

Topic: National Service Criminal History Check Manual Summary: This manual provides details on the background checks that protect the beneficiaries of national service.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

# National Service Criminal History Check Manual



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## National Service Criminal History Checks (NSCHC)

NSCHC is a screening procedure established by law to protect the beneficiaries of national service. NSCHC involves three types of criminal history checks:

- Nationwide name-based check of the National Sex Offender Public Website (NSOPW). The NSOPW (<https://www.nsopw.gov/>) is a centralized system that identifies people who are registered as sex offenders in states, territories, and with many federally recognized Tribes
- Name- or fingerprint-based search of the statewide criminal history registry in the candidate's state of residence and in the state where the person will serve or work.
- Fingerprint-based FBI check

For individuals in covered positions **without** recurring access or with episodic access to vulnerable populations, these checks are required:

- A nationwide name-based check of the National Sex Offender Public Website (NSOPW) AND
  - Either a name- or fingerprint-based search of the statewide criminal history registry in the candidate's state of residence and in the state where the person will serve or work; OR
  - a fingerprint-based FBI check.

For individuals in covered positions **with** recurring access to vulnerable populations, these checks are required:

- A nationwide name-based check of the NSOPW,
- Either a name- or fingerprint-based search of the statewide criminal history registry in the candidate's state of residence and in the state where the person will serve or work; AND
- A fingerprint-based FBI check.

The CNCS NSCHC requirements are baseline screening procedures, in terms of both screening criteria and safeguarding. Organizations working with vulnerable populations should institute a holistic framework for safeguarding beneficiaries of service. Safeguarding is broader than screening, as it includes additional actions you can take to ensure the health and safety of beneficiaries. Safeguarding includes procedures that provide clear steps on what to do to limit the risk to beneficiaries, it assigns roles and responsibilities and documents policies and procedures, and it complies with the process for investigating complaints.

### Covered Positions

Individuals who are serving through or employed by a national service program who receive a living allowance, stipend, national service education award, or salary are in a covered position, regardless of the type of service, their access to vulnerable populations, or whether they are paid with federal or matching funds. (45 C.F.R. § 2540.201).

### Vulnerable Populations

Vulnerable populations include children age 17 or younger, persons age 60 and older, and/or people with disabilities. People with disabilities are defined as having a physical or mental impairment which substantially limits one or more major life activities, having a record of such impairment, or regarded as having such impairment.

## Recurring Access

Recurring access is “the ability on more than one occasion to approach, observe, or communicate with a person, through physical proximity or other means, including but not limited to, electronic or telephonic communication.” (45 C.F.R. § 2510.20).

## Episodic Access

Recurring access is typically a regular, scheduled, and anticipated component of a person’s service activities. Episodic access is typically NOT a regular, scheduled, and anticipated component of a person’s service activities. A recipient does not need CNCS approval to use the “episodic access” exception to the NSCHC requirements.

Episodic access is not defined by a specific number of contacts. In other words, if a recipient does not anticipate that a person will have access to vulnerable populations, the NSCHC requirements will not apply after access occurs some specific number of times, but will apply once the access becomes regular, scheduled and anticipated.

If episodic access becomes unexpectedly regular or frequent, a recipient should re-evaluate its initial determination of episodic access and take appropriate action. In the majority of cases, it will be clear whether or not access to vulnerable populations is a regular, scheduled, and anticipated component of a person’s service activities.

CNCS recommends that grant recipients specifically address contact with vulnerable populations in each position description, service agreement, or similar document describing a person’s service/work activities.

## Covered Grant Recipients

All grant recipients that receive CNCS funding for a salary, stipend, living allowance, or the provision of national service education awards are covered by the NSCHC rules.

These include but are not limited to:

- AmeriCorps State Grants, including full-cost fixed amount grants
- AmeriCorps National Grants, including full-cost fixed amount grants
- AmeriCorps Planning Grants
- Foster Grandparent Program Grants (stipended participants and fixed cost program staff)
- Non-profit Capacity Building Grants
- Martin Luther King Day of Service Grants
- RSVP Grants
- School Turnaround AmeriCorps Grants
- Senior Companion Program Grants
- Senior Demonstration Program Grants that receive federal funding
- September 11th Challenge Grants
- Social Innovation Fund Grants
- Summer of Service Grants
- VISTA Support Grants (Staff funded by CNCS share)
- Volunteer Generation Fund Grants

## Identifying Individuals in Covered Positions

You can most easily identify individuals in covered positions using the “on the budget” or expenditure report test.

### On the Budget Test

Covered positions are usually, but not always, listed on the recipient’s approved grant budget. If the position is listed on the budget, it passes the “on the budget” test and is covered.

The NSCHC requirements cover employees whose positions are funded in part or in whole with a CNCS grant, either as CNCS share or the recipient share. Therefore, not only are your direct employees covered, but so are your partners’ and sub-recipients’ employees if they are assigned to perform grant activities and you are including their pay as matching funds.

**Please note:** Senior Corps grants have an Excess column on their budget. Individuals receiving a salary or stipend exclusively from this column are not in covered positions for the purposes of National Service Criminal History Checks. If, however, the same individual received any percentage of salary or stipend from the federal or match share of the budget they are in a covered position and must undergo the appropriate checks. If monitored, it is the responsibility of the recipient to produce both past and current documentation to show that no federal or match funds have been spent to support the volunteer and/or employee.

### Expenditure Report Test

Sometimes a covered position may be added to the budget without requiring a formal budget amendment. In this case, covered positions are identified by using the expenditure report test. If the cost of the payment is included in the federal or matching program costs reported for the recipient or its sub-recipients on the Federal Financial Report, then the person is in a covered position.

Keep in mind that there are a variety of ways that costs may be listed, including single positions, grouped position types, or lump-sums for sub-award-supported activities

### Education Award Programs and Professional Corps Fixed-Amount Grants

Both EAP and Professional Corps fixed-amount grant staff are not required to conduct checks on their employees or partner’s staff because the small amount of Federal support per member does not establish a nexus between the Federal assistance awarded and the payment of salaries using grant funds. However, the funding provided to a full-cost, fixed-amount grant is sufficient to contribute towards the full range of recipient costs including salaries.

Therefore the NSCHC requirements apply to individuals performing program activities under a full-cost fixed amount grant. Examining the funded grant application narrative wherein the program’s activities are described will assist in identifying covered positions.

## National Service Participants in EAPs, Full-cost Fixed-amount Grants, and Other Fixed-amount Grants

National service participants in EAPs, full-cost fixed-amount grants, and other fixed-amount grants are covered by NSCHC rules because they receive National Service Education Awards.

## NSCHC and Sub-recipients and Other Recipients of National Service Resources (e.g. through sub-grants)

All grant program provisions, law and regulations, the requirement to perform the NSCHC applies to any subrecipients or partners implementing a covered national service program. This requirement applies no matter how large or small the dollar amount of the sub-award, or whether the costs are covered by CNCS federal funds or non-federal matching funds.

## Minors

NSCHC Requirements for an Individual who WILL turn 18 during Service:

- The recipient must conduct these checks if the individual has **recurring access** to vulnerable populations:
  - NSOPW, name- or fingerprint-based State check(s) **and** fingerprint-based FBI check.
    - The individual is required to be accompanied during service while state check(s) or FBI check components are pending.
- The recipient must conduct these checks if the individual has **no or episodic access** to vulnerable populations:
  - NSOPW, name- or fingerprint-based State check(s) **or** fingerprint-based FBI check

NSCHC Requirements for an Individual who will NOT turn 18 during Service:

- The recipient must conduct these checks if the individual has **recurring access** to vulnerable populations:
  - NSOPW, name- or fingerprint-based State check(s) **or** fingerprint-based FBI check.
    - The individual is required to be accompanied during service while state check(s) or FBI check components are pending.
- The recipient must conduct these checks if the individual has **no or episodic access** to vulnerable populations:
  - NSOPW, name- or fingerprint-based State check(s) **or** fingerprint-based FBI check

An individual's age has no effect on the timing requirements of the checks specified in 45 CFR 2540.204.

If state law prohibits checks on individuals under 18, you must request an ASP from CNCS.

## Recipients and People Not Required to Comply with NSCHC Requirements

There are a few grant types that are not covered because they do not fund an activity that meets CNCS's definition of a recipient. Also, some individuals are not covered because they do not receive any payment types specified by law.

### Non-covered Grant Types:

- AmeriCorps State Commission Support grants
- AmeriCorps Commission Investment Fund grants
- Senior Demonstration Program Grants that receive no federal funding

### Individuals Not Required to Undergo an NSCHC:

- Staff of AmeriCorps Fixed Price Education Award Programs (EAPs)
- Staff of fixed amount Professional Corps
- Staff whose salaries are covered under the grantee's indirect cost rate, or cost allocation plan
- Recipients of Summer of Service awards
- RSVP volunteers
- Non-stipended Senior Companions
- Non-stipended Foster Grandparents
- VISTA volunteers (criminal history check screening procedures are performed by CNCS personnel)
- Citizens who benefit from service, but are not providing service (i.e. beneficiaries)
- Contractors delivering goods or services to a recipient for a fee
- Community volunteers with no affiliation or attachment to the recipient, and who receive no financial remuneration

### Commission Staff\*

\*Usually, Commission Staff are not covered by NSCHC.

Because the intent of the law is to establish requirements at the operational level, and commissions usually do not directly operate or assign staff to perform national service program activities, commission employees are usually not covered positions. However, commission staff may require an NSCHC if they are assigned to perform grant activities. This guidance applies to a state commission regardless of whether the commission is a state governmental entity or an independent, incorporated non-profit.

The NSCHC requirements do apply if the commission receives a Volunteer Generation Fund grant and uses the grant funds or match to pay staff.

The NSCHC requirements do not apply to Commission Support Grants or Commission Investment Fund Grants.

### Contractors\*

\*In most cases, contractors are not covered by NSCHC.

CNCS applies the NSCHC requirements based on the legal distinctions between subawards (also known as subgrants) and contracts as defined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. See 2 C.F.R. §§ 200.22 & 200.92, respectively. Organizations may colloquially refer to subawards as contracts. However, the two are legally distinct and the NSCHC requirements apply to subawards, not contracts. Guidance on how to determine whether you have entered

into a subaward or a contract with another entity is available at 2 C.F.R. § 200.330, “Subrecipient and contractor determinations.”

**Subaward:** The NSCHC requirement does apply to individuals in covered positions who work or serve under subawards, as defined under 2 C.F.R. § 200.92. This is because subrecipients are responsible for adherence to applicable Federal requirements specified in the original federal award, as stated in 2 C.F.R. § 200.330(a)(4).

**Contractor:** The NSCHC requirement does not apply to individuals who provide services under a contract, as defined under 2 C.F.R. § 200.22. If your organization enters into a contract with an entity to provide services, the NSCHC requirements do not apply to the contractor because payments made by your organization to the contractor are not grant-funded living allowances, stipends, or salaries.

If the services for which you contracted involve ongoing contact between contractor personnel and service beneficiaries, then even though the specific requirements of the NSCHC do not apply to those contract personnel, CNCS strongly recommends that your organization use prudent and reasonable screening procedures of contractor personnel to protect service beneficiaries from the risk of harm. You may obtain free and immediate results of a sex offender search through <https://www.nsopw.gov/>. The costs of additional screening for contractors with ongoing contact with service beneficiaries are allowable grant costs.

Please note that this guidance only clarifies existing rules related to the NSCHC. It does not authorize or change a recipient’s ability to subaward or contract. By regulation, Senior Corps recipients are prohibited from making subawards or from contracting out project management requirements necessary to accomplish the purposes of the grant, as described in 45 C.F.R. §§ 2551.22, 2552.22, and 2553.22. Social Innovation Fund subrecipients may not make further subawards.

## Ineligibility

NSCHC determines eligibility, as defined in the Serve America Act. The Serve America Act explicitly defines the following individuals as ineligible to serve or work on CNCS grants:

- Anyone who is listed, or required to be listed, on a sex offender registry is ineligible to serve or work in a covered position.
- Anyone convicted of murder (as defined in 18 U.S.C. § 1111) is ineligible to serve or work in a covered position.
- Anyone who refuses to undergo the NSCHC is ineligible to serve or work in a covered position.
- Anyone who makes a false statement in connection with a program’s inquiry concerning the person’s criminal history is ineligible to serve or work in a covered position.

Grant recipients must document that the individual understands that selection in to the program is contingent upon the organizations’ review of the individuals NSCHC component results, if any.

If the applicant is found to be ineligible because of NSCHC component results, grant recipients must provide a reasonable opportunity for the individual to review and challenge the factual accuracy of a results before action is taken to exclude the individual from the position.

## Arrests vs. Convictions

The requirements do not disqualify applicants on the basis of arrest. In certain states, there are legal constraints on how an arrest record may be considered, and some statewide criminal repositories do not include arrest information in the records they release. Recipients should recognize that they have a dual status under the Civil Rights Act of 1964, depending on the nature of their relationship with a candidate.

Grant recipients, because they get federal financial assistance, must comply with the Civil Rights Act of 1964 and its implementing regulation. These regulations prohibit discrimination, including selection and placement of volunteers and members, on the basis of race, color, and national origin, in CNCS-funded programs and activities. And as employers, recipients must also comply with Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment decisions. The Equal Employment Opportunity Commission (EEOC) has issued [guidance](#) explaining when consideration of arrest and conviction records violates Title VII.

As the EEOC guidance outlines, recipients should be mindful that arrests alone are mere allegations, and that actual criminal *convictions*, or actual evidence of conduct underlying an arrest, are the relevant indicators of a person's fitness, or in some cases, eligibility, to serve with, or work for, a CNCS grant recipient. Recipients should make sure that their screening practices are narrowly tailored in a manner that complies with these federal nondiscrimination requirements, in addition to applicable state laws governing the consideration of criminal history records.

## Non-disqualifying Convictions

If the NSCHC returns results *other* than those above, the recipient has the discretion – subject to any federal civil rights law and state law requirements – to decide if the results of a criminal history background check disqualify a candidate from service. Recipients should consider the factors set forth in the [EEOC's guidance under Title VII](#), including 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 position. Recipients should have written policies on their disqualification criteria and be consistent in how those criteria are applied.

Grant recipients should be aware of federal reentry policy, which aims, among other goals, to reduce post prison barriers to employment. Participation in national service programs funded by CNCS could help people who have been in prison successfully re-enter society. Therefore, we encourage agencies to minimize barriers to service – without putting their program beneficiaries at genuine risk – for former prisoners who are not ineligible under the law.

The CNCS NSCHC requirements are baseline screening procedures, in terms of both screening criteria and safeguarding. Organizations working with vulnerable populations should institute a holistic framework for safeguarding beneficiaries of service. Safeguarding is broader than screening, as it includes additional actions you can take to ensure the health and safety of beneficiaries. Safeguarding includes procedures that provide clear steps on what to do to limit the risk to beneficiaries, it assigns roles and responsibilities and documents policies and procedures, and it complies with the process for investigating complaints.

## NSCHC Timing

*It is a best practice to conduct and complete **all** checks before individuals begin work or service.*

**NSOPW:** The results of the NSOPW must be reviewed and documented *prior* to the person beginning work or starting service (before work, service, or training hours are charged to the grant, federal or match). A person may *not* accrue hours towards their work or service without first having cleared the NSOPW component of the NSCHC. Checks that are not within these time frames are noncompliant.

Please note: Grant recipients who use Truescreen need to refer to the Truescreen pre-approved ASP (<https://www.nationalservice.gov/CHCFAQs>).

**State Check(s) and FBI Check:** The criminal history information components (state of service check, state of residence check, and FBI checks) of the NSCHC must be initiated no later than the first day of the start of service or work. Checks that are not within these time frames are noncompliant.

For participants who are serving a consecutive term of service within the same program at the same recipient, and are moving to a position with access to vulnerable populations, the NSCHC components for people serving vulnerable populations must be added to their existing cleared criminal history check. A consecutive term of service means that there is not a break in service that exceeds 120 days.

Please note: Grant recipients who use Truescreen need to refer to the Truescreen pre-approved ASP.

## Initiation

Initiating state and FBI checks is going one step further than getting permission to conduct an NSCHC. This could include, for example, fingerprinting, sending requests to a state repository to get checks, or having candidates fill out official forms for getting the required checks. You must be able to document how and when checks were initiated. You must have policies and procedures outlining how you initiate checks and apply them consistently.

## Accompaniment

Individuals in covered positions are required to be accompanied during service or work while state check(s) or FBI check components are pending. A person is accompanied when he or she is in the physical presence of a person who is cleared for access to a vulnerable population.

One possible way to document accompaniment is to indicate on the covered person's timesheet

- 1) who accompanied during the access,
- 2) on what dates and hours, and
- 3) have the person who performed the accompaniment incrementally sign off and attest to the accuracy of the documentation.

You should have policies and procedures that clearly describe your accompaniment guidelines and documentation procedures. The documentation should show the day, times, accompanier and individual accompanied.

Please see Pre-Approved ASP on Ceasing Accompaniment for when accompaniment may cease.

## Break In Service

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

It is not necessary to redo the NSCHC for individuals who serve consecutive terms of service, so long as

- (1) the break in service does not exceed 120 days and
- (2) the original check is compliant for the covered position in which the individual will be serving. If the person did not originally have recurring access to vulnerable populations, but will have such access in the new term of service (or work position), then you must conduct the additional required checks. You must retain documentation of the original check results.

It is a best practice to document any break in service and retain that documentation as a grant record. For example, if a Senior Corps volunteer who receives a stipend has run out of leave and is on leave without pay, the grant recipient should maintain documentation to show that the person is on leave status rather than terminated from the program.

## National Service Participants Consecutive Terms

It is not necessary to redo the NSCHC for individuals who serve consecutive terms of service, so long as

- 1) the break in service does not exceed 120 days and
- 2) the original check is compliant for the covered position in which the individual will be serving.

If the person did not originally have recurring access to vulnerable populations, but will have such access in the new term of service (or work position), then you must conduct the additional required checks. This also applies to individuals whose service began on or after April 21, 2011 and who changed positions after January 1, 2013. You must retain documentation of the original check results.

## Changing National Service Programs

When someone leaves on national service program and begins serving or working in another program, the program receiving the employee or participant must conduct a new NSCHC, even if there has been no break in service.

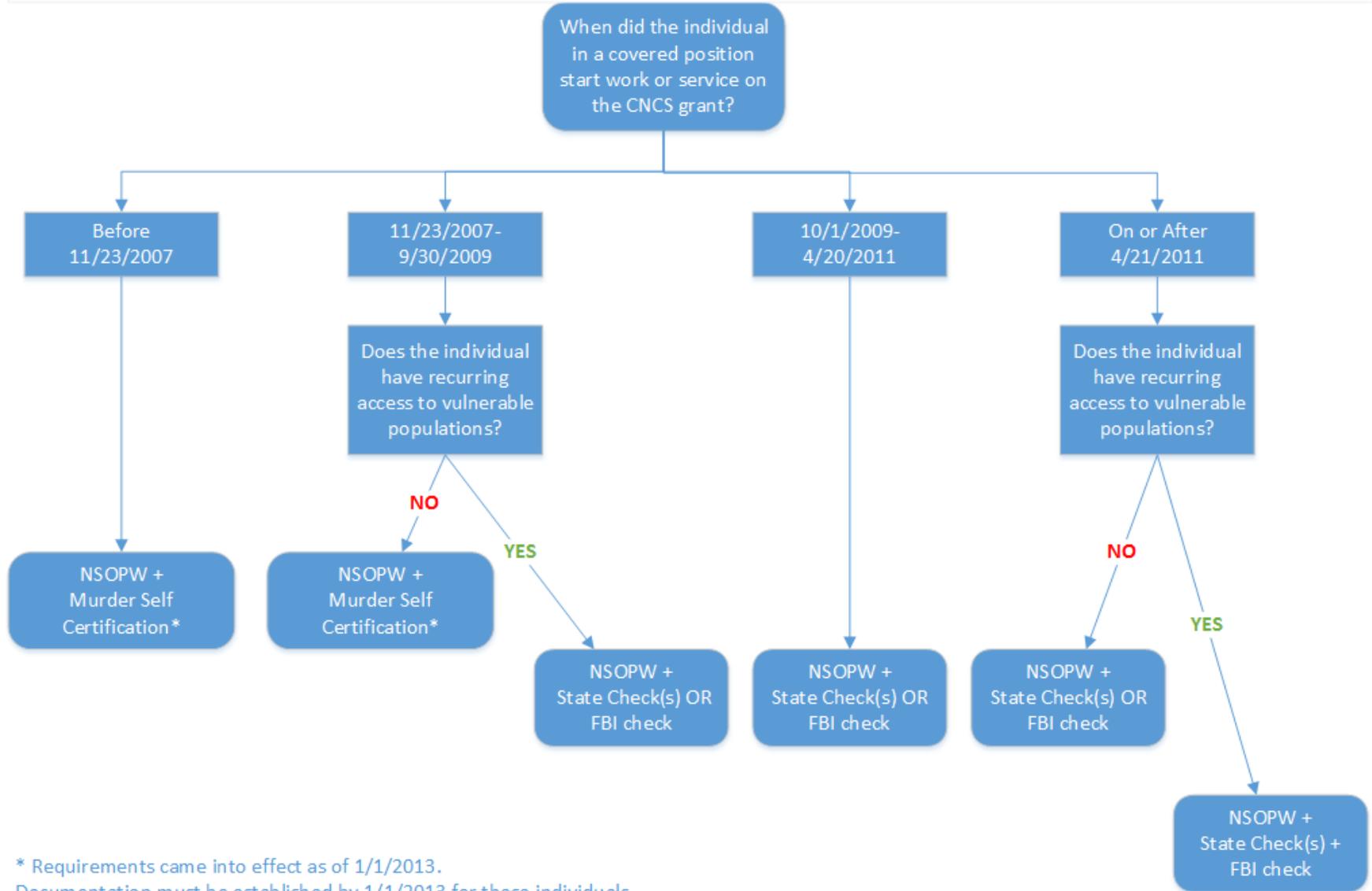
However, if you are a recipient with multiple programs, and a member or employee moves from one of them to another, you only have to conduct a new NSCHC on that person if they

- 1) have a break in service that's longer than 120 days, or
- 2) if the person moves from a covered position that doesn't have recurring access to a vulnerable population to a covered position that does have recurring access to a vulnerable population.

Please note that in the second example above, a completely new check would not be required, only the missing component would need to be conducted, that is, either the state or FBI check that was not conducted as part of the original check

### National Service Criminal History Checks Effective Dates

NSCHC requirements are based on an individual in a covered position's start date.



\* Requirements came into effect as of 1/1/2013.  
 Documentation must be established by 1/1/2013 for these individuals.  
 Updated November 15, 2018