

## § 2540.100

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## 45 CFR Ch. XXV (10–1–23 Edition)

SOURCE: 59 FR 13808, Mar. 23, 1994, unless otherwise noted.

### Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

#### § 2540.100 What restrictions govern the use of Corporation assistance?

(a) *Supplantation.* Corporation assistance may not be used to replace State and local public funds that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal public expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.

(b) *Religious use.* Corporation assistance may not be used to provide religious instruction, conduct worship services, or engage in any form of proselytization.

(c) *Political activity.* Corporation assistance may not be used by program participants or staff to assist, promote, or deter union organizing; or finance, directly or indirectly, any activity designed to influence the outcome of a Federal, State or local election to public office.

(d) *Contracts or collective bargaining agreements.* Corporation assistance may not be used to impair existing contracts for services or collective bargaining agreements.

(e) *Nonduplication.* Corporation assistance may not be used to duplicate an activity that is already available in the locality of a program. And, unless the requirements of paragraph (f) of this section are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency in which such entity resides.

(f) *Nondisplacement.* (1) An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance.

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(2) An organization may not displace a volunteer by using a participant in a program receiving Corporation assistance.

(3) A service opportunity will not be created under this chapter that will infringe in any manner on the promotional opportunity of an employed individual.

(4) A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(5) A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that—

(i) Will supplant the hiring of employed workers; or

(ii) Are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(6) A participant in any program receiving assistance under this chapter may not perform services or duties that have been performed by or were assigned to any—

(i) Presently employed worker;

(ii) Employee who recently resigned or was discharged;

(iii) Employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;

(iv) Employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) Employee who is on strike or who is being locked out.

[59 FR 13808, Mar. 23, 1994, as amended at 70 FR 39607, July 8, 2005]

### § 2540.110 Limitation on use of Corporation funds for administrative costs.

(a)(1) Not more than five percent of the grant funds provided under 45 CFR 2516, 2517, 2519, and 2521 for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(2) The distribution of administrative costs between the grant and any

subgrant will be subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs the Corporation will approve one of the following methods in the award document:

(i) Limit the amount or rate of indirect costs that may be paid with Corporation funds under a grant or subgrant to five percent of total Corporation funds expended, provided that—

(A) Organizations that have an established indirect cost rate for Federal awards will be limited to this method; and

(B) Unreimbursed indirect costs may be applied to meeting operational matching requirements under the Corporation's award;

(ii) Specify that a fixed rate of five percent or less (not subject to supporting cost documentation) of total Corporation funds expended may be used to pay for administrative costs, provided that the fixed rate is in conjunction with an overall 15 percent administrative cost factor to be used for organizations that do not have established indirect cost rates; or

(iii) Utilize such other method that the Corporation determines in writing is consistent with OMB guidance and other applicable requirements, helps minimize the burden on grantees or subgrantees, and is beneficial to grantees or subgrantees and the Federal Government.

(b) Costs attributable to administrative functions as well as program functions should be prorated between administrative costs and program costs.

[63 FR 18133, Apr. 14, 1998]

### Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants

#### § 2540.200 Which entities are required to comply with the National Service Criminal History Check requirements in this subpart?

The National Service Criminal History Check is a requirement for entities that are recipients or subrecipients of the following grants:

(a) Operational grants provided by AmeriCorps State and National;