

# Suitability to Work with Minors





# Agenda

- Definitions
- Grant Requirements
- Sex Offender Check Requirements
- Criminal History Requirements
- Suitability Determinations
- OCJG Compliance Requirements
- Review of Forms

# Definitions

**“Participating Minor”** – all individuals under 18 years of age participating in a program as described in the scope of work.

**“Covered Individual”** – any individual or client of any recipient (or subrecipient) who is expected to interact with any participating minor. The individual DOES NOT have to be an employee of the recipient, it can be a consultant, contractor (and their employees), trainee, volunteer, or teacher.

**“Activities under the Award”** – activities carried out under the award by the recipient (or subrecipient); and actions taken by an entity for a procurement under the award or subaward regardless of if it was paid for with federal funds or the recipient’s own funding.

# Definitions

**“Interaction”** – physical contact, oral and written communication, and the transmission of images and sound which may be in person or by electronic means; but DOES NOT include:

- 1) unexpected, brief contact that is unintentional (ex. delivering mail to an office with children)
- 2) “personally-accompanied contact” = infrequent, occasional contact in the presence of an accompanying adult who will remain continuously within view and earshot of the covered individual (ex. Someone who comes to make a presentation)

# Definitions

**“Current and Appropriate Information”** – includes information resulting from checks or screening required by law, and/or the recipient (or subrecipient’s) written policies AND the sex offender and criminal history requirements described in this presentation.



Searches must be completed **NO EARLIER THAN** six (6) months before the determination is made.

# Grant Requirements (FY19+)

Recipients and Subrecipients (at any tier) MUST make an ADVANCE, WRITTEN determination of the “covered individual’s” suitability to work with participating minors using the information in the subsequent sections of this presentation.

Recipients and Subrecipients (at any tier) MUST update and re-examine their suitability determinations AT LEAST every 5 years.

Recipients and Subrecipients (at any tier) MUST update re-examine suitability determinations upon learning information that may affect the determination.

# Sex Offender DB Searches

Search by NAME, PREVIOUS NAMES, and/or ALIASES of the following “reasonably accessible” federal, state, local, and tribal databases as applicable, including:

- 1) The Dru Sjodin National Sex Offender Public Site ([www.nsopw.gov](http://www.nsopw.gov))
- 2) Public registries (state, local, tribal) for the area in which the individual lives, works, goes to school, or has in the past 5 years
- 3) Public registries (state, local, tribal) for the area in which the individual is expected to interact with a participating minor under the award

# Sex Offender DB Example

A covered individual lives in Thomasville, GA and is expected to volunteer with the Leon County Police Athletic League. The subrecipient must search:

- 1) The Dru Sjodin National Sex Offender Public Site ([www.nsopw.gov](http://www.nsopw.gov))
- 2) The Georgia Sex Offender Database (individual's state of residence)
- 3) The Florida Sex Offender Database (where the interaction will occur)





# Criminal History Searches

Each covered individual (18+) must have a search of pertinent state, local, and tribal criminal history registries or similar repositories for the time period beginning 5 calendar years preceding the date of the search. This must include searches of:

- 1) Criminal History Database for each state in which the individual lives, works, goes to school or has at any time during the past five years
- 2) Criminal History Database for each state in which the individual is expected to interact with a participating minor under the award

# Criminal History Searches



The federal award condition states the criminal history searches SHOULD be fingerprint based. If this is not possible, the search should use: current name, previous name, and known aliases.

Recipients and Subrecipients MAY use grant funds for background check fees to comply with this condition, provided supplanting does not occur.



# Criminal History Example

A covered individual recently moved from New York two years ago to Thomasville, GA and is expected to volunteer with the Leon County Police Athletic League. The subrecipient must search:

- 1) Criminal History Database for New York
- 2) Criminal History Database for Georgia
- 3) Criminal History Database for Florida



# Suitability Determinations

Recipients and subrecipients (at any tier) must take into account the following when making their ADVANCE, WRITTEN suitability determinations:

- 1) Applicable federal, state, local, tribal law
- 2) Recipient (or subrecipient's) own written policies and procedures
- 3) Results of the sex offender searches
- 4) Results of the criminal history searches

# Suitability Determinations



Recipients and subrecipients (at any tier) absolutely CANNOT make a “suitable” determination for any covered individual who:

- 1) Withholds consent to a criminal history search required by this award condition
- 2) Knowingly makes a false statement which affects the searches required by this award condition
- 3) Is listed as a sex offender on the Dru Sjodin National Sex Offender Public Website

# Suitability Determinations



Recipients and subrecipients (at any tier) absolutely CANNOT make a “suitable” determination for any covered individual who:

- 4) Has been convicted (felony OR misdemeanor) of:
  - a) Sexual or physical abuse of a minor
  - b) Neglect or endangerment of a minor
  - c) Rape/sexual assault, incl. conspiracy to commit

# Suitability Determinations



Recipients and subrecipients (at any tier) absolutely CANNOT make a “suitable” determination for any covered individual who:

- 4) Has been convicted (felony OR misdemeanor) of:
  - d) Sexual exploitation (i.e. child pornography and trafficking)
  - e) Kidnapping
  - f) Voyeurism

**Now... what does it  
mean for OCJG  
subawards?**





# FY2020+ Awards

Subrecipients at any tier who indicate grant funds will be used to support a program or project involving interaction with “participating minors” MUST complete the following at the time of application submission:

- 1) Complete the “Suitability to Work and/or Interact with Minors Certification”
- 2) Complete the “Suitability to Work and/or Interact with Minors Tracking Sheet”



Failure to provide both forms at the time of award **WILL** result in the withholding of funds.

# FY2019 Approved Awards

The subrecipient monitoring tool has been updated to reflect this requirement. Subrecipients with projects that must comply with these requirements must submit the following at the time of monitoring.

- 1) For open subawards: Complete the "Suitability to Work and/or Interact with Minors Certification. If the subaward is closed, no certification is required.
- 2) Complete the "Suitability to Work and/or Interact with Minors Tracking Sheet" (open and closed subawards)



This does not apply to pending applications. They should be conditioned at the time of award.

# SWIM Certification

The Suitability to Work and/or Interact with Minors Certification details the requirements for sex offender and criminal history checks. The certification must:

- 1) Contain the application number
- 2) Be dated within a reasonable timeframe (i.e. from solicitation release date OR notification of residual funding)



We are not prescribing who signs. If anyone who is not in a “position” of authority signs, it is best practice to inquire if they are authorized to represent the subrecipient/implementing agency.



# SWIM Tracking Sheet

The Suitability to Work and/or Interact with Minors Tracking Sheet requires the subrecipient to provide information and a written determination of each “covered individual’s” suitability to work/interact with minors.

NOTE: We cannot legally review background check results, etc. of individuals. This tracking form requires notating the dates searches were performed and requires the subrecipient to select “Suitable” or “Unsuitable” for a determination. The subrecipient must maintain documentation to support the determination in the event of a DOJ audit.

# SWIM Tracking Review

When reviewing the Suitability to Work and/or Interact with Minors Tracking Sheet, ensure the following:

- 1) Ensure the grant/application number is provided.
- 2) Ensure dates are within 6 months of the date signed and are provided for the Dru Sjodin National Sex Offender Registry, State Sex Offender Registry, AND Criminal History Repository boxes.
- 3) Ensure a final determination is selected.
- 4) Save a copy of the tracking sheet in the file and the in the county folder in the event of continuation grants.



# SWIM Tracking Exceptions

Certain entities are required to perform fingerprint-based criminal history searches and have the fingerprints retained to allow the entities to be notified of any subsequent arrests within the State of Florida. Examples include but are not limited to:

- 1) Criminal Justice Professionals certified by the CJSTC (certified LEOs and COs)
- 2) State criminal justice agencies (FDC, DJJ)
- 3) DOH providers (licensed and monitored)
- 4) DBPR professions (ABT, Talent Agents, CAMs)
- 5) DCF licensed individuals and providers
- 6) Certified Teachers



# SWIM Tracking Exceptions

If the entity is required to “retain” fingerprints and the subrecipient does not want to submit a tracking sheet because there are numerous employees (i.e. DJJ), they may choose to submit a letter on department letterhead that:

- 1) Clearly states fingerprints for the covered individuals (i.e. staff, contractors, volunteers, etc.) are retained by department policy or statute.
- 2) Provides an assurance statement that all individuals interacting with minors are determined to be suitable based on the criteria in the grant condition.
- 3) Is signed by the chief official of the organization

# SWIM Tracking Exceptions



Even though the subrecipient may “retain fingerprints”, they are still obligated to ensure their background process complies with ALL sex offender and criminal history search requirements in the award condition.

For example: If FDLE retains fingerprints but DOES NOT check the national sex offender registry, FDLE would be required to provide a date the registry was searched and what determination was made regarding suitability.





# SWIM Tracking Exception Example Language

“This letter requests exemption for the [Agency Name] to complete the Suitability to Work with Minors Tracking Sheet. The covered individuals working on this grant program include interns and employees of our agency. Currently, our agency retains fingerprints for all interns and employees and is notified immediately if a member is arrested. Additionally, our agency policy requires we review national and state sex offender databases on a biennial basis for our employees who may interact with minors as a part of their jobs.

As the authorized official for the [Agency Name], I certify the individuals interacting with “participating minors” on this program are suitable to do so.”



# Forms Review

Certification Form

Tracking Sheet

# Questions?

