

April 30, 2015

GUIDANCE ON FALSE STATEMENTS UNDER THE NATIONAL SERVICE CRIMINAL HISTORY CHECK

False Statements Affecting Statutory Eligibility under the National Service Criminal History Checks

Each entity selecting individuals to serve in a position in which the individuals receive a living allowance, stipend, national service educational award, or salary through a program receiving assistance under the national service laws (i.e., a “covered position”) shall conduct National Service Criminal History Checks (NSCHCs) for such individuals. 42 U.S.C. § 12645g(a). NSCHCs are required to determine whether an individual is ineligible to serve in a covered position because the individual is: (1) registered, or is required to be registered, on a State sex offender registry or the National Sex Offender Registry, or (2) has been convicted of murder under 18 U.S.C. § 1111. 42 U.S.C. § 12645g(c).

This guidance is intended to clarify when an individual is statutorily ineligible to serve in a covered position for “[making] a false statement in connection with such criminal history check.” 42 U.S.C. § 12645g(c). A false statement under section 12645g(c) is made when an individual intentionally provides false information required to conduct national service criminal history check components found at section 12645g(b). This would arise when an individual intentionally provides the following to conduct the components of the NSCHC:

- A false name,
- A government-issued identification belonging to another person,
- A false identification, or
- Fingerprints of another individual.

The intentionally false statements, as listed above regarding information required to conduct NSCHC components found at section 12645g(b), render an individual ineligible to serve under section 12645g(c).

Considerations Around Grantee-mandated Disqualification Determinations

Independent of the NSCHC ineligibility criteria of section 12645g(c)(3) and (4) (relating to sex offenders and convicted murderers), if the NSCHC returns results that implicate criteria other than those above, the grantee has the discretion, subject to any federal civil rights law and state law requirements, to decide whether or not the results of a criminal history background check disqualify an individual from service with the grantee. In cases where individuals provide false information requested for a grantee-mandated disqualification determination, grant recipients have discretion in how to deal with the situation, again consistent with federal civil rights law and state law requirements. Grantee-mandated disqualification determinations, and false statements related to such determinations, have no effect on an individual’s eligibility under the statute.

As discussed in Corporation for National and Community Service (CNCS) regulations, grant recipients should have written policies on their disqualification criteria, narrowly tailored to the specific requirements of their particular programs, and be consistent in how those criteria are applied to all applicants.

The use of criminal history records to exclude members and staff from CNCS-funded programs and activities may, in some circumstances, run afoul of federal or state civil rights laws. See 77 FR 60928. Grantees should consider the factors set forth in the EEOC's guidance¹ 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. As explained in the EEOC guidance, grantees should be mindful that arrests alone are mere allegations, and that actual criminal convictions (where there has been a formal adjudication by a finder of fact), or actual evidence of conduct underlying an arrest, are the relevant indicators of an individual's fitness, or in some cases, eligibility (i.e., murder), to serve with, or work for, a CNCS grantee.

Grantees should also be aware of federal reentry policy, which seeks to minimize unjustified collateral consequences on formerly incarcerated persons. Participation in national service programs funded by CNCS could aid the successful reentry of formerly incarcerated persons into society. Therefore, barriers to participation in national service programs for those formerly incarcerated persons who are not statutorily ineligible to serve should be minimized as much as possible without putting program beneficiaries at genuine risk. See 77 FR 60929.

Grantees also should be mindful of their responsibility to safeguard the confidentiality of information relating to criminal history and provide a reasonable opportunity for an individual to review and challenge criminal history check results before adverse action is taken to exclude an individual from a covered position. See 45 CFR § 2540.205(e) and (f).

¹ http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm