

Subpart B—VISTA Sponsors

§ 2556.100 Which entities are eligible to apply to become VISTA sponsors?

The following types of entities are eligible to apply to become VISTA sponsors and thereby undertake projects in the U.S. and certain U.S. territories:

- (a) Private nonprofit organizations.
- (b) Public nonprofit organizations.
- (c) State government or state government agencies.
- (d) Local government or local government agencies.
- (e) Tribal government or tribal government agencies.

§ 2556.105 Which entities are prohibited from being VISTA sponsors?

(a) An entity is prohibited from being a VISTA sponsor or from otherwise receiving VISTA assistance if a principal purpose or activity of the entity includes any of the following:

(1) *Electoral activities.* Any activity designed to influence the outcome of elections to any public office, such as actively campaigning for or against, or supporting, candidates for public office; raising, soliciting, or collecting funds for candidates for public office; or preparing, distributing, providing funds for campaign literature for candidates, including leaflets, pamphlets, and material designed for print or electronic media.

(2) *Voter registration activities.* Any voter registration activity, such as providing transportation of individuals to voter registration sites; providing assistance to individuals in the process of registering to vote, including determinations of eligibility; or disseminating official voter registration material.

(3) *Transportation to the polls.* Providing voters or prospective voters with transportation to the polls or raising, soliciting, or collecting funds for such activities.

(b) Any organization that, subsequent to the receipt of VISTA assistance, makes as one of its principal purposes or activities any of the activities described in paragraph (a) of this section is subject to the procedures in §§ 2556.125 through 2556.145.

§ 2556.110 What VISTA assistance is available to a sponsor?

(a) A sponsor may be approved for one or more VISTA positions.

(b) A sponsor, upon review and approval by AmeriCorps to establish a leader position or positions, and in accordance with criteria set forth at subpart G of this part, may be approved for one or more leader positions.

(c) A sponsor, upon approval by AmeriCorps to establish a summer associate position or positions, and in accordance with criteria set forth at subpart F of this part, may be approved for one or more summer associate positions.

(d) A sponsor may be eligible to receive certain grant assistance under the terms determined and prescribed by AmeriCorps.

(e) A sponsor may receive training and technical assistance related to carrying out the purposes of title I of the DVSA.

§ 2556.115 Is a VISTA sponsor required to provide a cash or in-kind match?

(a) A sponsor is not required to provide a cash match for any of the assistance listed in § 2556.110.

(b) A sponsor must provide supervision, workspace, service-related transportation, and any other materials necessary to operate and complete the VISTA project and support the VISTA.

§ 2556.120 How does a VISTA sponsor ensure the participation of people in the communities to be served?

(a) To the maximum extent practicable, the people of the communities to be served by VISTA members must participate in planning, developing, and implementing programs.

(b) The sponsor must articulate in its project application how it will engage or continue to engage relevant communities in the development and implementation of programs.

§ 2556.125 May AmeriCorps deny or reduce VISTA assistance to an existing VISTA project?

(a) AmeriCorps may deny or reduce VISTA assistance where a denial or reduction is based on:

- (1) Legislative requirement;

- (2) Availability of funding;
- (3) Failure to comply with applicable term(s) or condition(s) of a contract, grant agreement, or an applicable Memorandum of Agreement;
- (4) Ineffective management of AmeriCorps resources;
- (5) Substantial failure to comply with AmeriCorps policy and overall objectives under a contract, grant agreement, or applicable Memorandum of Agreement; or
- (6) General policy.

(b) In instances where the basis for denial or reduction of VISTA assistance may also be the basis for the suspension or termination of a VISTA project under this subpart, AmeriCorps is not limited to the use of this section to the exclusion of the procedures for suspension or termination in this subpart.

§2556.130 What is the procedure for denial or reduction of VISTA assistance to an existing VISTA project?

(a) AmeriCorps will notify the sponsor in writing, at least 75 calendar days before the anticipated denial or reduction of VISTA assistance, that AmeriCorps proposes to deny or reduce VISTA assistance. AmeriCorps' written notice will state the reasons for the decision to deny or reduce assistance and will provide an opportunity period for the sponsor to respond to the merits of the proposed decision. AmeriCorps retains sole authority to make the final determination as to whether the VISTA assistance at issue will be denied or reduced, as appropriate.

(b) Where AmeriCorps' notice of proposed decision is based upon a specific charge of the sponsor's failure to comply with the applicable term(s) or condition(s) of a contract, grant agreement, or an applicable Memorandum of Agreement, the notice will offer the sponsor an opportunity period to respond in writing to the notice, with any affidavits or other supporting documentation, and to request an informal hearing before a mutually agreed-upon impartial hearing officer. The authority of such a hearing officer will be limited to conducting the hearing and offering recommendations to AmeriCorps. Regardless of whether or not an informal hearing takes place,

AmeriCorps will retain full authority to make the final determination as to whether the VISTA assistance is denied or reduced, as appropriate.

(c) If the recipient requests an informal hearing, in accordance with paragraph (b) of this section, such hearing will be held on a date specified by AmeriCorps and held at a location convenient to the sponsor.

(d) If AmeriCorps' proposed decision is based on ineffective management of resources, or on the substantial failure to comply with AmeriCorps policy and overall objectives under a contract, grant agreement, or an applicable Memorandum of Agreement, AmeriCorps will inform the sponsor in the notice of proposed decision of the opportunity to show cause why VISTA assistance should not be denied or reduced, as appropriate. AmeriCorps retains full authority to make the final determination whether the VISTA assistance at issue will be denied or reduced, as appropriate.

(e) The recipient will be informed of AmeriCorps' final determination on whether the VISTA assistance at issue is denied or reduced, and the basis for the determination.

(f) The procedure in this section does not apply to a denial or reduction of VISTA assistance based on legislative requirements, availability of funding, or on general policy.

§2556.135 What is suspension and when may AmeriCorps suspend a VISTA project?

(a) Suspension is any action by AmeriCorps that temporarily suspends or curtails assistance, in whole or in part, to all or any part of a VISTA project, prior to the time that the project term is concluded. Suspension does not include the denial or reduction of new or additional VISTA assistance.

(b) In an emergency situation for up to 30 consecutive days, AmeriCorps may suspend assistance to a sponsor, in whole or in part, for the sponsor's material failure or threatened material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this part, VISTA program policy, or an applicable

Memorandum of Agreement. Such suspension in an emergency situation will be pursuant to notice and opportunity to show cause why assistance should not be suspended.

(c) To initiate suspension proceedings, AmeriCorps will notify the sponsor in writing that AmeriCorps is suspending assistance in whole or in part. The written notice will contain the following:

(1) The grounds for the suspension and the effective date of the suspension;

(2) The sponsor's right to submit written material in response to the suspension to show why the VISTA assistance should not be suspended, or should be reinstated, as appropriate; and

(3) The opportunity to adequately correct the deficiency, or deficiencies, which led to AmeriCorps' notice of suspension.

(d) In deciding whether to continue or lift the suspension, as appropriate, AmeriCorps will consider any timely material presented in writing, any material presented during the course of any informal meeting, as well as any showing that the sponsor has adequately corrected the deficiency which led to the initiation of suspension.

(e) During the period of suspension of a sponsor, no new expenditures, if applicable, may be made by the sponsor's VISTA project at issue and no new obligations may be incurred in connection with the VISTA project at issue except as specifically authorized in writing by AmeriCorps.

(f) AmeriCorps may, at its discretion, modify the terms, conditions, and nature of the suspension or rescind the suspension action at any time, on its own initiative or upon a showing that the sponsor has adequately corrected the deficiency or deficiencies which led to the suspension and that repetition is not foreseeable.

§ 2556.140 What is termination and when may AmeriCorps terminate a VISTA project?

(a) Termination means any action by AmeriCorps that permanently terminates or curtails assistance to all or any part of a sponsor's VISTA project

prior to the time that the project term is concluded.

(b) AmeriCorps may terminate assistance to a sponsor in whole or in part for the sponsor's material failure to comply with an applicable term(s) or condition(s) of the DVSA, the regulations in this part, VISTA program policy, or an applicable Memorandum of Agreement.

(c) To initiate termination proceedings, AmeriCorps will notify the sponsor in writing that AmeriCorps is proposing to terminate assistance in whole or in part. The written notice will contain the following:

(1) A description of the VISTA assistance proposed for termination, the grounds that warrant such proposed termination, and the proposed date of effective termination;

(2) Instructions regarding the sponsor's opportunity, within 21 calendar days from the date the notice is issued, to respond in writing to the merits of the proposed termination and their right to request a full and fair hearing before a mutually agreed-upon impartial hearing officer; and

(3) Invitation of voluntary action by the sponsor to adequately correct the deficiency or deficiencies which led to AmeriCorps' notice of proposed termination.

(d) In deciding whether to effect termination of VISTA assistance, AmeriCorps will consider any relevant, timely material presented in writing; any relevant material presented during the course of any full and fair hearing; and any showing that the sponsor has adequately corrected the deficiency which led to the initiation of termination proceedings.

(e) Regardless of whether or not a full and fair hearing takes place, AmeriCorps retains all authority to make the final determination as to whether termination of VISTA assistance is appropriate.

(f) The sponsor will be informed of AmeriCorps' final determination on the proposed termination of VISTA assistance, and the basis or bases for the determination.

(g) AmeriCorps may, at its discretion, modify the terms, conditions, and nature of a termination action or rescind a termination action at any time

on its own initiative, or upon a showing that the sponsor has adequately corrected the deficiency which led to the termination or the initiation of termination proceedings, and that repetition is not threatened.

§ 2556.145 May AmeriCorps pursue other remedies against a VISTA project for a sponsor's material failure to comply with any other requirement not set forth in this subpart?

The procedures established by this subpart do not preclude AmeriCorps from pursuing any other remedies authorized by law.

§ 2556.150 What activities are VISTA members not permitted to perform as part of service?

(a) A VISTA may not perform any activities in the project application that do not correspond with the purpose of the VISTA program, as described in § 2556.1, or that the Director has otherwise prohibited.

(b) A VISTA may not perform services or duties as a VISTA member that would otherwise be performed by employed workers or other volunteers (not including participants under the DVSA and the National and Community Service Act of 1990, as amended).

(c) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, that supplant the hiring of or result in the displacement of employed workers or other volunteers (not including participants under the DVSA or the National and Community Service Act of 1990, as amended).

(d) A VISTA may not perform any services or duties, or engage in activities as a VISTA member, which impair existing contracts for service.

(e) The requirements of paragraphs (b) through (d) of this section do not apply when the sponsor requires the service in order to avoid or relieve suffering threatened by, or resulting from, a disaster, civil disturbance, terrorism, or war.

(f) A sponsor or subrecipient may not request or receive any compensation from a VISTA, from a beneficiary of VISTA project services, or any other source for services of a VISTA.

§ 2556.155 May a sponsor manage a VISTA project through a subrecipient?

(a) A sponsor may carry out a VISTA project through one or more subrecipients that meet the eligibility criteria of § 2556.100.

(b) The sponsor must enter into a subrecipient agreement with each subrecipient. A subrecipient agreement must have at least the following elements:

(1) A project plan to be implemented by the subrecipient;

(2) Records to be kept and reports to be submitted;

(3) Responsibilities of the parties and other program requirements; and

(4) Suspension and termination policies and procedures.

(c) The sponsor retains the responsibility for compliance with a Memorandum of Agreement; the applicable regulations in this Part; and all applicable policies, procedures, and guidance issued by AmeriCorps regarding the VISTA program.

(d) A sponsor may not request or receive any compensation from a subrecipient for services performed by a VISTA.

(e) A sponsor may not receive payment from, or on behalf of, the subrecipient for costs of the VISTA assistance, except in two limited circumstances:

(1) For reasonable and actual costs incurred by the sponsor directly related to the subrecipient's participation in a VISTA project; and

(2) For any cost share related to a VISTA placed with the subrecipient in the VISTA project.

§ 2556.160 What are the sponsor's requirements for cost share projects?

(a) A sponsor must enter into a written agreement for cost share as prescribed by AmeriCorps.

(b) A sponsor must make timely cost share payments as prescribed by AmeriCorps and applicable Federal law and regulations.

(c) In addition to other sources of funds, a sponsor may use funds from Federal, State, or local Government agencies, provided the requirements of those agencies and their programs are met.

§ 2556.165

(d) Subject to review and approval by AmeriCorps, AmeriCorps may enter into an agreement with another entity to receive and use funds to make cost share payments on behalf of the sponsor.

§ 2556.165 What Fair Labor Standards apply to VISTA sponsors and subrecipients?

All sponsors and subrecipients that employ laborers and mechanics for construction, alteration, or repair of facilities must pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a.

§ 2556.170 What nondiscrimination requirements apply to sponsors and subrecipients?

(a) An individual with responsibility for the operation of a project that receives AmeriCorps assistance must not discriminate against a participant in, or member of the staff of, such project on the basis of the participant or staff member's race, color, national origin, sex, age, or political affiliation, or on the basis of disability, if the participant or staff member is a qualified individual with a disability.

(b) Any AmeriCorps assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) An individual with responsibility for the operation of a project that receives AmeriCorps assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with AmeriCorps funds. This provision does not apply to the employment (with AmeriCorps assistance) of any staff member of an AmeriCorps-supported project who was employed with the organization oper-

45 CFR Ch. XXV (10–1–23 Edition)

ating the project on the date the AmeriCorps assistance was awarded.

(d) Sponsors must notify all program participants, staff, applicants, and beneficiaries of:

(1) Their rights under applicable Federal nondiscrimination laws, including relevant provisions of the national service legislation and implementing regulations; and

(2) The procedure for filing a discrimination complaint. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, may discriminate against a VISTA on the basis of race, color, national origin, gender, age, religion, or political affiliation. No sponsor or subrecipient, or sponsor or subrecipient employee, or individual with responsibility for the implementation or operation of a sponsor or a subrecipient, may discriminate against a VISTA on the basis of disability, if the VISTA is a qualified individual with a disability.

§ 2556.175 What limitations are VISTA sponsors subject to regarding religious activities?

(a) A VISTA may not give religious instruction, conduct worship services, or engage in any form of proselytizing as part of their duties.

(b) A sponsor or subrecipient may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use any AmeriCorps assistance, including the services of any VISTA or VISTA assistance, to support any inherently religious activities, such as worship, religious instruction, or proselytizing, as part of the programs or services assisted by the VISTA program. If a VISTA sponsor or subrecipient conducts such inherently religious activities, the activities must be offered separately, in time or location, from the programs or services assisted under this Part by the VISTA program.

§ 2556.180 What are the limitations on VISTA sponsors receiving funding for the direct cost of supporting volunteers?

(a) AmeriCorps will not obligate funding for the direct cost of supporting volunteers that is:

(1) More than 30 percent of VISTA funds appropriated in any fiscal year; or

(2) For a new project that was not selected through a competitive process.

(b) The “direct cost of supporting volunteers” includes only those funds that are paid directly to VISTA members, leaders, or summer associates, such as: living allowance; travel reimbursements, including the Settling In Allowance; End of Service Benefits, including the cash stipend; and other expenses paid directly to the member, leader, or summer associate, as determined by the VISTA Director.

Subpart C—VISTA Members

§ 2556.200 Who may serve as a VISTA?

An individual may serve as a VISTA if all the following requirements are met as of the date the individual takes the oath or affirmation, as appropriate, to enter VISTA service:

(a) The individual is at least eighteen years of age. There is no upper age limit.

(b) The individual is a United States citizen or national, or is legally residing within a State.

§ 2556.205 What commitments and agreements must an individual make to serve in the VISTA program?

(a) To the maximum extent practicable, the individual must make a full-time commitment to remain available for service without regard to regular working hours, at all times during their period of service, except for authorized periods of leave.

(b) To the maximum extent practicable, the individual must make a full-time personal commitment to alleviate poverty and poverty-related problems, and to live among and at the economic level of the low-income people served by the project.

(c) The individual’s service cannot be used to satisfy service requirements of

parole, probation, or community service prescribed by the criminal justice system.

(d) A VISTA candidate or member agrees to undergo an investigation into their criminal history or background as a condition of enrollment, or continued enrollment, in the VISTA program.

§ 2556.210 Who reviews and approves an application for VISTA service?

AmeriCorps has the final authority to approve or deny applications for VISTA service.

Subpart D—Terms, Protections, and Benefits of VISTA Members

§ 2556.300 Is a VISTA considered a Federal employee and is a VISTA considered an employee of the sponsor?

(a) Except for the purposes listed here, a VISTA is not considered an employee of the Federal Government. A VISTA is considered a Federal employee only for the following purposes:

(1) Federal Tort Claims Act—28 U.S.C. 1346(b); 28 U.S.C. 2671–2680;

(2) Federal Employees’ Compensation Act—5 U.S.C. chapter 81, subchapter 1;

(3) Hatch Act—5 U.S.C. chapter 73, subchapter III;

(4) Internal Revenue Service Code—26 U.S.C. 1 *et seq.*; and

(5) Title II of the Social Security Act—42 U.S.C. 401 *et seq.*

(b) A VISTA is not considered a Federal employee for any purposes other than those set forth in paragraph (a) of this section.

(c) A VISTA is not covered by Federal or State unemployment compensation related to their enrollment or service in the VISTA program. A VISTA’s service is not considered employment for purposes of eligibility for, or receipt of, Federal, State, or any other unemployment compensation.

(d) Monetary allowances, such as living allowances that VISTAs receive during VISTA service, are not considered wages. Monetary allowances, such as living allowances, that VISTAs receive during VISTA service are considered income for such purposes as Federal income tax and Social Security.

(e) A VISTA is not, under any circumstances, considered an employee of