareness of the need for programs to put effective safeguards in place to protect children and other vulnerable populations from abuse or harm. In developing this proposed requirement, we benefited greatly from suggestions and other input from Corporation grantees as well as

other interested organizations and individuals. The Corporation's Inspector General has made several recommendations in this area, prompting us to undertake a comprehensive review of our policies concerning criminal history checks for national and community service programs, with a particular emphasis on AmeriCorps members and Senior Corps volunteers who serve children and other vulnerable populations.

Sections 192A, 193, and 193A of the National and Community Service Act of 1990, 42 U.S.C. 12651b-d, give the Corporation broad authority to establish rules to protect program beneficiaries. This authority is reinforced by Executive Order 13331, National and Community Service Programs (Feb. 27, 2004), 60 FR 9911 (Mar. 3, 2004), which directs the Corporation to "strengthen its oversight of national and community service programs through performance and compliance standards and other management tools."

Rapid advances in technology are increasing the speed and breadth of information about individuals in our society, but we have not identified any established criminal history check process at the national level that we can simply mandate for all grantees. The FBI maintains the most complete criminal database in the United States. All records are fingerprint based. A fingerprint check generally is considered the most reliable, in part because it screens a physical characteristic rather than a name provided by an applicant. However, FBI-maintained records are less complete and less up-to-date than State records, and are available only to organizations specifically authorized by a Federal or State law. We know, from the input that we have received from organizations operating national and community service programs, that many do not currently have access to FBI fingerprint checks.

The U.S. Department of Justice recently issued a report with recommendations for broader access to FBI criminal history records for non-criminal purposes, including screening volunteers for entities providing services to children, the elderly, and individuals with disabilities. The "Attorney General's Report on Criminal History Background Checks (June 2006)" is available on line at http://www.usdoj.gov/olp/ag_bgchecks_report.pdf (hereinafter "DOJ Report"). As such recommendations are implemented in Federal and State law, grantees operating national and community service programs may have better access

to FBI fingerprint checks. In time, they may also have access to State and national criminal history databases that make use of driver's licenses incorporating fingerprint or other biometric data as a result of the Real ID Act of 2005 (Pub. L. 109-13) and new biometric techniques such as DNA identification. The Corporation will continue to provide information and guidance on its Web site, as well as through its training and technical assistance providers, to grantees on available sources for criminal history background checks as both the law and the technology evolve.

We are aware of Congressional interest in making accurate information about individuals' criminal history available while appropriately limiting the sharing of such information. For example, the PROTECT Act (Pub. L. 108-21) authorizes the Boys & Girls Club of America, the National Council of Youth Sports, the National Mentoring Partnership, and nonprofit organizations that provide care, treatment, education, training, instruction, supervision, or recreation to children to participate in a pilot program with the National Center for Missing and Exploited Children to obtain Federal FBI fingerprint criminal history checks on volunteer applicants for a fixed fee of \$18 per individual. Corporation grantees that provide the above types of services to children may consider contacting the National Center for Missing and Exploited Children (<http://www.missingkids.com>) to determine if they are eligible to participate in the pilot program. Alternatively, mentoring organizations, such as Foster Grandparent programs and many AmeriCorps programs, may apply through the National Mentoring Partnership (<http://www.mentoring.org>), a current participant in the pilot program. The lessons learned from the ongoing PROTECT Act's pilot program are likely to inform and spur greater and more effective coordination across State lines. Both the Senate and the House of Representatives are also currently considering bills that would establish national standards for reporting sex offenses to the National Sex Offender Registry, which could enhance the reliability and availability of NSOR searches. Amid this changing landscape, the Corporation seeks at this time to achieve a consistent baseline practice among Senior Companion and Foster Grandparent programs and among AmeriCorps State/National programs serving children, persons age 60 and older, or individuals with disabilities.

The following proposed rule establishes a baseline screening process at the national level. The process is

designed to be relatively straightforward in terms of documenting and monitoring, so that programs serving vulnerable populations can demonstrate that they are making a reasonably informed decision about who they select to participate. This screening process will be a Federal grant condition separate and apart from any State requirement.

By requiring a baseline criminal history screening process, we do not intend to minimize the importance of a comprehensive approach to screening and supervising staff and volunteers based on the particular elements of a given program. Conducting criminal history checks is but one part of an effective risk management approach to protecting program participants from harm as well as protecting the sponsoring organization from liability. Organizations serving children and other vulnerable populations need to be mindful that no screening process is foolproof. Sponsoring organizations should be alert to best practices, not only in screening participants and staff, but also to elements of program design and operation that provide additional safeguards. Examples include designing a program to minimize opportunities for potential abuse; conducting regular child or elder abuse prevention training; restricting one-on-one or other unsupervised contact with vulnerable clients; controlling access to areas where vulnerable clients are present; making unannounced observation visits; posting and reinforcing protocols around responding to potential abuse. To that end, we draw your attention to the "Staff Screening Tool Kit, 3rd Edition," a document prepared by the Nonprofit Risk Management Center that contains helpful information designed to strengthen an organization's staff and volunteer screening and supervision processes. You may access this publication at <http://www.nationalservice.gov/screeningtoolkit>.

Requiring a baseline process as a grant condition is not intended to discourage grantees from doing more than what we require. In fact, we strongly encourage grantees to do more, as no screening process by itself can guarantee the safety and well-being of vulnerable populations in any program. Indeed, the strongest programs design and operate their programs on the assumption that the screening process is not foolproof. We will promote and support well-informed risk management decisions of our grantees through training and technical assistance designed to promote the sharing of best practices.

Similarly, as part of the baseline process we require fairness and confidentiality in handling criminal history information, and we will offer guidance and share best practices in implementing these general requirements. These fairness and confidentiality requirements are congruent with the Attorney General's privacy recommendation and discussion of "fair information practices" as applied to criminal history records in the recent DOJ Report to Congress. As the DOJ Report points out, we also have an interest, as a society, in rehabilitating individuals with a criminal history and in avoiding unlawful discrimination. The Corporation has also reviewed comments and public statements submitted to DOJ by privacy, civil liberties, and ex-offender advocates concerning the impact of criminal background checks and sex offender registries on privacy, rehabilitation, and discrimination. We considered such interests in drafting the proposed rule, which limits the screening and disqualification requirements to positions serving the most vulnerable individuals while providing fairness and confidentiality protections to applicants. In addition, we remind grantees that criminal history searches and results often include other potentially sensitive identifying data, such as Social Security number, date of birth, driver's license number, and home address, which should be handled carefully to protect the individuals concerned from identity theft, physical threats, or other injury. Fairness and confidentiality procedures can help ensure that qualified prospective volunteers and employees are not discouraged from seeking to be involved in national and community service programs.

Closely related to privacy requirements are Federal and State laws that prohibit discrimination in employment, such as Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*). This can be an issue, for example, if employment decisions are attributed to the results of criminal history checks, but those are actually used as a pretext for excluding individuals based on their race, religion, gender, age, or age. The recently-revised EEOC Compliance Manual, Section 15: Race and Color Discrimination (April 19, 2006), refers to court rulings on the potential "disparate impact" of a hiring policy based on arrests or convictions. The EEOC suggests that prospective employers should weigh the following factors in each case to ensure that their decisions to disqualify applicants based

on criminal history results are grounded on defensible "business needs," despite any differential impact:

- The nature and gravity of the offense;
- The time that has passed since the conviction or completion of the sentence; and
- The nature of the job held or sought.

These considerations apply directly to preventing unlawful discrimination in the employment of persons for covered grant-funded staff positions, and may be relevant to a national and community service program's evaluation of applicants to a position as a member or participant. The EEOC Compliance Manual is available online at: <http://www.eeoc.gov/policy/docs/race-color.html>.

III. Covered Positions

This proposed rule covers Senior Companions and Foster Grandparents, and participant positions in AmeriCorps State/National and other programs that provide a Corporation-funded living allowance, stipend, education award, or other remuneration to individuals who have recurring access to children, persons age 60 and older, or individuals with disabilities. We define "children" as individuals 17 years of age and younger, consistent with the PROTECT Act. Sixty years of age—the lowest age commonly used by Congress to define elderly persons—is the threshold age for protecting elderly persons. "Individuals with disabilities" has the same meaning given the term in the Rehabilitation Act in 29 U.S.C. 705(20)(B) and covers any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The proposed rule also covers grant-funded staff with access to the identified vulnerable populations in these programs. Grantees, therefore, must establish the age and disability status of program participants.

Currently, AmeriCorps State and National grant programs, including the Education Awards Program, have a criminal background check requirement in their grant provisions. In light of the Corporation's substantial support for AmeriCorps members (or "participants", in statutory terms), all of whom are eligible to receive a Corporation-funded education award upon successful completion of service, we believe that baseline screening requirements are appropriate. This proposed rule adds details to the required search elements, establishes procedures to assure fairness and

confidentiality, and disqualifies registered sex offenders from AmeriCorps positions with recurring access to children, persons age 60 and older, or individuals with disabilities.

The proposed rule covers the SCP and FGP programs because we believe that their focus on serving vulnerable populations through participants who receive Corporation-funded stipends also warrants baseline screening provisions at the national level. It gives more specific direction to SCP and FGP sponsoring organizations in carrying out an important aspect of their current responsibility to establish risk management policies and procedures, and disqualifies registered sex offenders from serving as Senior Companions or Foster Grandparents.

The proposed rule also applies to other Corporation-supported grant programs in which service participants receive a Corporation-funded living allowance, stipend, or education award and, on a recurring basis, have access to children, persons age 60 and older, or individuals with disabilities. For example, the rule would cover a Challenge Grant program that provides a stipend to participants who tutor children in an after-school program.

The proposed rule's requirements do not cover the RSVP or Learn and Serve America programs, or unaffiliated volunteers recruited by national and community service programs. We believe that, given the relatively attenuated connection between the Corporation and individual participants in those programs—and unaffiliated volunteers generated by any of our programs—we may reasonably defer to pre-existing duties of care under State law. We wish to emphasize the importance of ascertaining and meeting the applicable standards of care under State law for all Corporation-supported programs and activities.

The proposed rule does not cover the AmeriCorps National Civilian Community Corps or the AmeriCorps VISTA programs, as the selection of participants in those programs is made by Federal personnel rather than by grantee organizations. We are strengthening our internal screening practices in both those programs through an arrangement with the U.S. Office of Personnel Management, but outside the scope of this rulemaking.

IV. Content of Proposed Rule

We have focused on a criminal history review that reflects a set of information that should be reasonably accessible to grantees, with the following required elements.

1. *Required searches.* Unless the Corporation approves an alternative screening protocol and unless prohibited by State law, a covered grantee must, in selecting an individual for participation, conduct and document two searches: (A) A criminal history records search (by name or fingerprint) of the State criminal registry for the State in which the program operates and the State in which the applicant resides at the time of application; and (B) a search of the Department of Justice (DOJ) National Sex Offender Registry (NSOR) at <http://www.nsopr.gov>.

Requiring a check of State criminal registries is supported by data obtained as a result of the PROTECT Act pilot program. According to the DOJ Report, of the volunteers with criminal records identified through a FBI check during the first part of the pilot program, 71 percent would have been identified at the State level.

The NSOR is a nationwide, Internet-based, searchable Web site that provides one-stop access to registries from all 50 States, Guam, Puerto Rico, and the District of Columbia. A grantee operating in, or recruiting an applicant from, a State that discontinues participating in the NSOR must conduct and document a search of the sexual offender registry for the State in which the program operates and the State in which the applicant resides at the time of application. In addition, grantees should know that the NSOR compiles but does not independently verify or analyze data that is provided by each State, and even if current legislative proposals to establish national reporting standards are adopted there may continue to be differences in the content and currency of data held respectively in the NSOR and State sex offender registries. In addition, States may have different sex offender registration requirements, depending on the status of the offender and the level of an offense in a specific State. To assist the public, the FBI has a link on its Web site to each State's sexual offender registry. The FBI Web site can be accessed at <http://www.fbi.gov/hq/cid/cac/states.htm>.

A grantee may ascertain and assess an individual's criminal history or sex offender status directly from the applicable government agency or indirectly through a duly authorized intermediary such as a commercial entity or nonprofit organization.

2. *Required procedures.* Procedures must include: (a) Verification of the applicant's identity by examining a government-issued photo identification card; (b) prior, written authorization by the applicant; (c) documentation of the

applicant's understanding that selection into the program is contingent upon the organization's review of the applicant's criminal history, if any; (d) an opportunity for the applicant to review and challenge the factual accuracy of a result before action is taken to exclude the applicant from the position; and (e) safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with the authorization provided by the applicant. (Grantees may find a useful model in considering confidentiality safeguards in the Federal Trade Commission's Standards for Safeguarding Customer Information, 16 CFR Part 314, posted at <http://www.ftc.gov/os/2002/05/67fr36585.pdf>.) An applicant who refuses to authorize a program to conduct a criminal history check may not serve in a covered position.

3. *Required documentation.* A grantee must document in writing that it (or its designee) verified the identity of the applicant by examining the applicant's government-issued photo identification card, conducted the required check, and considered the result in selecting an individual for a covered position. There is no requirement under the proposed rule that the grantee maintain the result itself.

A Senior Companion or Foster Grandparent sponsoring organization must demonstrate that the required check is conducted at least once for any Senior Companion or Foster Grandparent who begins serving with the program on or after the effective date of this rule. An AmeriCorps grantee must document that the required check is conducted the first time an individual applies for a covered position in its program on or after the rule's effective date.

To the extent consistent with Federal or State law, a covered grantee may, by written agreement, arrange for any of these requirements to be completed by another organization. If a grantee demonstrates that, for good cause including a conflict with State law, it is unable to comply with the required searches or that it can obtain equivalent or better information through an alternative process, the Corporation will consider approving an alternative search protocol proposed in writing by the grantee. The grantee should submit the alternative protocol in writing to the Corporation's Office of Grants Management. The Office of Grants Management will review the alternative protocol to ensure that it: (1) Verifies the identity of the applicant; and (2) includes a search of an alternative criminal database that is sufficient to

identify the existence, or absence of, a criminal offense.

In addition, a grantee that conducts and documents a fingerprint-based criminal history check through the FBI or through a national name-based check that, at a minimum, includes a search of the State criminal repository registry in the State in which the program is operating, as well as in the State in which the applicant resides, will be deemed to have satisfied the criminal history check requirement and does not need separate approval by the Corporation.

Establishing a baseline process as a grant condition is in no way intended to discourage grantees from undertaking additional measures to screen applicants. For example, grantees should be aware that an individual might provide a false name during the application process. Consequently, while the Corporation proposes, pursuant to this rule, to require grantees to verify an applicant's identity with a government-issued photo identification card, such as a driver's license, the Corporation also strongly encourages grantees to take other precautionary steps such as consistently checking references or past employment. Additional screening practices include conducting a personal interview or examining driving records for an individual whose program assignment will include driving a vehicle. In addition, some programs have access to State-based child abuse or elder abuse registries. A grantee's decision to take any of these additional steps reflects the organization's own judgment about appropriate screening and is not considered a requirement under the Corporation grant.

By policy, eligible AmeriCorps programs that have fully enrolled their awarded member slots are allowed to replace any member who terminates service before completing a required minimum (currently 15 percent) of his or her term. If the background screening results in the member being ineligible to serve and the member has already served more than 15 percent of the required term of service, a grantee may seek an exception to the re-fill policy by submitting a written request for an exception to the Corporation's Office of Grants Management. The Office of Grants Management will review the request for an exception to determine if the delay in obtaining the criminal history check for the member was a result of the grantee's lack of due diligence, or was for a reason that was beyond the grantee's control. The Office will reply to all such requests within 30 days of receipt of such requests.

V. Costs

The proposed rule requires grantees to obtain and document a baseline criminal history check for covered individuals. The Corporation considers the cost of this required criminal history check a reasonable and necessary program grant expense, such costs being presumptively eligible for reimbursement. In any event, a grantee should include the costs associated with its screening process in the grant budget it submits for approval to the Corporation.

A grantee may not charge an individual for the cost of a criminal history check. In addition, because criminal history checks are inherently attributable to operating a program, such costs may not be charged to a State commission administrative grant.

We will monitor the screening and documentation requirement as a material condition of receiving a Corporation grant. A grantee's failure to comply with this requirement may adversely affect the grantee's access to grant funds or ability to obtain future grants from the Corporation. In addition, a grantee jeopardizes eligibility for reimbursement of costs related to a disqualified individual if it fails to perform or document the required check.

VI. Disqualification of Registered Sex Offenders

States have developed sexual offender registries to inform the public concerning the presence and location of individuals who have been convicted of certain sex-related offenses, either committed within that State, or in another State. Depending on the severity of the convicted offense, individuals are required to register as sex offenders either for a specified number of years (e.g., 10 years) or for life.

An individual who, while under consideration for a covered position, is subject to a State sex offender registration requirement, is deemed unsuitable for, and may not serve in the position.

A grantee is not precluded under this proposed rule from adopting additional grounds for disqualification if it decides that is appropriate or necessary for a particular program. Grantees should, however, be aware that State law may specifically prohibit the consideration of conviction or arrest records under certain circumstances. Finally, grantees should look at criminal history checks as but one of many sources of information to assess whether an individual is suitable for a program.

A grantee may not select an individual for a position that has

recurring access to children, persons age 60 and older, or individuals with disabilities prior to determining whether the individual is subject to a State sex offender registration requirement, which is readily ascertainable through an on-line search. Because the additionally-required search of State criminal registries, or an approved alternative search, may take more time, a grantee may select or place an individual contingent upon obtaining these additional results subsequently. A grantee should take reasonable precautions to ensure that safeguards are in place while the results are pending. These safeguards could include adjusting an individual's duties to minimize access to vulnerable persons, additional monitoring, or other risk mitigation steps as determined by the grantee.

VII. Relationship to State Laws

To the extent that any element of the proposed rule is not permitted under State law, the Corporation's Office of Grants Management is prepared to approve an alternative that is consistent with State law, within 30 days of receiving such notice.

VIII. Effective Dates

The Corporation intends to make any final rule based on this proposal effective no sooner than 90 days after the final rule is published in the **Federal Register**. The requirement will apply prospectively, to the selection of individuals who begin to participate on or after the effective date.

IX. Regulatory Procedures

Executive Order 12866

The Corporation has determined that the proposed rule is not an "economically significant" rule within the meaning of E.O. 12866 because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. It is, however, a significant rule and has been reviewed by the Office of

Management and Budget in accordance with EO 12866.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605 (b)), the Corporation certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This regulatory action will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Unfunded Mandates

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding \$100 million on the private sector.

Paperwork Reduction Act

This proposed rule contains no information collection requirements and is therefore not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. The proposed rule does not have any Federalism implications, as described above.

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2522

Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2540

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2551

Aged, Grant programs—social programs, Volunteers.

45 CFR Part 2552

Aged, Grant programs—social programs, Volunteers.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

1. The authority citation for part 2510 continues to read as follows:

Authority: 42 U.S.C. 12501 et seq.

2. Amend § 2510.20 by adding the definitions of “children,” and “recurring access” in alphabetical order to read as follows:

§ 2510.20 Definitions.

* * * * *

Children. The term children means individuals 17 years of age and younger.

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Recurring access. The term recurring access means 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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PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

1. The authority citation for part 2522 is revised to read as follows:

Authority: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911.

2. Add the following new sections: § 2522.205, § 2522.206, and § 2522.207 to read as follows:

§ 2522.205 When must I apply suitability criteria relating to criminal history?

You must apply suitability criteria relating to criminal history to a participant or staff position that provides a Corporation-funded living allowance, stipend, education award, salary, or other remuneration, and which involves recurring access to children, persons age 60 and older, or individuals with disabilities.

§ 2522.206 What suitability criteria must I apply to a covered position?

Any individual who is registered, or required to be registered, on a State sex offender registry is deemed unsuitable for, and may not serve in, a covered position.

§ 2522.207 What are the requirements to conduct criminal history checks when I select an individual for a covered position?

In selecting an individual for a covered position, you must follow the procedures in part 2540 of this title.

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

1. The authority citation for part 2540 is revised to read as follows:

Authority: 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

2. Redesignate § 2540.200 as § 2540.208 and add the following sections: § 2540.200, § 2540.201, § 2540.202, § 2540.203, § 2540.204, § 2540.205 and § 2540.206.

§ 2540.200 When must I apply suitability criteria relating to criminal history?

You must apply suitability criteria relating to criminal history to a position that provides a Corporation-funded living allowance, stipend, education award, salary, or other remuneration, and which involves recurring access to children, persons age 60 and older, or individuals with disabilities.

§ 2540.201 What suitability criteria must I apply to a covered position?

Any individual who is registered, or required to be registered, on a State sex offender registry is deemed unsuitable for, and may not serve in, a position covered by suitability criteria.

§ 2540.202 What types of criminal history checks must I conduct in selecting an individual for a covered position?

Unless the Corporation approves an alternative screening protocol, in selecting an individual for participation in a stipended position that has recurring access to children, persons age 60 and older, or individuals with disabilities, you are responsible, unless prohibited by State law, for conducting and documenting the following:

(a) State criminal registry search. A search (by name or fingerprint) of the State criminal registry for the State in which your program operates and the State in which the applicant resides at the time of application;

(b) Sex Offender Registry. A name-based search of the Department of Justice (DOJ) National Sex Offender Registry (NSOR).

§ 2540.203 What procedures must I follow in conducting a criminal history check for a covered position?

You are responsible for following these procedures:

(a) Verify the applicant’s identity by examining the applicant’s government-issued photo identification card, such as a driver’s license;

(b) Obtain prior, written authorization for the criminal history check from the applicant;

(c) Document the applicant’s understanding that selection into the program is contingent upon the organization’s review of the applicant’s criminal history, if any;

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

(e) Provide safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant.

§ 2540.204 What documentation must I maintain regarding a criminal history check for a covered position?

You are responsible for documenting in writing that you (or your designee) verified the identity of the applicant for a covered position by examining the applicant’s government-issued photo identification card, conducted the required check for a covered position, and considered the result in selecting the individual.

§ 2540.205 Under what circumstances may I follow alternative procedures in conducting a criminal history check for a covered position?

(a) FBI fingerprint-based check. If you conduct and document a fingerprint-based criminal history check through the Federal Bureau of Investigation, you will be deemed to have satisfied the criminal history check requirement and do not need separate approval by the Corporation.

(b) Name-based search. If you conduct and document a name-based criminal history check through a source other than the FBI that, includes a check of the criminal records repository, in the State in which your program is

operating, as well as in the State in which the applicant lives, you will be deemed to have satisfied the criminal history check requirement and do not need separate approval by the Corporation.

(c) *Alternative search approval.* If you demonstrate that, for good cause including a conflict with State law, you are unable to comply with a requirement relating to criminal history checks or that you can obtain equivalent or better information through an alternative process, the Corporation will consider approving an alternative search protocol that you submit in writing to your program officer at the Corporation's Office of Grants Management. The Office of Grants Management will review the alternative protocol to ensure that it:

- (1) Verifies the identity of the applicant; and
- (2) Includes a search of an alternative criminal database that is sufficient to identify the existence, or absence of, a criminal offense.

§ 2540.206 How often must I conduct a criminal history check on an individual in a covered position?

(a) You must conduct a criminal history check when an individual in a covered position initially enrolls in, or is hired by, your program.

(b) For an individual who serves consecutive terms of service in your program, no additional check is required after the first term.

PART 2551—SENIOR COMPANION PROGRAM

1. The authority citation for part 2551 is revised to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

Subpart C of Part 2551—[Amended]

2. Amend subpart C by redesignating § 2551.31 as § 2551.32.

Subpart B of Part 2551—[Amended]

3. Amend subpart B of part 2551 as follows:

a. By redesignating § 2551.26 as § 2551.31 of subpart B and adding the following sections: § 2551.26, § 2551.27, § 2551.28, § 2551.29 and § 2551.30.

§ 2551.26 To whom does this Part apply?

This part applies to Senior Companion Sponsors in selecting Senior Companions and in selecting Senior Companion grant-funded employees who, on a recurring basis, have access to children, persons age 60 and older, or individuals with disabilities.

§ 2551.27 What criminal history checks must I conduct?

Unless the Corporation approves an alternative screening protocol, in selecting an individual as a Senior Companion or as a covered grant-funded employee, you are responsible for ensuring, unless prohibited by State law, that the following screening activities are conducted and documented in writing:

(a) *State criminal registry search.* A search (by name or fingerprint) of the State criminal registry for the State in which the program operates and the State in which the applicant resides at the time of application;

(b) *Sex Offender Registry.* A name-based search of the Department of Justice (DOJ) National Sex Offender Registry (NSOR).

§ 2551.28 What procedures must I follow in conducting a criminal history check?

You are responsible for ensuring that the following procedures are satisfied:

(a) Verify the applicant's identity by examining the applicant's government-issued photo identification card, such as a driver's license;

(b) Obtain prior, written authorization for the criminal history check from the applicant;

(c) Document the individual's understanding that selection into the program is contingent upon the organization's review of the applicant's criminal history, if any;

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

(e) Provide safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant.

§ 2551.29 What documentation must I maintain regarding a criminal history check?

You are responsible for documenting in writing that you (or your designee) verified the identity of the applicant for a covered position by examining the applicant's government-issued photo identification card, conducted the required check for a covered position, and considered the result in selecting the individual.

§ 2551.30 Under what circumstances may I follow alternative procedures in conducting a criminal history check?

(a) *FBI fingerprint-based check.* If you or your designee conduct and document a fingerprint-based criminal history check through the Federal Bureau of Investigation, you will be deemed to

have satisfied the criminal history check requirement and do not need separate approval by the Corporation.

(b) *Name-based search.* If you conduct and document a name-based criminal history check through a source other than the FBI that, includes a check of the criminal records repository, in the State in which your program is operating, as well as in the State in which the applicant lives, you will be deemed to have satisfied the criminal history check requirement and do not need separate approval by the Corporation.

(c) *Alternative search approval.* If you demonstrate that, for good cause including a conflict with State law, you are unable to comply with a requirement relating to criminal history checks or that you can obtain equivalent or better information through an alternative process, the Corporation will consider approving an alternative search protocol that you submit in writing to the Office of Grants Management. The Office of Grants Management will review the alternative protocol to ensure that it:

- (1) Verifies the identity of the applicant; and
- (2) Includes a search of an alternative criminal database that is sufficient to identify the existence, or absence of, a criminal offense.

4. Redesignate §§ 2551.42, 2551.43, 2551.44, 2551.45, 2551.46 as §§ 2551.43, 2551.44, 2551.45, 2551.46, 2551.47, respectively, and

b. Add the following new section: § 2551.42.

§ 2551.42 May an individual who is subject to a State sex offender registration requirement serve as a Senior Companion or as a Senior Companion grant-funded employee?

Any individual who is registered, or who is required to be registered, on a State sex offender registry is deemed unsuitable for, and may not serve in, a position as a Senior Companion or as a Senior Companion grant-funded employee.

PART 2552—FOSTER GRANDPARENT PROGRAM

1. The authority citation for part 2552 is revised to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

Subpart C of Part 2552—[Amended]

2. Amend subpart C by redesignating § 2552.31 as § 2552.32.

3. Amend Subpart B by redesignating § 2552.26 as § 2552.31 of subpart B and adding the following sections:

§ 2552.26, § 2552.27, § 2552.28, § 2552.29, and § 2552.30.

§ 2552.26 To whom does this Part apply?

This part applies to Foster Grandparent Sponsors in selecting Foster Grandparents and in selecting Foster Grandparent grant-funded employees who, on a recurring basis, have access to children, persons age 60 and older, or individuals with disabilities.

§ 2552.27 What criminal history checks must I conduct?

Unless the Corporation approves an alternative screening protocol, in selecting an individual as a Foster Grandparent or as a covered grant-funded employee, you are responsible for ensuring, unless prohibited by State law, that the following screening activities are conducted and documented in writing:

(a) *State criminal registry search.* A search (by name or fingerprint) of the State criminal registry for the State in which the program operates and the State in which the applicant resides at the time of application;

(b) *Sex Offender Registry.* A name-based search of either the Department of Justice (DOJ) National Sex Offender Registry (NSOR) or a sex offender registry that provides results concerning individuals who are registered as sex offenders in the State in which your program operates and the State in which the applicant resides at the time of application.

§ 2552.28 What procedures must I follow in conducting criminal history checks?

You are responsible for ensuring that the following procedures are satisfied:

(a) Verify the applicant's identity by examining the applicant's government-issued photo identification card, such as a driver's license;

(b) Obtain prior, written authorization for the criminal history check from the applicant;

(c) Document the individual's understanding that selection into program is contingent upon the organization's review of the applicant's criminal history, if any;

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

(e) Provide safeguards to ensure the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant.

§ 2552.29 What documentation must I maintain regarding a criminal history check?

You are responsible for documenting in writing that you (or your designee) verified the identity of the applicant for a covered position by examining the applicant's government-issued photo identification card, conducted the required check for a covered position, and considered the result in selecting the individual.

§ 2552.30 Under what circumstances may I follow alternative procedures in conducting a criminal history check?

(a) *FBI fingerprint-based check.* If you or your designee conduct and document a fingerprint-based criminal history check through the Federal Bureau of Investigation, you will be deemed to have satisfied the criminal history check requirement and do not need separate approval by the Corporation.

(b) *Name-based search.* If you conduct and document a name-based criminal history check through a source other than the FBI that, includes a check of the criminal records repository, in the State in which your program is operating, as well as in the State in which the applicant lives, you will be

deemed to have satisfied the criminal history check requirement and do not need separate approval by the Corporation.

(c) *Alternative search approval.* If you demonstrate that, for good cause including a conflict with State law, you are unable to comply with a requirement relating to criminal history checks or that you can obtain equivalent or better information through an alternative process, the Corporation will consider approving an alternative search protocol that you submit in writing to the Office of Grants Management. The Office of Grants Management will review the alternative protocol to ensure that it:

(1) Verifies the identity of the applicant; and

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

4. Amend subpart D of part 2552 as follows:

a. By redesignating § 2552.42, § 2552.43, § 2552.44, § 2552.45, § 2552.46 as § 2552.43 § 2552.44, § 2552.45, § 2552.46, § 2552.47, respectively, and

b. By adding the following new section: § 2552.42.

§ 2552.42 May an individual who is subject to a State sex offender registration requirement serve as a Foster Grandparent or as a Foster Grandparent grant-funded employee?

Any individual who is registered, or required to be registered, on a State sex offender registry is deemed unsuitable for, and may not serve in, a position as a Foster Grandparent or as a Foster Grandparent grant-funded employee.

Dated: October 20, 2006.

Frank R. Trinity,

General Counsel.

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