

The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

**§§ 2490.161–2490.169 [Reserved]**

**§ 2490.170 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director of Administration and Finance shall be responsible for coordinating implementation of this section. Complaints may be sent to James Madison Memorial Fellowship Foundation, 2000 K Street, NW., suite 303, Washington, DC 20006.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 2490.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[58 FR 57699, Oct. 26, 1993]

**§§ 2490.171–2490.999 [Reserved]**

**PARTS 2491–2499 [RESERVED]**



## CHAPTER XXV—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

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## PART 2500—AGENCY OPERATING NAME AND LOGOS

Sec.

2500.1 Agency Operating Name

2500.2 Description of Logos

2500.3 Retirement of Logos

2500.4 Authority to affix logos

AUTHORITY: 42 U.S.C. 12651c (c); 12653 (a) and (f).

SOURCE: 85 FR 65240, Oct. 15, 2020, unless otherwise noted.

### § 2500.1 Agency Operating Name.

(a) The Corporation for National and Community Service adopts AmeriCorps as its official agency operating name.

(b) Use of AmeriCorps as the agency operating name incorporates the Corporation for National and Community Service by reference.

### § 2500.2 Description of Logos.

(a) The AmeriCorps Logo (Logo) is the key element in agency identification. It provides a visual representation of the agency's role to unite America by bringing people together to serve communities. It is symbolic of the way AmeriCorps members and volunteers lift and improve communities through service and volunteering. This Logo is the visual link which connects the graphic communications of all Agency programs.

(b) The Logo is described as follows: The logo is an image of a solid circle containing an A where one pillar is a solid block line and the other is represented by a flag pole with the flag in motion, appearing to fly from the left to the right and forming the A as the flag intersects with the other pillar. AmeriCorps appears in bold to the right of the mark.

Figure 1 to paragraph (b)



(c) The AmeriCorps Seniors Logo (Seniors Logo) identifies the highlighted AmeriCorps Seniors programs and represents the agency's commitment to programs and volunteer oppor-

tunities for the older American population.

(d) The AmeriCorps Seniors Logo is described as follows: The word Seniors appears beneath AmeriCorps to the right of the circle containing the A.

Figure 2 to paragraph (c)



### § 2500.3 Retirement of Logos.

The agency officially retires the day-to-day use of all pre-existing logos, em-

blems, and other insignia, except the Days of Service logos, but does not relinquish the legal rights to these logos.

## § 2500.4

### § 2500.4 Authority to affix logos.

Restrictions on the use of AmeriCorps logos are found in 45 CFR 2540.500 through 2540.560.

## PART 2502—EMPLOYEE INDEMNIFICATION REGULATIONS

Sec.

2502.10 Purpose.

2502.20 Applicability.

2502.30 Definitions.

2502.40 Under what circumstances may AmeriCorps indemnify employees?

2502.50 At what point in a legal proceeding will AmeriCorps consider a request to indemnify the employee?

2502.60 What types of legal proceedings may an AmeriCorps employee seek indemnification or settlement for?

2502.70 What must an AmeriCorps employee do if served with process or pleadings that includes a covered claim?

2502.80 What may the General Counsel do upon receipt of the process and pleadings and report of circumstances?

2502.90 How may an AmeriCorps employee request indemnification?

2502.100 How will AmeriCorps handle the request for indemnification?

AUTHORITY: 28 U.S.C. 2679(b)(1); 42 U.S.C. 12651c(c).

SOURCE: 87 FR 54628, Sept. 7, 2022, unless otherwise noted.

### § 2502.10 Purpose.

The purpose of this part is to provide the procedures for indemnification of AmeriCorps employees who are personally named in certain legal proceedings not covered by the Federal Tort Claims Act (FTCA) or the Federal Employee Liability Reform and Tort Compensation Act (FELRTCA) when AmeriCorps determines both that the actions arose within the scope of their AmeriCorps employment and that indemnification is in the agency's interest. These determinations are matters of agency discretion.

### § 2502.20 Applicability.

(a) This part is applicable to all former and current AmeriCorps employees, including special Government employees.

(b) This part does not apply to volunteers, service members, contractors, or any other individuals who may be af-

filiated with AmeriCorps, but not employed by the agency.

### § 2502.30 Definitions.

*AmeriCorps* means the Corporation for National and Community Service.

*AmeriCorps employee* means a current or former employee of the Corporation for National and Community Service, regardless of whether the individual was an employee before the Corporation for National and Community Service began operating under the name AmeriCorps.

*CEO* means the AmeriCorps Chief Executive Officer or their designee.

*Covered claim* means a claim seeking damages against an employee personally (or against their estate) for personal injury, death, or loss of property, resulting from the employee's activities, when AmeriCorps determines both that the actions arose within the scope of their office or employment but are not covered by the Federal Tort Claims Act (FTCA) or the Federal Employee Liability Reform and Tort Compensation Act (FELRTCA).

*General Counsel* means the AmeriCorps General Counsel or their designee.

### § 2502.40 Under what circumstances may AmeriCorps indemnify employees?

AmeriCorps may, at its sole discretion, indemnify an AmeriCorps employee for a verdict, judgment, or other monetary award rendered against the employee personally in a claim or may settle or compromise a personal damages claim against an AmeriCorps employee if:

(a) The CEO determines that the AmeriCorps employee's conduct giving rise to the verdict, judgment, monetary award, or claim was taken within the scope of their employment;

(b) The CEO determines that the indemnification or settlement is in AmeriCorps' best interest; and

(c) AmeriCorps appropriated funds are available for the indemnification or settlement.

**§ 2502.50 At what point in a legal proceeding will AmeriCorps consider a request to indemnify the employee?**

(a) AmeriCorps may settle or compromise a claim against an AmeriCorps employee at any time.

(b) Unless there are exceptional circumstances, as determined by the CEO, AmeriCorps will not consider a request to indemnify a claim before entry of an adverse verdict, judgment, or award.

**§ 2502.60 What types of legal proceedings may an AmeriCorps employee seek indemnification or settlement for?**

An AmeriCorps employee may seek indemnification or settlement in any civil action or proceeding brought, in any court, for a covered claim.

**§ 2502.70 What must an AmeriCorps employee do if served with process or pleadings that includes a covered claim?**

An AmeriCorps employee who is named as a defendant (or the personal representative of the AmeriCorps employee's estate) in a legal proceeding that includes a covered claim and who wishes to seek indemnification must promptly notify their supervisor, who then promptly notifies the Office of General Counsel. Former employees must directly notify the Office of General Counsel.

**§ 2502.80 What may the General Counsel do upon receipt of the process and pleadings and report of circumstances?**

Where appropriate, the General Counsel may request that the Department of Justice provide legal representation for the AmeriCorps employee.

**§ 2502.90 How may an AmeriCorps employee request indemnification?**

To request indemnification for a verdict, judgment, award, or settlement proposal of a covered claim, the AmeriCorps employee must:

(a) Have complied with the requirements of § 2502.70.

(b) Submit a written request, via their supervisor, to the head of the employee's office, or (in the case a former employee) directly to the Office of General Counsel. The written request must include appropriate documentation, in-

cluding copies of the verdict, judgment, award, or settlement proposal.

**§ 2502.100 How will AmeriCorps handle the request for indemnification?**

(a) The head of the office or their designee will review the employee's request and submit all of the following to the General Counsel:

(1) The original or a copy of the employee's request.

(2) A recommendation to approve or deny the request.

(3) A detailed analysis of the basis for a recommendation.

(4) A certification from the Chief Financial Officer as to whether the agency has funds available to pay the indemnification.

(b) The General Counsel will:

(1) Review the circumstances of the incident that gave rise to the action or proceeding, and all data relevant to the question of whether the employee was acting within the scope of their employment.

(2) Where appropriate, seek the views of the U.S. Department of Justice and/or the U.S. Attorney for the district encompassing the location where the action or proceeding is brought.

(3) Prepare a recommendation to approve or deny the request.

(4) Forward the request, the accompanying documentation, and the General Counsel's recommendation to the CEO for a decision.

**PART 2505—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT**

Sec.

2505.1 Applicability.

2505.2 Definitions.

2505.3 To what extent are meetings of the Board open to the public?

2505.4 On what grounds may the Board close a meeting or withhold information?

2505.5 What are the procedures for closing a meeting, withholding information, and responding to requests by affected persons to close a meeting?

2505.6 What are the procedures for making a public announcement of a meeting?

2505.7 What are the procedures for changing the time or place of a meeting following the public announcement?

AUTHORITY: 5 U.S.C. 552b; 42 U.S.C. 12651c(c).

## § 2505.1

SOURCE: 64 FR 66403, Nov. 26, 1999, unless otherwise noted.

### § 2505.1 Applicability.

(a) This part implements the provisions of section 3(a) of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings of the Corporation's Board of Directors, or to any subdivision of the Board that is authorized to act on its behalf. The Board of Directors may waive the provisions of this part to the extent authorized by law.

(b) Nothing in this part expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552), except that the exemptions set forth in § 2505.4 shall govern in the case of any request made pursuant to the Freedom of Information Act to copy or inspect the transcript, recording, or minutes described in § 2505.5.

(c) Nothing in this part authorizes the Corporation to withhold from any individual any record, including transcripts, recordings, or minutes required by this part, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a).

### § 2505.2 Definitions.

As used in this part:

(a) *Board* means the Board of Directors established pursuant to 42 U.S.C. 12651a, or any subdivision of the Board that is authorized to act on its behalf.

(b) *Chairperson* means the Member elected by the Board to serve as Chairperson.

(c) *General Counsel* means the Corporation's principal legal officer or other attorney acting at the designation of the Corporation's principal legal officer.

(d) *Corporation* means the Corporation for National and Community Service established pursuant to 42 U.S.C. 12651.

(e) *Meeting* means the deliberations of at least a quorum of the Corporation's Board of Directors where such deliberations determine or result in the joint conduct or disposition of official Corporation business. A meeting may be conducted under this part through telephone or similar communications equipment by means of which all participants may communicate with each

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other. The term meeting includes a portion thereof. The term meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the members individually by telephone.

(2) Action by a quorum of the Board to—

(i) Open or to close a meeting or to release or to withhold information pursuant to § 2505.5;

(ii) Set an agenda for a proposed meeting;

(iii) Call a meeting on less than seven days' notice as permitted by § 2505.6(b); or

(iv) Change the subject-matter or the determinations to open or to close a publicly announced meeting under § 2505.7(b).

(3) A gathering for the purpose of receiving briefings from the Corporation's staff or expert consultants, provided that Members of the Board do not engage in deliberations at such sessions that determine or result in the joint conduct or disposition of official Corporation business on such matters.

(4) A gathering for the purpose of engaging in preliminary discussions or exchanges of views that do not effectively predetermine official Corporation action on a particular matter.

(f) *Member* means a current member of the Corporation's Board of Directors.

(g) *Presiding Officer* means the Chairperson or, in the absence of the Chairperson, the Vice Chairperson of the Board of Directors or other member authorized to act in this capacity by the Board.

(h) *Quorum* means the number of Members authorized to conduct Corporation business pursuant to the Board's bylaws.

### § 2505.3 To what extent are meetings of the Board open to the public?

The Board shall conduct meetings, as defined in § 2505.2, in accordance with this part. Except as provided in § 2505.4, the Board's meetings shall be open to the public. The public is invited to attend all meetings of the Board that are



open to the public but may not participate in the Board's deliberations at such meetings or record any meeting by means of electronic, photographic, or other device.

**§ 2505.4 On what grounds may the Board close a meeting or withhold information?**

The Board may close a meeting or withhold information that otherwise would be required to be disclosed under §§ 2505.5, 2505.6 and 2505.7 if it properly determines that an open meeting or disclosure is likely to—

- (a) Disclose matters that are—
  - (1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy; and
  - (2) In fact properly classified pursuant to such Executive order;
- (b) Relate solely to the internal personnel rules and practices of the Corporation;
- (c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute—
  - (1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
  - (2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (e) Involve accusing any person of a crime, or formally censuring any person;
- (f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would—
  - (1) Interfere with enforcement proceedings;
  - (2) Deprive a person of a right to a fair trial or an impartial adjudication;
  - (3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institution;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Corporation, except that this provision shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action; or

(j) Specifically concerning the Corporation's issuance of a subpoena or the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

**§ 2505.5 What are the procedures for closing a meeting, withholding information, and responding to requests by affected persons to close a meeting?**

(a) The Board may vote to close a meeting or withhold information pertaining to a meeting. Such action may be taken only when a majority of the entire membership of the Board votes to take such action. A separate vote shall be taken with respect to each action under § 2505.4. The Board may act by taking a single vote with respect to a series of meetings which are proposed

## § 2505.6

to be closed to the public, or with respect to any information concerning a series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in the series. Each Member's vote under this paragraph shall be recorded and no proxies shall be allowed.

(b) If your interests may be directly affected if a meeting is open you may request that the Board close the meeting on one of the grounds referred to in § 2505.4(e), (f), or (g). You should submit your request to the Corporation for National and Community Service, Office of the General Counsel, 250 E Street SW., Washington, DC 20525. The Board shall, upon the request of any one of its members, determine by recorded vote whether to grant your request.

(c) Within one working day of any vote taken pursuant to this section, the Board shall make publicly available a written copy of such vote reflecting the vote of each Member on the question. If a meeting is to be closed to the public, the Board shall, within one working day, make available a full written explanation of its action closing the meeting and a list of all persons expected to attend the meeting and their affiliation.

(d) For each closed meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemption relied upon. A copy of the certification shall be available for public inspection.

(e) For each closed meeting, the Board shall issue a statement setting forth the time, place, and persons present. A copy of such statement shall be available for public inspection.

(f)(1) For each closed meeting, with the exception of a meeting closed pursuant to § 2505.4(h) or (j), the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting.

(2) For meetings that are closed pursuant to § 2505.4(h) or (j), the Board may maintain a set of minutes in lieu of a transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any ac-

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tions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any vote. All documents considered in connection with any action shall be identified in such minutes.

(3) The Corporation shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Corporation determines to contain information which may be properly withheld. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Corporation shall maintain the transcript, recording, or minutes for each closed meeting for at least two years or at least one year after the conclusion of any Corporation business acted upon at the meeting, whichever occurs later.

[64 FR 66403, Nov. 26, 1999, as amended at 81 FR 12600, Mar. 10, 2016]

### **§ 2505.6 What are the procedures for making a public announcement of a meeting?**

(a) For each meeting, the Board shall make a public announcement, at least one week before the meeting, of—

- (1) The meeting's time and place;
- (2) The matters to be considered;
- (3) Whether the meeting is to be open or closed; and

(4) The name and business telephone number of the official designated by the Board to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if—

(1) The Board determines by recorded vote that Board business requires that the meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time and posted on the Corporation's home page.

(c) Immediately following a public announcement required by paragraph (a) of this section, the Corporation will submit for publication in the FEDERAL REGISTER a notice of the time, place, and subject matter of the meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting.

**§ 2505.7 What are the procedures for changing the time or place of a meeting following the public announcement?**

(a) After there has been a public announcement of a meeting, the time or place of the meeting may be changed only if the Board publicly announces the change at the earliest practicable time. Such a change need not be determined by recorded vote.

(b) After there has been a public announcement of a meeting, the subject-matter of the meeting, or the determination of the Board to open or to close a meeting may be changed only when—

(1) The Board determines, by recorded vote, that Board business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces the change and the vote of each Member at the earliest practicable time.

(c) The deletion of any subject-matter previously announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this section.

**PART 2506—COLLECTION OF DEBTS**

**Subpart A—Introduction**

Sec.

2506.1 Why is the Corporation issuing these regulations?

2506.2 Under what authority does the Corporation issue these regulations?

2506.3 What definitions apply to the regulations in this part?

2506.4 What types of debts are excluded from these regulations?

2506.5 If a debt is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?

2506.6 What is a claim or debt?

2506.7 Why does the Corporation have to collect debts?

2506.8 What action might the Corporation take to collect debts?

2506.9 What rights do I have as a debtor?

**Subpart B—General Provisions**

2506.10 Will the Corporation use its cross-servicing agreement with Treasury to collect its debts?

2506.11 Will the Corporation refer debts to the Department of Justice?

2506.12 Will the Corporation provide information to credit reporting agencies?

2506.13 How will the Corporation contract for private collection services?

2506.14 What should I expect to receive from the Corporation if I owe a debt to the Corporation?

2506.15 What will the notice tell me regarding collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice?

2506.16 What will the notice tell me about my opportunity for review of my debt?

2506.17 What must I do to obtain a review of my debt, and how will the review process work?

2506.18 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to the Corporation?

2506.19 How can I resolve my debt through voluntary repayment?

2506.20 What is the extent of the Chief Executive Officer's authority to compromise debts owed to the Corporation, or to suspend or terminate collection action on such debts?

2506.21 May the Corporation's failure to comply with these regulations be used as a defense to a debt?

**Subpart C—Salary Offset**

2506.30 What debts are included or excluded from coverage of these regulations on salary offset?

2506.31 May I ask the Corporation to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?

2506.32 What are the Corporation's procedures for salary offset?

2506.33 How will the Corporation coordinate salary offsets with other agencies?

2506.34 Under what conditions will the Corporation make a refund of amounts collected by salary offset?

2506.35 Will the collection of a debt by salary offset act as a waiver of my rights to dispute the claimed debt?

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### Subpart D—Tax Refund Offset

- 2506.40 Which debts can the Corporation refer to Treasury for collection by offsetting tax refunds?
- 2506.41 What are the Corporation's procedures for collecting debts by tax refund offset?

### Subpart E—Administrative Offset

- 2506.50 Under what circumstances will the Corporation collect amounts that I owe to the Corporation (or some other Federal agency) by offsetting the debt against payments that the Corporation (or some other Federal agency) owes me?
- 2506.51 How will the Corporation request that my debt to the Corporation be collected by offset against some payment that another Federal agency owes me?
- 2506.52 What procedures will the Corporation use to collect amounts I owe to a Federal agency by offsetting a payment that the Corporation would otherwise make to me?
- 2506.53 When may the Corporation make an offset in an expedited manner?
- 2506.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to the Corporation?

### Subpart F—Administrative Wage Garnishment

- 2506.55 How will the Corporation collect debts through Administrative Wage Garnishment?

AUTHORITY: 5 U.S.C. 5514; 31 U.S.C. 3701–3720A, 3720D; 44 U.S.C. 2104(a).

SOURCE: 68 FR 16438, Apr. 4, 2003, unless otherwise noted.

## Subpart A—Introduction

### § 2506.1 Why is the Corporation issuing these regulations?

(a) The Corporation is issuing these regulations to inform the public of procedures that may be used by the Corporation for the collection of debt.

(b) These regulations provide that the Corporation will attempt to collect debts owed to it or other Government agencies either directly, or by other means including salary offsets, administrative offsets, tax refund offsets, or administrative wage garnishment.

(c) These regulations also provide that the Corporation has entered into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury

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will take authorized action to collect amounts owed to the Corporation.

### § 2506.2 Under what authority does the Corporation issue these regulations?

(a) The Corporation is issuing the regulations in this part under the authority of 31 U.S.C. chapter 37, 3701–3720A and 3720D. These sections implement the requirements of the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

(b) The Corporation is also issuing the regulations in this part to conform to the Federal Claims Collection Standards (FCCS), which prescribe standards for handling the Federal Government's claims for money or property. The FCCS are issued by the Department of Justice (DOJ) and the Treasury at 31 CFR chapter IX, parts 900–904. The Corporation adopts those standards without change. The regulations in this part supplement the FCCS by prescribing procedures necessary and appropriate for the Corporation's operations.

(c) The Corporation is also issuing the regulations in this part to conform to the standards for handling Administrative Wage Garnishment processing by the Federal Government. The standards are issued by the Treasury at 31 CFR 285.11. The Corporation adopts those standards without change. The regulations in this part supplement the standards by prescribing procedures necessary and appropriate for the Corporation's operations.

(d) The Corporation is further issuing the regulations in this part under the authority of 5 U.S.C. 5514, and the salary offset regulations published by the Office of Personnel and Management at 5 CFR part 550, subpart K.

(e) All of these debt collection regulations are issued under the Corporation's authority under 42 U.S.C. 12651c(c).

### § 2506.3 What definitions apply to the regulations in this part?

As used in this part:

Administrative offset means withholding funds payable by the United States (including funds payable by the

United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt.

Administrative wage garnishment means a process whereby a Federal agency may, without first obtaining a court order, order an employer to withhold up to 15 percent of your disposable pay for payment to the Federal agency to satisfy a delinquent non-tax debt.

Agency means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

Certification means a written statement received by a paying agency or disbursing official from a creditor agency that requests the paying agency or disbursing official to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

Chief Executive Officer means the Chief Executive Officer of the Corporation, or his or her designee.

Claim (see definition of *Debt* in this section).

Compromise means the settlement of a debt for less than the full amount owed.

Corporation means the Corporation for National and Community Service.

Creditor agency means the agency to which the debt is owed, including a debt collection center when acting on behalf of the creditor agency.

Cross-servicing agreement is a letter of agreement entered into between the Corporation and the Financial Management Service (FMS) of the Treasury in which the Corporation has authorized FMS to take all appropriate actions to enforce collection of debts or groups of debts referred to FMS by the Corporation. These debt collection services are provided by FMS on behalf of the Corporation in accordance with all statutory and regulatory requirements.

Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

Debt and claim are deemed synonymous and interchangeable. These terms mean an amount of money, funds, or property that has been determined by an agency official to be due the United

States from any person, organization, or entity except another Federal agency. For the purpose of administrative offset under 31 U.S.C. 3716 and subpart E of these regulations, the terms, "debt" and "claim" also include money, funds or property owed by a person to a State (including past-due support being enforced by a State); the District of Columbia; American Samoa; Guam; the United States Virgin Islands; the Commonwealth of the Northern Mariana Islands; or the Commonwealth of Puerto Rico.

Debt collection center means the Treasury or any other agency or division designated by the Secretary of the Treasury with authority to collect debts on behalf of creditor agencies.

Debtor means a person, organization, or entity, except another Federal agency, who owes a debt. Use of the terms "I," "you," "me," and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph.

Delinquent debt means a debt that has not been paid by the date specified in the Corporation's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made.

Disposable pay means the part of an employee's pay that remains after deductions that are required to be withheld by law have been made.

Employee means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

Federal Claims Collection Standards (FCCS) means the standards currently published by DOJ and the Treasury at 31 CFR parts 900-904.

Paying agency means any agency that is making payments of any kind to a debtor. In some cases, the Corporation may be both the creditor agency and the paying agency.

Payroll office means the office that is primarily responsible for payroll records and the coordination of pay matters with the appropriate personnel office.

Person includes a natural person or persons, profit or non-profit corporation, partnership, association, trust,

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estate, consortium, state or local government, or other entity that is capable of owing a debt to the United States; however, agencies of the United States are excluded.

Private collection contractor means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

Salary offset means a payroll procedure to collect a debt under 5 U.S.C. 5514 and 31 U.S.C. 3716 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Tax refund offset means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Corporation or any other Federal agency.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

#### § 2506.4 What types of debts are excluded from these regulations?

The following types of debts are excluded:

(a) Debts or claims arising under the Internal Revenue Code (26 U.S.C. 1 *et seq.*) or the tariff laws of the United States, or the Social Security Act (42 U.S.C. 301 *et seq.*); except as provided under sections 204(f) and 1631 (42 U.S.C. 404(f) and 1383(b)(4)(A)).

(b) Any case to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies;

(c) Any case where collection of a debt is explicitly provided for or provided by another statute, *e.g.*, travel advances under 5 U.S.C. 5705 and employee training expenses under 5 U.S.C. 4108, or, as provided for by title 11 of the United States Code, when the claims involve bankruptcy;

(d) Any debt based in whole or in part on conduct in violation of the antitrust laws or involving fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any party having an interest in the claim, as described in the FCCS, unless DOJ

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authorizes the Corporation to handle the collection;

(e) Claims between Federal agencies;

(f) Unless otherwise provided by law, administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt may not be initiated more than 10 years after the Government's right to collect the debt first accrued. (Exception: The 10-year limit does not apply if facts material to the Federal Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.) The 10-year limitation also does not apply to debts reduced to a judgment; and

(g) Unless otherwise stated, debts which have been transferred to the Treasury or referred to the DOJ will be collected in accordance with the procedures of those agencies.

#### § 2506.5 If a debt is not excluded from these regulations, may it be compromised, suspended, terminated, or waived?

Nothing in this part precludes:

(a) The compromise, suspension, or termination of collection actions, where appropriate under the FCCS, or the use of alternative dispute resolution methods if they are consistent with applicable law and regulations.

(b) An employee from requesting waiver of an erroneous payment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716; or any debtor from questioning the amount or validity of a debt, in the manner set forth in this part.

#### § 2506.6 What is a claim or debt?

A claim or debt is an amount of money, funds, or property that has been determined by an agency official to be due the United States from any person, organization, or entity except another Federal agency (see § 2506.3).

#### § 2506.7 Why does the Corporation have to collect debts?

Federal agencies are required to try to collect claims or debts of the Federal Government for money, funds, or property arising out of the agency's activities.

**§ 2506.8 What action might the Corporation take to collect debts?**

(a) There are a number of actions that the Corporation is permitted to take when attempting to collect debts. These actions include:

(1) Salary, tax refund or administrative offset, or administrative wage garnishment (see subparts C, D, E, and F of this part respectively); or

(2) Using the services of private collection contractors.

(b) In certain instances, usually after collection efforts have proven unsuccessful, the Corporation transfers debts to the Treasury for collection or refers them to the DOJ for litigation (see §§ 2506.10 and 2506.11).

**§ 2506.9 What rights do I have as a debtor?**

As a debtor you have several basic rights. You have a right to:

(a) Notice as set forth in these regulations (see § 2506.14);

(b) Inspect the records that the Corporation has used to determine that you owe a debt (see § 2506.14);

(c) Request review of the debt and possible payment options (see § 2506.17);

(d) Propose a voluntary repayment agreement (see § 2506.19); and/or

(e) Question if the debt is excluded from these regulations (see § 2506.5(b)).

**Subpart B—General Provisions****§ 2506.10 Will the Corporation use its cross-servicing agreement with Treasury to collect its debts?**

(a) The Corporation entered into a cross-servicing agreement on March 26, 1999, with Treasury Financial Management Services (FMS) that authorizes the Treasury to take the collection actions described in this part on behalf of the Corporation (see § 2506.3). The Corporation will refer debts or groups of debts to FMS for collection action. The debt collection procedures that the Treasury FMS uses are based on 31 U.S.C. chapter 37 and this part.

(b) The Corporation must transfer to the Treasury any debt that has been delinquent for a period of 180 days or more, so that the Secretary of the Treasury may take appropriate action to collect the debt or terminate collec-

tion action. This is pursuant to § 901.3 of the FCCS.

(c) Paragraph (b) of this section will not apply to any debt or claim that:

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sales program;

(3) Has been referred to a private collection contractor for collection for a period of time acceptable to the Secretary of the Treasury;

(4) Is at a debt collection center for a period of time acceptable to the Secretary of the Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt or claim is first delinquent; or

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury.

**§ 2506.11 Will the Corporation refer debts to the Department of Justice?**

The Corporation will refer to DOJ for litigation debts on which aggressive collection actions have been taken, but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive Corporation collection action, and within the period for bringing a timely suit against the debtor.

**§ 2506.12 Will the Corporation provide information to credit reporting agencies?**

(a) The Corporation will report certain delinquent debts to appropriate consumer credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Corporation:

(1) Takes reasonable action to locate the debtor if a current address is not available;

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(2) Provides the notice required under § 2506.14(a) if a current address is available; and

(3) Obtains satisfactory assurances from the credit reporting agency that it complies with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and other Federal laws governing the provision of credit information.

(c) At the time debt information is submitted to a credit reporting agency, the Corporation provides a written statement to the reporting agency that all required actions have been taken. In addition, the Corporation thereafter ensures that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verifies or corrects information relevant to the debt.

(d) If a debtor disputes the validity of the debt, the credit reporting agency refers the matter to the appropriate Corporation official. The credit reporting agency excludes the debt from its reports until the Corporation certifies in writing that the debt is valid.

(e) The Corporation may disclose to a commercial credit bureau information concerning a commercial debt, including the following:

(1) Information necessary to establish the name, address, and employer identification number of the commercial debtor;

(2) The amount, status, and history of the debt; and

(3) The program or pertinent activity under which the debt arose.

### § 2506.13 How will the Corporation contract for private collection services?

The Corporation uses the services of a private collection contractor when it determines that such use is in the Corporation's best interest. When the Corporation determines that there is a need to contract for private collection services, the Corporation:

(a) Retains sole authority to:

(1) Resolve any dispute with the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the DOJ for litigation; and

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(5) Take any other action under this part;

(b) Requires the contractor to comply with the:

(1) Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m);

(2) Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o); and

(3) Other applicable Federal and State laws pertaining to debt collection practices and applicable regulations of the Corporation in this part;

(c) Requires the contractor to account accurately and fully for all amounts collected; and

(d) Requires the contractor to provide to the Corporation, upon request, all data and reports contained in its files related to its collection actions on a debt.

### § 2506.14 What should I expect to receive from the Corporation if I owe a debt to the Corporation?

(a) The Corporation will send you a written notice when we determine that you owe a debt to the Corporation. The notice will be hand-delivered or sent to you at the most current address known to the Corporation. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt;

(2) That a designated Corporation official has reviewed the debt and determined that it is valid;

(3) That payment of the debt is due as of the date of the notice, and that the debt will be considered delinquent if you do not pay it within 30 days of the date of the notice;

(4) The Corporation's policy concerning interest, penalty charges, and administrative costs (see § 2506.18), including a statement that such assessments must be made against you unless excused in accordance with the FCCS and this part;

(5) That you have the right to inspect and copy disclosable Corporation records pertaining to your debt, or to receive copies of those records if personal inspection is impractical;

(6) That you have the opportunity to enter into an agreement, in writing



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and signed by both you and the designated Corporation official, for voluntary repayment of the debt (see § 2506.19);

(7) The address, telephone number, and name of the Corporation official available to discuss the debt;

(8) Possible collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice (see § 2506.15 for a fuller description of possible actions);

(9) That the Corporation may suspend or revoke any licenses, permits, or other privileges for failure to pay a debt; and

(10) Information on your opportunity to obtain a review concerning the existence or amount of the debt, or the proposed schedule for offset of Federal employee salary payments (see § 2506.16).

(b) The Corporation will respond promptly to communications from you.

(c) Exception to entitlement to notice, hearing, written responses, and final decisions. With respect to the regulations covering internal salary offset collections (see § 2506.32), the Corporation excepts from the provisions of paragraph (a) of this section—

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a

point of contact for contesting such adjustment.

### **§ 2506.15 What will the notice tell me regarding collection actions that might be taken if the debt is not paid within 60 days of the notice, or arrangements to pay the debt are not made within 60 days of the notice?**

The notice provided under § 2506.14 will advise you that, within 60 days of the date of the notice, your debt (including any interest, penalty charges, and administrative costs) must be paid or you must enter into a voluntary repayment agreement. If you do not pay the debt or enter into the agreement within that deadline, the Corporation may enforce collection of the debt by any or all of the following methods:

(a) By transferring the debt to the Treasury for collection, including under a cross-servicing agreement with the Treasury (see § 2506.10);

(b) By referral to a credit reporting agency (see § 2506.12), private collection contractor (see § 2506.13), or the DOJ (see § 2506.11);

(c) If you are a Corporation employee, by deducting money from your disposable pay account until the debt (and all accumulated interest, penalty charges, and administrative costs) is paid in full (see subpart C of this part). The Corporation will specify the amount, frequency, approximate beginning date, and duration of the deduction. 5 U.S.C. 5514 and 31 U.S.C. 3716 govern such proceedings;

(d) If you are an employee of a Federal agency other than the Corporation, by initiating certification procedures to implement a salary offset by that Federal agency (see subpart C of this part). 5 U.S.C. 5514 governs such proceedings;

(e) By referring the debt to the Treasury for offset against any refund of overpayment of tax (see subpart D of this part);

(f) By administrative offset (see subpart E of this part);

(g) By administrative wage garnishment (see subpart F of this part); or

(h) By liquidation of security or collateral. The Corporation has the right to hold security or collateral, liquidate it, and apply the proceeds to your debt through the exercise of a power of sale

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in the security instrument or a foreclosure. The Corporation will not follow the procedures in this paragraph (h) if the cost of disposing of the collateral will be disproportionate to its value.

#### **§ 2506.16 What will the notice tell me about my opportunity for review of my debt?**

The notice provided by the Corporation under §§ 2506.14 and 2506.15 will also advise you of the opportunity to obtain a review within the Corporation concerning the existence or amount of the debt or the proposed schedule for offset of Federal employee salary payments. The notice will also advise you of the following:

(a) The name, address, and telephone number of a Corporation official whom you may contact concerning procedures for requesting a review;

(b) The method and time period for requesting a review;

(c) That the filing of a request for a review on or before the 60th day following the date of the notice will stay the commencement of collection proceedings;

(d) The name and address of the Corporation official to whom you should send the request for a review;

(e) That a final decision on the review (if one is requested) will be issued in writing at the earliest practical date, but not later than 60 days after the receipt of the request for a review, unless you request, and the review official grants, a delay in the proceedings;

(f) That any knowingly false or frivolous statements, representations, or evidence may subject you to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(2) Penalties under the False Claims Act (31 U.S.C. 3729-3733) or any other applicable statutory authority; and

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(g) Any other rights available to you to dispute the validity of the debt or to have recovery of the debt waived, or remedies available to you under statutes or regulations governing the pro-

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gram for which the collection is being made; and

(h) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt that are later waived or found not owed will be promptly refunded to you.

#### **§ 2506.17 What must I do to obtain a review of my debt, and how will the review process work?**

(a) *Request for review.* (1) You have the right to request a review by the Corporation of the existence or the amount of your debt, the proposed schedule for offset of Federal employee salary payments, or whether the debt is past due or legally enforceable. If you want a review, you must send a written request to the Corporation official designated in the notice (see § 2506.16(d)).

(2) You must sign your request for review and fully identify and explain with reasonable specificity all the facts, evidence, and witnesses that support your position. Your request for review should be accompanied by available evidence to support your contentions.

(3) Your request for review must be received by the designated officer or employee of the Corporation on or before the 60th calendar day following the date of the notice. Timely filing will stay the commencement of collection procedures. The Corporation may consider requests filed after the 60-day period provided for in this section if you:

(i) Can show that the delay was the result of circumstances beyond your control; or

(ii) Did not receive notice of the filing deadline (unless you had actual notice of the filing deadline).

(b) *Inspection of the Corporation records related to the debt.* (1) If you want to inspect or copy the Corporation records related to the debt (see § 2506.14(a)(5)), you must send a letter to the Corporation official designated in the notice. Your letter must be received within 30 days of the date of the notice.

(2) In response to the timely request described in paragraph (b)(1) of this

section, the designated Corporation official will notify you of the location and time when you may inspect and copy records related to the debt.

(3) If personal inspection of the Corporation records related to the debt is impractical, reasonable arrangements will be made to send you copies of those records.

(c) *Review official.* (1) When required by Federal law or regulation, such as in a salary offset situation, the Corporation will request an administrative law judge, or hearing official from another agency who is not under the supervision or control of the Chief Executive Officer, to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Chief Executive Officer for the issuance of the Corporation's final decision (see paragraph (f) of this section for content of the review decision).

(2) When Federal law or regulation does not require the Corporation to have the review conducted by an administrative law judge, or by a hearing official from another agency who is not under the supervision or control of the Chief Executive Officer, the Corporation has the right to appoint a hearing official to conduct the review. In these cases, the hearing official will, following the review, submit the review decision to the Chief Executive Officer for the issuance of the Corporation's final decision (see paragraph (f) of this section for the content of the review decision).

(d) *Review procedure.* If you request a review, the review official will notify you of the form of the review to be provided. The review official will determine whether an oral hearing is required, or if a review of the written record is sufficient, in accordance with the FCCS. Although you may request an oral hearing, such a hearing is required only when a review of the documentary evidence cannot determine the question of indebtedness, such as when the validity of the debt turns on an issue of credibility or truthfulness. In either case, the review official will conduct the review in accordance with the FCCS. If the review will include an oral hearing, the notice sent to you by

the review official will set forth the date, time, and location of the hearing.

(e) *Date of decision.* (1) The review official will issue a written decision, based upon either the written record or documentary evidence and information developed at an oral hearing. This decision will be issued as soon as practical, but not later than 60 days after the date on which the Corporation received your request for a review, unless you request, and the review official grants, a delay in the proceedings.

(2) If the Corporation is unable to issue a decision within 60 days after the receipt of the request for a hearing:

(i) The Corporation may not issue a withholding order or take other action until the review (in whatever form) is held and a decision is rendered; and

(ii) If the Corporation previously issued a withholding order to the debtor's employer, the Corporation must suspend the withholding order beginning on the 61st day after the receipt of the review request and continuing until a review (in whatever form) is held and a decision is rendered.

(f) *Content of review decision.* The review official will prepare a written decision that includes:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The review official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedule, if applicable.

(g) *Interest, penalty charge, and administrative cost accrual during review period.* Interest, penalty charges, and administrative costs authorized by law will continue to accrue during the review period.

**§ 2506.18 What interest, penalty charges, and administrative costs will I have to pay on a debt owed to the Corporation?**

(a) *Interest.* (1) The Corporation will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Corporation will not recover interest if you pay the debt

within 30 days of the date on which interest begins to accrue. The Corporation will assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717, unless a different rate is either necessary to protect the interests of the Corporation or established by a contract, repayment agreement, or statute. The Corporation will notify you of the basis for its finding when a different rate is necessary to protect the interests of the Corporation.

(3) The Chief Executive Officer may extend the 30-day period for payment without interest when he or she determines that such action is in the best interest of the Corporation. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Corporation will assess a penalty charge of 6 percent a year on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* The Corporation will assess charges to cover administrative costs incurred as a result of your failure to pay a debt before it becomes delinquent. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Corporation.

(d) *Allocation of payments.* A partial or installment payment by a debtor will be applied first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(e) *Additional authority.* The Corporation may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory authority.

(f) *Waiver.* (1) The Chief Executive Officer may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty charges, or administrative costs, if he or she determines that collection of

these charges would be against equity and good conscience or not in the best interest of the Corporation.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, and unless otherwise stated in these regulations, where these charges have been collected before the waiver decision, they will not be refunded. The Chief Executive Officer's decision to waive or not waive collection of these charges is final and is not subject to further review.

**§ 2506.19 How can I resolve my debt through voluntary repayment?**

(a) In response to a notice of debt, you may propose to the Corporation that you be allowed to repay the debt through a voluntary repayment agreement in lieu of the Corporation taking other collection actions under this part.

(b) Your request to enter into a voluntary repayment agreement must:

- (1) Be in writing;
- (2) Admit the existence of the debt; and

(3) Either propose payment of the debt (together with interest, penalty charges, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(c) The Corporation will collect debts in one lump sum whenever feasible. However, if you are unable to pay your debt in one lump sum, the Corporation may accept payment in regular installments that bear a reasonable relationship to the size of the debt and your ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in three years or less.

(d) The Corporation will consider a request to enter into a voluntary repayment agreement in accordance with the FCCS. The Chief Executive Officer may request additional information from you, including financial statements if you request to make payments in installments, in order to determine whether to accept a voluntary repayment agreement. It is within the Chief Executive Officer's discretion to accept a repayment agreement instead of proceeding with other collection actions under this part, and to set the

necessary terms of any voluntary repayment agreement. No repayment agreement will be binding on the Corporation unless it is in writing and signed by both you and the Chief Executive Officer. At the Corporation's option, you may be required to provide security as part of the agreement to make payments in installments. Notwithstanding the provisions of this section, 31 U.S.C. 3711 will govern any reduction or compromise of a debt.

**§ 2506.20 What is the extent of the Chief Executive Officer's authority to compromise debts owed to the Corporation, or to suspend or terminate collection action on such debts?**

(a) The Chief Executive Officer may compromise, suspend, or terminate collection action on those debts owed to the Corporation that do not exceed \$100,000 excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended. The Corporation will follow the policies in § 902.2 of the FCCS.

(b) The uncollected portion of a debt owed to the Corporation that is not recovered as the result of a compromise will be reported to the Internal Revenue Service (IRS) as income to the debtor in accordance with IRS procedures if this uncollected amount is at least \$600.00.

**§ 2506.21 May the Corporation's failure to comply with these regulations be used as a defense to a debt?**

No, the failure of the Corporation to comply with any standard in the FCCS or these regulations will not be available to any debtor as a defense.

### Subpart C—Salary Offset

**§ 2506.30 What debts are included or excluded from coverage of these regulations on salary offset?**

(a) The regulations in this subpart provide the Corporation procedures for the collection by salary offset of a Federal employee's pay to satisfy certain debts owed to the Corporation or to other Federal agencies.

(b) The regulations in this subpart do not apply to any case where collection of a debt by salary offset is explicitly

provided for or prohibited by another statute.

(c) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the Federal Claims Collection Act of 1966, as amended, or the FCCS.

(d) A levy imposed under the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

**§ 2506.31 May I ask the Corporation to waive an overpayment that otherwise would be collected by offsetting my salary as a Federal employee?**

Yes, the regulations in this subpart do not preclude you from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or other statutory provisions pertaining to the particular debts being collected.

**§ 2506.32 What are the Corporation's procedures for salary offset?**

(a) The Corporation will coordinate salary deductions under this subpart as appropriate.

(b) If you are a Corporation employee who owes a debt to the Corporation, the Corporation's payroll office in Human Resources will determine the amount of your disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Corporation's payroll office of certification of debt from the creditor agency.

(d) The Notice provisions of these regulations do not apply to certain debts arising under this section (*see* § 2506.14(c)).

(e) Types of collection. (1) *Lump-sum offset*. If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions*. Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and your ability to pay. However, the amount deducted from any period

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will not exceed 15 percent of the disposable pay from which the deduction is made unless you have agreed in writing to the deduction of a greater amount. If possible, installment payments will be sufficient in size and frequency to liquidate the debt in three years or less.

(3) *Deductions from final check.* A deduction exceeding the 15 percent of disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the FCCS in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check, the Corporation may offset later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the FCCS.

(f) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Corporation's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

### § 2506.33 How will the Corporation coordinate salary offsets with other agencies?

(a) *Responsibilities of the Corporation as the creditor agency (i.e. when the debtor owes a debt to the Corporation and is an employee of another agency).* Upon completion of the procedures established in this subpart and pursuant to 5 U.S.C. 5514 and 31 U.S.C. 3716, the Corporation must submit a claim to a paying agency or disbursing official.

(1) In its claim, the Corporation must certify, in writing, the following:

- (i) That the employee owes the debt;
- (ii) The amount and basis of the debt;
- (iii) The date the Corporation's right to collect the debt first accrued;

(iv) That the Corporation's regulations in this subpart have been approved by OPM under 5 CFR part 550, subpart K; and

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(v) That the Corporation has met the certification requirements of the paying agency.

(2) If the collection must be made in installments, the Corporation's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Corporation may also advise the paying agency of the number of installments to be collected and the date of the first installment, if that date is other than the next officially established pay period.

(3) The Corporation will also include in its claim:

(i) The employee's written consent to the salary offset;

(ii) The employee's signed statement acknowledging receipt of the procedures required by 5 U.S.C. 5514; or

(iii) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the actions taken and the dates of those actions.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Corporation must submit its claim to the paying agency or disbursing official for collection under 31 U.S.C. 3716. The paying agency will (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), certify the total amount of its collection on the debt and notify the employee and the Corporation. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal government sources, then (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. However, the Corporation must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for making

the other payments before the collection can be made.

(5) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Corporation may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be administratively offset to collect the debt.

(6) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Corporation will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Corporation will submit a properly certified claim to the new paying agency and will subsequently review the debt to ensure that the collection is resumed by the new paying agency.

(b) *Responsibilities of the Corporation as the paying agency (i.e., when the debtor owes a debt to another agency and is an employee of the Corporation).* (1) Complete claim. When the Corporation receives a certified claim from a creditor agency (under the creditor agency's regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the Corporation sends the employee a written notice containing:

(i) A statement that the Corporation has received a certified claim from the creditor agency;

(ii) The amount of the debt;

(iii) The date salary offset deductions will begin; and

(iv) The amount of such deductions.

(2) Incomplete claim. When the Corporation receives an incomplete certification of debt from a creditor agency, the Corporation will return the claim with a notice that the creditor agency must:

(i) Comply with the procedures required under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and

(ii) Properly certify a claim to the Corporation before the Corporation will take action to collect from the employee's current pay account.

(3) The Corporation is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from the Corporation to another paying agency. If, after the creditor agency has submitted the claim to the Corporation, the employee transfers from the Corporation to a different paying agency before the debt is collected in full, the Corporation will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

**§ 2506.34 Under what conditions will the Corporation make a refund of amounts collected by salary offset?**

(a) If the Corporation is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(1) The debt is waived or all or part of the funds deducted are otherwise found not to be owed (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs the Corporation to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section will not bear interest.

**§ 2506.35 Will the collection of a debt by salary offset act as a waiver of my rights to dispute the claimed debt?**

No, your involuntary payment of all or any portion of a debt under this subpart will not be construed as a waiver of any rights that you may have under 5 U.S.C. 5514 or other provisions of a law or written contract, unless there are statutory or contractual provisions to the contrary.

**Subpart D—Tax Refund Offset**

**§ 2506.40 Which debts can the Corporation refer to Treasury for collection by offsetting tax refunds?**

(a) The regulations in this subpart implement 31 U.S.C. 3720A, which authorizes the Treasury to reduce a tax

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refund by the amount of a past-due, legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due, legally enforceable debt referable to the Treasury for tax refund offset is a debt that is owed to the Corporation and:

- (1) Is at least \$25.00;
- (2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;
- (3) With respect to which the Corporation has:
  - (i) Given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable;
  - (ii) Considered evidence presented by the debtor; and
  - (iii) Determined that an amount of the debt is past due and legally enforceable;
- (4) With respect to which the Corporation has notified or has made a reasonable attempt to notify the debtor that:
  - (i) The debt is past due, and
  - (ii) Unless repaid within 60 days of the date of the notice, the debt may be referred to the Treasury for offset against any refund of overpayment of tax; and
- (5) All other requirements of 31 U.S.C. 3720A and the Treasury regulations relating to the eligibility of a debt for tax return offset (31 CFR 285.2) have been satisfied.

#### **§ 2506.41 What are the Corporation's procedures for collecting debts by tax refund offset?**

(a) The Corporation's Accounting and Financial Management Services Division will be the point of contact with the Treasury for administrative matters regarding the offset program.

(b) The Corporation will ensure that the procedures prescribed by the Treasury are followed in developing information about past-due debts and submitting the debts to the Treasury.

(c) The Corporation will submit to the Treasury a notification of a taxpayer's liability for past-due legally enforceable debt. This notification will contain the following:

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(1) The name and taxpayer identification number of the debtor;

(2) The amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of § 2506.40(b) have been satisfied; and

(5) Any other information as prescribed by Treasury.

(d) For purposes of this section, notice that collection of the debt is stayed by a bankruptcy proceeding involving the debtor will bar referral of the debt to the Treasury.

(e) The Corporation will promptly notify the Treasury to correct data when the Corporation:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under title 11 of the United States Code and the automatic stay is in effect or has been adjudicated bankrupt and the debt has been discharged.

(f) When advising debtors of the Corporation's intent to refer a debt to the Treasury for offset, the Corporation will also advise debtors of remedial actions (see §§ 2506.9 and 2506.14 through 2506.16 of this part) available to defer the offset or prevent it from taking place.

#### **Subpart E—Administrative Offset**

#### **§ 2506.50 Under what circumstances will the Corporation collect amounts that I owe to the Corporation (or some other Federal agency) by offsetting the debt against payments that the Corporation (or some other Federal agency) owes me?**

(a) The regulations in this subpart apply to the collection of any debts you owe to the Corporation, or to any request from another Federal agency that the Corporation collect a debt you owe by offsetting your debt against a payment the Corporation owes you. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended (31



U.S.C. 3716). The Corporation will carry out administrative offset in accordance with the provisions of the Federal Claims Collection Standards. The regulations in this subpart are intended only to supplement the provisions of the FCCS.

(b) The Chief Executive Officer, after attempting to collect a debt you owe to the Corporation under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset only after giving you:

(1) Written notice of the type and amount of the debt, the intention of the Chief Executive Officer to collect the debt by administrative offset, and an explanation of the rights of the debtor;

(2) An opportunity to inspect and copy the records of the Corporation related to the debt;

(3) An opportunity for a review within the Corporation of the decision of the Corporation related to the debt; and

(4) An opportunity to make a written agreement with the Chief Executive Officer to repay the amount of the debt.

(c) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years, unless facts material to the Corporation's or the requesting Federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(d) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly prohibited by statute; or

(2) Debts owed to the Corporation by Federal agencies.

**§ 2506.51 How will the Corporation request that my debt to the Corporation be collected by offset against some payment that another Federal agency owes me?**

The Chief Executive Officer may request that funds due and payable to you by another Federal agency instead be paid to the Corporation to satisfy a debt you owe to the Corporation. The Corporation will refer debts to the Treasury for centralized administra-

tive offset in accordance with the FCCS and the procedures established by the Treasury. Where centralized offset is not available or appropriate, the Corporation may request offset directly from the Federal agency that is holding funds for you. In requesting administrative offset, the Corporation will certify in writing to the Federal agency that is holding funds for you:

(a) That you owe the debt;  
(b) The amount and basis of the debt; and

(c) That the Corporation has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, the applicable administrative offset regulations of the agency holding the funds, and the applicable provisions of the FCCS with respect to providing you with due process.

**§ 2506.52 What procedures will the Corporation use to collect amounts I owe to a Federal agency by offsetting a payment that the Corporation would otherwise make to me?**

(a) Any Federal agency may request that the Corporation administratively offset funds due and payable to you in order to collect a debt you owe to that agency. The Corporation will initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency stating:

(i) That you owe the debt;  
(ii) The amount and basis of the debt;  
(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of the FCCS, including providing you with any required hearing or review; and

(2) A determination by the Chief Executive Officer that offsetting funds payable to you by the Corporation in order to collect a debt owed by you would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

(b) *Multiple debts.* In instances where two or more creditor agencies are seeking administrative offsets, or where

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two or more debts are owed to a single creditor agency, the Corporation may, in its discretion, allocate the amount it owes to you to the creditor agencies in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

### **§ 2506.53 When may the Corporation make an offset in an expedited manner?**

The Corporation may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 2506.51 and 2506.52 if failure to take the offset would substantially jeopardize the Corporation's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be followed promptly by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the United States, will be promptly refunded.

### **§ 2506.54 Can a judgment I have obtained against the United States be used to satisfy a debt that I owe to the Corporation?**

Yes. Collection by offset against a judgment obtained by a debtor against the United States will be accomplished in accordance with 31 U.S.C. 3728 and 31 U.S.C. 3716.

## **Subpart F—Administrative Wage Garnishment**

### **§ 2506.55 How will the Corporation collect debts through Administrative Wage Garnishment?**

The Corporation will collect debts through Administrative Wage Garnishment in accordance with the Administrative Wage Garnishment regulations issued by the Treasury. The Corporation adopts, for purposes of this subpart, the Treasury's Administrative Wage Garnishment regulations in 31 CFR 285.11. This procedure allows the Corporation to garnish the disposable pay of a debtor without first obtaining a court order.

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## **PART 2507—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT**

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## Corporation for National and Community Service

## § 2507.3

2507.27 Rights and services qualified by the FOIA statute.

AUTHORITY: 5 U.S.C. 552, 42 U.S.C. 12501 *et seq.*

SOURCE: 87 FR 55309, Sept. 9, 2022, unless otherwise noted.

### Subpart A—General Provisions

#### § 2507.1 Scope.

This part contains the rules that the Corporation for National and Community Service, operating as AmeriCorps (“the Agency” or “AmeriCorps”), follows in processing requests for records under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (“OMB Guidelines”). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with AmeriCorps’ Privacy Act regulations, 45 CFR part 2508, as well as under this part.

#### § 2507.2 Policy.

(a) AmeriCorps follows a balanced approach in administering the FOIA. The Agency recognizes the right of the public to seek access to information in its possession. It also recognizes the legitimate interests of organizations or persons who have submitted records to AmeriCorps or who would otherwise be affected by release of records. AmeriCorps has no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. The Agency provides the fullest responsible disclosure that is consistent with the requirements of the FOIA.

(b) When a FOIA exemption gives Federal agencies the discretion to either withhold or release records, AmeriCorps releases the records or information unless it reasonably foresees that disclosure would harm an interest that the exemption protects.

#### § 2507.3 Definitions.

As used in this part:

*Agency* is any executive agency, military agency, government corporation, government-controlled corporation, or other establishment in the Executive Branch of the Federal Government, or any independent regulatory agency. AmeriCorps is an agency.

*AmeriCorps* or *the Agency* means the Corporation for National and Community Service, which operates as AmeriCorps.

*Complex request* is a request that typically seeks a high volume of material or requires additional steps to process, such as the need to search for records in multiple locations.

*Consultation* is when AmeriCorps locates a record that contains information of interest to another agency, and, before any final determination is made, AmeriCorps asks that other agency for its views on whether or not the records can be released to the requester.

*Exemptions* are the nine categories of information that are not required to be released in response to a FOIA request because release would be harmful to a government or private interest. These categories are called “exemptions” from disclosure.

*Expedited processing* is the FOIA response track granted in certain limited situations to process FOIA requests ahead of other pending requests.

*FOIA request* is a written request for Agency records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business—but not including a Federal agency, an agent of a foreign government, an order from a court, or a fugitive from the law—that either explicitly or implicitly involves the FOIA, or this part.

*Freedom of Information Act (FOIA)* is a United States Federal law at 5 U.S.C. 552 that grants the public access to records possessed by government agencies. Upon written request, U.S. Government agencies are required to release reasonably described records, except to the extent the records fall under an exclusion or one of the nine exemptions listed in the Act.

*Frequently requested records* are records that have been released either in full or with the same information withheld and either:

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(1) Have been requested from AmeriCorps three or more times; or

(2) Because of their subject matter, AmeriCorps determines have become or are likely to become the subject of subsequent requests for the same records.

*Multitrack processing* is a system that divides incoming FOIA requests into processing tracks according to their complexity.

*Office of Government Information Services* (OGIS) is an office within the National Archives and Records Administration that offers mediation services to resolve disputes between FOIA requesters and agencies, as a non-exclusive alternative to litigation. OGIS also reviews agency FOIA compliance, policies, and procedures and makes recommendations for improvement.

*Proactive disclosures* are records that agencies make publicly available on their website without waiting for a specific FOIA request.

*Record* means information, regardless of the form in which it is stored or its characteristics, which is created or obtained by an agency and is under the control of the agency at the time of the request. It includes information maintained for the agency by an entity under government contract for records management purposes. It does not include records that do not already exist and that would have to be created specifically to respond to a request.

*Referral* occurs when an agency locates a record that originated with, or is of otherwise primary interest to, another agency. The receiving agency will forward that record to the other agency to process the record and to provide the final determination directly to the requester.

*Search* is the process of looking for and retrieving records or information responsive to a request.

*Simple request* is a FOIA request that an agency anticipates will involve a small volume of material or which the agency will be able to process relatively quickly.

*Tolling* means temporarily stopping the running of a time limit.

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##### § 2507.4 Agency FOIA officials.

The following are AmeriCorps' authorized FOIA officials, each of whom will be identified on *americorps.gov*, and their roles.

(a) The *Chief FOIA Officer*:

(1) Has overall responsibility for AmeriCorps' compliance with the FOIA;

(2) Provides high-level oversight and support to AmeriCorps' FOIA program;

(3) Recommends adjustments to AmeriCorps' practices, personnel, and funding, as needed, to improve FOIA administration, including through Chief FOIA Officer Reports submitted to the U.S. Department of Justice;

(4) Tells the Agency's FOIA Officers of all significant developments with respect to the FOIA;

(5) Is responsible for offering training to agency staff regarding their FOIA responsibilities;

(6) Serves as the primary liaison with the Office of Government Information Services and the U.S. Department of Justice's Office of Information Policy; and

(7) Reviews, at least annually, all aspects of AmeriCorps' administration of the FOIA to ensure compliance with the FOIA's requirements.

(b) The *FOIA Officer* receives, tracks, and processes the Agency's FOIA requests, including making final release determinations. The FOIA Officer is responsible for program direction, original denials, and policy decisions required for effective implementation of the Agency's FOIA program.

(c) The *FOIA Appeals Officer* receives and act upon appeals from requesters whose initial requests for the Agency's records have been denied, in whole or in part.

(d) The *FOIA Public Liaison* serves as the official to whom a FOIA requester can raise concerns about the services received, following an initial response from the FOIA Officer. In addition, the FOIA Public Liaison assists, as appropriate, in reducing delays, increasing transparency, answering requesters' questions about the status of their requests, and resolving disputes.

### Subpart B—Proactive Disclosures of Agency Records

#### § 2507.5 Records available on agency website.

(a) AmeriCorps regularly updates and posts the following on its public website, *americorps.gov*:

(1) Information that is required to be published in the FEDERAL REGISTER under 5 U.S.C. 552(a)(1) and:

(2) Administrative staff manuals and instructions to staff that affect any member of the public.

(3) Statements of policy and interpretation adopted by AmeriCorps and not published in the FEDERAL REGISTER.

(4) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of administrative cases.

(5) Records that AmeriCorps determines are or will be the subject of widespread media, historical, or academic interest and that may properly be publicly posted.

(b) On the FOIA page of its public website, *americorps.gov*, the Agency posts records that are required by the FOIA to be made available for public inspection and copying under 5 U.S.C. 552(a)(2), including, but not limited to, frequently requested records.

(c) For help from the FOIA Officer or the FOIA Public Liaison in finding proactively disclosed records, members of the public may contact AmeriCorps at *foia@cns.gov* or at: AmeriCorps, Office of the General Counsel, 250 E Street SW, Washington, DC 20525.

### Subpart C—Filing a FOIA Request

#### § 2507.6 Requirements for FOIA requests.

(a) *General information.* AmeriCorps has a centralized system for responding to FOIA requests. AmeriCorps headquarters is the central processing point for all requests for Agency records, regardless of where they are stored. State service commissions are not part of AmeriCorps and are not Federal agencies, and thus are not subject to the FOIA.

(b) *Directions for making requests.* All FOIA requests must be submitted in writing to the FOIA Officer at

AmeriCorps headquarters in one of the following ways:

(1) *By email:* *foia@cns.gov*. Including a phone number with a request will help with processing.

(2) *By online submission:* via the National FOIA Portal at *www.FOIA.gov*.

(3) *By mail:* AmeriCorps, Attn.: FOIA Officer, Office of General Counsel, 250 E Street SW, Washington, DC 20525.

(4) *By fax:* (202) 606-3467.

(c) *Description of records sought.* Requesters must provide enough detail about the Agency's records they seek that AmeriCorps personnel can find responsive records, if they exist, with a reasonable amount of effort. To the extent possible, requesters should include information that helps identify the records, such as dates, titles or names, authors, recipients, subject matter of the records, or assigned reference numbers. Requesters may adjust their request or ask for advice on writing a request by sending a note to *foia@cns.gov*.

(1) If a request does not reasonably describe the records sought, AmeriCorps' response to the request may be delayed or denied.

(2) When AmeriCorps determines that a request does not sufficiently describe the records sought, it will ask the requester for further information. If the requester does not respond to a request for additional information within thirty (30) working days, the request may be administratively closed at AmeriCorps' discretion. A requester may, after administrative closure of a request, submit a new request with additional information for further consideration.

(d) *Third-party requests.* When a request for records pertains to a third party (that is, a person other than the requester), the requester may receive greater access by submitting a notarized authorization signed by the third party or a declaration, made in compliance with the requirements set forth in the FOIA, that the third party authorizes disclosure of the records to the requester, or proof that the third party is deceased (for example, a copy of a death certificate or a published obituary). If necessary, AmeriCorps may require additional information from a requester to verify that the third party consents to disclosure. Alternatively,

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requesters may demonstrate an overriding public interest in the disclosure of information pertaining to a third party (for example, by producing evidence that alleged Government impropriety occurred, necessitating a disclosure of information related to official misconduct).

(e) *Date range for requested records.* Requesters may ask for a specific date range for a search, but requests may not ask for records that are anticipated for the future, but do not yet exist. As it determines which records are responsive to a request, AmeriCorps ordinarily will include only records in its possession as of the date it begins its search, if a date range is not specified.

(f) *Contact information.* Requesters must provide a telephone number or email address in their request so that AmeriCorps can contact them for clarification, if necessary, or help them narrow down a request that would otherwise be unduly burdensome.

### § 2507.7 Requests for archived records.

In accordance with agency records schedules and General Records Schedules, AmeriCorps transfers permanent records to the National Archives and Records Administration (“National Archives”). Once these records are transferred, they are in the physical and legal custody of the National Archives. Accordingly, requests for retired AmeriCorps records should be submitted to the National Archives by mail addressed to: Special Access and FOIA Staff (NWCTF), 8601 Adelphi Road, Room 5500, College Park, MD 20740; by fax to (301) 837-1864; or by email to [specialaccess\\_foia@nara.gov](mailto:specialaccess_foia@nara.gov).

## Subpart D—Agency Processing and Response to FOIA Requests

### § 2507.8 Processing of requests.

(a) *Authority to grant or deny requests.* The FOIA Officer is authorized to grant or deny any requests for records maintained by AmeriCorps. If the request is for records under the control and jurisdiction of the Office of the Inspector General, the FOIA Officer will forward the request to that office’s FOIA officer for the initial determination and the reply to the requester.

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(b) *Providing records.* AmeriCorps will provide copies only of records it has in its possession. AmeriCorps is not compelled to create new records to respond to a FOIA request, answer questions posed as FOIA requests, perform research for a requester, compile lists of selected items from its files, or provide a requester with statistical or other data, unless such data has been compiled previously and is available in the form of a record.

(1) AmeriCorps is required to provide only one copy of a record.

(2) AmeriCorps will ordinarily provide the record in electronic form. Requesters may specify the preferred form or format for the records they seek, and AmeriCorps will provide releasable records in that form or format if they are readily reproducible in that way and the format allows for any necessary redactions.

(3) If AmeriCorps cannot make a legible copy of a record to be released, it is not required to reconstruct the record. Instead, AmeriCorps will furnish the best copy possible and note the record’s poor quality in its reply.

(c) *Records previously released.* If AmeriCorps has released a record, or a part of a record, to a requester in the past, it will ordinarily release it to a new requester. However, this principle does not apply if the previous release was unauthorized or if an exemption applies that did not apply earlier. If an exemption is the reason for denial, AmeriCorps will specify the exemption under which information is withheld.

(d) *Consultation and referral.* When AmeriCorps reviews records in response to a request and determines that another agency of the Federal Government holds an interest in the record, AmeriCorps will proceed in one of the following ways:

(1) *Consultation.* When responsive records have originated with AmeriCorps but contain within them information of interest to another agency, or other Federal Government office, AmeriCorps consults with that other agency before making a release determination.

(2) *Referral.* (i) When a responsive record has originated with a different agency or other Federal Government office that is subject to the FOIA,

AmeriCorps refers the responsibility for responding to the request regarding that record, on the presumption that the agency that originated a record will be best able to make the disclosure determination. However, if AmeriCorps and the originating agency jointly agree that AmeriCorps is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever AmeriCorps refers any part of the responsibility for responding to a request to another agency, it will document the referral, maintain a copy of the record that it refers, notify the requester of the referral, and tell the requester the name(s) of the agency to which the record was referred and that agency's FOIA contact information.

#### **§ 2507.9 Reasons for withholding some records.**

(a) AmeriCorps records will be made available to the public unless it determines that such records should be withheld from disclosure under subsection 552(b) of the Act and/or in accordance with this part. Section 552(b) of the FOIA contains nine exemptions to the mandatory disclosure of records.

(b) AmeriCorps will:

(1) Withhold information under the FOIA only if disclosure is prohibited by law or it reasonably foresees that disclosure would harm an interest protected by an exemption.

(2) Consider whether partial disclosure of information is possible whenever it determines that a full disclosure of a requested record is not possible.

(3) Take reasonable steps necessary to segregate and release nonexempt information.

(4) Note in the record and response letter the basis for a redaction when it withholds information in a record, or an entire record.

(c) To the extent it properly can under an exemption, AmeriCorps will withhold information it obtains from any submitter that gave it to the agency in reliance on a statutory or regulatory provision for confidentiality. This section does not authorize the giving of any pledge of confidentiality by any officer or employee of AmeriCorps.

(d) The deliberative process privilege of Exemption 5 of the FOIA will not apply to records created 25 years or more before the date when the records were requested.

#### **§ 2507.10 Timing of responses to requests.**

(a) *In General.* AmeriCorps ordinarily will respond to requests according to their order of receipt.

(b) *Multitrack processing.* AmeriCorps processes requests in a multitrack system based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing. This multitrack processing system does not lessen the Agency's responsibility to process requests as quickly as possible.

(1) AmeriCorps uses three tracks:

(i) A track for simple requests that can be processed in 20 working days;

(ii) A track for complex requests that require more than 20 working days; and

(iii) A track for expedited processing.

(2) Within each track, processing will ordinarily proceed on a "first-in, first-out" basis, and rank-ordered by the date of receipt of the request, unless there are unusual circumstances as set forth in paragraph (c) of this section, or the requester is entitled to expedited processing as set forth in paragraph (e) of this section.

(3) If a request does not qualify as simple, AmeriCorps may give the requester an opportunity to limit the scope of the request in order to qualify for faster processing.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and AmeriCorps extends the time limit on that basis, AmeriCorps will:

(1) Before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances and when AmeriCorps expects to complete processing the request; and

(2) When the extension exceeds 10 working days, AmeriCorps will:

(i) Notify the requester in writing of the right to seek dispute resolution services from the Office of Government Information Services (OGIS);

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(ii) Give the requester an opportunity to modify the request or arrange an alternative time period for processing; and

(iii) Provide contact information for the FOIA Public Liaison.

(d) *Aggregating Requests to Satisfy Unusual Circumstances.* For the purposes of satisfying unusual circumstances under the FOIA, AmeriCorps may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. AmeriCorps will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) Requests and appeals will be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of a person;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Government's integrity that affect public confidence.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, that explains in detail the basis for requesting expedited processing.

(i) For example, under paragraphs (e)(1)(ii) and (iv) of this section, a requester who is not a full-time member of the news media must establish that their primary professional activity or occupation is information dissemination, though it need not be their sole occupation. They must also clearly describe why there is a particular urgency to inform the public about the government activity or questions about integrity involved in the request—one that extends beyond the

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public's right to know about government activity generally.

(ii) As a matter of administrative discretion, AmeriCorps may waive the formal certification requirement.

(3) Within 10 calendar days of receiving a request for expedited processing, AmeriCorps will notify the requester of its decision whether to grant or deny the request. If AmeriCorps grants expedited processing, the request will be placed in the expedited processing track and be processed as soon as practicable. If AmeriCorps denies a request for expedited processing, it will act expeditiously on any appeal of that decision.

(f) *Tolling.* The 20-day period under paragraph (b)(1) of this section commences on the date that the request is first received by the FOIA Officer. The 20-day period will not be tolled by AmeriCorps except under the following circumstances:

(1) The FOIA Officer may make one request to the requester for information and will toll the 20-day period while waiting for the information. The time from this request to the FOIA Officer's receipt of a response that addresses the questions will be tolled.

(2) If the requester has indicated that they are willing to pay fees up to a certain amount, but the estimated fee exceeds that amount, the FOIA Officer will notify them of the higher estimated fees and ask if they wish to revise the amount of fees they are willing to pay or modify the request. The time from this request to the FOIA Officer's receipt of a response that addresses the questions will be tolled.

### § 2507.11 Responses to requests.

(a) *In general.* To the extent practicable, AmeriCorps will communicate with requesters using electronic means, such as email. Upon request, AmeriCorps will provide an estimated date by which it expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the agency may provide interim responses, releasing records on a rolling basis.

(b) *Acknowledgment of requests.* AmeriCorps will acknowledge the request and inform the requester of the



tracking number assigned to the request.

(c) *Determinations on requests.* In all determinations on requests, AmeriCorps will notify the requester in writing of the right to seek assistance from AmeriCorps' FOIA Public Liaison.

(1) *Grants of requests for records.* When AmeriCorps grants a request in for records in full, it will notify the requester in writing and provide the records. If fees apply, AmeriCorps will inform the requester of those fees and send them the requested records promptly upon their payment of those fees.

(2) *Grants for other matters.* When AmeriCorps grants a request for a fee waiver, modification of a request, or expedited processing, it will notify the requester promptly, in writing.

(3) *Adverse determinations on requests.* If AmeriCorps denies a request in any respect, it will notify the requester in writing of the determination and their right to seek dispute resolution services from AmeriCorps' FOIA Public Liaison or the Office of Government Information Services.

(i) Adverse determinations, or denials of requests for records, include decisions that a record, or portion of it, is exempt; that the request does not reasonably describe the records sought; that the record is not subject to the FOIA, is not an agency record, does not exist, cannot be located, or has been destroyed; or that the record is not readily reproducible in the format sought by the requester.

(ii) Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(4) *Information provided in the case of a denial.* Response letters that deny all or part of a request will be signed by the person making the decision and will provide:

(i) In the case of records withheld in whole or in part, a general description of what has been withheld and, where not evident, an estimate of the volume of material withheld, unless providing the description or estimate would harm an interest protected by an exemption;

(ii) The reasons for the denial, including, as applicable, a reference to

the specific FOIA exemption that authorizes the withholding;

(iii) An explanation of the requester's appeal rights as described in Subpart F and the name and contact information of the Agency's FOIA Appeals Officer.

### Subpart E—Confidential Commercial Information

#### § 2507.12 Definitions for this subpart.

In addition to the definitions in § 2507.3, the following definitions apply to this subpart:

*Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly, to the Federal Government.

*Confidential commercial information* means commercial or financial information obtained by an agency from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

#### § 2507.13 Procedures for release of commercial information.

(a) *Notification to submitters of confidential commercial or financial information.* When AmeriCorps possesses confidential commercial or financial information, and receives a request for the records, the Agency will, before release of any information:

(1) Notify the submitter about the request and provide copies of the requested records;

(2) Tell the submitter what information it proposes to disclose and withhold in accordance with Exemption (b)(4) of the Act; and

(3) Require the submitter to inform the agency in writing, within 10 business days from the date the notice is sent, if they object to any proposed disclosure of commercial or financial information in the records.

(b) *When notice to submitter is not required.* AmeriCorps will not give notice to a submitter of confidential commercial or financial information if:

(1) The Agency determines that the information shall not be disclosed;

(2) The information has previously been published or otherwise lawfully been made available to the public; or

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(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(c) *Analysis of objection.* AmeriCorps will consider a submitter's timely objections and specific grounds for non-disclosure in deciding whether to disclose the requested information. AmeriCorps will not consider any information not timely submitted. A submitter who fails to make a timely objection will be considered to have no objection to disclosure, unless the submitter requests an extension of time to reply and is granted that extension or a lesser one.

(d) *Disclosure over the objection of a submitter.* Whenever AmeriCorps determines to disclose information over the objection of a submitter of commercial or financial information, it will send the submitter written notice that includes:

(1) A description of the commercial or financial information to be released to the requester;

(2) The reasons why the submitter's objection to release was not sustained;

(3) The date when the records will be disclosed, which shall be not less than 5 business days after the notice is sent.

(e) *Notice of suit for release.* Whenever a requester brings suit to compel the disclosure of a submitter's commercial or financial information, AmeriCorps will promptly notify the submitter.

(f) *Notification to requestor.* AmeriCorps will notify the requester whenever:

(1) AmeriCorps provides the submitter with notice and the opportunity to object to disclosure;

(2) AmeriCorps notifies the submitter of its intent to disclose requested information; and

(3) The submitter files a lawsuit to prevent disclosure of the information.

### **Subpart F—Appeals and Alternative Dispute Resolution**

#### **§ 2507.14 Administrative appeals.**

Whenever AmeriCorps denies a FOIA request, it will inform the requester of the reasons for the denial and of the requester's right to appeal the denial to the FOIA Appeals Officer.

(a) *What a requester may appeal.* A requester may appeal:

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(1) The withholding of a document or part of a document;

(2) Denial of a fee waiver request;

(3) The type or amount of fees they were charged;

(4) Any other type of adverse determination under the FOIA; or

(5) A failure by AmeriCorps to conduct an adequate search for the requested records.

(b) *What a requester may not appeal.* A requester may not appeal the lack of a timely response.

(c) *When appeal is required.* A requester must generally submit a timely administrative appeal before they seek court review of the Agency's adverse determination.

(d) *Requirements for making an appeal.* A requester must:

(1) Make the appeal in writing;

(2) Transmit or postmark the appeal within 90 calendar days after the date of adverse determination;

(3) Clearly identify the assigned request number and the Agency determination they are appealing;

(4) Mark the subject line of the appeal email, or letter and envelope, with "FOIA Appeal."

(e) *Where to file an appeal.* A requester may file an appeal by sending an email to [foia@cns.gov](mailto:foia@cns.gov) to the attention of the FOIA Appeals Officer, or a letter to: FOIA Appeals Officer, AmeriCorps, 250 E Street SW, Washington, DC 20525. There is no charge for filing an administrative appeal.

(f) *Adjudication of appeals.* (1) The FOIA Appeals Officer will conduct *de novo* review and make the final determination on appeals.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(g) *Decisions on appeals.* The FOIA Appeals Officer will provide the decision on any appeal in writing within 20 days (excepting Saturdays, Sundays, and legal public holidays) from the date the FOIA Appeals Officer received the appeal. The FOIA Appeals Officer's determination of an appeal constitutes the Agency's final action.

(1) If the FOIA Appeals Officer's decision upholds the Agency's determination, the decision will:

(i) State the reasons for the affirmation, including any FOIA exemptions applied;

(ii) Notify the requester of their statutory right to file a lawsuit; and

(iii) Inform the requester of the mediation services offered by OGIS as a non-exclusive alternative to litigation.

(2) If the FOIA Appeals Officer's decision remands or modifies the Agency determination, either in whole or in part, they will notify the requester of that determination in writing. Thereafter, AmeriCorps will re-process the FOIA request in accordance with that determination and, if applicable, promptly send the releasable records to the requester, unless a reasonable delay is justified.

[87 FR 55309, Sept. 9, 2022; 87 FR 57643, Sept. 21, 2022]

#### **§ 2507.15 Mediation and dispute resolution services.**

If a requester receives an adverse determination on a FOIA request, they have the right to seek dispute resolution services from the FOIA Public Liaison or mediation services from OGIS. Congress has charged OGIS with resolving FOIA disputes between Federal agencies and requesters. OGIS's mediation services are an alternative to litigation, but do not preclude it.

### **Subpart G—Fees**

#### **§ 2507.16 Definitions for this subpart.**

In addition to the definitions in § 2507.3, the following definitions apply to this subpart:

*Commercial use request* is a FOIA request for a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Agency's decision to place a requester in the commercial use category will be made on a case-by-case basis, in consideration of the requester's intended use of the information.

*Direct costs* are the expenses AmeriCorps incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. Direct costs do not include overhead expenses such as the costs of

space, or of heating or lighting a facility.

*Duplication fees* are the reasonable direct costs of making copies of records to respond to a FOIA request, including the cost of materials to produce paper copies and materials plus operator time to produce tapes, disks, or other media.

*Educational institution* is any school that operates a program of scholarly research. To qualify for this fee category, a requester must show that the request is authorized by, and made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. The request must serve the scholarly research goals of the institution rather than an individual research goal.

*Fee waiver* is a waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest and is not requested for a commercial interest.

*Noncommercial scientific institution* is an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by, and made under the auspices of, a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

*Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. A freelance journalist will be regarded as a representative of the news media if they demonstrate a solid basis for expecting publication through a news media entity.

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*Review fees* are the direct costs incurred during the initial examination of a document to determine if it must be disclosed under the FOIA. This includes doing all that is necessary to prepare a record for disclosure, such as redacting the record and marking the appropriate exemptions. Review time also includes time spent obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter. It does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review fees are properly charged even if a record ultimately is not disclosed.

*Search fees* are costs of all time spent looking for responsive material, including, if necessary, page-by-page or line-by-line identification of information within records.

### § 2507.17 Fees overview.

(a) AmeriCorps will charge fees for processing FOIA requests in accordance with the provisions of this subpart and with the OMB Guidelines, unless a waiver or reduction of fees has been granted under § 2507.24.

(b) AmeriCorps will search for, review, and duplicate records in the most efficient and the least expensive manner.

(c) AmeriCorps may properly charge for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(d) When a request is made for commercial purposes, review fees will be

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assessed for the Agency's time spent on its initial analysis to determine whether an exemption applies to a record or portion of a record.

(e) No charge will be made at the administrative review stage for review of exemptions that were applied at the initial review stage. However, if one or more exemptions are deemed to no longer apply, the costs associated with the Agency's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(f) Requesters may seek a fee waiver. AmeriCorps will consider requests for a fee waiver in accordance with the requirements in § 2507.24.

(g) To resolve any fee issues that arise under this section, AmeriCorps may contact a requester for additional information.

### § 2507.18 Requester categories and fees charged.

(a) The FOIA establishes the following categories of requesters and, depending on the category, these types of fees to be paid:

(1) Commercial use requesters: these pay search, review, and duplication fees.

(2) Non-commercial scientific institutions, educational institutions whose purpose is scholarly or scientific research, or news media requesters: these pay only duplication fees.

(3) All other requesters: these pay search and duplication fees.

(b) The fee schedule for search, review, and duplication is as follows:

TABLE 1 TO PARAGRAPH (b)

Requester	Search fee	Review fee	Duplication fee
Commercial use requester .....	\$70.00 per hour .....	\$70.00 per hour .....	For photocopies, 20¢ per page.
Educational & Non-Commercial Scientific institutions.	No fee .....	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.
Representatives of the news media.	No fee .....	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.
All others .....	The first two hours are free; after that, \$70.00 per hour.	No fee .....	For photocopies, the first 100 pages are free; after that, 20¢ per page.

**§ 2507.19 Circumstances in which fees may not be charged.**

(a) If AmeriCorps fails to comply with the time limits for responding to a request, and if no unusual or exceptional circumstances, as defined by the FOIA, apply to processing the request, it may not charge search fees (or, for requesters with preferred fee status, may not charge duplication fees).

(b) If AmeriCorps fails to comply with the extended time limit for unusual circumstances under § 2705.10(c), it may not charge search fees (or, for requesters with preferred fee status, may not charge duplication fees), except as follows:

(1) If unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, AmeriCorps may charge search fees (or, for requesters with preferred fee status, may charge duplication fees), so long as AmeriCorps has given the requester timely written notice and has discussed with the requester via email, telephone, or paper mail (or made at least three good-faith attempts to do so) how the requester could limit the scope of the request.

(2) If a court determines that exceptional circumstances exist, AmeriCorps' failure to comply with a time limit will be excused for the length of time provided by the court order.

(c) AmeriCorps will charge search or review fees for a quarter-hour period only when more than half of that period is required for search or review.

(d) AmeriCorps will not charge any fee if the total fee calculated according to § 2507.18 is \$25.00 or less for any request.

**§ 2507.20 Notice of anticipated fees in excess of \$25.00.**

(a) When AmeriCorps estimates that fees will exceed \$25.00 and the requester has not stated in writing their willingness to pay fees as high as anticipated, it will inform the requester of the estimated fees, including a breakdown for search, review, or duplication.

(1) AmeriCorps will inform the requester if only a portion of the fee can be readily estimated.

(2) For non-commercial-use requesters subject to search fees, the notice

will tell them that they are entitled to two hours of search time at no charge. For all requesters who ask for non-electronic copies of the records, AmeriCorps will inform them that they are entitled to 100 pages of duplication at no charge. In both cases, AmeriCorps will tell the requester whether those entitlements are included in the estimate.

(b) When AmeriCorps notifies a requester that the actual or estimated total fee exceeds \$25.00, it will stop work on the request and the processing time will be tolled until the requester, in writing:

(1) Commits to paying the actual or estimated total fee; or

(2) Designates a specific dollar amount of fees they are willing to pay; or

(3) Tells AmeriCorps that they seek only that which can be provided with two free hours of search time and 100 free pages of duplication, in the case that they are eligible for these entitlements.

(c) If the requester has specified a fee amount they are willing to pay, but AmeriCorps estimates that the total fee will be greater than that:

(1) It will notify the requester of the estimated excess and ask if they wish to either revise the amount of fees they are willing to pay or modify the request, and

(2) The Agency will stop work on the request and toll the processing time according to § 2507.10(f).

(d) The FOIA Officer or FOIA Public Liaison will be available to help any requester reformulate a request to meet the requester's needs at a lower cost.

**§ 2507.21 Other charges.**

(a) *Charges for other services.* Although it is not required to provide special services, if AmeriCorps chooses as a matter of administrative discretion to do so, it will charge the direct costs of providing those services. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(b) *Charging interest.* AmeriCorps may charge interest on any unpaid bill

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starting on the 31st day following the billing date. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the agency. AmeriCorps will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

### § 2507.22 Aggregating requests to ensure payment of fees.

(a) When AmeriCorps reasonably believes that a requester or a group of requesters acting together is attempting to divide a single request into multiple smaller requests so as to avoid fees, AmeriCorps may aggregate those requests and charge accordingly.

(1) AmeriCorps may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees.

(2) For requests separated by more than 30 days, AmeriCorps will aggregate them only where there is a reasonable basis for determining that aggregation is justified in view of all the circumstances involved.

(b) Multiple requests involving unrelated matters will not be aggregated.

### § 2507.23 Collection and payment of fees.

(a) AmeriCorps must ordinarily receive all applicable fees before it sends copies of records to a requester. This is payment for work already completed, not an advance payment.

(b) AmeriCorps may require an advance payment before work begins or is continued on a request when one of the following two circumstances exists. In these cases, AmeriCorps will not consider the FOIA request to have been received and will not conduct further work on the request until it receives the required payment. If the requester does not pay the advance payment within 30 calendar days after the date of AmeriCorps' fee determination, the request will be closed.

(1) If AmeriCorps determines or estimates that a total fee will be greater than \$250.00, it may require that the requester pay in advance, up to the

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amount of the entire anticipated fee, before starting to process the request. AmeriCorps may choose to process the request before it collects fees if it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) When a requester has previously failed to pay a properly charged FOIA fee to the Agency within 30 calendar days of the billing date, AmeriCorps may require the requester to pay the full amount past due, plus any applicable interest on that prior request, and may also require the requester to pay in advance the full amount of any anticipated fee before it begins to process a new request or continues to process a pending request or any pending appeal. If AmeriCorps has a reasonable basis to believe that a requester has misrepresented their identity in order to avoid paying outstanding fees, it may require the requester to provide proof of identity.

(c) Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(d) AmeriCorps is not required to accept payments in installments.

### § 2507.24 Fee waivers or fee reductions.

(a) Requests for a waiver or reduction of fees should be made when the FOIA request is first submitted to AmeriCorps and should address in specific detail the factors below. However, a requester may ask for a fee waiver at a later time, if their FOIA request is still pending or is on administrative appeal.

(b) AmeriCorps will grant a waiver of fees, or a one-time reduction of the rate established under § 2507.18, when it determines that the requester has demonstrated that disclosure of the requested information is in the public interest and is not primarily in the commercial interest of the requester.

(1) To determine whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, AmeriCorps will consider the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal Government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about Federal Government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. Disclosure of information that is already in the public domain, in either the same or a substantially identical form, would not contribute to such understanding.

(iii) Disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area, as well as their ability and intention to effectively convey information to the public, will be considered. A representative of the news media making the request for professional purposes satisfies this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent. However, AmeriCorps will not make value judgments about whether the information at issue is “important” enough to be made public.

(2) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, AmeriCorps will give requesters an opportunity to explain the purpose of the request. The Agency will consider the following factors:

(i) If there is an identified commercial interest, AmeriCorps will determine whether that is the primary interest furthered by the request.

(ii) The identified commercial interest is not the primary interest furthered by the request (such that a waiver or reduction of fees is justified) where the public interest in disclosure is greater than the identified commercial interest in disclosure. AmeriCorps ordinarily will presume that when a news media requester has satisfied the public interest standard, it is a public interest that is primarily served by disclosure to that requester. Disclosure to data brokers or others who merely

compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(c) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records only.

(d) A requester may appeal the denial of a fee waiver.

## Subpart H—Miscellaneous

### § 2507.25 Preservation of records.

AmeriCorps will preserve all correspondence relating to FOIA requests it receives, and all records processed for those requests, until the destruction of the correspondence and records is authorized by Title 44 of the United States Code and the records disposition authority granted by NARA. The records will not be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

### § 2507.26 Reporting requirements.

(a) AmeriCorps will submit to the Attorney General a statistical report on FOIA requests, processing, disposition, and appeals.

(b) As required, the Chief FOIA Officer will submit to the Attorney General a Chief FOIA Officer Report containing a narrative description of the steps taken by the agency to support and improve FOIA compliance and transparency.

### § 2507.27 Rights and services qualified by the FOIA statute.

Nothing in this part may be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

## PART 2508—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

### Sec.

2508.1 Definitions.

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- 2508.17 When shall fees be charged and at what rate?
- 2508.18 What are the penalties for obtaining a record under false pretenses?
- 2508.19 What Privacy Act exemptions or control of systems of records are exempt from disclosure?
- 2508.20 What are the restrictions regarding the release of mailing lists?

AUTHORITY: 5 U.S.C. 552a; 42 U.S.C. 12501 *et seq.*; 42 U.S.C. 4950 *et seq.*

SOURCE: 64 FR 19294, Apr. 20, 1999, unless otherwise noted.

### § 2508.1 Definitions.

(a) *Amend* means to make a correction to, or expunge any portion of, a record about an individual which that individual believes is not accurate, relevant, timely, or complete.

(b) *Appeal Officer* means the individual delegated the responsibility to act on all appeals filed under the Privacy Act.

(c) *Chief Executive Officer* means the Head of the Corporation.

(d) *Corporation* means the Corporation for National and Community Service.

(e) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence.

(f) *Maintain* means to collect, use, store, disseminate or any combination of these recordkeeping functions; exercise of control over and therefore, responsibility and accountability for, systems of records.

(g) *Personnel record* means any information about an individual that is maintained in a system of records by the Corporation that is needed for personnel management or processes such as staffing, employment development, retirement, grievances, and appeals.

(h) *Privacy Act Officer* means the individual delegated the authority to allow access to, the release of, or the withholding of records pursuant to an official Privacy Act request. The Privacy Act Officer is further delegated the authority to make the initial determination on all requests to amend records.

(i) *Record* means any document or other information about an individual maintained by the agency whether collected or grouped, and including, but not limited to, information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information that contains the name or other personal identification number, symbol, etc. assigned to such individual.

(j) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(k) *System of records* means a group of any records under the maintenance and control of the Corporation from which information is retrieved by use of the name of an individual or by some personal identifier of the individual.



**§ 2508.2 What is the purpose of this part?**

The purpose of this part is to set forth the basic policies of the Corporation governing the maintenance of its system of records which contains personal information concerning its employees as defined in the Privacy Act (5 U.S.C. 552a). Records included in this part are those described in aforesaid act and maintained by the Corporation and/or any component thereof.

**§ 2508.3 What is the Corporation's Privacy Act policy?**

It is the policy of the Corporation to protect, preserve, and defend the right of privacy of any individual about whom the Corporation maintains personal information in any system of records and to provide appropriate and complete access to such records including adequate opportunity to correct any errors in said records. Further, it is the policy of the Corporation to maintain its records in such a manner that the information contained therein is, and remains material and relevant to the purposes for which it is received in order to maintain its records with fairness to the individuals who are the subjects of such records.

**§ 2508.4 When can Corporation records be disclosed?**

(a)(1) The Corporation will not disclose any record that is contained in its system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless disclosure of the record would be:

(i) To employees of the Corporation who maintain the record and who have a need for the record in the performance of their official duties;

(ii) When required under the provisions of the Freedom of Information Act (5 U.S.C. 552);

(iii) For routine uses as appropriately published in the annual notice of the FEDERAL REGISTER;

(iv) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(v) To a recipient who has provided the Corporation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(vi) To the National Archives and Records Administration of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(vii) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Corporation for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. Such a record may also be disclosed by the Corporation to the law enforcement agency on its own initiative in situations in which criminal conduct is suspected provided that such disclosure has been established as a routine use or in situations in which the misconduct is directly related to the purpose for which the record is maintained;

(viii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of any individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(ix) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(x) To the Comptroller General or any of his or her authorized representatives, in the course of the performance of official duties in the General Accounting Office;

(xi) Pursuant to an order of a court of competent jurisdiction served upon the Corporation pursuant to 45 CFR 1201.3, and provided that if any such

#### § 2508.5

record is disclosed under such compulsory legal process and subsequently made public by the court which issued it, the Corporation must make a reasonable effort to notify the individual to whom the record pertains of such disclosure;

(xii) To a contractor, expert, or consultant of the Corporation (or an office within the Corporation) when the purpose of the release to perform a survey, audit, or other review of the Corporation's procedures and operations; and

(xiii) To a consumer reporting agency in accordance with section 3711(f) of title 31.

#### **§ 2508.5 When does the Corporation publish its notice of its system of records?**

The Corporation shall publish annually a notice of its system of records maintained by it as defined herein in the format prescribed by the General Services Administration in the FEDERAL REGISTER; provided, however, that such publication shall not be made for those systems of records maintained by other agencies while in the temporary custody of the Corporation.

#### **§ 2508.6 When will the Corporation publish a notice for new routine uses of information in its system of records?**

At least 30 days prior to publication of information under the preceding section, the Corporation shall publish in the FEDERAL REGISTER a notice of its intention to establish any new routine use of any system of records maintained by it with an opportunity for public comments on such use. Such notice shall contain the following:

(a) The name of the system of records for which the routine use is to be established.

(b) The authority for the system.

(c) The purpose for which the record is to be maintained.

(d) The proposed routine use(s).

(e) The purpose of the routine use(s).

(f) The categories of recipients of such use. In the event of any request for an addition to the routine uses of the systems which the Corporation maintains, such request may be sent to the following office: Office of the General Counsel, Corporation for National

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and Community Service, 250 E Street SW., Washington, DC 20525.

[64 FR 19294, Apr. 20, 1999, as amended at 81 FR 12600, Mar. 10, 2016]

#### **§ 2508.7 To whom does the Corporation provide reports regarding changes in its system of records?**

The Corporation shall provide to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, advance notice of any proposal to establish or alter any system of records as defined herein. This report will be submitted in accordance with guidelines provided by the Office of Management and Budget.

#### **§ 2508.8 Who is responsible for establishing the Corporation's rules of conduct for Privacy Act compliance?**

(a) The Chief Executive Officer shall ensure that all persons involved in the design, development, operation or maintenance of any system of records as defined herein are informed of all requirements necessary to protect the privacy of individuals who are the subject of such records. All employees shall be informed of all implications of the Act in this area including the civil remedies provided under 5 U.S.C. 552a(g)(1) and the fact that the Corporation may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and this regulation.

(b) The Chief Executive Officer shall also ensure that all personnel having access to records receive adequate training in the protection of the security of personal records, and that adequate and proper storage is provided for all such records with sufficient security to assure the privacy of such records.

#### **§ 2508.9 What officials are responsible for the security, management and control of Corporation record keeping systems?**

(a) The Director of Administration and Management Services shall have overall control and supervision of the security of all systems of records and shall be responsible for monitoring the

security standards set forth in this regulation.

(b) A designated official (System Manager) shall be named who shall have management responsibility for each record system maintained by the Corporation and who shall be responsible for providing protection and accountability for such records at all times and for insuring that such records are secured in appropriate containers whenever not in use or in the direct control of authorized personnel.

**§ 2508.10 Who has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems?**

The Chief Executive Officer has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained, including all reports and outputs from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data, and must furthermore minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Corporation.

(2) All records, when not under the personal control of the employees authorized to use the records, must be stored in a locked metal filing cabinet. Some systems of records are not of such confidential nature that their disclosure would constitute a harm to an individual who is the subject of such record. However, records in this cat-

egory shall also be maintained in locked metal filing cabinets or maintained in a secured room with a locking door.

(3) Access to and use of a system of records shall be permitted only to persons whose duties require such access within the Corporation, for routine uses as defined in § 2508.4 as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the Corporation to persons needing such records in the performance of their official duties or routine uses as defined in § 2508.4, or such other uses as provided herein, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to the Director, Administration and Management Services.

(5) Access to areas where a system of records is stored will be limited to those persons whose duties require work in such areas. There shall be an accounting of the removal of any records from such storage areas utilizing a written log, as directed by the Director, Administration and Management Services. The written log shall be maintained at all times.

(6) The Corporation shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within a system of records shall be in accordance with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data, whether contained in punch cards, magnetic tapes or discs, are not under the personal control of an authorized person, such information must be stored in a locked or secured room, or in such other facility having greater safeguards than those provided for herein.

#### § 2508.11

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning or in the case of tapes or discs, degaussing, in accordance with any regulations now or hereafter proposed by the General Services Administration or other appropriate authority.

#### **§ 2508.11 How shall offices maintaining a system of records be accountable for those records to prevent unauthorized disclosure of information?**

(a) Each office maintaining a system of records shall account for all records within such system by maintaining a written log in the form prescribed by the Director, Administration and Management Services, containing the following information:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency. Disclosures made to employees of the Corporation in the normal course of their duties, or pursuant to the provisions of the Freedom of Information Act, need not be accounted for.

(2) Such accounting shall contain the name and address of the person or agency to whom the disclosure was made.

(3) The accounting shall be maintained in accordance with a system of records approved by the Director, Administration and Management Services, as sufficient for the purpose but in any event sufficient to permit the construction of a listing of all disclosures at appropriate periodic intervals.

(4) The accounting shall reference any justification or basis upon which

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any release was made including any written documentation required when records are released for statistical or law enforcement purposes under the provisions of subsection (b) of the Privacy Act of 1974 (5 U.S.C. 552a).

(5) For the purpose of this part, the system of accounting for disclosures is not a system of records under the definitions hereof, and need not be maintained within a system of records.

(6) Any subject individual may request access to an accounting of disclosures of a record. The subject individual shall make a request for access to an accounting in accordance with § 2508.13. An individual will be granted access to an accounting of the disclosures of a record in accordance with the procedures of this subpart which govern access to the related record. Access to an accounting of a disclosure of a record made under § 2508.13 may be granted at the discretion of the Director, Administration and Management Services.

#### **§ 2508.12 What are the contents of the systems of record that are to be maintained by the Corporation?**

(a) The Corporation shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(b) In situations in which the information may result in adverse determinations about such individual's rights, benefits and privileges under any Federal program, all information placed in a system of records shall, to the greatest extent practicable, be collected from the individual to whom the record pertains.

(c) Each form or other document that an individual is expected to complete in order to provide information for any system of records shall have appended thereto, or in the body of the document:

(1) An indication of the authority authorizing the solicitation of the information and whether the provision of the information is mandatory or voluntary.

(2) The purpose or purposes for which the information is intended to be used.

(3) Routine uses which may be made of the information and published pursuant to § 2508.6.

(4) The effect on the individual, if any, of not providing all or part of the required or requested information.

(d) Records maintained in any system of records used by the Corporation to make any determination about any individual shall be maintained with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the making of any determination about such individual, provided, however, that the Corporation shall not be required to update or keep current retired records.

(e) Before disseminating any record about any individual to any person other than an employee in the Corporation, unless the dissemination is made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), the Corporation shall make reasonable efforts to ensure that such records are, or were at the time they were collected, accurate, complete, timely and relevant for Corporation purposes.

(f) Under no circumstances shall the Corporation maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

(g) In the event any record is disclosed as a result of the order of a court of appropriate jurisdiction, the Corporation shall make reasonable efforts to notify the individual whose record was so disclosed after the process becomes a matter of public record.

**§ 2508.13 What are the procedures for acquiring access to Corporation records by an individual about whom a record is maintained?**

(a) Any request for access to records from any individual about whom a record is maintained will be addressed to the Corporation for National and Community Service, Office of the General Counsel, Attn: Privacy Act Officer,

250 E Street SW., Washington, DC 20525, or delivered in person during regular business hours, whereupon access to his or her record, or to any information contained therein, if determined to be releasable, shall be provided.

(b) If the request is made in person, such individual may, upon his or her request, be accompanied by a person of his or her choosing to review the record and shall be provided an opportunity to have a copy made of any record about such individual.

(c) A record may be disclosed to a representative chosen by the individual as to whom a record is maintained upon the proper written consent of such individual.

(d) A request made in person will be promptly complied with if the records sought are in the immediate custody of the Corporation. Mailed requests or personal requests for documents in storage or otherwise not immediately available, will be acknowledged within 10 working days, and the information requested will be promptly provided thereafter.

(e) With regard to any request for disclosure of a record, the following procedures shall apply:

(1) Medical or psychological records shall be disclosed to an individual unless, in the judgment of the Corporation, access to such records might have an adverse effect upon such individual. When such determination has been made, the Corporation may require that the information be disclosed only to a physician chosen by the requesting individual. Such physician shall have full authority to disclose all or any portion of such record to the requesting individual in the exercise of his or her professional judgment.

(2) Test material and copies of certificates or other lists of eligibles or any other listing, the disclosure of which would violate the privacy of any other individual, or be otherwise exempted by the provisions of the Privacy Act, shall be removed from the record before disclosure to any individual to whom the record pertains.

[64 FR 19294, Apr. 20, 1999, as amended at 81 FR 12600, Mar. 10, 2016]

**§ 2508.14 What are the identification requirements for individuals who request access to records?**

The Corporation shall require reasonable identification of all individuals who request access to records to ensure that records are disclosed to the proper person.

(a) In the event an individual requests disclosure in person, such individual shall be required to show an identification card such as a drivers license, etc., containing a photo and a sample signature of such individual. Such individual may also be required to sign a statement under oath as to his or her identity, acknowledging that he or she is aware of the penalties for improper disclosure under the provisions of the Privacy Act.

(b) In the event that disclosure is requested by mail, the Corporation may request such information as may be necessary to reasonably ensure that the individual making such request is properly identified. In certain cases, the Corporation may require that a mail request be notarized with an indication that the notary received an acknowledgment of identity from the individual making such request.

(c) In the event an individual is unable to provide suitable documentation or identification, the Corporation may require a signed notarized statement asserting the identity of the individual and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(d) In the event a requestor wishes to be accompanied by another person while reviewing his or her records, the Corporation may require a written statement authorizing discussion of his or her records in the presence of the accompanying representative or other persons.

**§ 2508.15 What are the procedures for requesting inspection of, amendment or correction to, or appeal of an individual's records maintained by the Corporation other than that individual's official personnel file?**

(a) A request for inspection of any record shall be made to the Director,

Administration and Management Services. Such request may be made by mail or in person provided, however, that requests made in person may be required to be made upon a form provided by the Director of Administration and Management Services who shall keep a current list of all systems of records maintained by the Corporation and published in accordance with the provisions of this regulation. However, the request need not be in writing if the individual makes his or her request in person. The requesting individual may request that the Corporation compile all records pertaining to such individual at any named Service Center/State Office, AmeriCorps\*NCCC Campus, or at Corporation Headquarters in Washington, DC, for the individual's inspection and/or copying. In the event an individual makes such request for a compilation of all records pertaining to him or her in various locations, appropriate time for such compilation shall be provided as may be necessary to promptly comply with such requests.

(b) Any such requests should contain, at a minimum, identifying information needed to locate any given record and a brief description of the item or items of information required in the event the individual wishes to see less than all records maintained about him or her.

(1) In the event an individual, after examination of his or her record, desires to request an amendment or correction of such records, the request must be submitted in writing and addressed to the Corporation for National and Community Service, Office of the General Counsel, Attn: Privacy Act Officer, 250 E Street SW., Washington, DC 20525. In his or her written request, the individual shall specify:

(i) The system of records from which the record is retrieved;

(ii) The particular record that he or she is seeking to amend or correct;

(iii) Whether he or she is seeking an addition to or a deletion or substitution of the record; and,

(iv) His or her reasons for requesting amendment or correction of the record.

(2) A request for amendment or correction of a record will be acknowledged within 10 working days of its receipt unless the request can be processed and the individual informed of the Privacy Act Officer's decision on the request within that 10 day period.

(3) If the Privacy Act Officer agrees that the record is not accurate, timely, or complete, based on a preponderance of the evidence, the record will be corrected or amended. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Corporation's function for which the record was provided or is maintained. In either case, the individual will be informed in writing of the amendment, correction, or deletion and, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(4) If the Privacy Act Officer does not agree that the record should be amended or corrected, the individual will be informed in writing of the refusal to amend or correct the record. He or she will also be informed that he or she may appeal the refusal to amend or correct his or her record in accordance with § 2508.17.

(5) Requests to amend or correct a record governed by the regulation of another government agency will be forwarded to such government agency for processing and the individual will be informed in writing of the referral.

(c) In the event an individual disagrees with the Privacy Act Officer's initial determination, he or she may appeal such determination to the Appeal Officer in accordance with § 2508.17. Such request for review must be made within 30 days after receipt by the requestor of the initial refusal to amend.

[64 FR 19294, Apr. 20, 1999, as amended at 81 FR 12601, Mar. 10, 2016]

**§ 2508.16 What are the procedures for filing an appeal for refusal to amend or correct records?**

(a) In the event an individual desires to appeal any refusal to correct or amend records, he or she may do so by addressing, in writing, such appeal to the Corporation for National and Com-

munity Service, Office of the Chief Operating Officer, Attn: Appeal Officer, 250 E Street SW., Washington, DC 20525. Although there is no time limit for such appeals, the Corporation shall be under no obligation to maintain copies of original requests or responses thereto beyond 180 days from the date of the original request.

(b) An appeal will be completed within 30 working days from its receipt by the Appeal Officer; except that, the appeal authority may, for good cause, extend this period for an additional 30 days. Should the appeal period be extended, the individual appealing the original refusal will be informed in writing of the extension and the circumstances of the delay. The individual's request for access to or to amend or correct the record, the Privacy Act Officer's refusal to amend or correct the record, and any other pertinent material relating to the appeal will be reviewed. No hearing will be held.

(c) If the Appeal Officer determines that the record that is the subject of the appeal should be amended or corrected, the record will be amended or corrected and the individual will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(d) If the appeal is denied, the subject individual will be informed in writing:

(1) Of the denial and reasons for the denial;

(2) That he or she has a right to seek judicial review of the denial; and

(3) That he or she may submit to the Appeal Officer a concise statement of disagreement to be associated with the disputed record and disclosed whenever the record is disclosed.

(e) Whenever an individual submits a statement of disagreement to the Appeal Officer in accordance with paragraph (d)(3) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of the subject individual's statement of disagreement will be disclosed with the record. If the appeal authority deems it appropriate, a concise statement of the Appeal Officer's reasons for denying the individual's appeal may

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also be disclosed with the record. While the individual will have access to this statement of reasons, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of the individual's statement of disagreement, as well as the statement, if any, of the Appeal Officer's reasons for denying the individual's appeal.

[64 FR 19294, Apr. 20, 1999, as amended at 81 FR 12601, Mar. 10, 2016]

### **§ 2508.17 When shall fees be charged and at what rate?**

(a) No fees shall be charged for search time or for any other time expended by the Corporation to review or produce a record except where an individual requests that a copy be made of the record to which he or she is granted access. Where a copy of the record must be made in order to provide access to the record (e.g., computer printout where no screen reading is available), the copy will be made available to the individual without cost.

(b) The applicable fee schedule is as follows:

(1) Each copy of each page, up to 8½" × 14", made by photocopy or similar process is \$0.10 per page.

(2) Each copy of each microform frame printed on paper is \$0.25.

(3) Each aperture card is \$0.25.

(4) Each 105-mm fiche is \$0.25.

(5) Each 100' foot role of 35-mm microfilm is \$7.00.

(6) Each 100' foot role of 16-mm microfilm is \$6.00.

(7) Each page of computer printout without regard to the number of carbon copies concurrently printed is \$0.20.

(8) Copying records not susceptible to photocopying (e.g., punch cards or magnetic tapes), at actual cost to be determined on a case-by-case basis.

(9) Other copying forms (e.g., typing or printing) will be charged at direct costs, including personnel and equipment costs.

(c) All copying fees shall be paid by the individual before the copying will be undertaken. Payments shall be made by check or money order payable to the "Corporation for National and

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Community Service," and provided to the Privacy Act Officer processing the request.

(d) A copying fee shall not be charged or collected, or alternatively, it may be reduced, when it is determined by the Privacy Act Officer, based on a petition, that the petitioning individual is indigent and that the Corporation's resources permit a waiver of all or part of the fee. An individual is deemed to be indigent when he or she is without income or lacks the resources sufficient to pay the fees.

(e) Special and additional services provided at the request of the individual, such as certification or authentication, postal insurance and special mailing arrangement costs, will be charged to the individual.

(f) A copying fee totaling \$5.00 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

### **§ 2508.18 What are the penalties for obtaining a record under false pretenses?**

The Privacy Act provides, in pertinent part that:

(a) Any person who knowingly and willfully requests to obtain any record concerning an individual from the Corporation under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000 (5 U.S.C. 552a(I)(3)).

(b) A person who falsely or fraudulently attempts to obtain records under the Privacy Act also may be subject to prosecution under such other criminal statutes as 18 U.S.C. 494, 495 and 1001.

### **§ 2508.19 What Privacy Act exemptions or control of systems of records are exempt from disclosure?**

(a) Certain systems of records that are maintained by the Corporation are exempted from provisions of the Privacy Act in accordance with exemptions (j) and (k) of 5 U.S.C. 552a.

(1) Exemption of Inspector General system of records. Pursuant to, and limited by 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General that contains the Investigative Files shall be exempted from the provisions of 5



U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6)(7), (9), (10), and (11), and (I), and 45 CFR 2508.11, 2508.12, 2508.13, 2508.14, 2508.15, 2508.16, and 2508.17, insofar as the system contains information pertaining to criminal law enforcement investigations.

(2) Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General that contains the Investigative Files shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), and 45 CFR 2508.11, 2508.12, 2508.13, 2508.14, 2508.15, 2508.16, and 2508.17, insofar as the system contains investigatory materials compiled for law enforcement purposes.

(b) Exemptions to the General Counsel system of records. Pursuant to, and limited by 5 U.S.C. 552a(d)(5), the system of records maintained by the Office of the General Counsel that contains the Legal Office Litigation/Correspondence Files shall be exempted from the provisions of 5 U.S.C. 552a(d)(5), and 45 CFR 2508.4, insofar as the system contains information compiled in reasonable anticipation of a civil action or proceeding.

#### **§ 2508.20 What are the restrictions regarding the release of mailing lists?**

An individual's name and address may not be sold or rented by the Corporation unless such action is specifically authorized by law. This section does not require the withholding of names and addresses otherwise permitted to be made public.

## **PART 2509—ADMINISTRATIVE PRACTICE AND PROCEDURES**

### **Subpart A—Guidance Documents**

Sec.

2509.10 What does this subpart cover?

2509.12 What should I do if a guidance document is covered by this subpart?

2509.14 What is the purpose of the review and clearance procedure?

2509.16 How will CNCS make guidance documents available to the public?

2509.18 What procedures apply to guidance documents identified as "significant"?

2509.20 What is a "significant" guidance document?

2509.22 When will guidance be published for public notice-and-comment?

2509.24 How may the public submit a petition to CNCS for the withdrawal or modification of a guidance document?

2509.26 What is the effect of rescinded guidance documents?

2509.28 How will significant guidance be issued when there are exigent circumstances?

2509.30 No judicial review or enforceable rights.

### **Subpart B [Reserved]**

**AUTHORITY:** 42 U.S.C. 12651c(c); E.O. 13891, 84 FR 55235.

**SOURCE:** 85 FR 44475, July 23, 2020, unless otherwise noted.

## **Subpart A—Guidance Documents**

### **§ 2509.10 What does this subpart cover?**

(a) This subpart sets forth the Corporation for National and Community Service's (CNCS's) procedures for issuing guidance documents. It applies to all CNCS employees and contractors involved in issuing CNCS guidance documents on or after April 28, 2020.

(b) For the purposes of this subpart, "guidance document" means any statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statute, regulatory, or technical issue, or an interpretation of a statute or regulation, but does not include:

(1) Legislative rules promulgated under 5 U.S.C. 553 (or similar statutory provisions), or exempt from rule-making requirements under 5 U.S.C. 553(a);

(2) Rules of agency organization, procedure, or practice;

(3) Decisions of agency adjudications under 5 U.S.C. 554 or similar statutory provisions;

(4) Internal executive branch legal advice or legal advisory opinions addressed to executive branch officials;

(5) Agency statements of specific applicability, including advisory or legal opinions directed to particular parties about circumstance-specific questions, notices regarding particular locations or facilities, and correspondence with individual persons or entities, except documents directed to a particular

## § 2509.12

party and designed to guide the conduct of the broader regulated public;

(6) Legal briefs, other court filings, or positions taken in litigation or enforcement actions;

(7) Agency statements that do not set forth for the first time a new regulatory policy on a statutory, regulatory, or technical issue or an interpretation of a statute or regulation, including speeches and individual presentations, editorials, media interviews, press materials, or congressional testimony;

(8) Grant solicitations and awards;

(9) Contract solicitations and awards; or

(10) Purely internal agency policies or guidance directed solely to CNCS employees or contractors or to other Federal agencies that are not intended to have substantial future effect on the behavior of regulated parties.

### **§ 2509.12 What should I do if a guidance document is covered by this subpart?**

(a) All CNCS guidance documents require review and clearance in accordance with this subpart.

(b) Guidance proposed by CNCS must be reviewed by the Office of General Counsel (OGC) and cleared by the General Counsel or his/her designee.

(c) Additional reviews by other CNCS officials are also conducted as described in CNCS Policy 100—Preparing Policies and Procedures and Policy 103—Clearing Controlled Correspondence and Other Documents with the Board, Chief Executive Officer, and Chief of Staff, or subsequent updates or revisions to those policies.

### **§ 2509.14 What is the purpose of the review and clearance procedure?**

CNCS's guidance issuance process shall ensure that each proposed guidance document satisfies the following requirements:

(a) The guidance document complies with all relevant statutes and regulations (including any statutory deadlines for Agency action);

(b) The guidance document identifies or includes:

(1) The term “guidance” or its functional equivalent;

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(2) The issuing CNCS responsible office name;

(3) A unique identifier, including, at a minimum, the date of issuance and title of the document and its regulatory identification number (RIN), if applicable;

(4) The activity or entities to which the guidance applies;

(5) Citations to applicable statutes and regulations;

(6) A statement noting whether the guidance is intended to revise or replace any previously issued guidance and, if so, sufficient information to identify the previously issued guidance; and

(7) A short summary of the subject matter covered in the guidance document at the top of the document;

(c) The guidance document avoids using mandatory language, such as “shall,” “must,” “required,” or “requirement,” unless the language is describing an established statutory or regulatory requirement or is addressed to CNCS employees and will not foreclose CNCS's consideration of positions advanced by affected private parties;

(d) The guidance document is written in plain and understandable English; and

(e) All guidance documents should include the following disclaimer prominently in each guidance document: “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.” When CNCS's guidance document is binding because binding guidance is authorized by law or because the guidance is incorporated into a contract, CNCS will modify the disclaimer above to reflect either of those facts.

### **§ 2509.16 How will CNCS make guidance documents available to the public?**

CNCS shall:

(a) Ensure all effective guidance documents, identified by a unique identifier which includes, at a minimum, the document's title and date of issuance or revision and its RIN, if applicable,

are on its website in a single, searchable, indexed database, and available to the public in accordance with § 2905.16;

(b) Note on its website that guidance documents lack the force and effect of law, except as authorized by law or as incorporated into a contract; and

(c) Publish on its website where the public can comment electronically on any guidance documents that are subject to the notice-and-comment procedures described in § 2509.22 and to submit requests electronically for issuance, reconsideration, modification, or rescission of guidance documents.

(d) Guidance documents that do not appear on the Agency's single, searchable, indexed database are rescinded.

**§ 2509.18 What procedures apply to guidance documents identified as “significant”?**

(a) OGC review of proposed guidance documents will include a preliminary determination as to whether the proposed guidance document is significant within the meaning of § 2509.20. Unless exempt, each proposed guidance document determined to be significant must be approved by the Chief Executive Officer before issuance. In such instances, CNCS will:

(1) Obtain a RIN to report what CNCS is planning to issue;

(2) Coordinate the guidance document with the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) for the interagency review, final significance determination, and clearance; and

(3) Coordinate internal review and clearance of the guidance document before submitting it to the Chief Executive Officer for approval, consistent with CNCS Policy 103.

(b) If the guidance document is determined to be significant under § 2509.20, CNCS may proceed with publication in the FEDERAL REGISTER. For each significant guidance document, the originating CNCS office should include a statement in the clearance memorandum indicating that the guidance document has been reviewed and cleared in accordance with this section.

**§ 2509.20 What is a “significant” guidance document?**

(a) The term “significant guidance document” means a guidance document that will be disseminated to regulated entities or the general public and that may reasonably be anticipated:

(1) To lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the U.S. economy, a sector of the U.S. economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) To create serious inconsistency or otherwise interfere with an action taken or planned by another Federal agency;

(3) To alter materially the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) To raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866, as further amended.

(b) The term “significant guidance document” does not include the categories of documents excluded by § 2509.12 or any other category of guidance documents exempted in writing by CNCS in consultation with OIRA.

(c) Significant and economically significant guidance documents must be reviewed by OIRA under E.O. 12866 before issuance and must demonstrate compliance with the applicable requirements for regulations or rules, including significant regulatory actions, set forth in E.O. 12866, E.O. 13563, E.O. 13609, E.O. 13771, and E.O. 13777.

**§ 2509.22 When will guidance be published for public notice-and-comment?**

(a) Except as provided in paragraph (b) of this section, all proposed CNCS guidance documents determined to be significant within the meaning of § 2509.20 are subject to public notice-and-comment. CNCS shall publish notification in the FEDERAL REGISTER of the proposed significant guidance document and invite public comments for a minimum of 30 days, then publish a response to major concerns raised in the

#### § 2509.24

comments when the final guidance document is published.

(b) The requirements of paragraph (a) of this section will not apply to any significant guidance document for which CNCS finds, in consultation with OIRA, good cause that notice-and-comment procedures are impracticable, unnecessary, or contrary to the public interest (and incorporates the finding of good cause and a brief statement of reasons in the guidance issued).

(c) CNCS and OIRA may establish an agreement on presumptively exempted categories of guidance; such documents will be presumptively exempt from the requirements of paragraph (a) of this section.

#### § 2509.24 How may the public submit a petition to CNCS for the withdrawal or modification of a guidance document?

(a) Interested parties may submit petitions to CNCS requesting withdrawal or modification of any effective guidance document by sending an email to *Guidance@cns.gov* or by sending the request to Corporation for National and Community Service ATT: Associate Director of Policy, 250 E Street SW, Washington, DC 20525.

(b) Interested parties should include the guidance document's title and a summary justification describing why the document should be withdrawn, how it should be modified, or the nature of the concern with the guidance.

(c) The responsible CNCS department, in consultation with OGC, will review the petition, determine if withdrawal or modification is necessary or the best way to resolve the concern, and respond to the petitioner no later than 90 days after receipt of the request.

#### § 2509.26 What is the effect of rescinded guidance documents?

CNCS may not cite, use, or rely on rescinded guidance documents, except to establish historical facts.

#### § 2509.28 How will significant guidance be issued when there are exigent circumstances?

Under exigent circumstances, such as safety, health, or when statutory deadlines or court order or other compelling cause require CNCS to act more

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quickly than normal review procedures allow, CNCS will notify OIRA as soon as possible and, to the extent practicable, comply with the requirements of this subpart at the earliest opportunity.

#### § 2509.30 No judicial review or enforceable rights.

This subpart is intended to improve the internal management of CNCS. As such, it is for the use of CNCS employees only and is not intended to, and does not create any right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its agencies or other entities, its officers or employees, or any other person.

#### Subpart B [Reserved]

### PART 2510—OVERALL PURPOSES AND DEFINITIONS

Sec.

2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?

2510.20 Definitions.

AUTHORITY: 42 U.S.C. 12511.

#### § 2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?

The National and Community Service Trust Act of 1993 established the Corporation for National and Community Service (the Corporation). The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the Nations educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service. The Corporation will undertake activities and provide assistance to States and other eligible entities to support national and community service programs and to achieve other purposes consistent with its mission.

[59 FR 13783, Mar. 23, 1994]

**§ 2510.20 Definitions.**

The following definitions apply to terms used in 45 CFR parts 2510 through 2550:

*Act.* The term *Act* means the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*).

*Administrative costs.* The term *administrative costs* means general or centralized expenses of overall administration of an organization that receives assistance under the Act and does not include program costs.

(1) For organizations that have an established indirect cost rate for Federal awards, administrative costs mean those costs that are included in the organization's indirect cost rate. Such costs are generally identified with the organization's overall operation and are further described in 2 CFR part 200.

(2) For organizations that do not have an established indirect cost rate for Federal awards, administrative costs include:

(i) Costs for financial, accounting, auditing, contracting, or general legal services except in unusual cases when they are specifically approved in writing by the Corporation as program costs.

(ii) Costs for internal evaluation, including overall organizational management improvement costs (except for independent evaluations and internal evaluations of a program or project).

(iii) Costs for general liability insurance that protects the organization(s) responsible for operating a program or project, other than insurance costs solely attributable to a program or project.

*Adult Volunteer.* (1) The term *adult volunteer* means an individual, such as an older adult, an individual with disability, a parent, or an employee of a business of public or private nonprofit organization, who—

(i) Works without financial remuneration in an educational institution to assist students of out-of-school youth; and

(2) Is beyond the age of compulsory school attendance in the State in which the educational institution is located.

*AmeriCorps.* The term *AmeriCorps* means the combination of all AmeriCorps programs and participants.

*AmeriCorps educational award.* The term *AmeriCorps educational award* means a national service educational award described in section 147 of the Act.

*AmeriCorps participant.* The term *AmeriCorps participant* means any individual who is serving in—

(1) An AmeriCorps program;

(2) An approved AmeriCorps position; or

(3) Both.

*AmeriCorps program.* The term *AmeriCorps program* means—

(1) Any program that receives approved AmeriCorps positions;

(2) Any program that receives Corporation funds under section 121 of the Act; or

(3) Both.

*Approved AmeriCorps position.* The term *approved AmeriCorps position* means an AmeriCorps position for which the Corporation has approved the provision of an AmeriCorps educational award as one of the benefits to be provided for successful service in the position.

*Approved Silver Scholar position.* The term *approved Silver Scholar position* means a Silver Scholar position for which the Corporation has approved a Silver Scholar education award.

*Approved Summer of Service position.* The term *approved Summer of Service position* means a Summer of Service position for which the Corporation has approved a Summer of Service education award.

*Carry out.* The term *carry out*, when used in connection with an AmeriCorps program described in section 122 of the Act, means the planning, establishment, operation, expansion, or replication of the program.

*Chief Executive Officer.* The term *Chief Executive Officer*, except when used to refer to the chief executive officer of a State, means the Chief Executive Officer of the Corporation appointed under section 193 of the Act.

*Children.* The term *children* means individuals 17 years of age and younger.

*Community-based agency.* The term *community-based agency* means a private nonprofit organization (including a church or other religious entity) that—

## § 2510.20

(1) Is representative of a community or a significant segment of a community; and

(2) Is engaged in meeting educational, public safety, human, or environmental community needs.

*Community-based entity.* The term community-based entity means a public or private nonprofit organization that—

(1) Has experience with meeting unmet human, educational, environmental, or public safety needs; and

(2) Meets other such criteria as the Chief Executive Officer may establish.

*Corporation.* The term *Corporation* means the Corporation for National and Community Service established under section 191 of the Act.

*Economically disadvantaged.* The term *economically disadvantaged*, with respect to an individual, has the same meaning as such term as defined in the Job Training Partnership Act (29 U.S.C. 1503(8)).

*Elementary school.* The term *elementary school* has the same meaning given the term in section 1471(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(8)).

*Empowerment zone.* The term *empowerment zone* means an area designated as an empowerment zone by the Secretary of the Department of Housing and Urban Development or the Secretary of the Department of Agriculture.

*Grantmaking entity.* (1) For school-based programs, the term *grantmaking entity* means a public or private nonprofit organization experienced in service-learning that—

(i) Submits an application to make grants for school-based service-learning programs in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

(2) For community-based programs, the term *grantmaking entity* means a qualified organization that—

(i) Submits an application to make grants to qualified organizations to implement, operate, expand, or replicate community-based service programs that provide for educational, public safety, human, or environmental serv-

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ice by school-age youth in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

*Higher Education partnerships.* The term *higher education partnership* means one or more public or private nonprofit organizations, or public agencies, including States, and one or more institutions of higher education that have entered into a written agreement specifying the responsibilities of each partner.

*Indian.* The term *Indian* means a person who is a member of an Indian tribe, or is a “Native”, as defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

*Indian lands.* The term *Indian lands* means any real property owned by an Indian tribe, any real property held in trust by the United States for an Indian or Indian tribe, and any real property held by an Indian or Indian tribe that is subject to restrictions on alienation imposed by the United States.

*Indian tribe.* The term *Indian tribe* means—

(1) An Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the “Indian Reorganization Act”, 25 U.S.C. 461 *et seq.*); and

(ii) Any Regional Corporation or Village Corporation, as defined in subsection (g) or (j), respectively, of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)); and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (1) of this definition.

*Individual with a disability.* Except as provided in section 175(a) of the Act, the term *individual with a disability* has the meaning given the term in section 7(8)(B) of the Rehabilitation Act of 1973

(29 U.S.C. 706(8)(B)), which includes individuals with cognitive and other mental impairments, as well as individuals with physical impairments, who meet the criteria in that definition.

*Infrastructure-building activities.* The term *infrastructure-building activities* refers to activities that increase the capacity of organizations, programs and individuals to provide high quality service to communities.

*Institution of higher education.* The term *institution of higher education* has the same meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

*Local educational agency (LEA).* The term *local educational agency* has the same meaning given the term in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

*Local partnership.* The term *local partnership* means a partnership, as defined in § 2510.20 of this chapter, that meets the eligibility requirements to apply for subgrants under § 2516.110 or § 2517.110 of this chapter.

*National nonprofit.* The term *national nonprofit* means any nonprofit organization whose mission, membership, activities, or constituencies are national in scope.

*National service laws.* The term *national service laws* means the Act and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*).

*Objective.* The term *objective* means a desired accomplishment of a program.

*Out-of-school youth.* The term *out-of-school youth* means an individual who—

- (1) Has not attained the age of 27;
- (2) Has not completed college or its equivalent; and
- (3) Is not enrolled in an elementary or secondary school or institution of higher education.

*Participant.* (1) The term *participant* means an individual enrolled in a program that receives assistance under the Act.

(2) A participant may not be considered to be an employee of the program in which the participant is enrolled.

(3) A participant may also be referred to by the term *member*.

*Partnership.* The term *partnership* means two or more entities that have

entered into a written agreement specifying the partnership's goals and activities as well as the responsibilities, goals, and activities of each partner.

*Partnership program.* The term *partnership program* means a program through which an adult volunteer, a public or private nonprofit organization, an institution of higher education, or a business assists a local educational agency.

*Program.* The term *program*, unless the context otherwise requires, and except when used as part of the term *academic program*, means a program described in the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*), in section 112(a) (other than a program referred to in paragraph (3)(B) of that section), 118A, or 118(b)(1), or subsection (a), (b), or (c) of section 122, or in paragraph (1) or (2) of section 152(b), section 198B, 198C, 198H, or 198K, or an activity that could be funded under section 179A, 198, 198O, 198P, or 199N.

*Program costs.* The term *program costs* means expenses directly related to a program or project, including their operations and objectives. Program costs include, but are not limited to:

- (1) Costs attributable to participants, including: living allowances, insurance payments, and expenses for training and travel.
- (2) Costs (including salary, benefits, training, travel) attributable to staff who recruit, train, place, support, coordinate, or supervise participants, or who develop materials used in such activities.

(3) Costs for independent evaluations and internal evaluations to the extent that the evaluations cover only the funded program or project.

(4) Costs, excluding those already covered in an organization's indirect cost rate, attributable to staff that work in a direct program or project support, operational, or oversight capacity, including, but not limited to: support staff whose functions directly support program or project activities; staff who coordinate and facilitate single or multi-site program and project activities; and staff who review, disseminate and implement Corporation guidance and policies directly relating to a program or project.

(5) Space, facility, and communications costs for program or project operations and other costs that primarily support program or project operations, excluding those costs that are already covered by an organization's indirect cost rate.

(6) Other allowable costs, excluding those costs that are already covered by an organization's indirect cost rate, specifically approved by the Corporation as directly attributable to a program or project.

*Program sponsor.* The term *program sponsor* means an entity responsible for recruiting, selecting, and training participants, providing them benefits and support services, engaging them in regular group activities, and placing them in projects.

*Project.* The term *project* means an activity, or a set of activities, carried out through a program that receives assistance under the Act, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

*Project sponsor.* The term *project sponsor* means an organization, or other entity, that has been selected to provide a placement for a participant.

*Qualified individual with a disability.* The term *qualified individual with a disability* has the meaning given the term in section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)).

*Qualified organization.* The term *qualified organization* means a public or private nonprofit organization, other than a grantmaking entity, that—

(1) Has experience in working with school-age youth; and

(2) Was in existence at least one year before the date on which the organization submitted an application for a service-learning program.

*Recognized equivalent of a high-school diploma.* The term *recognized equivalent of a high-school diploma* means:

(1) A General Education Development Certificate (GED);

(2) A State certificate received by a student after the student has passed a State-authorized examination that the

State recognizes as the equivalent of a high-school diploma;

(3) An academic transcript of a student who has successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree; or

(4) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who has not completed high-school but who excelled academically in high-school, documentation that the student excelled academically in high-school and has met the formalized, written policies of the institution for admitting such students.

*Recurring access.* The term *recurring access* means the ability on more than one occasion to approach, observe, or communicate with, an individual, through physical proximity or other means, including but not limited to, electronic or telephonic communication.

*School-age youth.* The term *school-age youth* means—

(1) Individuals between the ages of 5 and 17, inclusive; and

(2) Children with disabilities, as defined in section 602(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(a)(1)), who receive services under part B of that Act.

*Secondary school.* The term *secondary school* has the same meaning given the term in section 1471(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(21)).

*Service-learning.* The term *service-learning* means a method under which students or participants learn and develop through active participation in thoughtfully organized service that—

(1) Is conducted in and meets the needs of a community;

(2) Is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community;

(3) Helps foster civic responsibility;

(4) Is integrated into and enhances the academic curriculum of the students or the educational components of the community service program in which the participants are enrolled; and



(5) Includes structured time for the students and participants to reflect on the service experience.

*Service-learning coordinator.* The term *service-learning coordinator* means an individual trained in service-learning who identifies community partners for LEAs; assists in designing and implementing local partnerships service-learning programs; provides technical assistance and information to, and facilitates the training of, teachers; and provides other services for an LEA.

*State.* The term *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term also includes Palau, until the Compact of Free Association is ratified.

*State Commission.* The term *State Commission* means a State Commission on National and Community Service maintained by a State pursuant to section 178 of the Act. Except when used in section 178, the term includes an alternative administrative entity for a State approved by the Corporation under that section to act in lieu of a State Commission.

*State educational agency (SEA).* The term *State educational agency* has the same meaning given that term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

*Student.* The term *student* means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full-time or part-time basis.

*Subdivision of a State.* The term *subdivision of a State* means an governmental unit within a State other than a unit with Statewide responsibilities.

*Subtitle C program.* The term *subtitle C program* means an AmeriCorps program authorized and funded under subtitle C of the National and Community Service Act of 1990, as amended. (NCSA) (42 U.S.C. 12501 *et seq.*) It does not include demonstration programs, or other AmeriCorps programs, funded under subtitle H of the NCSA.

*Target community.* The term *target community* means the geographic community in which an AmeriCorps grant

applicant intends to provide service to address an identified unmet human, educational, environmental, or public safety (including disaster-preparedness and response) need.

*U.S. Territory.* The term *U.S. Territory* means the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau, until the Compact of Free Association with Palau is ratified.

[59 FR 13783, Mar. 23, 1994, as amended at 63 FR 18137, Apr. 14, 1998; 67 FR 45359, July 9, 2002; 70 FR 39596, July 8, 2005; 72 FR 48581, Aug. 24, 2007; 73 FR 53759, Sept. 17, 2008; 74 FR 46502, Sept. 10, 2009; 75 FR 51409, Aug. 20, 2010; 77 FR 60931, Oct. 5, 2012; 79 FR 76077, Dec. 19, 2014]

## PART 2513 [RESERVED]

### PART 2515—SERVICE-LEARNING PROGRAM PURPOSES

AUTHORITY: 42 U.S.C. 12501 *et seq.*

#### § 2515.10 What are the service-learning programs of the Corporation for National and Community Service?

(a) There are three service-learning programs: (1) School-based programs, described in part 2516 of this chapter.

(2) Community-based programs, described in part 2517 of this chapter.

(3) Higher education programs, described in part 2519 of this chapter.

(b) Each program gives participants the opportunity to learn and develop their own capabilities through service-learning, while addressing needs in the community.

[59 FR 13786, Mar. 23, 1994]

### PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

#### Subpart A—Eligibility To Apply

Sec.

2516.100 What is the purpose of school-based service-learning programs?

2516.110 Who may apply for a direct grant from the Corporation?

2516.120 Who may apply for funding a subgrant?

#### Subpart B—Use of Grant Funds

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AUTHORITY: 42 U.S.C. 12521–12529; 42 U.S.C. 12645g.

SOURCE: 59 FR 13786, Mar. 23, 1994, unless otherwise noted.

### Subpart A—Eligibility To Apply

SOURCE: 74 FR 46502, Sept. 10, 2009, unless otherwise noted.

#### § 2516.100 What is the purpose of school-based service-learning programs?

The purpose of school-based service-learning programs is to promote service-learning as a strategy to support high-quality service-learning projects that engage students in meeting community needs with demonstrable results, while enhancing students' academic and civic learning; and support efforts to build institutional capacity, including the training of educators, and to strengthen the service infrastructure to expand service opportunities.

#### § 2516.110 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation:

(1) A State, through a State educational agency (SEA). For purposes of this part “State” means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and, except for the purpose of § 2516.600(b), U.S. Territories; “SEA” means a “State educational agency” as defined in § 2510.20 of this chapter or an SEA-designated statewide entity (which may be a community-based entity) with demonstrated experience in supporting or implementing service-learning programs.

(2) An Indian Tribe.

(3) For activities in a nonparticipating State or Indian Tribe, a community-based entity as defined in § 2510.20.

(b) The types of grants for which each entity is eligible are described in § 2516.200.

**§ 2516.120 Who may apply for funding a subgrant?**

Entities that may apply for a subgrant from a State, Indian Tribe, or community-based entity are:

(a) A qualified organization, Indian Tribe, Territory, local educational agency, for-profit business, private elementary school or secondary school, or institution of higher education for a grant from a State for planning and building the capacity of school-based service-learning programs.

(b) A local partnership, for a grant from a State to implement, operate, or expand a school-based service learning program.

(1) The local partnership must include an LEA and one or more community partners. The local partnership may include a private for-profit business, or private elementary or secondary school, or an Indian Tribe (except that an Indian Tribe distributing funds to a project under this paragraph is not eligible to be part of the partnership operating that project).

(2) The community partners must include a public or private nonprofit organization that has demonstrated expertise in the provision of services to meet educational, public safety, human, or environmental needs; will make projects available for participants, who must be students; and was in existence at least one year before the date on which the organization submitted an application under this part.

(c) An LEA or Indian Tribe for planning school-based service-learning programs involving paying, recruiting, and supporting service-learning coordinators.

(d) An LEA, local partnership, or public or private nonprofit organization for a grant from a State to implement, operate, or expand an adult volunteer program. The local partnership must include an LEA and one or more public or private nonprofit organizations, other educational agencies, or an Indian Tribe (except that an Indian Tribe distributing funds under this paragraph is not eligible to be a recipient of those funds) that coordinate and operate projects for participants who must be students.

(e) An eligible entity for a grant from a State or Indian Tribe to carry out civic engagement activities.

**Subpart B—Use of Grant Funds****§ 2516.200 How may grant funds be used?**

Funds under a school-based service learning grant may be used for the purposes described in this section.

(a) *Planning and capacity-building.* (1) A State, Indian Tribe, or community-based entity may use funds to pay for planning and building its capacity to implement school-based service-learning programs. These entities may use funds either directly or through subgrants or contracts with qualified organizations.

(2) Authorized activities include the following:

(i) Providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants) and trainers, conducted by qualified individuals or organizations experienced in service-learning.

(ii) Developing service-learning curricula, consistent with State or local academic content standards, to be integrated into academic programs, including the age-appropriate learning components for students to analyze and apply their service experiences.

(iii) Forming local partnerships described in § 2516.120 to develop school-based service-learning programs in accordance with this part.

(iv) Devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities.

(v) Establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities.

(vi) Establishing effective outreach and dissemination of information to ensure the broadest possible participation of schools throughout the State, Territory or serving the Indian Tribe involved, with particular attention to schools not making adequate yearly

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progress for two or more consecutive years under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq.*).

(b) *Implementing, operating, and expanding school-based programs.* (1) A State, Indian Tribe or community-based entity may use funds to make subgrants to local partnerships described in § 2516.120(b) to implement, operate, or expand school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from community-based entities for programs in that State.

(3) Authorized activities include paying the costs of the recruitment, training, supervision, placement, salaries and benefits of service-learning coordinators.

(c) *Planning programs.* (1) A State may use funds to make subgrants to LEAs for planning school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from community-based entities for planning programs in that State.

(3) Authorized activities include paying the costs of—

(i) The salaries and benefits of service-learning coordinators as defined in § 2510.20 of this chapter; and

(ii) The recruitment, training, supervision, and placement of service-learning coordinators who may be, but are not required to be, participants in an AmeriCorps program described in parts 2520 through 2524 of this chapter, or who receive AmeriCorps education awards, or who may be participants in a project under section 201 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5001), or who may participate in a Youthbuild program under section 173A of the Workforce Investment Act of 1998 (29 U.S.C. 2918a).

(d) *Adult volunteer programs.* (1) A State, Indian Tribe, or community-based entity may use funds to make subgrants to local partnerships described in § 2516.120(c) to implement,

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operate, or expand school-based programs involving adult volunteers to utilize service-learning to improve the education of students.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local partnerships for adult volunteer programs in that State.

(e) *Planning by Indian Tribes and U.S. Territories.* If the Corporation makes a grant to an Indian Tribe or a U.S. Territory to plan school-based service-learning programs, the grantee may use the funds for that purpose.

(f) *Civic engagement programs.* A State, Indian Tribe, Territory or qualified organization may use funds to support service-learning civic engagement programs that promote a better understanding of:

(1) The principles of the Constitution, the heroes of United States history (including military history), and the meaning of the Pledge of Allegiance;

(2) How the Nation's government functions; and

(3) The importance of service in the Nation's character.

[74 FR 46503, Sept. 10, 2009]

### Subpart C—Eligibility To Participate

#### § 2516.300 Who may participate in a school-based service-learning program?

Students who are enrolled in elementary or secondary schools on a full-time or part-time basis may participate in school-based programs.

#### § 2516.310 May private school students participate?

(a) Yes. To the extent consistent with the number of students in the State or Indian tribe or in the school district of the LEA involved who are enrolled in private nonprofit elementary or secondary schools, the State, Indian tribe, or LEA must (after consultation with appropriate private school representatives) make provision—

(1) For the inclusion of services and arrangements for the benefit of those

students so as to allow for the equitable participation of the students in the programs under this part; and

(2) For the training of the teachers of those students so as to allow for the equitable participation of those teachers in the programs under this part.

(b) If a State, Indian tribe, or LEA is prohibited by law from providing for the participation of students or teachers from private nonprofit schools as required by paragraph (a) of this section, or if the Corporation determines that a State, Indian tribe, or LEA substantially fails or is unwilling to provide for their participation on an equitable basis, the Corporation will waive those requirements and arrange for the provision of services to the students and teachers.

[59 FR 13786, Mar. 23, 1994, as amended at 74 FR 46504, Sept. 10, 2009]

**§2516.320 Is a participant eligible to receive an AmeriCorps educational award?**

No. However, service-learning coordinators who are approved AmeriCorps positions are eligible for AmeriCorps educational awards.

**Subpart D—Application Contents**

**§2516.400 What must a State or Indian tribe include in an application for a grant?**

In order to apply for a grant from the Corporation under this part, a State (SEA) or Indian tribe must submit the following: (a) A three-year strategic plan for promoting service-learning through programs under this part, or a revision of a previously approved three-year strategic plan. The application of a SEA must include a description of how the SEA will coordinate its service-learning plan with the State Plan under §2550.80(a) of this chapter and with other federally-assisted activities.

(b) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the programs as may be

required for fiscal audits and program evaluation; and

(2) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, non-displacement, and grievance procedure requirements of Part 2540.

[59 FR 13786, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46504, Sept. 10, 2009]

**§2516.410 What must a community-based entity include in an application for a grant?**

In order to apply to the Corporation for a grant, a community-based entity must submit the following:

(a) A detailed description of the proposed program goals and activities. The application of a community-based entity must include—

(1) A description of how the applicant will coordinate its activities with the State Plan under §2513 of this chapter, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission and with other Federally-assisted activities.

(b) The specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluations;

(2) Prior to the placement of a participant, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees;

(3) Develop an age-appropriate learning component for participants in the program that includes a chance for participants to analyze and apply their service experiences; and

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(4) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, non-displacement, and grievance procedure requirements of Part 2540.

[74 FR 46504, Sept. 10, 2009]

### **§ 2516.420 What must an LEA, local partnership, qualified organization or other eligible entity include in an application for a subgrant?**

In order to apply for a subgrant from a State, Indian Tribe, or community-based entity under this part, an applicant must include the information required by the Corporation grantee.

[74 FR 46504, Sept. 10, 2009]

## **Subpart E—Application Review**

### **§ 2516.500 How does the Corporation review the merits of an application?**

(a) In reviewing the merits of an application submitted to the Corporation under this part, the Corporation evaluates the quality, innovation, replicability, and sustainability of the proposal on the basis of the following criteria: (1) Quality, as indicated by the extent to which—

(i) The program will provide productive meaningful, educational experiences that incorporate service-learning methods;

(ii) The program will meet community needs and involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together to explore the root causes of community problems;

(iii) The principal leaders of the program will be well qualified for their responsibilities;

(iv) The program has sound plans and processes for training, technical assistance, supervision, quality control, evaluation, administration, and other key activities; and

(v) The program will advance knowledge about how to do effective and innovative community service and service-learning and enhance the broader elementary and secondary education field.

(2) Replicability, as indicated by the extent to which the program will assist

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others in learning from experience and replicating the approach of the program.

(3) Sustainability, as indicated by the extent to which—

(i) An SEA, Indian tribe or community-based entity applicant demonstrates the ability and willingness to coordinate its activities with the State Plan under § 2550.80(a) of this chapter and with other federally assisted activities;

(ii) The program will foster collaborative efforts among local educational agencies, local government agencies, community based agencies, businesses, and State agencies;

(iii) The program will enjoy strong, broad-based community support; and

(iv) There is evidence that financial resources will be available to continue the program after the expiration of the grant.

(b) The Corporation also gives priority to proposals that—

(1) Involve participants in the design and operation of the program;

(2) Reflect the greatest need for assistance, such as programs targeting low-income areas or serving economically disadvantaged youth;

(3) Involve students from public and private schools serving together;

(4) Involve students of different ages, races, genders, ethnicities, abilities and disabilities, or economic backgrounds, serving together;

(5) Are integrated into the academic program of the participants;

(6) Best represent the potential of service-learning as a vehicle for education reform and school-to-work transition;

(7) Develop civic responsibility and leadership skills and qualities in participants;

(8) Demonstrate the ability to achieve the goals of this part on the basis of the proposal's quality, innovation, replicability, and sustainability; or

(9) Address any other priority established by the Corporation for a particular period.

(c) In reviewing applications submitted by Indian tribes and U.S. Territories, the Corporation—

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(1) May decide to approve only planning of school-based service-learning programs; and

(2) Will set the amounts of grants in accordance with the respective needs of applicants.

[59 FR 13786, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46504, Sept. 10, 2009]

### **§2516.510 What happens if the Corporation rejects a State's application for an allotment grant?**

If the Corporation rejects a State's application for an allotment grant under §2516.600(b)(2), the Corporation will—

(a) Promptly notify the State of the reasons for the rejection;

(b) Provide the State with a reasonable opportunity to revise and resubmit the application;

(c) Provide technical assistance, if necessary; and

(d) Promptly reconsider the resubmitted application and make a decision.

### **§2516.520 How does a State, Indian tribe, or community-based entity review the merits of an application?**

In reviewing the merits of an application for a subgrant under this part, a Corporation grantee must use the criteria and priorities in §2516.500.

[59 FR 13786, Mar. 23, 1994, as amended at 74 FR 46504, Sept. 10, 2009]

## Subpart F—Distribution of Funds

### **§2516.600 How are funds for school-based service-learning programs distributed?**

(a) Of the amounts appropriated to carry out this part for any fiscal year, the Corporation will reserve not less than two percent and not more than three percent for grants to Indian Tribes and U.S. Territories to be allotted in accordance with their respective needs.

(b) The Corporation will use the remainder of the funds appropriated as follows:

(1) Allotments to States.

(i) From 50 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 50 percent of the remainder as

the number of school-age youth in the State bears to the total number of school-age youth of all States.

(ii) From 50 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 50 percent of the remainder as the allocation to the State for the previous fiscal year under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 *et seq.*) bears to the allocations to all States.

(iii) Notwithstanding other provisions of paragraph (b)(1) of this section, for any fiscal year for which amounts appropriated for Part I of Subtitle B of Title I of the National and Community Service Act of 1990 (42 U.S.C. 12521 *et seq.*) exceed \$50,000,000, the minimum allotment to each State under this paragraph (b)(1) will be \$75,000.

(2) For the purpose of paragraph (b) of this section, “State” means one of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) If a State or Indian Tribe does not submit an application that meets the requirements for approval under this part, the Corporation (after making any grants to community-based entities for activities in nonparticipating States) may use its allotment for States and Indian Tribes with approved applications, as the Corporation determines appropriate.

[74 FR 46504, Sept. 10, 2009]

## Subpart G—Funding Requirements

### **§2516.700 What matching funds are required?**

(a) The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Eighty percent of the total cost for the first year for which the program receives assistance;

(2) Sixty-five percent of the total cost for the second year; and

(3) Fifty percent of the total cost for the third year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment,

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or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws or title I of the Elementary and Secondary Act of 1965 (20 U.S.C. 6311 *et seq.*)).

(c) The Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to a lack of available financial resources at the local level.

[74 FR 46504, Sept. 10, 2009]

### § 2516.710 What are the limits on the use of funds?

The following limits apply to funds available under this part:

(a)(1) Not more than six percent of the grant funds provided under this part 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 is subject to the approval of the Corporation.

(3) In applying the limitation on administrative costs, the Corporation may 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 six 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 six 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

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(iii) Use 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) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

[74 FR 46505, Sept. 10, 2009]

### § 2516.720 What is the length of each type of grant?

(a) One year is the maximum length of—

(1) A planning grant under § 2516.200 (a), (c) or (e); and

(2) A grant to a local partnership for activities in a nonparticipating State under § 2516.200 (b)(2) and (d)(2).

(b) All other grants are for a period of up to three years, subject to satisfactory performance and annual appropriations.

### § 2516.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

## Subpart H—Evaluation Requirements

### § 2516.800 What are the purposes of an evaluation?

Every evaluation effort should serve to improve program quality, examine benefits of service, or fulfill legislative requirements.

### § 2516.810 What types of evaluations are grantees and subgrantees required to perform?

All grantees and subgrantees are required to perform internal evaluations



which are ongoing efforts to assess performance and improve quality. Grantees and subgrantees may, but are not required to, arrange for independent evaluations which are assessments of program effectiveness by individuals who are not directly involved in the administration of the program. The cost of independent evaluations is allowable.

**§2516.820 What types of internal evaluation activities are required of programs?**

Programs are required to: (a) Continuously assess management effectiveness, the quality of services provided, and the satisfaction of both participants and service recipients. Internal evaluations should seek frequent feedback and provide for quick correction of weakness. The Corporation encourages programs to use internal evaluation methods, such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and service recipient and participant surveys.

(b) Track progress toward pre-established objectives. Objectives must be established by programs and approved by the Corporation. Programs must submit to the Corporation (or the Corporation grantee as applicable) periodic performance reports.

(c) Collect and submit to the Corporation (through the Corporation grantee as applicable) the following data: (1) The total number of participants in each program and basic demographic characteristics of the participants including sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(2) Other information as required by the Corporation.

(d) Cooperate fully with all Corporation evaluation activities.

**§2516.830 What types of activities are required of Corporation grantees to evaluate the effectiveness of their subgrantees?**

A Corporation grantee that makes subgrants must do the following: (a) Ensure that subgrantees comply with the requirements of §2516.840.

(b) Track program performance in terms of progress toward pre-established

objectives; ensure that corrective action is taken when necessary; and submit to the Corporation periodic performance reports.

(c) Collect from programs and submit to the Corporation the descriptive information required in §2516.820(c)(1).

(d) Cooperate fully with all Corporation evaluation activities.

**§2516.840 By what standards will the Corporation evaluate individual Learn and Serve America programs?**

The Corporation will evaluate programs based on the following: (a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award.

(b) The extent to which the program is cost-effective.

(c) Other criteria as determined and published by the Corporation.

**§2516.850 What will the Corporation do to evaluate the overall success of the service-learning program?**

(a) The Corporation will conduct independent evaluations. These evaluations will consider the opinions of participants and members of the communities where services are delivered. If appropriate, these evaluations will compare participants with individuals who have not participated in service-learning programs. These evaluations will—

(1) Study the extent to which service-learning programs as a whole affect the involved communities;

(2) Determine the extent to which service-learning programs as a whole increase academic learning of participants, enhance civic education, and foster continued community involvement; and

(3) Determine the effectiveness of different program models.

(b) The Corporation will also determine by June 30, 1995, whether outcomes of service-learning programs are defined and measured appropriately, and the implications of the results from such a study for authorized funding levels.

## **§ 2516.860**

### **§ 2516.860 Will information on individual participants be kept confidential?**

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in § 2516.840. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees under this part must comply with the provisions of paragraph (a) of this section.

## **PART 2517—COMMUNITY-BASED SERVICE-LEARNING PROGRAMS**

### **Subpart A—Eligibility To Apply**

Sec.

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2517.700 Are matching funds required?

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2517.720 What is the length of a grant?

2517.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

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### **Subpart H—Evaluation Requirements**

2517.800 What are the evaluation requirements for community-based programs?

AUTHORITY: 42 U.S.C. 12541–12547.

SOURCE: 59 FR 13790, Mar. 23, 1994, unless otherwise noted.

### **Subpart A—Eligibility To Apply**

#### **§ 2517.100 Who may apply for a direct grant from the Corporation?**

(a) The following entities may apply for a direct grant from the Corporation: (1) A State Commission established under part 2550 of this chapter.

(2) A grantmaking entity as defined in § 2510.20 of this chapter.

(3) A qualified organization as defined in § 2515.20 of this chapter.

(b) The types of grants for which each entity is eligible are described in § 2517.200.

#### **§ 2517.110 Who may apply for a subgrant from a Corporation grantee?**

Entities that may apply for a subgrant from a State Commission or grantmaking entity are qualified organizations that have entered into a local partnership with one or more—

(a) Local educational agencies (LEAs);

(b) Other qualified organizations; or

(c) Both.

### **Subpart B—Use of Grant Funds**

#### **§ 2517.200 How may grant funds be used?**

Funds under a community-based Learn and Serve grant may be used for the purposes described in this section.

(a) A State Commission or grantmaking entity may use funds—

(1) To make subgrants to qualified organizations described in § 2517.110 to implement, operate, expand, or replicate a community-based service program that provides direct and demonstrable educational, public safety, human, or environmental service by participants, who must be school-age youth; and

(2) To provide training and technical assistance to qualified organizations.

(b)(1) A qualified organization may use funds under a direct grant or a

subgrant to implement, operate, expand, or replicate a community-based service program.

(2) If a qualified organization receives a direct grant, its program must be carried out at multiple sites or be particularly innovative.

### **Subpart C—Eligibility To Participate**

#### **§2517.300 Who may participate in a community-based service-learning program?**

School-age youth as defined in §2510.20 of this chapter may participate in a community-based program.

### **Subpart D—Application Contents**

#### **§2517.400 What must a State Commission or grantmaking entity include in an application for a grant?**

(a) In order to apply for a grant from the Corporation under this part, a State Commission or a grantmaking entity must submit the following: (1) A three-year plan for promoting service-learning through programs under this part. The plan must describe the types of community-based program models proposed to be carried out during the first year.

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(3) A description of how the applicant will coordinate its activities with the State Plan under §2550.80(a) of this chapter and with other federally-assisted activities, including a description of plans to meet and consult with the State Commission, if possible, and to provide a copy of the program application to the State Commission.

(4) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Ensure that, prior to placing a participant in a program, the entity

carrying out the program will consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out that are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In addition, a grantmaking entity must submit information demonstrating that the entity will make grants for a program—

(1) To carry out activities in two or more States, under circumstances in which those activities can be carried out more efficiently through one program than through two or more programs; and

(2) To carry out the same activities, such as training activities or activities related to exchanging information on service experiences, through each of the projects assisted through the program.

[59 FR 13790, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008]

#### **§2517.410 What must a qualified organization include in an application for a grant or a subgrant?**

(a) In order to apply to the Corporation for a direct grant, a qualified organization must submit the following: (1) A plan describing the goals and activities of the proposed program;

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package; and

(3) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Prior to placing a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out who are engaged in the same or similar

## **§ 2517.500**

work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In order to apply to a State Commission or a grantmaking entity for a subgrant, a qualified organization must submit the following: (1) A plan describing the goals and activities of the proposed program; and

(2) Such specific program, budget, and other information as the Commission or entity reasonably requires.

### **Subpart E—Application Review**

#### **§ 2517.500 How is an application reviewed?**

In reviewing an application for a grant or a subgrant, the Corporation, a State Commission, or a grantmaking entity will apply the following criteria: (a) The quality of the program proposed.

(b) The innovation of, and feasibility of replicating, the program.

(c) The sustainability of the program, based on—

(1) Strong and broad-based community support;

(2) Multiple funding sources or private funding; and

(3) Coordination with the State Plan under § 2550.80(a) of this chapter and other federally-assisted activities.

(d) The quality of the leadership of the program, past performance of the program, and the extent to which the program builds on existing programs.

(e) The applicant's efforts—

(1) To recruit participants from among residents of the communities in which projects would be conducted;

(2) To ensure that the projects are open to participants of different ages, races, genders, ethnicities, abilities and disabilities, and economic backgrounds; and

(3) To involve participants and community residents in the design, leadership, and operation of the program.

(f) The extent to which projects would be located in areas that are—

(1) Empowerment zones, redevelopment areas, or other areas with high concentrations of low-income people; or

(2) Environmentally distressed.

[59 FR 13790, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008]

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### **Subpart F—Distribution of Funds**

#### **§ 2517.600 How are funds for community-based service-learning programs distributed?**

All funds are distributed by the Corporation through competitive grants.

### **Subpart G—Funding Requirements**

#### **§ 2517.700 Are matching funds required?**

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Ninety percent of the total cost for the first year for which the program receives assistance;

(2) Eighty percent of the total cost for the second year;

(3) Seventy percent of the total cost for the third year; and

(4) Fifty percent of the total cost for the fourth year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

#### **§ 2517.710 Are there limits on the use of funds?**

Yes. The following limits apply to funds available under this part:

(a)(1) Not more than five percent of the grant funds provided under this part 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.

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(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)(1) An SEA or Indian tribe must spend between ten and 15 percent of the grant to build capacity through training, technical assistance, curriculum development, and coordination activities.

(2) The Corporation may waive this requirement in order to permit an SEA or a tribe to use between ten percent and 20 percent of the grant funds to build capacity. To be eligible to receive the waiver, the SEA or tribe must submit an application to the Corporation.

(c) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to

participation in a program assisted under this part.

[63 FR 18137, Apr. 14, 1998]

### **§ 2517.720 What is the length of a grant?**

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

### **§ 2517.730 May an applicant submit more than one application to the Corporation for the same project at the same time?**

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

## **Subpart H—Evaluation Requirements**

### **§ 2517.800 What are the evaluation requirements for community-based programs?**

The evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

## **PART 2518—SERVICE-LEARNING CLEARINGHOUSE**

Sec.

2518.100 What is the purpose of a Service-Learning Clearinghouse?

2518.110 What are the functions of a Service-Learning Clearinghouse?

AUTHORITY: 42 U.S.C. 12653o.

### **§ 2518.100 What is the purpose of a Service-Learning Clearinghouse?**

The Corporation will provide financial assistance, from funds appropriated to carry out the activities listed under parts 2531 through 2534 of this chapter, to public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, to establish a clearinghouse, which will carry out activities, either directly or by arrangement with

## § 2518.110

another such organization, with respect to information about service-learning.

[59 FR 13792, Mar. 23, 1994, as amended at 75 FR 51409, Aug. 20, 2010]

### § 2518.110 What are the functions of a Service-Learning Clearinghouse?

An organization that receives assistance from funds appropriated to carry out the activities listed under parts 2531 through 2534 of this chapter may—

(a) Assist entities carrying out State or local service-learning programs with needs assessments and planning;

(b) Conduct research and evaluations concerning service-learning;

(c)(1) Provide leadership development and training to State and local service-learning program administrators, supervisors, project sponsors, and participants; and

(2) Provide training to persons who can provide the leadership development and training described in paragraph (c)(1) of this section;

(d) Facilitate communication among entities carrying out service-learning programs and participants in such programs;

(e) Provide information, curriculum materials, and technical assistance relating to planning and operation of service-learning programs, to States and local entities eligible to receive financial assistance under this title;

(f) Provide information regarding methods to make service-learning programs accessible to individuals with disabilities;

(g)(1) Gather and disseminate information on successful service-learning programs, components of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects; and

(2) Coordinate the activities of the Clearinghouse with appropriate entities to avoid duplication of effort;

(h) Make recommendations to State and local entities on quality controls to improve the quality of service-learning programs;

(i) Assist organizations in recruiting, screening, and placing service-learning coordinators; and

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(j) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

[59 FR 13792, Mar. 23, 1994, as amended at 75 FR 51409, Aug. 20, 2010]

## PART 2519—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

### Subpart A—Purpose and Eligibility To Apply

Sec.

2519.100 What is the purpose of the Higher Education programs?

2519.110 Who may apply for a grant?

2519.120 What is the Federal Work-Study requirement?

### Subpart B—Use of Grant Funds

2519.200 How may grant funds be used?

### Subpart C—Participant Eligibility and Benefits

2519.300 Who may participate in a Higher Education program?

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### Subpart D—Application Contents

2519.400 What must an applicant include in an application for a grant?

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### Subpart F—Distribution of Funds

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2519.720 What is the length of a grant?

2519.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

### Subpart H—Evaluation Requirements

2519.800 What are the evaluation requirements for Higher Education programs?

AUTHORITY: 42 U.S.C. 12561; 42 U.S.C. 12645g.

SOURCE: 59 FR 13792, Mar. 23, 1994, unless otherwise noted.

### Subpart A—Purpose and Eligibility To Apply

#### § 2519.100 What is the purpose of the Higher Education programs?

The purpose of the higher education innovative programs for community service is to expand participation in community service by supporting high-quality, sustainable community service programs carried out through institutions of higher education, acting as civic institutions helping to meet the educational, public safety, human, and environmental needs of the communities in which the programs operate.

#### § 2519.110 Who may apply for a grant?

The following entities may apply for a grant from the Corporation: (a) An institution of higher education.

(b) A consortium of institutions of higher education.

(c) A higher education partnership, as defined in § 2510.20 of this chapter.

#### § 2519.120 What is the Federal Work-Study requirement?

To be eligible for assistance under this part, an institution of higher education must demonstrate that it meets the minimum requirements under section 443(b)(2)(A) of the Higher Education Act of 1965 (42 U.S.C. 2753(b)(2)(A)) relating to the participation of students employed under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) (relating to Federal Work-Study programs) in community service activities, or has received a waiver of those requirements from the Secretary of Education.

[74 FR 46505, Sept. 10, 2009]

### Subpart B—Use of Grant Funds

#### § 2519.200 How may grant funds be used?

Funds under a higher education program grant may be used for the following activities: (a) Enabling an institution of higher education, a higher education partnership or a consortium to create or expand an organized community service program that—

(1) Engenders a sense of social responsibility and commitment to the

community in which the institution is located; and

(2) Provides projects for the participants described in § 2519.300.

(b) Supporting student-initiated and student-designed community service projects.

(c) Strengthening the leadership and instructional capacity of teachers at the elementary, secondary, and post-secondary levels with respect to service-learning by—

(1) Including service-learning as a key component of the preservice teacher education of the institution; and

(2) Encouraging the faculty of the institution to use service-learning methods throughout the curriculum.

(d) Facilitating the integration of community service carried out under the grant into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students may obtain credit for their community service projects.

(e) Supplementing the funds available to carry out work-study programs under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) to support service-learning and community service.

(f) Strengthening the service infrastructure within institutions of higher education in the United States that supports service-learning and community service.

(g) Providing for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize service-learning.

### Subpart C—Participant Eligibility and Benefits

#### § 2519.300 Who may participate in a Higher Education program?

Students, faculty, administration and staff of an institution, as well as residents of the community may participate. For the purpose of this part, the term “student” means an individual who is enrolled in an institution of higher education on a full-time or part-time basis.

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### **§ 2519.310 Is a participant eligible to receive an AmeriCorps educational award?**

In general, no. However, certain positions in programs funded under this part may qualify as approved AmeriCorps positions. The Corporation will establish eligibility requirements for these positions as a part of the application package.

### **§ 2519.320 May a program provide a stipend to a participant?**

(a) A program may provide a stipend for service activities for a participant who is a student if the provision of stipends is reasonable in the context of a program's design and objectives.

(1) A program may not provide a stipend to a student who is receiving academic credit for service activities unless the service activities require a substantial time commitment beyond that expected for the credit earned.

(2) A participant who is earning money for service activities under the work-study program described in § 2519.200(e) may not receive an additional stipend from funds under this part.

(b) Consistent with the AmeriCorps program requirements in § 2522.100 of this chapter, a program with participants serving in approved full-time AmeriCorps positions must ensure the provision of a living allowance and, if necessary, health care and child care to those participants. A program may, but is not required to, provide a prorated living allowance to individuals participating in approved AmeriCorps positions on a part-time basis, consistent with the AmeriCorps program requirements in § 2522.240 of this chapter.

## **Subpart D—Application Contents**

### **§ 2519.400 What must an applicant include in an application for a grant?**

In order to apply to the Corporation for a grant, an applicant must submit the following: (a) A plan describing the goals and activities of the proposed program.

(b) The specific program, budget, and other information and assurances specified by the Corporation in the grant application package.

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(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(2) Comply with the criminal history check requirements for all grant-funded staff employed after October 1, 2009, in accordance with 45 CFR 2540.200–207, as well as the nonduplication, non-displacement, and grievance procedure requirements of Part 2540.

(3) Prior to the placement of a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees; and

(4) Comply with any other assurances that the Corporation deems necessary.

[59 FR 13792, Mar. 23, 1994, as amended at 74 FR 46505, Sept. 10, 2009]

## **Subpart E—Application Review**

### **§ 2519.500 How does the Corporation review an application?**

(a) The Corporation will review an application submitted under this part on the basis of the quality, innovation, replicability, and sustainability of the proposed program and such other criteria as the Corporation establishes in an application package.

(b) In addition, in reviewing applications submitted under this part, the Corporation will take into consideration whether proposed programs—

(1) Demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of its students, to supporting the community service projects carried out under the program;

(2) Specify how the institution will promote faculty, administration, and staff participation in the community service projects;

(3) Specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools and colleges;



(4) Describe any higher education partnership that will participate in the community service projects, such as a higher education partnership comprised of the institution, a student organization, a community-based agency, a local government agency, or a non-profit entity that serves or involves school-age youth, older adults, low-income communities, a department of the institution, or a group of faculty comprised of different departments, schools, or colleges at the institution;

(5) Demonstrate community involvement in the development of the proposal and the extent to which the proposal will contribute to the goals of the involved community members;

(6) Demonstrate a commitment to perform community service projects in underserved urban and rural communities;

(7) Describe research on effective strategies and methods to improve service utilized in the design of the projects;

(8) Specify that the institution will use funds under this part to strengthen the infrastructure in institutions of higher education;

(9) With respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth; or

(10) Describe the needs that the proposed projects are designed to address, such as housing, economic development, infrastructure, health care, job training, education, crime prevention, urban planning, transportation, information technology, or child welfare.

(c) In addition, the Corporation may designate additional review criteria in an application notice that will be used in selecting programs.

[74 FR 46505, Sept. 10, 2009]

### Subpart F—Distribution of Funds

#### §2519.600 How are funds for Higher Education programs distributed?

All funds under this part are distributed by the Corporation through grants or by contract.

### Subpart G—Funding Requirements

#### §2519.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed 50 percent.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in-kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources (including private funds or donated services) or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

[59 FR 13792, Mar. 23, 1994, as amended at 74 FR 46506, Sept. 10, 2009]

#### §2519.710 Are there limits on the use of funds?

Yes. The following limits apply to funds available under this part:

(a)(1) Not more than six percent of the grant funds provided under this part 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 six 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

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

(ii) Specify that a fixed rate of six 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.

[63 FR 18138, Apr. 14, 1998, as amended at 74 FR 46506, Sept. 10, 2009]

### § 2519.720 What is the length of a grant?

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

### § 2519.730 May an applicant submit more than one application to the Corporation for the same project at the same time?

No. The Corporation will reject an application for a project if an application for funding or educational awards for the same project is already pending before the Corporation.

## Subpart H—Evaluation Requirements

### § 2519.800 What are the evaluation requirements for Higher Education programs?

The monitoring and evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

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## PART 2520—GENERAL PROVISIONS: AMERICORPS SUBTITLE C PROGRAMS

Sec.

2520.5 What definitions apply to this part?

2520.10 What is the purpose of the AmeriCorps subtitle C program described in parts 2520 through 2524 of this chapter?

2520.20 What service activities may I support with my grant?

2520.25 What direct service activities may AmeriCorps members perform?

2520.30 What capacity-building activities may AmeriCorps member perform?

2520.35 Must my program recruit or support volunteers?

2520.40 Under what circumstances may AmeriCorps members in my program raise resources?

2520.45 How much time may an AmeriCorps member spend fundraising?

2520.50 How much time may AmeriCorps members in my program spend in education and training activities?

2520.55 When may my organization collect fees for services provided by AmeriCorps members?

2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?

2520.65 What activities are prohibited in AmeriCorps subtitle C programs?

AUTHORITY: 42 U.S.C. 12571–12595.

SOURCE: 59 FR 13794, Mar. 23, 1994, unless otherwise noted.

### § 2520.5 What definitions apply to this part?

*You.* For this part, *you* refers to the grantee or an organization operating an AmeriCorps program.

[70 FR 39596, July 8, 2005]

### § 2520.10 What is the purpose of the AmeriCorps subtitle C program described in parts 2520 through 2524 of this chapter?

The purpose of the AmeriCorps subtitle C program is to provide financial assistance under subtitle C of the National and Community Service Act to support AmeriCorps programs that address educational, public safety, human, or environmental needs through national and community service, and to provide AmeriCorps education awards to participants in such programs.

[67 FR 45359, July 9, 2002]

**§ 2520.20 What service activities may I support with my grant?**

(a) Your grant must initiate, improve, or expand the ability of an organization and community to provide services to address local unmet environmental, educational, public safety (including disaster preparedness and response), or other human needs.

(b) You may use your grant to support AmeriCorps members:

(1) Performing direct service activities that meet local needs.

(2) Performing capacity-building activities that improve the organizational and financial capability of non-profit organizations and communities to meet local needs by achieving greater organizational efficiency and effectiveness, greater impact and quality of impact, stronger likelihood of successful replicability, or expanded scale.

[70 FR 39596, July 8, 2005]

**§ 2520.25 What direct service activities may AmeriCorps members perform?**

(a) The AmeriCorps members you support under your grant may perform direct service activities that will advance the goals of your program, that will result in a specific identifiable service or improvement that otherwise would not be provided, and that are included in, or consistent with, your Corporation-approved grant application.

(b) Your members' direct service activities must address local environmental, educational, public safety (including disaster preparedness and response), or other human needs.

(c) Direct service activities generally refer to activities that provide a direct, measurable benefit to an individual, a group, or a community.

(d) Examples of the types of direct service activities AmeriCorps members may perform include, but are not limited to, the following:

- (1) Tutoring children in reading;
- (2) Helping to run an after-school program;
- (3) Engaging in community clean-up projects;
- (4) Providing health information to a vulnerable population;
- (5) Teaching as part of a professional corps;
- (6) Providing relief services to a community affected by a disaster; and

(7) Conducting a neighborhood watch program as part of a public safety effort.

[70 FR 39597, July 8, 2005]

**§ 2520.30 What capacity-building activities may AmeriCorps members perform?**

Capacity-building activities that AmeriCorps members perform should enhance the mission, strategy, skills, and culture, as well as systems, infrastructure, and human resources of an organization that is meeting unmet community needs. Capacity-building activities help an organization gain greater independence and sustainability.

(a) The AmeriCorps members you support under your grant may perform capacity-building activities that advance your program's goals and that are included in, or consistent with, your Corporation-approved grant application.

(b) Examples of capacity-building activities your members may perform include, but are not limited to, the following:

(1) Strengthening volunteer management and recruitment, including:

(i) Enlisting, training, or coordinating volunteers;

(ii) Helping an organization develop an effective volunteer management system;

(iii) Organizing service days and other events in the community to increase citizen engagement;

(iv) Promoting retention of volunteers by planning recognition events or providing ongoing support and follow-up to ensure that volunteers have a high-quality experience; and

(v) Assisting an organization in reaching out to individuals and communities of different backgrounds when encouraging volunteering to ensure that a breadth of experiences and expertise is represented in service activities.

(2) Conducting outreach and securing resources in support of service activities that meet specific needs in the community;

(3) Helping build the infrastructure of the sponsoring organization, including:

(i) Conducting research, mapping community assets, or gathering other

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information that will strengthen the sponsoring organization's ability to meet community needs;

(ii) Developing new programs or services in a sponsoring organization seeking to expand;

(iii) Developing organizational systems to improve efficiency and effectiveness;

(iv) Automating organizational operations to improve efficiency and effectiveness;

(v) Initiating or expanding revenue-generating operations directly in support of service activities; and

(vi) Supporting staff and board education.

(4) Developing collaborative relationships with other organizations working to achieve similar goals in the community, such as:

(i) Community organizations, including faith-based organizations;

(ii) Foundations;

(iii) Local government agencies;

(iv) Institutions of higher education; and

(v) Local education agencies or organizations.

[70 FR 39597, July 8, 2005]

### § 2520.35 Must my program recruit or support volunteers?

(a) Unless the Corporation or the State commission, as appropriate, approves otherwise, some component of your program that is supported through the grant awarded by the Corporation must involve recruiting or supporting volunteers.

(b) If you demonstrate that requiring your program to recruit or support volunteers would constitute a fundamental alteration to your program structure, the Corporation (or the State commission for formula programs) may waive the requirement in response to your written request for such a waiver in the grant application.

[70 FR 39597, July 8, 2005]

### § 2520.40 Under what circumstances may AmeriCorps members in my program raise resources?

(a) AmeriCorps members may raise resources directly in support of your program's service activities.

(b) Examples of fundraising activities AmeriCorps members may perform in-

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clude, but are not limited to, the following:

(1) Seeking donations of books from companies and individuals for a program in which volunteers teach children to read;

(2) Writing a grant proposal to a foundation to secure resources to support the training of volunteers;

(3) Securing supplies and equipment from the community to enable volunteers to help build houses for low-income individuals;

(4) Securing financial resources from the community to assist in launching or expanding a program that provides social services to the members of the community and is delivered, in whole or in part, through the members of a community-based organization;

(5) Seeking donations from alumni of the program for specific service projects being performed by current members.

(c) AmeriCorps members may not:

(1) Raise funds for living allowances or for an organization's general (as opposed to project) operating expenses or endowment;

(2) Write a grant application to the Corporation or to any other Federal agency.

[70 FR 39597, July 8, 2005]

### § 2520.45 How much time may an AmeriCorps member spend fundraising?

An AmeriCorps member may spend no more than ten percent of his or her originally agreed-upon term of service, as reflected in the member enrollment in the National Service Trust, performing fundraising activities, as described in § 2520.40.

[70 FR 39597, July 8, 2005]

### § 2520.50 How much time may AmeriCorps members in my program spend in education and training activities?

(a) No more than 20 percent of the aggregate of all AmeriCorps member service hours in your program, as reflected in the member enrollments in the National Service Trust, may be spent in education and training activities.

(b) Capacity-building activities and direct service activities do not count

towards the 20 percent cap on education and training activities.

[70 FR 39597, July 8, 2005]

**§ 2520.55 When may my organization collect fees for services provided by AmeriCorps members?**

You may, where appropriate, collect fees for direct services provided by AmeriCorps members if:

- (a) The service activities conducted by the members are allowable, as defined in this part, and do not violate the non-displacement provisions in § 2540.100 of these regulations; and
- (b) You use any fees collected to finance your non-Corporation share, or as otherwise authorized by the Corporation.

[70 FR 39597, July 8, 2005]

**§ 2520.60 What government-wide requirements apply to staff fundraising under my AmeriCorps grant?**

You must follow OMB Guidance published at 2 CFR part 200 and Corporation implementing regulations at 2 CFR Chapter XXII. In particular, see 2 CFR 200.442—Fundraising and Investment Management Costs.

[79 FR 76077, Dec. 19, 2014]

**§ 2520.65 What activities are prohibited in AmeriCorps subtitle C programs?**

(a) While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or the Corporation, staff and members may not engage in the following activities:

- (1) Attempting to influence legislation;
- (2) Organizing or engaging in protests, petitions, boycotts, or strikes;
- (3) Assisting, promoting, or deterring union organizing;
- (4) Impairing existing contracts for services or collective bargaining agreements;
- (5) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- (6) Participating in, or endorsing, events or activities that are likely to

include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;

(7) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(8) Providing a direct benefit to—

- (i) A business organized for profit;
- (ii) A labor union;
- (iii) A partisan political organization;

(iv) A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 except that nothing in this section shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative;

(v) An organization engaged in the religious activities described in paragraph (g) of this section, unless Corporation assistance is not used to support those religious activities; and

(9) Conducting a voter registration drive or using Corporation funds to conduct a voter registration drive;

(10) Providing abortion services or referrals for receipt of such services; and

(11) Such other activities as the Corporation may prohibit.

(b) Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-Corporation funds. Individuals should not wear the AmeriCorps logo while doing so.

[67 FR 45359, July 9, 2002. Redesignated at 70 FR 39597, July 8, 2005; 73 FR 53759, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009]

**PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD**

Sec.

2521.5 What definitions apply to this part?

## § 2521.5

- 2521.10 Who may apply to receive an AmeriCorps subtitle C grant?  
2521.20 What types of AmeriCorps subtitle C program grants are available for award?  
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### PROGRAM MATCHING REQUIREMENTS

- 2521.35 Who must comply with matching requirements?  
2521.40 What are the matching requirements?  
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2521.50 If I am an Indian Tribe, to what extent may I use tribal funds toward my share of costs?  
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2521.70 To what extent may the Corporation waive the matching requirements in §§ 2521.45 and 2521.60 of this part?  
2521.80 What matching level applies if my program was funded in the past but has not recently received an AmeriCorps grant?  
2521.90 If I am a new or replacement legal applicant for an existing program, what will my matching requirements be?  
2521.95 To what extent may I use grant funds for administrative costs?

AUTHORITY: 42 U.S.C. 12571–12595.

SOURCE: 59 FR 13794, Mar. 23, 1994, unless otherwise noted.

### § 2521.5 What definitions apply to this part?

*You.* For this part, *you* refers to the grantee, unless otherwise noted.

[70 FR 39598, July 8, 2005]

### § 2521.10 Who may apply to receive an AmeriCorps subtitle C grant?

(a) States (including Territories), subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education are eligible to apply for AmeriCorps subtitle C grants. However, the fifty States, the District of Columbia and Puerto Rico must first receive Corporation authorization for the use of a State Commission or alternative administrative or transitional entity pursuant to part 2550 of this chapter in order to be eligible.

(b) The Corporation may also enter into contracts or cooperative agreements for AmeriCorps assistance with

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Federal agencies that are Executive Branch agencies or departments. Bureaus, divisions, and local and regional offices of such departments and agencies may only receive assistance pursuant to a contract or agreement with the central department or agency. The requirements relating to Federal agencies are described in part 2523 of this chapter.

[59 FR 13794, Mar. 23, 1994, as amended at 67 FR 45360, July 9, 2002]

### § 2521.20 What types of AmeriCorps subtitle C program grants are available for award?

The Corporation may make the following types of grants to eligible applicants. The requirements of this section will also apply to any State or other applicant receiving assistance under this part that proposes to conduct a grant program using the assistance to support other national or community service programs.

(a) *Planning grants*—(1) *Purpose.* The purpose of a planning grant is to assist an applicant in completing the planning necessary to implement a sound concept that has already been developed.

(2) *Eligibility.* (i) States may apply directly to the Corporation for planning grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for planning grants.

(3) *Duration.* A planning grant will be negotiated for a term not to exceed one year.

(b) *Operational grants*—(1) *Purpose.* The purpose of an operational grant is to fund an organization that is ready to establish, operate, or expand an AmeriCorps program. An operational grant may include AmeriCorps educational awards. An operational grant may also include a short planning period of up to six months, if necessary, to implement a program.

(2) *Eligibility.* (i) States may apply directly to the Corporation for operational grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including religious organizations and labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for operational grants. The Corporation may limit the categories of applicants eligible to apply directly to the Corporation for assistance under this section consistent with its National priorities.

(3) *Duration.* An operational grant will be negotiated for a term not to exceed three years. Within a three-year term, renewal funding will be contingent upon periodic assessment of program quality, progress to date, and availability of Congressional appropriations.

(c) *Replication Grants.* The Corporation may provide assistance for the replication of an existing national service program to another geographical location.

(d) *Training, technical assistance and other special grants—(1) Purpose.* The purpose of these grants is to ensure broad access to AmeriCorps programs for all Americans, including those with disabilities; support disaster relief efforts; assist efforts to secure private support for programs through challenge grants; and ensure program quality by supporting technical assistance and training programs.

(2) *Eligibility.* Eligibility varies and is detailed under 45 CFR part 2524, “Technical Assistance and Other Special Grants.”

(3) *Duration.* Grants will be negotiated for a renewable term of up to three years.

[59 FR 13794, Mar. 23, 1994, as amended at 67 FR 45360, July 9, 2002]

#### § 2521.30 How will AmeriCorps subtitle C program grants be awarded?

In any fiscal year, the Corporation will award AmeriCorps subtitle C program grants as follows:

(a) *Grants to State Applicants.* (1) For the purposes of this section, the term “State” means the fifty States, Puerto Rico, and the District of Columbia.

(2) One-third of the funds available under this part and a corresponding allotment of AmeriCorps educational awards, as specified by the Corpora-

tion, will be distributed according to a population-based formula to the 50 States, Puerto Rico and the District of Columbia if they have applications approved by the Corporation.

(3) At least one-third of funds available under this part and an appropriate number of AmeriCorps awards, as determined by the Corporation, will be awarded to States on a competitive basis. In order to receive these funds, a State must receive funds under paragraphs (a)(2) or (b)(1) of this section in the same fiscal year.

(4) In making subgrants with funds awarded by formula or competition under paragraphs (a)(2) or (3) of this section, a State must ensure that a minimum of 50 percent of funds going to States will be used for programs that operate in the areas of need or on Federal or other public lands, and that place a priority on recruiting participants who are residents in high need areas, or on Federal or other public lands. The Corporation may waive this requirement for an individual State if at least 50 percent of the total amount of assistance to all States will be used for such programs.

(b) *Grants to Applicants other than States.* (1) One percent of available funds will be distributed to the U.S. Territories<sup>1</sup> that have applications approved by the Corporation according to a population-based formula.<sup>2</sup>

(2) One percent of available funds will be reserved for distribution to Indian tribes on a competitive basis.

(3) The Corporation will use any funds available under this part remaining after the award of the grants described in paragraphs (a) and (b)(1) and (2) of this section to make direct competitive grants to subdivisions of States, Indian tribes, public or private nonprofit organizations (including religious organizations and labor organizations), institutions of higher education, and Federal agencies. No more than

<sup>1</sup>The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

<sup>2</sup>The amount allotted as a grant to each such territory or possession is equal to the ratio of each such Territory’s population to the population of all such territories multiplied by the amount of the one percent set-aside.

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one-third of the these remaining funds may be awarded to Federal agencies.

(c) *Allocation of AmeriCorps educational awards only.* The Corporation will determine on an annual basis the appropriate number of educational awards to make available for eligible applicants who have not applied for program assistance.

(d) *Effect of States' or Territories' failure to apply.* If a State or U.S. Territory does not apply for or fails to give adequate notice of its intent to apply for a formula-based grant as announced by the Corporation and published in applications and the Notice of Funds Availability, the Corporation will use the amount of that State's allotment to make grants to eligible entities to carry out AmeriCorps programs in that State or Territory. Any funds remaining from that State's allotment after making such grants will be reallocated to the States, Territories, and Indian tribes with approved AmeriCorps applications at the Corporation's discretion.

(e) *Effect of rejection of State application.* If a State's application for a formula-based grant is ultimately rejected by the Corporation pursuant to § 2522.320 of this chapter, the State's allotment will be available for redistribution by the Corporation to the States, Territories, and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

(f) The Corporation will make grants for training, technical assistance and other special programs described in part 2524 of this chapter at the Corporation's discretion.

[59 FR 13794, Mar. 23, 1994, as amended at 63 FR 18138, Apr. 14, 1998; 67 FR 45360, July 9, 2002; 70 FR 39598, July 8, 2005; 73 FR 53759, Sept. 17, 2008]

### PROGRAM MATCHING REQUIREMENTS

## § 2521.35 Who must comply with matching requirements?

(a) The matching requirements described in §§ 2521.40 through 2521.95 apply to you if you are a subgrantee of a State commission or a direct program grantee of the Corporation. These requirements do not apply to Education Award Programs.

(b) If you are a State commission, you must ensure that your grantees

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meet the match requirements established in this part, and you are also responsible for meeting an aggregate overall match based on your grantees' individual match requirements.

[70 FR 39598, July 8, 2005; 70 FR 48882, Aug. 22, 2005]

## § 2521.40 What are the matching requirements?

If you are subject to matching requirements under § 2521.35, you must adhere to the following:

(a) *Basic match:* At a minimum, you must meet the basic match requirements as articulated in § 2521.45.

(b) *Regulatory match:* In addition to the basic requirements under paragraph (a) of this section, you must provide an overall level of matching funds according to the schedule in § 2521.60(a), or § 2521.60(b) if applicable.

(c) *Budgeted match:* To the extent that the match in your approved budget exceeds your required match levels under paragraph (a) or (b) of this section, any failure to provide the amount above your regulatory match but below your budgeted match will be considered as a measure of past performance in subsequent grant competitions.

[70 FR 39598, July 8, 2005]

## § 2521.45 What are the limitations on the Federal government's share of program costs?

The limitations on the Federal government's share are different—in type and amount—for member support costs and program operating costs.

(a) *Member support:* The Federal share, including Corporation and other Federal funds, of member support costs, which include the living allowance required under § 2522.240(b)(1), FICA, unemployment insurance (if required under State law), worker's compensation (if required under State law), is limited as follows:

(1) The Federal share of the living allowance may not exceed 85 percent of the minimum living allowance required under § 2522.240(b)(1), and 85 percent of other member support costs.

(2) If you are a professional corps described in § 2522.240(b)(2)(i), you may not use Corporation funds for the living allowance.



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(3) Your share of member support costs must be non-Federal cash.

(4) The Corporation's share of health care costs may not exceed 85 percent.

(b) *Program operating costs*: The Corporation share of program operating costs may not exceed 67 percent. These costs include expenditures (other than member support costs described in paragraph (a) of this section) such as staff, operating expenses, internal evaluation, and administration costs.

(1) You may provide your share of program operating costs with cash, including other Federal funds (as long as the other Federal agency permits its funds to be used as match), or third party in-kind contributions.

(2) Contributions, including third party in-kind must:

- (i) Be verifiable from your records;
- (ii) Not be included as contributions for any other Federally assisted program;
- (iii) Be necessary and reasonable for the proper and efficient accomplishment of your program's objectives; and
- (iv) Be allowable under applicable OMB cost principles.

(3) You may not include the value of direct community service performed by volunteers, but you may include the value of services contributed by volunteers to your organizations for organizational functions such as accounting, audit, and training of staff and AmeriCorps programs.

[70 FR 39598, July 8, 2005]

### § 2521.50 If I am an Indian Tribe, to what extent may I use tribal funds towards my share of costs?

If you are an Indian Tribe that receives tribal funds through Public Law 93-638 (the Indian Self-Determination and Education Assistance Act), those funds are considered non-Federal and you may use them towards your share of costs, including member support costs.

[70 FR 39598, July 8, 2005]

### § 2521.60 To what extent must my share of program costs increase over time?

Except as provided in paragraph (b) of this section, if your program continues to receive funding after an initial three-year grant period, you must continue to meet the minimum requirements in § 2541.45 of this part. In addition, your required share of program costs, including member support and operating costs, will incrementally increase to a 50 percent overall share by the tenth year and any year thereafter that you receive a grant, without a break in funding of five years or more. A 50 percent overall match means that you will be required to match \$1 for every \$1 you receive from the Corporation.

(a) *Minimum Organization Share*: (1) Subject to the requirements of § 2521.45 of this part, and except as provided in paragraph (b) of this section, your overall share of program costs will increase as of the fourth consecutive year that you receive a grant, according to the following timetable:

	Year 1 (per- cent)	Year 2 (per- cent)	Year 3 (per- cent)	Year 4 (per- cent)	Year 5 (per- cent)	Year 6 (per- cent)	Year 7 (per- cent)	Year 8 (per- cent)	Year 9 (per- cent)	Year 10 (per- cent)
Minimum member support ....	15	15	15	15	15	15	15	15	15	15
Minimum operating costs .....	33	33	33	33	33	33	33	33	33	33
Minimum overall share .....	N/A	N/A	N/A	26	30	34	38	42	46	50

(2) A grantee must have contributed matching resources by the end of a grant period in an amount equal to the combined total of the minimum overall annual match for each year of the grant period, according to the table in paragraph (a)(1) of this section.

(3) A State commission may meet its match based on the aggregate of its grantees' individual match requirements.

(b) *Alternative match requirements*: If your program is unable to meet the match requirements as required in

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paragraph (a) of this section, and is located in a rural or a severely economically distressed community, you may apply to the Corporation for a waiver that would require you to increase the

overall amount of your share of program costs beginning in the seventh consecutive year that you receive a grant, according to the following table:

	Year 1 (per- cent)	Year 2 (per- cent)	Year 3 (per- cent)	Year 4 (per- cent)	Year 5 (per- cent)	Year 6 (per- cent)	Year 7 (per- cent)	Year 8 (per- cent)	Year 9 (per- cent)	Year 10 (per- cent)
Minimum member support ....	15	15	15	15	15	15	15	15	15	15
Minimum operating costs .....	33	33	33	33	33	33	33	33	33	33
Minimum overall share .....	N/A	N/A	N/A	N/A	N/A	N/A	29	31	33	35

(c) *Determining Program Location.* (1) The Corporation will determine whether your program is located in a rural county by considering the U.S. Department of Agriculture's Beale Codes.

(2) The Corporation will determine whether your program is located in a severely economically distressed county by considering unemployment rates, per capita income, and poverty rates.

(3) Unless the Corporation approves otherwise, as provided in paragraph (c)(4) of this section, the Corporation will determine the location of your program based on the legal applicant's address.

(4) If you believe that the legal applicant's address is not the appropriate way to consider the location of your program, you may request the waiver described in paragraph (b) of this section and provide the relevant facts about your program location to support your request.

(d) *Schedule for current program grants:* If you have completed at least one three-year grant cycle on the date this regulation takes effect, you will be required to provide your share of costs beginning at the year three level, according to the table in paragraph (a) of this section, in the first program year in your grant following the regulation's effective date, and increasing each year thereafter as reflected in the table.

(e) *Flexibility in how you provide your share:* As long as you meet the basic match requirements in § 2521.45, you may use cash or in-kind contributions to reach the overall share level. For example, if your organization finds it easier to raise member support match, you may choose to meet the required overall match by raising only more

member support match, and leave operational match at the basic level, as long as you provide the required overall match.

(f) *Reporting excess resources.* (1) The Corporation encourages you to obtain support over-and-above the matching fund requirements. Reporting these resources may make your application more likely to be selected for funding, based on the selection criteria in §§ 2522.430 and 2522.435 of these regulations.

(2) You must comply with § 2543.23 of this title and applicable OMB circulars in documenting cash and in-kind contributions and excess resources.

[70 FR 39598, July 8, 2005]

**§ 2521.70 To what extent may the Corporation waive the matching requirements in §§ 2521.45 and 2521.60 of this part?**

(a) The Corporation may waive, in whole or in part, the requirements of §§ 2521.45 and 2521.60 of this part if the Corporation determines that a waiver would be equitable because of a lack of available financial resources at the local level.

(b) If you are requesting a waiver, you must demonstrate:

(1) The lack of resources at the local level;

(2) That the lack of resources in your local community is unique or unusual;

(3) The efforts you have made to raise matching resources; and

(4) The amount of matching resources you have raised or reasonably expect to raise.

(c) You must provide with your waiver request:

(1) A request for the specific amount of match you are requesting that the Corporation waive; and

(2) A budget and budget narrative that reflects the requested level in matching resources.

[70 FR 39598, July 8, 2005]

**§ 2521.80 What matching level applies if my program was funded in the past but has not recently received an AmeriCorps grant?**

(a) If you have not been a direct recipient of an AmeriCorps operational grant from the Corporation or a State commission for five years or more, as determined by the end date of your most recent grant period, you may begin matching at the year one level, as reflected in the timetable in § 2521.60(a) of this part, upon receiving your new grant award.

(b) If you have not been a direct recipient of an AmeriCorps operational grant from the Corporation or a State commission for fewer than five years, you must begin matching at the same level you were matching at the end of your most recent grant period.

[70 FR 39598, July 8, 2005]

**§ 2521.90 If I am a new or replacement legal applicant for an existing program, what will my matching requirements be?**

If your organization is a new or replacement legal applicant for an existing program, you must provide matching resources at the level the previous legal applicant had reached at the time you took over the program.

[70 FR 39598, July 8, 2005]

**§ 2521.95 To what extent may I use grant funds for administrative costs?**

(a) Not more than five percent of the grant funds provided under this part for any fiscal year may be used to pay for administrative costs, as defined in § 2510.20 of this chapter.

(b) The distribution of administrative costs between the grant and any subgrant will be subject to the approval of the Corporation.

(c) In applying the limitation on administrative costs the Corporation will

approve one of the following methods in the award document:

(1) 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—

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

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

(2) 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

(3) 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.

[70 FR 39598, July 8, 2005]

**PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS**

**Subpart A—Minimum Requirements and Program Types**

Sec.

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AUTHORITY: 42 U.S.C. 12571–12595; 12651b–12651d; E.O. 13331, 69 FR 9911, Sec. 1612, Pub. L. 111–13.

SOURCE: 59 FR 13796, Mar. 23, 1994, unless otherwise noted.

### Subpart A—Minimum Requirements and Program Types

#### § 2522.10 What definitions apply to this part?

*You.* For this part, *you* refers to the grantee, unless otherwise noted.

[70 FR 39600, July 8, 2005]

#### § 2522.100 What are the minimum requirements that every AmeriCorps program, regardless of type, must meet?

Although a wide range of programs may be eligible to apply for and receive support from the Corporation, all AmeriCorps subtitle C programs must meet certain minimum program requirements. These requirements apply regardless of whether a program is supported directly by the Corporation or through a subgrant. All AmeriCorps programs must:

(a) Address educational, public safety, human, or environmental needs, and provide a direct and demonstrable benefit that is valued by the community in which the service is performed;

(b) Perform projects that are designed, implemented, and evaluated with extensive and broad-based local input, including consultation with representatives from the community served, participants (or potential participants) in the program, community-based agencies with a demonstrated record of experience in providing services, and local labor organizations representing employees of project sponsors (if such entities exist in the area to be served by the program);

(c) Obtain, in the case of a program that also proposes to serve as the project sponsor, the written concurrence of any local labor organization representing employees of the project sponsor who are engaged in the same or substantially similar work as that proposed to be carried out by the AmeriCorps participant;

(d) Establish and provide outcome objectives, including a strategy for achieving these objectives, upon which self-assessment and Corporation-assessment of progress can rest. Such assessment will be used to help determine the extent to which the program has had a positive impact: (1) On communities and persons served by the projects performed by the program;

(2) On participants who take part in the projects; and

(3) In such other areas as the program or Corporation may specify;

(e) Strengthen communities and encourage mutual respect and cooperation among citizens of different races, ethnicities, socioeconomic backgrounds, educational levels, both men and women and individuals with disabilities;

(f) Agree to seek actively to include participants and staff from the communities in which projects are conducted, and agree to seek program staff and participants of different races and ethnicities, socioeconomic backgrounds, educational levels, and genders as well as individuals with disabilities unless a program design requires emphasizing the recruitment of staff and participants who share a specific characteristic or background. In no case may a program violate the non-discrimination, nonduplication and nondisplacement rules governing participant selection described in part 2540

of this chapter. In addition, programs are encouraged to establish, if consistent with the purposes of the program, an intergenerational component that combines students, out-of-school youths, and older adults as participants;

(g)(1) Determine the projects in which participants will serve and establish minimum qualifications that individuals must meet to be eligible to participate in the program; these qualifications may vary based on the specific tasks to be performed by participants. Regardless of the educational level or background of participants sought, programs are encouraged to select individuals who possess leadership potential and a commitment to the goals of the AmeriCorps program. In any case, programs must select participants in a non-partisan, non-political, non-discriminatory manner, ensuring fair access to participation. In addition, programs are required to ensure that they do not displace any existing paid employees as provided in part 2540 of this chapter;

(2) In addition, all programs are required to comply with any pre-service orientation or training period requirements established by the Corporation to assist in the selection of motivated participants. Finally, all programs must agree to select a percentage (to be determined by the Corporation) of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under part 2533 of this chapter. The Corporation may also specify a minimum percentage of participants to be selected from the national leadership pool established under § 2522.210(c). The Corporation may vary either percentage for different types of AmeriCorps programs;

(h) Provide reasonable accommodation, including auxiliary aids and services (as defined in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(1))) based on the individualized need of a participant who is a qualified individual with a disability (as defined in section 101(8) of such Act (42 U.S.C. 12111(8))). For the purpose of complying with this provision, AmeriCorps programs may apply for additional financial assistance from

the Corporation pursuant to § 2524.40 of this chapter;

(i) Use service experiences to help participants achieve the skills and education needed for productive, active citizenship, including the provision, if appropriate, of structured opportunities for participants to reflect on their service experiences. In addition, all programs must encourage every participant who is eligible to vote to register prior to completing a term of service;

(j) Provide participants in the program with the training, skills, and knowledge necessary to perform the tasks required in their respective projects, including, if appropriate, specific training in a particular field and background information on the community, including why the service projects are needed;

(k) Provide support services—

(1) To participants who are completing a term of service and making the transition to other educational and career opportunities; and

(2) To those participants who are school dropouts in order to assist them in earning the equivalent of a high school diploma;

(l) Ensure that participants serving in approved AmeriCorps positions receive the living allowance and other benefits described in §§ 2522.240 through 2522.250 of this chapter;

(m) Describe the manner in which the AmeriCorps educational awards will be apportioned among individuals serving in the program. If a program proposes to provide such benefits to less than 100 percent of the participants in the program, the program must provide a compelling rationale for determining which participants will receive the benefits and which participants will not. AmeriCorps programs are strongly encouraged to offer alternative post-service benefits to participants who will not receive AmeriCorps educational awards, however AmeriCorps grant funds may not be used to provide such benefits;

(n) Agree to identify the program, through the use of logos, common application materials, and other means (to be specified by the Corporation), as part of a larger national effort and to participate in other activities such as common opening ceremonies (including

the administration of a national oath or affirmation), service days, and conferences designed to promote a national identity for all AmeriCorps programs and participants, including those participants not receiving AmeriCorps educational awards. This provision does not preclude an AmeriCorps program from continuing to use its own name as the primary identification, or from using its name, logo, or other identifying materials on uniforms or other items;

(o) Agree to begin terms of service at such times as the Corporation may reasonably require and to comply with any restrictions the Corporation may establish as to when the program may take to fill an approved AmeriCorps position left vacant due to attrition;

(p) Comply with all evaluation procedures specified by the Corporation, as explained in §§ 2522.500 through 2522.560;

(q) In the case of a program receiving funding directly from the Corporation, meet and consult with the State Commission for the State in which the program operates, if possible, and submit a copy of the program application to the State Commission; and

(r) Address any other requirements as specified by the Corporation.

[59 FR 13796, Mar. 23, 1994, as amended at 67 FR 45360, July 9, 2002; 75 FR 51410, Aug. 20, 2010]

**§ 2522.110 What types of programs are eligible to compete for AmeriCorps grants?**

Types of programs eligible to compete for AmeriCorps grants include the following: (a) *Specialized skills programs.*

(1) A service program that is targeted to address specific educational, public safety, human, or environmental needs and that—

(i) Recruits individuals with special skills or provides specialized pre-service training to enable participants to be placed individually or in teams in positions in which the participants can meet such needs; and

(ii) If consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(2) A preprofessional training program in which students enrolled in an institution of higher education—

(i) Receive training in specified fields, which may include classes containing service-learning;

(ii) Perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(iii) Agree to provide service upon graduation to meet educational, public safety, human, or environmental needs related to such training.

(3) A professional corps program that recruits and places qualified participants in positions—

(i) As teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, public safety, human, or environmental needs in communities with an inadequate number of such professionals;

(ii) That may include a salary in excess of the maximum living allowance authorized in § 2522.240(b)(2); and

(iii) That are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any AmeriCorps educational award from the National Service Trust) of the participants.

(b) *Specialized service programs.* (1) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(2) A program that seeks to eliminate hunger in communities and rural areas through service in projects—

(i) Involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(ii) Involving the gleaned of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;

(iii) Seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or

(iv) Providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(3) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—

(i) The housing needs of low-income families and the homeless; and

(ii) The need for community facilities in low-income areas.

(c) *Community-development programs.*

(1) A community corps program that meets educational, public safety, human, or environmental needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.

(2) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such an area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such an area that meet unaddressed community and individual needs, including projects that would—

(i) Meet the needs of low-income children and youth aged 18 and younger, such as providing after-school ‘safe-places’, including schools, with opportunities for learning and recreation; or

(ii) Be directed to other important unaddressed needs in such an area.

(d) *Programs that expand service program capacity.* (1) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under Serve-America.

(2) An AmeriCorps entrepreneur program that identifies, recruits, and

trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(e) *Campus-based programs.* A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

(1) Students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*);

(2) Teams composed of such students; or

(3) Teams composed of a combination of such students and community residents.

(f) *Intergenerational programs.* An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other AmeriCorps programs described in this subsection.

(g) *Youth development programs.* A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under subtitle I, the Public Lands Corps established under the Public Lands Corps Act of 1993, the Urban Youth Corps established under section 106 of the National and Community Service Trust Act of 1993, and other conservation corps or youth service corps that perform service on Federal or other public lands or on Indian lands or Hawaiian home lands), that:

(1) Undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(2) Includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvantaged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and



(3) Provides those participants who are youths and young adults with—

(i) Crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) The opportunity to develop citizenship values and skills through service to their community and the United States.

(h) *Individualized placement programs.* An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(i) *Other programs.* Such other AmeriCorps programs addressing educational, public safety, human, or environmental needs as the Corporation may designate in the application.

### Subpart B—Participant Eligibility, Requirements, and Benefits

#### § 2522.200 What are the eligibility requirements for an AmeriCorps participant?

(a) *Eligibility.* An AmeriCorps participant must—

(1)(i) Be at least 17 years of age at the commencement of service; or

(ii) Be an out-of-school youth 16 years of age at the commencement of service participating in a program described in § 2522.110(b)(3) or (g);

(2)(i) Have a high school diploma or its equivalent; or

(ii) Not have dropped out of elementary or secondary school to enroll as an AmeriCorps participant and must agree to obtain a high school diploma or its equivalent prior to using the education award; or

(iii) Obtain a waiver from the Corporation of the requirements in paragraphs (a)(2)(i) and (a)(2)(ii) of this section based on an independent evaluation secured by the program demonstrating that the individual is not capable of obtaining a high school diploma or its equivalent; or

(iv) Be enrolled in an institution of higher education on an ability to benefit basis and be considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091);

(3) Be a citizen, national, or lawful permanent resident alien of the United States;

(4) Satisfy the National Service Criminal History Check eligibility criteria pursuant to 45 CFR 2540.202.

(b) *Written declaration regarding high school diploma sufficient for enrollment.* For purposes of enrollment, if an individual provides a written declaration under penalty of law that he or she meets the requirements in paragraph (a) of this section relating to high school education, a program need not obtain additional documentation of that fact.

(c) *Primary documentation of status as a U.S. citizen or national.* The following are acceptable forms of certifying status as a U.S. citizen or national:

(1) A birth certificate showing that the individual was born in one of the 50 states, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands;

(2) A United States passport;

(3) A report of birth abroad of a U.S. Citizen (FS-240) issued by the State Department;

(4) A certificate of birth-foreign service (FS 545) issued by the State Department;

(5) A certification of report of birth (DS-1350) issued by the State Department;

(6) A certificate of naturalization (Form N-550 or N-570) issued by the Immigration and Naturalization Service; or

(7) A certificate of citizenship (Form N-560 or N-561) issued by the Immigration and Naturalization Service.

(d) *Primary documentation of status as a lawful permanent resident alien of the United States.* The following are acceptable forms of certifying status as a lawful permanent resident alien of the United States:

(1) Permanent Resident Card, INS Form I-551;

(2) Alien Registration Receipt Card, INS Form I-551;

(3) A passport indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence; or

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(4) A Departure Record (INS Form I-94) indicating that the INS has approved it as temporary evidence of lawful admission for permanent residence.

(e) *Secondary documentation of citizenship or immigration status.* If primary documentation is not available, the program must obtain written approval from the Corporation that other documentation is sufficient to demonstrate the individual's status as a U.S. citizen, U.S. national, or lawful permanent resident alien.

[64 FR 37413, July 12, 1999, as amended at 67 FR 45360, July 9, 2002; 77 FR 60931, Oct. 5, 2012]

### § 2522.205 To whom must I apply eligibility criteria relating to criminal history?

You must apply eligibility criteria relating to criminal history to individuals specified in 45 CFR 2540.201.

[86 FR 11146, Feb. 24, 2021]

### § 2522.206 [Reserved]

### § 2522.207 How do I determine an individual's eligibility to serve in a covered position?

To determine an individual's eligibility to serve in a covered position, you must follow the procedures in part 2540 of this chapter.

[77 FR 60932, Oct. 5, 2012]

### § 2522.210 How are AmeriCorps participants recruited and selected?

(a) *Local recruitment and selection.* In general, AmeriCorps participants will be selected locally by an approved AmeriCorps program, and the selection criteria will vary widely among the different programs. Nevertheless, AmeriCorps programs must select their participants in a fair and non-discriminatory manner which complies with part 2540 of this chapter. In selecting participants, programs must also comply with the recruitment and selection requirements specified in this section.

(b)(1) *National and State recruitment and selection.* The Corporation and each State Commission will establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved AmeriCorps positions, which may include positions available

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under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 *et seq.*). The national and state recruitment and placement system will be designed and operated according to Corporation guidelines.

(2) *Dissemination of information.* The Corporation and State Commissions will disseminate information regarding available approved AmeriCorps positions through cooperation with secondary schools, institutions of higher education, employment service offices, community-based organizations, State vocational rehabilitation agencies within the meaning of the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*) and other State agencies that primarily serve qualified individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are qualified individuals with disabilities.

(c) *National leadership pool*—(1) *Selection and training.* From among individuals recruited under paragraph (b) of this section or nominated by service programs, the Corporation may select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. The leadership training will be provided by the Corporation directly or through a grant, contract, or cooperative agreement as the Corporation determines.

(2) *Emphasis on certain individuals.* In selecting individuals to receive leadership training under this provision, the Corporation will make special efforts to select individuals who have served—

(i) In the Peace Corps;

(ii) As VISTA volunteers;

(iii) As participants in AmeriCorps programs receiving assistance under parts 2520 through 2524 of this chapter;

(iv) As participants in National Service Demonstration programs that received assistance from the Commission on National and Community Service; or

(v) As members of the Armed Forces of the United States and who were honorably discharged from such service.

(3) *Assignment.* At the request of a program that receives assistance, the Corporation may assign an individual who receives leadership training under

paragraph (c)(1) of this section to work with the program in a leadership position and carry out assignments not otherwise performed by regular participants. An individual assigned to a program will be considered to be a participant of the program.

**§ 2522.220 What are the required terms of service for AmeriCorps participants?**

(a) *Term of Service.* A term of service may be defined as:

(1) *Full-time service.* 1,700 hours of service during a period of not more than one year.

(2) *Part-time service.* 900 hours of service during a period of not more than two years.

(3) *Reduced part-time term of service.* The Corporation may reduce the number of hours required to be served in order to receive an educational award for certain part-time participants serving in approved AmeriCorps positions. In such cases, the educational award will be reduced in direct proportion to the reduction in required hours of service. These reductions may be made for summer programs, for categories of participants in certain approved AmeriCorps programs and on a case-by-case, individual basis as determined by the Corporation.

(4) *Summer programs.* A summer program, in which less than 1700 hours of service are performed, are part-time programs.

(b) *Eligibility for subsequent term.* A participant will only be eligible to serve a subsequent term of service if that individual has received a satisfactory performance review for any previous term of service in an approved AmeriCorps position, in accordance with the requirements of paragraph (d) of this section and § 2526.15. Mere eligibility for a second or further term of service in no way guarantees a participant selection or placement.

(c) *Participant evaluation.* For the purposes of determining a participant's eligibility for an educational award as described in § 2522.240(a) and eligibility to serve a second or additional term of service as described in paragraph (c) of this section, each AmeriCorps grantee is responsible for conducting a mid-term and end-of-term evaluation. A

mid-term evaluation is not required for a participant who is released early from a term of service or in other circumstances as approved by the Corporation. The end-of-term evaluation should consist of:

(1) A determination of whether the participant:

(i) Successfully completed the required term of service described in paragraph (a) of this section, making the participant eligible for an educational award as described in § 2522.240(a);

(ii) Was released from service for compelling personal circumstances, making the participant eligible for a pro-rated educational award as described in § 2522.230(a)(2); or

(iii) Was released from service for cause, making the participant ineligible to receive an educational award for that term of service as described in § 2522.230(b)(3); and

(2) A participant performance and conduct review to determine whether the participant's service was satisfactory, which will assess whether the participant:

(i) Has satisfactorily completed assignments, tasks, or projects, or, for those participants released from service early, whether the participant made a satisfactory effort to complete those assignments, tasks, or projects that the participant could reasonably have addressed in the time the participant served; and

(ii) Has met any other criteria which had been clearly communicated both orally and in writing at the beginning of the term of service.

(d) *Limitation.* The Corporation may set a minimum or maximum percentage of hours of a full-time, part-time, or reduced term of service described in paragraphs (a)(1), (a)(2), and (a)(3) of this section that a participant may engage in training, education, or other similar approved activities

(e) *Grievance procedure.* Any AmeriCorps participant wishing to contest a program's ruling of unsatisfactory performance may file a grievance according to the procedures set forth in part 2540 of this chapter. If that grievance procedure or subsequent binding arbitration procedure finds that the participant did in fact satisfactorily

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complete a term of service, then that individual will be eligible to receive an educational award and/or be eligible to serve a second term of service.

(f) *Extension of term for disaster purposes.* If approved by the Corporation, a program may permit an AmeriCorps participant performing service directly related to disaster relief efforts to continue in a term of service for a period of up to 90 days beyond the period otherwise specified. A period of service performed by an AmeriCorps participant in an originally agreed-upon term of service and service performed under this paragraph shall constitute a single term of service for the purposes of § 2526.50(a) of this chapter.

[59 FR 13796, Mar. 23, 1994, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009; 75 FR 51410, Aug. 20, 2010]

### **§ 2522.230 Under what circumstances may an AmeriCorps participant be released from completing a term of service, and what are the consequences?**

An AmeriCorps program may release a participant from completing a term of service for compelling personal circumstances, as determined by the program, or for cause.

(a) *Release for compelling personal circumstances.*

(1) An AmeriCorps program may release a participant upon a determination by the program, consistent with the criteria listed in paragraphs (a)(6) and (a)(7) of this section, that the participant is unable to complete the term of service because of compelling personal circumstances, if the participant has otherwise performed satisfactorily and has completed at least fifteen percent of the agreed term of service.

(2) A participant who is released for compelling personal circumstances and who completes at least 15 percent of the required term of service is eligible for a pro-rated education award.

(3) The program must document the basis for any determination that compelling personal circumstances prevent a participant from completing a term of service.

(4) Compelling personal circumstances include:

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(i) Those that are beyond the participant's control, such as, but not limited to:

(A) A participant's disability or serious illness;

(B) Disability, serious illness, or death of a participant's family member if this makes completing a term unreasonably difficult or impossible; or

(C) Conditions attributable to the program or otherwise unforeseeable and beyond the participant's control, such as a natural disaster, a strike, relocation of a spouse, or the nonrenewal or premature closing of a project or program, that make completing a term unreasonably difficult or impossible;

(ii) Those that the Corporation, has for public policy reasons, determined as such, including:

(A) Military service obligations;

(B) Acceptance by a participant of an opportunity to make the transition from welfare to work; or

(C) Acceptance of an employment opportunity by a participant serving in a program that includes in its approved objectives the promotion of employment among its participants.

(5) Compelling personal circumstances do not include leaving a program:

(i) To enroll in school;

(ii) To obtain employment, other than in moving from welfare to work or in leaving a program that includes in its approved objectives the promotion of employment among its participants; or

(iii) Because of dissatisfaction with the program.

(6) As an alternative to releasing a participant, an AmeriCorps\*State/National program may, after determining that compelling personal circumstances exist, suspend the participant's term of service for up to two years (or longer if approved by the Corporation based on extenuating circumstances) to allow the participant to complete service with the same or similar AmeriCorps program at a later time.

(b) *Release for cause.* (1) A release for cause encompasses any circumstances other than compelling personal circumstances that warrant an individual's release from completing a term of service.

(2) AmeriCorps programs must release for cause any participant who is convicted of a felony or the sale or distribution of a controlled substance during a term of service.

(3) A participant who is released for cause may not receive any portion of the AmeriCorps education award or any other payment from the National Service Trust.

(4) An individual who is released for cause must disclose that fact in any subsequent applications to participate in an AmeriCorps program. Failure to do so disqualifies the individual for an education award, regardless of whether the individual completes a term of service.

(5) An AmeriCorps\*State/National participant released for cause may contest the program's decision by filing a grievance. Pending the resolution of a grievance procedure filed by an individual to contest a determination by a program to release the individual for cause, the individual's service is considered to be suspended. For this type of grievance, a program may not—while the grievance is pending or as part of its resolution—provide a participant with federally-funded benefits (including payments from the National Service Trust) beyond those attributable to service actually performed, without the program receiving written approval from the Corporation.

(6) An individual's eligibility for a subsequent term of service in AmeriCorps will not be affected by release for cause from a prior term of service so long as the individual received a satisfactory end-of-term performance review as described in § 2522.220(c)(2) for the period served in the prior term.

(7) Except as provided in paragraph (e) of this section, a term of service from which an individual is released for cause counts as one of the terms of service described in § 2522.235 for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

(c) *Suspended service.* (1) A program must suspend the service of an individual who faces an official charge of a violent felony (e.g., rape, homicide) or sale or distribution of a controlled substance.

(2) A program must suspend the service of an individual who is convicted of possession of a controlled substance.

(3) An individual may not receive a living allowance or other benefits, and may not accrue service hours, during a period of suspension under this provision.

(d) *Reinstatement.* (1) A program may reinstate an individual whose service was suspended under paragraph (c)(1) of this section if the individual is found not guilty or if the charge is dismissed.

(2) A program may reinstate an individual whose service was suspended under paragraph (c)(2) of this section only if the individual demonstrates the following:

(i) For an individual who has been convicted of a first offense of the possession of a controlled substance, the individual must have enrolled in a drug rehabilitation program;

(ii) For an individual who has been convicted for more than one offense of the possession of a controlled substance, the individual must have successfully completed a drug rehabilitation program.

(e) *Release prior to serving 15 percent of a term of service.* If a participant is released for reasons other than misconduct prior to completing 15 percent of a term of service, the term will not be considered one of the terms of service described in § 2522.220(b) for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

[64 FR 37413, July 12, 1999, as amended at 73 FR 53759, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009; 75 FR 51410, Aug. 20, 2010]

**§ 2522.235 Is there a limit on the number of terms an individual may serve in an AmeriCorps State and National program?**

(a) *General limitation.* An individual may receive the benefits described in §§ 2522.240 through 2522.250 for no more than four terms of service in an AmeriCorps State and National program, regardless of whether those terms were served on a full-, part-, or reduced part-time basis, consistent with the limitations in § 2526.50.

(b) *Early release.* Except as provided in paragraph (c) of this section, a term of service from which an individual is

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released for compelling personal circumstances or for cause counts as one of the terms of service for which an individual may receive the benefits described in § 2522.240 through § 2522.250.

(c) *Release prior to serving fifteen percent of a term.* If a person is released for reasons other than misconduct prior to completing fifteen percent of a term of service, the term will not be considered one of the terms of service for which an individual may receive the benefits described in §§ 2522.240 through 2522.250.

[75 FR 51410, Aug. 20, 2010]

### **§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?**

(a) *AmeriCorps education awards.* An individual serving in an approved AmeriCorps State and National position may receive an education award from the National Service Trust upon successful completion of each of no more than four terms of service as defined in § 2522.220, consistent with the limitations in § 2526.50.

(b) *Living allowances—(1) Amount.* Subject to the provisions of this part, any individual who participates on a full-time basis in an AmeriCorps program carried out using assistance provided pursuant to § 2521.30 of this chapter, including an AmeriCorps program that receives educational awards only pursuant to § 2521.30(c) of this chapter, will receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under § 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). This requirement will not apply to any program that was in existence prior to September 21, 1993 (the date of the enactment of the National and Community Service Trust Act of 1993).

(2) *Maximum living allowance.* With the exception of a professional corps described in § 2522.110(a)(3), the AmeriCorps living allowances may not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). A professional corps AmeriCorps program may provide a stipend in excess of the max-

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imum, subject to the following conditions: (i) Corporation assistance may not be used to pay for any portion of the allowance; and

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application to the Corporation, and may not be included in a State's application for AmeriCorps program funds distributed by formula under § 2521.30(a)(2) of this chapter.

(3) *Living allowances for part-time participants.* Programs may, but are not required to, provide living allowances to individuals participating on a part-time basis (or a reduced term of part-time service authorized under § 2522.220(a)(3)). Such living allowances should be prorated to the living allowance authorized in paragraph (b)(1) of this section and will comply with such restrictions therein.

(4) *Waiver or reduction of living allowance for programs.* The Corporation may, at its discretion, waive or reduce the living allowance requirements if a program can demonstrate to the satisfaction of the Corporation that such requirements are inconsistent with the objectives of the program, and that participants will be able to meet the necessary and reasonable costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) *Waiver or reduction of living allowance by participants.* A participant may waive all or part of the receipt of a living allowance. The participant may revoke this waiver at any time during the participant's term of service. If the participant revokes the living allowance waiver, the participant may begin receiving his or her living allowance prospective from the date of the revocation; a participant may not receive any portion of the living allowance that may have accrued during the waiver period.

(6) *Limitation on Federal share.* The Federal share, including Corporation and other Federal funds, of the total amount provided to an AmeriCorps participant for a living allowance is limited as follows:

(i) In no case may the Federal share exceed 85% of the minimum required

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living allowance enumerated in paragraph (b)(1) of this section.

(ii) For professional corps described in paragraph (b)(2)(i) of this section, Corporation and other Federal funds may be used to pay for no portion of the living allowance.

(iii) If the minimum living allowance requirements has been waived or reduced pursuant to paragraph (b)(4) of this section and the amount of the living allowance provided to a participant has been reduced correspondingly—

(A) In general, the Federal share may not exceed 85% of the reduced living allowance; however,

(B) If a participant is serving in a program that provides room or board, the Corporation will consider on a case-by-case basis allowing the portion of that living allowance that may be paid using Corporation and other Federal funds to be between 85% and 100%.

(c) *Financial benefits for participants during an extended term of service for disaster purposes.* An AmeriCorps participant performing extended service under § 2522.220(f) may continue to receive a living allowance under paragraph (b) and other benefits under § 2522.250, but may not receive an additional AmeriCorps educational award under paragraph (a).

[59 FR 13796, Mar. 23, 1994, as amended at 71 FR 10611, Mar. 2, 2006; 73 FR 53760, Sept. 17, 2008; 74 FR 46506, Sept. 10, 2009; 75 FR 51410, Aug. 20, 2010]

### § 2522.245 How are living allowances disbursed?

A living allowance is not a wage and programs may not pay living allowances on an hourly basis. Programs must distribute the living allowance at regular intervals and in regular increments, and may increase living allowance payments only on the basis of increased living expenses such as food, housing, or transportation. Living allowance payments may only be made to a participant during the participant's term of service and must cease when the participant concludes the term of service. Programs may not provide a lump sum payment to a participant who completes the originally agreed-upon term of service in a shorter period of time.

[73 FR 53760, Sept. 17, 2008]

### § 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *Child Care.* Grantees must provide child care through an eligible provider or a child care allowance in an amount determined by the Corporation to those full-time participants who need child care in order to participate.

(1) *Need.* A participant is considered to need child care in order to participate in the program if he or she:

(i) Is the parent or legal guardian of, or is acting in loco parentis for, a child under 13 who resides with the participant;

(ii) Has a family income that does not exceed 75 percent of the State's median income for a family of the same size;

(iii) At the time of acceptance into the program, is not currently receiving child care assistance from another source, including a parent or guardian, which would continue to be provided while the participant serves in the program; and

(iv) Certifies that he or she needs child care in order to participate in the program.

(2) *Provider eligibility.* Eligible child care providers are those who are eligible child care providers as defined in the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5)).

(3) *Child care allowance.* The amount of the child-care allowance may not exceed the applicable payment rate to an eligible provider established by the State for child care funded under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A)).

(4) *Corporation share.* The Corporation will pay 100 percent of the child care allowance, or, if the program provides child care through an eligible provider, the actual cost of the care or the amount of the allowance, whichever is less.

(b) *Health care.* (1) Grantees must provide to all eligible participants who meet the requirements of paragraph (b)(2) of this section health care coverage that—

(i) Provides the minimum benefits determined by the Corporation;

## § 2522.300

(ii) Provides the alternative minimum benefits determined by the Corporation; or

(iii) Does not provide all of either the minimum or the alternative minimum benefits but that has a fair market value equal to or greater than the fair market value of a policy that provides the minimum benefits.

(2) *Participant eligibility.* A full-time participant is eligible for health care benefits if he or she is not otherwise covered by a health benefits package providing minimum benefits established by the Corporation at the time he or she is accepted into a program. If, as a result of participation, or if, during the term of service, a participant demonstrates loss of coverage through no deliberate act of his or her own, such as parental or spousal job loss or disqualification from Medicaid, the participant will be eligible for health care benefits.

(3) *Corporation share.* (i) Except as provided in paragraph (b)(3)(ii) of this section, the Corporation's share of the cost of health coverage may not exceed 85 percent.

(ii) The Corporation will pay no share of the cost of a policy that does not provide the minimum or alternative minimum benefits described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

[59 FR 13796, Mar. 23, 1994, as amended at 70 FR 39600, July 8, 2005]

### Subpart C—Application Requirements

#### § 2522.300 What are the application requirements for AmeriCorps program grants?

All eligible applicants seeking AmeriCorps program grants must—

(a) Provide a description of the specific program(s) being proposed, including the type of program and of how it meets the minimum program requirements described in § 2522.100; and

(b) Comply with any additional requirements as specified by the Corporation in the application package.

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#### § 2522.310 What are the application requirements for AmeriCorps educational awards only?

(a) Eligible applicants may apply for AmeriCorps educational awards only for one of the following eligible service positions: (1) A position for a participant in an AmeriCorps program that:

(i) Is carried out by an entity eligible to receive support under part 2521 of this chapter;

(ii) Would be eligible to receive assistance under this part, based on criteria established by the Corporation, but has not applied for such assistance;

(2) A position facilitating service-learning in a program described in parts 2515 through 2519 of this chapter;

(3) A position involving service as a crew leader in a youth corps program or a similar position supporting an AmeriCorps program; and

(4) Such other AmeriCorps positions as the Corporation considers to be appropriate.

(b) Because programs applying only for AmeriCorps educational awards must, by definition, meet the same basic requirements as other approved AmeriCorps programs, applicants must comply with the same application requirements specified in § 2522.300.

#### § 2522.320 [Reserved]

#### § 2522.330 [Reserved]

#### § 2522.340 How will I know if two projects are the same?

The Corporation will consider two projects to be the same if the Corporation cannot identify a meaningful difference between the two projects based on a comparison of the following characteristics, among others:

(a) The objectives and priorities of the projects;

(b) The nature of the services provided;

(c) The program staff, participants, and volunteers involved;

(d) The geographic locations in which the services are provided;

(e) The populations served; and

(f) The proposed community partnerships.

[73 FR 53760, Sept. 17, 2008]



### Subpart D—Selection of AmeriCorps Programs

#### § 2522.400 What process does the Corporation use to select new grantees?

The Corporation uses a multi-stage process, which may include review by panels of experts, Corporation staff review, and approval by the Chief Executive Officer or the Board of Directors, or their designee.

[70 FR 39600, July 8, 2005]

#### § 2522.410 What is the role of the Corporation's Board of Directors in the selection process?

The Board of Directors has general authority to determine the selection process, including priorities and selection criteria, and has authority to make grant decisions. The Board may delegate these functions to the Chief Executive Officer.

[70 FR 39600, July 8, 2005]

#### § 2522.415 How does the grant selection process work?

The selection process includes:

- (a) Determining whether your proposal complies with the application requirements, such as deadlines and eligibility requirements;
- (b) Applying the basic selection criteria to assess the quality of your proposal;
- (c) Applying any applicable priorities or preferences, as stated in these regulations and in the applicable Notice of Funding Availability; and
- (d) Ensuring innovation and geographic, demographic, and programmatic diversity across the Corporation's national AmeriCorps portfolio.

[70 FR 39600, July 8, 2005]

#### § 2522.420 What basic criteria does the Corporation use in making funding decisions?

In evaluating your application for funding, the Corporation will assess:

- (a) Your program design;
- (b) Your organizational capability; and
- (c) Your program's cost-effectiveness and budget adequacy.

[70 FR 39600, July 8, 2005]

§ 2522.425 [Reserved]

§ 2522.430 [Reserved]

§ 2522.435 [Reserved]

#### § 2522.440 What weight does the Corporation give to each category of the basic criteria?

In evaluating applications, the Corporation assigns the following weights for each category:

Category	Percentage
Program design .....	50
Organizational capability .....	25
Cost-effectiveness and budget adequacy .....	25

[70 FR 39600, July 8, 2005]

§ 2522.445 [Reserved]

§ 2522.448 [Reserved]

#### § 2522.450 What types of programs or program models may receive special consideration in the selection process?

Following the scoring of proposals under § 2522.440 of this part, the Corporation will seek to ensure that its portfolio of approved programs includes a meaningful representation of proposals that address one or more of the following priorities:

- (a) *Program models*: (1) Programs operated by community organizations, including faith-based organizations, or programs that support the efforts of community organizations, including faith-based organizations, to solve local problems;
- (2) Lower-cost professional corps programs, as defined in paragraph (a)(3) of § 2522.110 of this chapter.
- (b) *Program activities*: (1) Programs that serve or involve children and youth, including mentoring of disadvantaged youth and children of prisoners;
- (2) Programs that address educational needs, including those that carry out literacy and tutoring activities generally, and those that focus on reading for children in the third grade or younger;
- (3) Programs that focus on homeland security activities that support and promote public safety, public health, and preparedness for any emergency, natural or man-made (this includes

## § 2522.455

programs that help to plan, equip, train, and practice the response capabilities of many different response units ready to mobilize without warning for any emergency);

(4) Programs that address issues relating to the environment;

(5) Programs that support independent living for seniors or individuals with disabilities;

(6) Programs that increase service and service-learning on higher education campuses in partnership with their surrounding communities;

(7) Programs that foster opportunities for Americans born in the post-World War II baby boom to serve and volunteer in their communities; and

(8) Programs that involve community-development by finding and using local resources, and the capacities, skills, and assets of lower-income people and their community, to rejuvenate their local economy, strengthen public and private investments in the community, and help rebuild civil society.

(c) *Programs supporting distressed communities*: Programs or projects that will be conducted in:

(1) A community designated as an empowerment zone or redevelopment area, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people;

(2) An area that is environmentally distressed, as demonstrated by Federal and State data;

(3) An area adversely affected by Federal actions related to managing Federal lands that result in significant regional job losses and economic dislocation;

(4) An area adversely affected by reductions in defense spending or the closure or realignment of military installation;

(5) An area that has an unemployment rate greater than the national average unemployment for the most recent 12 months for which State or Federal data are available;

(6) A rural community, as demonstrated by Federal and State data; or

(7) A severely economically distressed community, as demonstrated by Federal and State data.

(d) *Other programs*: Programs that meet any additional priorities as the

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Corporation determines and disseminates in advance of the selection process.

[70 FR 39600, July 8, 2005]

### § 2522.455 How do I find out about additional priorities governing the selection process?

The Corporation posts discretionary funding opportunities addressing the Corporation's selection preferences and additional requirements on our website at [www.nationalservice.gov](http://www.nationalservice.gov) and at [www.grants.gov](http://www.grants.gov) in advance of grant competitions

[70 FR 39600, July 8, 2005]

### § 2522.460 To what extent may the Corporation or a State commission consider priorities other than those stated in these regulations or the Notice of Funding Availability?

(a) The Corporation may give special consideration to a national service program submitted by a State commission that does not meet one of the Corporation's priorities if the State commission adequately explains why the State is not able to carry out a program that meets one of the Corporation's priorities, and why the program meets one of the State's priorities.

(b) A State may apply priorities different than those of the Corporation in selecting its formula programs.

[70 FR 39600, July 8, 2005]

### § 2522.465 What information must a State commission submit on the relative strengths of applicants for State competitive funding?

(a) If you are a State commission applying for State competitive funding, you must prioritize the proposals you submit in rank order based on their relative quality and according to the following table:

If you submit this number of state competitive proposals to the corporation	Then you must rank this number of proposals
1 to 12 .....	At least top 5.
13 to 24 .....	At least top 10.
25 or more .....	At least top 15.

(b) While the rankings you provide will not be determinative in the grant selection process, and the Corporation

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will not be bound by them, we will consider them in our selection process.

[70 FR 39600, July 8, 2005]

### **§ 2522.470 What other factors or information may the Corporation consider in making final funding decisions?**

(a) The Corporation will seek to ensure that our portfolio of AmeriCorps programs is programmatically, demographically, and geographically diverse and includes innovative programs, and projects in rural, high poverty, and economically distressed areas.

(b) In applying the selection criteria under §§ 2522.420 through 2522.435, the Corporation may, with respect to a particular proposal, also consider one or more of the following for purposes of clarifying or verifying information in a proposal, including conducting due diligence to ensure an applicant's ability to manage Federal funds:

(1) For an applicant that has previously received a Corporation grant, any information or records the applicant submitted to the Corporation, or that the Corporation has in its system of records, in connection with its previous grant (*e.g.* progress reports, site visit reports, financial status reports, audits, HHS Account Payment Data Reports, Federal Cash Transaction Reports, timeliness of past reporting, etc.);

(2) Program evaluations;

(3) Member-related information from the Corporation's systems;

(4) Other Corporation internal information, including information from the Office of Inspector General, administrative standards for State commissions, and reports on program training and technical assistance;

(5) IRS Tax Form 990;

(6) An applicant organization's annual report;

(7) Information relating to the applicant's financial management from Corporation records;

(8) Member satisfaction indicators;

(9) Publicly available information including:

(i) Socio-economic and demographic data, such as poverty rate, unemployment rate, labor force participation, and median household income;

(ii) Information on where an applicant and its activities fall on the U.S. Department of Agriculture's urban-rural continuum (Beale codes);

(iii) Information on the nonprofit and philanthropic community, such as charitable giving per capita;

(iv) Information from an applicant organization's website; and

(v) U.S. Department of Education data on Federal Work Study and Community Service; and

(10) Other information, following notice in the relevant Notice of Funding Availability, of the specific information and the Corporation's intention to be able to consider that information in the review process.

(c) Before approving a program grant to a State commission, the Corporation will consider a State commission's capacity to manage and monitor grants.

[70 FR 39600, July 8, 2005]

### **§ 2522.475 To what extent must I use the Corporation's selection criteria and priorities when selecting formula programs or operating sites?**

You must ensure that the selection criteria you use include the following criteria:

(a) The quality of the national service program proposed to be carried out directly by the applicant or supported by a grant from the applicant.

(b) The innovative aspects of the national service program, and the feasibility of replicating the program.

(c) The sustainability of the national service program.

(d) The quality of the leadership of the national service program, the past performance of the program, and the extent to which the program builds on existing programs.

(e) The extent to which participants of the national service program are recruited from among residents of the communities in which projects are to be conducted, and the extent to which participants and community residents are involved in the design, leadership, and operation of the program.

(f) The extent to which projects would be conducted in one of the areas listed in § 2522.450(c)(1) through (5) of this subpart.

(g) In the case of applicants other than States, the extent to which the

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application is consistent with the application of the State in which the projects would be conducted.

(h) Such other criteria as the Corporation considers to be appropriate, following appropriate notice.

[70 FR 39600, July 8, 2005]

### § 2522.480 Can a State's application for formula funds be rejected?

Yes. Formula funds are not an entitlement.

(a) *Notification.* If the Corporation rejects an application submitted by a State Commission under part 2550 of this chapter for funds described in § 2521.30 of this chapter, the Corporation will promptly notify the State Commission of the reasons for the rejection of the application.

(b) *Revision.* The Corporation will provide a State Commission notified under paragraph (a) of this section with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation will provide technical assistance to the State Commission as part of the resubmission process. The Corporation will promptly reconsider an application resubmitted under this paragraph.

(c) *Redistribution.* The amount of any State's allotment under § 2521.30(a) of this chapter for a fiscal year that the Corporation determines will not be provided for that fiscal year will be available for redistribution by the Corporation to the States, Territories and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

[59 FR 13796, Mar. 23, 1994. Redesignated at 70 FR 39600, July 8, 2005]

### § 2522.485 How do I calculate my program's budgeted Corporation cost per member service year (MSY)?

If you are an AmeriCorps national and community service program, you calculate your Corporation cost per MSY by dividing the Corporation's share of budgeted grant costs by the number of member service years you are awarded in your grant. You do not include child-care or the cost of the

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education award a member may earn through serving with your program.

[70 FR 39603, July 8, 2005]

### Subpart E—Evaluation Requirements

#### § 2522.500 What is the purpose of this subpart?

(a) This subpart sets forth the minimum performance measures and evaluation requirements that you as a Corporation applicant or grantee must follow.

(b) The performance measures that you, as an applicant, propose when you apply will be considered in the review process and may affect whether the Corporation selects you to receive a grant. Your performance related to your approved measures will influence whether you continue to receive funding.

(c) Performance measures and evaluations are designed to strengthen your AmeriCorps program and foster continuous improvement, and help identify best practices and models that merit replication, as well as programmatic weaknesses that need attention.

[70 FR 39603, July 8, 2005]

#### § 2522.510 To whom does this subpart apply?

This subpart applies to you if you are a Corporation grantee administering an AmeriCorps grant, including an Education Award Program grant, or if you are applying to receive AmeriCorps funding from the Corporation.

[70 FR 39603, July 8, 2005]

#### § 2522.520 What special terms are used in this subpart?

The following definitions apply to terms used in this subpart of the regulations:

(a) *Approved application* means the application approved by the Corporation or, for formula programs, by a State commission.

(b) *Community beneficiaries* refers to persons who receive services or benefits from a program, but not to AmeriCorps members or to staff of the organization operating the program.

(c) *Outputs* are the amount or units of service that members or volunteers have completed, or the number of community beneficiaries the program has served. Outputs do not provide information on benefits or other changes in communities or in the lives of members or community beneficiaries. Examples of outputs could include the number of people a program tutors, counsels, houses, or feeds.

(d) *Intermediate-outcomes* specify a change that has occurred in communities or in the lives of community beneficiaries or members, but is not necessarily a lasting benefit for them. They are observable and measurable indications of whether or not a program is making progress and are logically connected to end outcomes. An example would be the number and percentage of students who report reading more books as a result of their participation in a tutoring program.

(e) *Internal evaluation* means an evaluation that a grantee performs in-house without the use of an independent external evaluator.

(f) *End-outcomes* specify a change that has occurred in communities or in the lives of community beneficiaries or members that is significant and lasting. These are actual benefits or changes for participants during or after a program. For example, in a tutoring program, the end outcome could be the percent and number of students who have improved their reading scores to grade-level, or other specific measures of academic achievement.

(g) *Grantee* includes subgrantees, programs, and projects.

(h) *National performance measures* are performance measures that the Corporation develops.

(i) *You* refers to a grantee or applicant organization.

[70 FR 39603, July 8, 2005; 70 FR 48882, Aug. 22, 2005]

**§ 2522.530 May I use the Corporation's program grant funds for performance measurement and evaluation?**

If performance measurement and evaluation costs were approved as part of your grant, you may use your program grant funds to support them, con-

sistent with the level of approved costs for such activities in your grant award.

[70 FR 39603, July 8, 2005]

**§ 2522.540 Do the costs of performance measurement or evaluation count towards the statutory cap on administrative costs?**

No, the costs of performance measurement and evaluation do not count towards the statutory five percent cap on administrative costs in the grant, as provided in § 2540.110 of this chapter.

[70 FR 39603, July 8, 2005]

PERFORMANCE MEASURES:  
REQUIREMENTS AND PROCEDURES

**§ 2522.550 What basic requirements must I follow in measuring performance under my grant?**

All grantees must establish, track, and assess performance measures for their programs. As a grantee, you must ensure that any program under your oversight fulfills performance measure and evaluation requirements. In addition, you must:

(a) Establish ambitious performance measures in consultation with the Corporation, or the State commission, as appropriate, following §§ 2422.560 through 2422.660 of this subpart;

(b) Ensure that any program under your oversight collects and organizes performance data on an ongoing basis, at least annually;

(c) Ensure that any program under your oversight tracks progress toward meeting your performance measures;

(d) Ensure that any program under your oversight corrects performance deficiencies promptly; and

(e) Accurately and fairly present the results in reports to the Corporation.

[70 FR 39603, July 8, 2005]

**§ 2522.560 What are performance measures and performance measurement?**

(a) Performance measures are measurable indicators of a program's performance as it relates to member service activities.

(b) Performance measurement is the process of regularly measuring the services provided by your program and

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the effect your program has in communities or in the lives of members or community beneficiaries.

(c) The main purpose of performance measurement is to strengthen your AmeriCorps program and foster continuous improvement and to identify best practices and models that merit replication. Performance measurement will also help identify programmatic weaknesses that need attention.

[70 FR 39603, July 8, 2005]

### **§ 2522.570 What information on performance measures must my grant application include?**

You must submit all of the following as part of your application for each program:

(a) Proposed performance measures, as described in § 2522.580 and § 2522.590 of this part.

(b) Estimated performance data for the program years for which you submit your application; and

(c) Actual performance data, where available, as follows:

(i) For continuation programs, performance data over the course of the grant to date; and

(ii) For recompetiting programs, performance data for the preceding three-year grant cycle.

[70 FR 39603, July 8, 2005]

### **§ 2522.580 What performance measures am I required to submit to the Corporation?**

(a) When applying for funds, you must submit, at a minimum, the following performance measures:

(1) One set of aligned performance measures (one output, one intermediate-outcome, and one end-outcome) that capture the results of your program's primary activity, or area of significant activity for programs whose design precludes identifying a primary activity; and

(2) Any national performance measures the Corporation may require, as specified in paragraph (b) of § 2522.590.

(b) For example, a tutoring program might use the following aligned performance measures:

(1) Output: Number of students that participated in a tutoring program;

(2) Intermediate-Outcome: Percent of students reading more books; and

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(3) End-Outcome: Number and percent of students who have improved their reading score to grade level.

(c) The Corporation encourages you to exceed the minimum requirements expressed in this section and expects, in second and subsequent grant cycles, that you will more fully develop your performance measures, including establishing multiple performance indicators, and improving and refining those you used in the past. Any performance measures you submit beyond what is required in paragraph (a)(1) of this section may or may not be aligned sets of measures.

[70 FR 39603, July 8, 2005]

### **§ 2522.590 Who develops my performance measures?**

(a) You are responsible for developing your program-specific performance measures through your own internal process.

(b) In addition, the Corporation may, in consultation with grantees, establish performance measures that will apply to all Corporation-sponsored programs, which you will be responsible for collecting and meeting.

[70 FR 39603, July 8, 2005]

### **§ 2522.600 Who approves my performance measures?**

(a) The Corporation will review and approve performance measures, as part of the grant application review process, for all non-formula programs. If the Corporation selects your application for funding, the Corporation will approve your performance measures as part of your grant award.

(b) If you are a program submitting an application under the State formula category, the applicable State commission is responsible for reviewing and approving your performance measures. The Corporation will not separately approve these measures.

[70 FR 39603, July 8, 2005]

### **§ 2522.610 What is the difference in performance measurements requirements for competitive and formula programs?**

(a) Except as provided in paragraph (b) of this section, State commissions

are responsible for making the final determination of performance measures for State formula programs, while the Corporation makes the final determination for all other programs.

(b) The Corporation may, through the State commission, require that formula programs meet certain national performance measures above and beyond what the State commission has individually negotiated with its formula grantees.

(c) While State commissions must hold their sub-grantees responsible for their performance measures, a State commission, as a grantee, is responsible to the Corporation for its formula programs' performance measures.

[70 FR 39603, July 8, 2005]

**§ 2522.620 How do I report my performance measures to the Corporation?**

The Corporation sets specific reporting requirements, including frequency and deadlines, for performance measures in the grant award.

(a) In general, you are required to report on the actual results that occurred when implementing the grant and to regularly measure your program's performance.

(b) Your report must include the results on the performance measures approved as part of your grant award.

(c) At a minimum you are required to report on outputs at the end of year one and outputs and intermediate outcomes at the end of years two and three. We encourage you to exceed these minimum requirements.

[70 FR 39603, July 8, 2005, as amended at 73 FR 53760, Sept. 17, 2008]

**§ 2522.630 What must I do if I am not able to meet my performance measures?**

If you are not on track to meet your performance measures, you must develop and submit to the Corporation, or the State commission for formula programs, a corrective action plan, consistent with paragraph (a) of this section, or submit a request to the Corporation, or the State commission for formula programs, consistent with paragraph (b) of this section, to amend your requirements under the cir-

cumstances described in § 2522.640 of this subpart.

(a) Your corrective action plan must be in writing and include all of the following:

(1) The factors impacting your performance goals;

(2) The strategy you are using and corrective action you are taking to get back on track toward your established performance measures; and

(3) The timeframe in which you plan to achieve getting back on track with your performance measures.

(b) A request to amend your performance measures must include all of the following:

(1) Why you are not on track to meet your performance requirements;

(2) How you have been tracking performance measures;

(3) Evidence of the corrective action you have taken;

(4) Any new proposed performance measures or targets; and

(5) Your plan to ensure that you meet any new measures.

(c) You must submit your plan under paragraph (a) of this section, or your request under paragraph (b) of this section, within 30 days of determining that you are not on track to meeting your performance measures.

(d) If you are a formula program, the State commission that approves the plan under paragraph (a) of this section or the request to amend your performance measures under paragraph (b) of this section, must forward an information copy to the Corporation's AmeriCorps program office within 15 days of approving the plan or the request.

[70 FR 39603, July 8, 2005]

**§ 2522.640 Under what circumstances may I change my performance measures?**

(a) You may change your performance measures only if the Corporation or, for formula programs, the State commission, approves your request to do so based on your need to:

(1) Adjust your performance measure or target based on experience so that your program's goals are more realistic and manageable;

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(2) Replace a measure related to one issue area with one related to a different issue area that is more aligned with your program service activity. For example, you may need to replace an objective related to health with one related to the environment;

(3) Redefine the service that individuals perform under the grant. For example, you may need to define your service as tutoring adults in English, as opposed to operating an after-school program for third-graders;

(4) Eliminate an activity because you have been unable to secure necessary matching funding; or

(5) Replace one measure with another. For example, you may decide that you want to replace one measure of literacy tutoring (increased attendance at school) with another (percentage of students who are promoted to the next grade level).

(b) [Reserved]

[70 FR 39603, July 8, 2005]

### **§ 2522.650 What happens if I fail to meet the performance measures included in my grant?**

(a) If you are significantly under-performing based on the performance measures approved in your grant, or fail to collect appropriate data to allow performance measurement, the Corporation, or the State commission for formula grantees, may specify a period of correction, after consulting with you. As a grantee, you must report results at the end of the period of correction. At that point, if you continue to under-perform, or fail to collect appropriate data to allow performance measurement, the Corporation may take one or more of the following actions:

(1) Reduce the amount of your grant;

(2) Suspend or terminate your grant;

(3) Use this information to assess any application from your organization for a new AmeriCorps grant or a new grant under another program administered by the Corporation;

(4) Amend the terms of any Corporation grants to your organization; or

(5) Take other actions that the Corporation deems appropriate.

(b) If you are a State commission whose formula program(s) is significantly under-performing or failing to collect appropriate data to allow per-

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formance measurement, we encourage you to take action as delineated in paragraph (a) of this section.

[70 FR 39603, July 8, 2005]

### **EVALUATING PROGRAMS: REQUIREMENTS AND PROCEDURES**

#### **§ 2522.700 How does evaluation differ from performance measurement?**

(a) Evaluation is a more in-depth, rigorous effort to measure the impact of programs. While performance measurement and evaluation both include systematic data collection and measurement of progress, evaluation uses scientifically-based research methods to assess the effectiveness of programs by comparing the observed program outcomes with what would have happened in the absence of the program. Unlike performance measures, evaluations estimate the impacts of programs by comparing the outcomes for individuals receiving a service or participating in a program to the outcomes for similar individuals not receiving a service or not participating in a program. For example, an evaluation of a literacy program may compare the reading ability of students in a program over time to a similar group of students not participating in a program.

(b) Performance measurement is the process of systematically and regularly collecting and monitoring data related to the direction of observed changes in communities, participants (members), or end beneficiaries receiving your program's services. It is intended to provide an indication of your program's operations and performance. In contrast to evaluation, it is not intended to establish a causal relationship between your program and a desired (or undesired) program outcome. For example, a performance measure for a literacy program may include the percentage of students receiving services from your program who increase their reading ability from "below grade level" to "at or above grade level". This measure indicates something good is happening to your program's service beneficiaries, but it does not indicate that the change can be wholly attributed to your program's services.

[70 FR 39603, July 8, 2005]



**§ 2522.710 What are my evaluation requirements?**

(a) If you are a State commission, you must establish and enforce evaluation requirements for your State formula subgrantees, as you deem appropriate.

(b) If you are a State competitive or direct Corporation AmeriCorps grantee (other than an Education Award Program grantee), and your average annual Corporation program grant is \$500,000 or more, you must arrange for an independent evaluation of your program, and you must submit the evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(c) If you are a State competitive or direct Corporation AmeriCorps grantee whose average annual Corporation program grant is less than \$500,000, or an Education Award Program grantee, you must conduct an internal evaluation of your program, and you must submit the evaluation with any application to the Corporation for competitive funds as required in § 2522.730 of this subpart.

(d) The Corporation may, in its discretion, supersede these requirements with an alternative evaluation approach, including one conducted by the Corporation at the national level.

(e) Grantees must cooperate fully with all Corporation evaluation activities.

[70 FR 39603, July 8, 2005]

**§ 2522.720 How many years must my evaluation cover?**

(a) If you are a State formula grantee, you must conduct an evaluation, as your State commission requires.

(b) If you are a State competitive or direct Corporation grantee, your evaluation must cover a minimum of one year but may cover longer periods.

[70 FR 39603, July 8, 2005]

**§ 2522.730 How and when do I submit my evaluation to the Corporation?**

(a) If you are an existing grantee re-competing for AmeriCorps funds for the first time, you must submit a summary of your evaluation efforts or plan to date, and a copy of any evaluation

that has been completed, as part of your application for funding.

(b) If you again compete for AmeriCorps funding after a second three-year grant cycle, you must submit the completed evaluation with your application for funding.

[70 FR 39603, July 8, 2005]

**§ 2522.740 How will the Corporation use my evaluation?**

The Corporation will consider the evaluation you submit with your application as follows:

(a) If you do not include with your application for AmeriCorps funding a summary of the evaluation, or the evaluation itself, as applicable, under § 2522.730, the Corporation reserves the right to not consider your application.

(b) If you do submit an evaluation with your application, the Corporation will consider the results of your evaluation in assessing the quality and outcomes of your program.

[70 FR 39603, July 8, 2005]

**§ 2522.800 How will the Corporation evaluate individual AmeriCorps programs?**

The Corporation will evaluate programs based on the following: (a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award;

(b) The extent to which the program is cost-effective; and

(c) The effectiveness of the program in meeting the following legislative objectives: (1) Providing direct and demonstrable services and projects that benefit the community by addressing educational, public safety, human, or environmental needs;

(2) Recruiting and enrolling diverse participants consistent with the requirements of part 2540 of this chapter, based on economic background, race, ethnicity, age, gender, marital status, education levels, and disability;

(3) Promoting the educational achievement of each participant based on earning a high school diploma or its equivalent and future enrollment in and completion of increasingly higher levels of education;

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(4) Encouraging each participant to engage in public and community service after completion of the program based on career choices and participation in other service programs;

(5) Promoting an ethic of active and productive citizenship among participants;

(6) Supplying additional volunteer assistance to community agencies without providing more volunteers than can be effectively utilized;

(7) Providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers; and

(8) Other criteria determined and published by the Corporation.

[59 FR 13796, Mar. 23, 1994. Redesignated at 70 FR 39603, July 8, 2005]

**§ 2522.810 What will the Corporation do to evaluate the overall success of the AmeriCorps programs?**

(a) The Corporation will conduct independent evaluations of programs, including in-depth studies of selected programs. These evaluations will consider the opinions of participants and members of the community where services are delivered. Where appropriate these studies will compare participants with individuals who have not participated in service programs. These evaluations will: (1) Study the extent to which the national service impacts involved communities;

(2) Study the extent to which national service increases positive attitudes among participants regarding the responsibilities of citizens and their role in solving community problems;

(3) Study the extent to which national service enables participants to afford post-secondary education with fewer student loans;

(4) Determine the costs and effectiveness of different program models in meeting program objectives including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative non-federally funded vouchers or post-service benefits, and programs utilizing individual placements and teams;

(5) Determine the impact of programs in each State on the ability of VISTA and National Senior Volunteer Corps, each regular and reserve component of the Armed Forces, and the Peace Corps to recruit individuals residing in that State; and

(6) Determine the levels of living allowances paid in all AmeriCorps programs and American Conservation and Youth Corps, individually, by State, and by region and determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(b) The Corporation will also determine by June 30, 1995: (1) Whether the State and national priorities designed to meet educational, public safety, human, or environmental needs are being addressed;

(2) Whether the outcomes of both stipended and nonstipended service programs are defined and measured appropriately;

(3) Whether stipended service programs, and service programs providing educational benefits in return for service, should focus on economically disadvantaged individuals or at risk youth, or whether such programs should include a mix of individuals, including individuals from middle and upper income families;

(4) The role and importance of stipends and educational benefits in achieving desired outcomes in the service programs;

(5) The income distribution of AmeriCorps participants, to determine the level of participation of economically disadvantaged individuals. The total income of participants will be determined as of the date the participant was first selected to participate in a program and will include family total income unless the evaluating entity determines that the participant was independent at the time of selection. Definitions for “independent” and “total income” are those used in section 480(a) of the Higher Education Act of 1965;

(6) The amount of assistance provided under the AmeriCorps programs that has been expended for projects conducted in areas classified as empowerment zones (or redevelopment areas), in areas that are targeted for special

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economic incentives or are otherwise identifiable as having high concentrations of low-income people, in areas that are environmentally distressed or adversely affected by Federal actions related to the management of Federal lands, in areas that are adversely affected by reductions in defense spending, or in areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available; and

(7) The implications of the results of these studies as appropriate for authorized funding levels.

[59 FR 13796, Mar. 23, 1994. Redesignated at 70 FR 39603, July 8, 2005]

### § 2522.820 Will information on individual participants be kept confidential?

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in § 2522.540. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees that receive assistance under this chapter

must comply with the provisions of paragraph (a) of this section.

[59 FR 13796, Mar. 23, 1994. Redesignated at 70 FR 39603, July 8, 2005]

## Subpart F—Program Management Requirements for Grantees

SOURCE: 70 FR 39606, July 8, 2005, unless otherwise noted.

### § 2522.900 What definitions apply to this subpart?

*Tutor* is defined as someone whose primary goal is to increase academic achievement in reading or other core subjects through planned, consistent, one-to-one or small-group sessions and activities that build on the academic strengths of students in kindergarten through 12th grade, and target their academic needs. A tutor does not include someone engaged in other academic support activities, such as mentoring and after-school program support, whose primary goal is something other than increasing academic achievement. For example, providing a safe place for children is not tutoring, even if some of the program activities focus on homework help.

### § 2522.910 What basic qualifications must an AmeriCorps member have to serve as a tutor?

If the tutor is:	Then the tutor must meet the following qualifications:
(a) Is considered to be an employee of the Local Education Agency or school, as determined by State law.	Paraprofessional qualifications under No Child Left Behind Act, as required in 34 CFR 200.58
(b) Is not considered to be an employee of the Local Education Agency or school, as determined by State law.	(1) High School diploma or its equivalent, or a higher degree; and  (2) Successful completion of pre- and in-service specialized training, as required in § 2522.940 of this subpart.

[59 FR 13796, Mar. 23, 1994, as amended at 74 FR 46506, Sept. 10, 2009]

### § 2522.920 Are there any exceptions to the qualifications requirements?

The qualifications requirements in § 2522.910 of this subpart do not apply to a member who is a K–12 student tutoring younger children in the school or after school as part of a structured, school-managed cross-grade tutoring program.

### § 2522.930 [Reserved]

### § 2522.940 What are the requirements for a program in which AmeriCorps members serve as tutors?

A program in which members engage in tutoring for children must:

(a) Articulate appropriate criteria for selecting and qualifying tutors, including the requirements in § 2522.910 of this subpart, and certify that selected

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tutors meet the requirements in § 2522.910.

(b) Identify the strategies or tools it will use to assess student progress and measure student outcomes;

(c) Certify that the tutoring curriculum and pre-service and in-service training content are high-quality and research-based, consistent with the instructional program of the local educational agency and with State academic content standards.

(d) Include appropriate member supervision by individuals with expertise in tutoring; and

(e) Provide specialized high-quality and research-based, member pre-service and in-service training consistent with the activities the member will perform.

[70 FR 39606, July 8, 2005, as amended at 74 FR 46506, Sept. 10, 2009]

### **§ 2522.950 What requirements and qualifications apply if my program focuses on supplemental academic support activities other than tutoring?**

(a) If your program does not involve tutoring as defined in § 2522.900 of this subpart, the Corporation will not impose the requirements in § 2522.910 through § 2522.940 of this subpart on your program.

(b) At a minimum, you must articulate in your application how you will recruit, train, and supervise members to ensure that they have the qualifications and skills necessary to provide the service activities in which they will be engaged.

## **PART 2523—AGREEMENTS WITH OTHER FEDERAL AGENCIES FOR THE PROVISION OF AMERICORPS PROGRAM ASSISTANCE**

Sec.

2523.10 Are Federal agencies eligible to apply for AmeriCorps program funds?

2523.20 Which Federal agencies may apply for such funds?

2523.30 Must Federal agencies meet the requirements imposed on grantees under parts 2521 and 2522 of this chapter?

2523.40 For what purposes should Federal agencies use AmeriCorps program funds?

2523.50 What types of grants are Federal agencies eligible to receive?

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2523.60 May Federal agencies enter into partnerships or participate in consortia?

2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?

2523.80 Are there restrictions on the use of Corporation funds?

2523.90 Is there a matching requirement for Federal agencies?

2523.100 Are participants in programs operated by Federal agencies Federal employees?

2523.110 Can Federal agencies submit multiple applications?

2523.120 Must Federal agencies consult with State Commissions?

AUTHORITY: 42 U.S.C. 12571–12595.

SOURCE: 59 FR 13804, Mar. 23, 1994, unless otherwise noted.

### **§ 2523.10 Are Federal agencies eligible to apply for AmeriCorps program funds?**

Yes. Federal agencies may apply for and receive AmeriCorps funds under parts 2521 and 2522 of this chapter, and they are eligible to receive up to one-third of the funds available for competitive distribution under § 2521.30(b)(3) of this chapter. The Corporation may enter into a grant, contract or cooperative agreement with another Federal agency to support an AmeriCorps program carried out by the agency. The Corporation may transfer funds available to it to other Federal agencies.

### **§ 2523.20 Which Federal agencies may apply for such funds?**

The Corporation will consider applications only from Executive Branch agencies or departments. Bureaus, divisions, and local and regional offices of such departments and agencies can only apply through the central department or agency; however, it is possible for the department or agency to submit an application proposing more than one program.

### **§ 2523.30 Must Federal agencies meet the requirements imposed on grantees under parts 2521 and 2522 of this chapter?**

Yes, except as provided in § 2523.90. Federal agency programs must meet the same requirements and serve the same purposes as all other applicants seeking support under part 2522 of this chapter.

**§ 2523.40 For what purposes should Federal agencies use AmeriCorps program funds?**

AmeriCorps funds should enable Federal agencies to establish programs that leverage agencies' existing resources and grant-making powers toward the goal of integrating service more fully into agencies' programs and activities. Agencies should plan to ultimately support new service initiatives out of their own budgets and appropriations.

**§ 2523.50 What types of funds are Federal agencies eligible to receive?**

Federal agencies may apply for planning and operating funds subject to the terms established by the Corporation in § 2521.20 of this chapter, except that operating grants will be awarded with the expectation that the Federal agencies will support the proposed programs from their own budgets once the Corporation grant(s) expire.

**§ 2523.60 May Federal agencies enter into partnerships or participate in consortia?**

Yes. Such partnerships or consortia may consist of other Federal agencies, Indian Tribes, subdivisions of States, community based organizations, institutions of higher education, or other non-profit organizations. Partnerships and consortia must be approved by the Corporation.

**§ 2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?**

Yes. The Corporation will give special consideration to those applications that address the national priorities established by the Corporation. The Corporation may also give special consideration to those applications that demonstrate the agency's intent to leverage its own funds through a Corporation-approved partnership or consortium, by raising other funds from Federal or non-Federal sources, by giving grantees incentives to build service opportunities into their programs, by committing appropriate in-kind resources, or by other means.

**§ 2523.80 Are there restrictions on the use of Corporation funds?**

Yes. The supplantation and non-displacement provisions specified in part 2540 of this chapter apply to the Federal AmeriCorps programs supported with such assistance.

**§ 2523.90 Is there a matching requirement for Federal agencies?**

No. A Federal agency is not required to match funds in programs that receive support under this chapter. However, Federal agency subgrantees are required to match funds in accordance with the requirements of § 2521.30(g) and § 2522.240(b)(6) of this chapter.

[59 FR 13804, Mar. 23, 1994, as amended at 73 FR 53760, Sept. 17, 2008]

**§ 2523.100 Are participants in programs operated by Federal agencies Federal employees?**

No. Participants in these programs have the same employee status as participants in other approved AmeriCorps programs, and are not considered Federal employees, except for the purposes of the Family and Medical Leave Act as specified in § 2540.220(b) of this chapter.

**§ 2523.110 Can Federal agencies submit multiple applications?**

No. The Corporation will only consider one application from a Federal agency for each AmeriCorps competition. The application may propose more than one program, however, and the Corporation may choose to fund any or all of those programs.

**§ 2523.120 Must Federal agencies consult with State Commissions?**

Yes. Federal agencies must provide a description of the manner in which the proposed AmeriCorps program(s) is coordinated with the application of the State in which the projects will be conducted. Agencies must also describe proposed efforts to coordinate AmeriCorps activities with State Commissions and other funded AmeriCorps programs within the State in order to build upon existing programs and not duplicate efforts.

## PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

Sec.

2524.10 For what purposes will technical assistance and training funds be made available?

2524.20 What are the guidelines for program development assistance and training grants?

2524.30 What are the guidelines for challenge grants?

2524.40 What are the guidelines for grants to involve persons with disabilities?

2524.50 What are the guidelines for assistance with disaster relief?

AUTHORITY: 42 U.S.C. 12571–12595.

SOURCE: 59 FR 13805, Mar. 23, 1994, unless otherwise noted.

### § 2524.10 For what purposes will technical assistance and training funds be made available?

(a) To the extent appropriate and necessary, the Corporation may make technical assistance available to States, Indian tribes, labor organizations, religious organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities eligible to apply for assistance under parts 2521 and 2522 of this chapter that desire—

(1) To develop AmeriCorps programs; or

(2) To apply for assistance under parts 2521 and 2522 of this chapter or under a grant program conducted using such assistance.

(b) In addition, the Corporation may provide program development assistance and conduct, directly or by grant or contract, appropriate training programs regarding AmeriCorps in order to—

(1) Improve the ability of AmeriCorps programs assisted under parts 2521 and 2522 of this chapter to meet educational, public safety, human, or environmental needs in communities—

(i) Where services are needed most; and

(ii) Where programs do not exist, or are too limited to meet community needs, as of the date on which the Corporation makes the grant or enters into the contract;

(2) Promote leadership development in such programs;

(3) Improve the instructional and programmatic quality of such programs to build an ethic of civic responsibility;

(4) Develop the management and budgetary skills of program operators;

(5) Provide for or improve the training provided to the participants in such programs;

(6) Encourage AmeriCorps programs to adhere to risk management procedures, including the training of participants in appropriate risk management practices; and

(7) Assist in such other manner as the Corporation may specify.

[59 FR 13805, Mar. 23, 1994, as amended at 67 FR 45360, July 9, 2002]

### § 2524.20 What are the guidelines for program development assistance and training grants?

(a) *Eligibility.* States, Federal agencies, Indian tribes, public or private nonprofit agencies, institutions of higher education, for-profit businesses, and individuals may apply for assistance under this section.

(b) *Duration.* A grant made under this section will be for a term of up to one year and is renewable.

(c) *Application requirements.* Eligible applicants must comply with the requirements specified in the Corporation's application package.

### § 2524.30 What are the guidelines for challenge grants?

(a) *Purpose.* The purpose of these grants is to challenge high quality AmeriCorps programs to diversify their funding base by matching private dollars they have raised with Corporation support. The Corporation will provide not more than \$1 for each \$1 raised in cash by the program from private sources in excess of amounts otherwise required to be provided by the program to satisfy the matching funds requirements specified under § 2521.30(g) of this chapter.

(b) *Eligibility.* Only Corporation grantees that meet all of the following eligibility criteria may apply for challenge grants: (1) They are funded under parts 2520 through 2523 of this chapter.

(2) They are high quality programs with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) They have operated with Corporation funds for at least six months.

(4) They have secured the minimum matching funds required by §§ 2521.30(g), 2522.240(b)(6), 2522.250(a)(4), and 2522.250(b)(2) of this chapter.

(c) *Allowable program activities.* Challenge grants are intended to provide special opportunities for national and community service programs to enroll additional participants or undertake other activities specified by the Corporation.

(d) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(e) *Limitation on use of the funds.* Each year the Corporation will establish a maximum award that a program may receive as a challenge grant.

(f) *Allocation of funds.* The Corporation will determine annually how much funding will be allocated to challenge grants from funds appropriated for AmeriCorps programs.

[59 FR 13805, Mar. 23, 1994, as amended at 73 FR 53760, Sept. 17, 2008]

#### **§ 2524.40 What are the guidelines for grants to involve persons with disabilities?**

(a) *Purpose.* There are two general purposes for these grants: (1) To assist AmeriCorps grantees in placing applicants who require reasonable accommodation (as defined in section 101(9) of the Americans With Disabilities Act of 1990, 42 U.S.C. 12111(9)) or auxiliary aids and services (as defined in section 3(1) of such Act, 42 U.S.C. 12102(1)) in an AmeriCorps program; and

(2) To conduct outreach activities to individuals with disabilities to recruit them for participation in AmeriCorps programs.

(b) *Eligibility*—(1) *Placement, accommodation, and auxiliary services.* Eligibility for assistance under this part is limited to AmeriCorps programs that: (i) Receive competitive funding from the Corporation under § 2521.30(a)(3) or 2521.30(b)(3) of this chapter; and

(ii) Demonstrate that the program has received a substantial number of applications for placement from persons who are individuals with a disability and who require a reasonable accommodation (as defined in section 101(9) of the Americans with Disabilities Act of 1990), or auxiliary aids and services (as defined in section 3(1) of such Act) in order to perform national service; and

(iii) Demonstrate that additional funding would assist the program in placing a substantial number of such individuals with a disability as participants in projects carried out through the program.

(2) *Outreach.* Corporation grantees and any public or private nonprofit organization may apply for funds to conduct outreach to individuals with disabilities to recruit them for participation in AmeriCorps programs. Outreach funds can also be used by any organization to assist AmeriCorps programs in adapting their programs to encourage greater participation by individuals with disabilities.

(c) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

#### **§ 2524.50 What are the guidelines for assistance with disaster relief?**

(a) *Purpose.* Disaster relief funds are intended to provide emergency assistance not otherwise available to enable national and community service programs to respond quickly and effectively to a Presidentially-declared disaster.

(b) *Eligibility.* Any AmeriCorps program (including youth corps, the National Civilian Community Corps, VISTA, and other programs authorized under the Domestic Volunteer Services Act) or grant making entity (such as a State or Federal agency) that is supported by the Corporation may apply for disaster relief grants.

(c) *Application process.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(d) *Waivers.* In appropriate cases, due to the limited nature of disaster activities, the Corporation may waive specific program requirements such as

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matching requirements and the provision of AmeriCorps educational awards for participants supported with disaster relief funds.

**PART 2525—NATIONAL SERVICE TRUST**

**Subpart A—Purpose and Definitions**

Sec.

- 2525.1 What is the National Service Trust?  
2525.2 Definitions.

**Subpart B—Eligibility for an Education Award**

- 2525.10 When can an Eligible Individual receive an education award from the National Service Trust?  
2525.15 Upon what basis may an entity responsible for the supervision of an Eligible Individual certify that the Eligible Individual successfully completed a term of service?  
2525.20 Under what circumstances is an Eligible Individual who does not complete an approved term of service eligible to receive a pro-rated education award?  
2525.25 If a participant in an approved Summer of Service or Silver Scholar position does not complete their term of service, are they eligible to receive a pro-rated education award?  
2525.30 How do convictions for the possession or sale of controlled substances affect an Eligible Individual's ability to use their award?  
2525.40 How long is an education award available for use?  
2525.41 When must an application for an extension be submitted?  
2525.42 Under what circumstances will AmeriCorps grant an extension?  
2525.43 What if the request for an extension is missing information or documentation?  
2525.44 How will AmeriCorps notify an Eligible Individual or Designated Recipient of its decision on the extension request?  
2525.45 Can an Eligible Individual or Designated Recipient appeal a denied request for an extension?  
2525.50 Is there a limit on the total amount of education awards an individual may receive?  
2525.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in additional terms of service?  
2525.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same term of service?

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- 2525.70 What are the effects of an erroneous certification of successful completion of a term of service?

**Subpart C—Determining the Amount of an Education Award**

- 2525.100 What is the amount of an education award?

**Subpart D—Using an Education Award**

- 2525.210 For what purposes may an education award be used?  
2525.220 What steps are necessary to use an education award to repay a qualified student loan?  
2525.230 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?  
2525.240 Is there a limit on the amount of an Eligible Individual's education award that AmeriCorps will disburse to an institution for a given period of enrollment?  
2525.250 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which AmeriCorps has disbursed all or part of that individual's education award?  
2525.260 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?  
2525.270 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?  
2525.280 What happens if an individual for whom AmeriCorps has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill-approved program?  
2525.290 What happens to an education award upon divorce or death?

**Subpart E—Payment of Accrued Interest**

- 2525.310 Under what circumstances will AmeriCorps pay interest that accrues on qualified student loans during an individual's term of service in an approved position?  
2525.320 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?  
2525.330 What steps are necessary for AmeriCorps to pay interest that has accrued on a qualified student loan in forbearance?



**Subpart F—Transfer of Education Awards**

- 2525.410 Under what circumstances may an Eligible Individual transfer an education award?
- 2525.420 For what purposes may a transferred award be used?
- 2525.430 What steps are necessary to transfer an education award?
- 2525.440 Is there a limit on the number of recipients an individual may designate to receive a transferred award?
- 2525.450 Is there a limit on the amount of transferred education awards a Designated Recipient may receive?
- 2525.460 What is the impact of transferring or receiving a transferred education award on an Eligible Individual's eligibility to receive additional education awards?
- 2525.470 Is a Designated Recipient required to accept a transferred education award?
- 2525.480 Under what circumstances is a transfer revocable?
- 2525.485 What steps are necessary to revoke a transfer?
- 2525.487 What happens to a transferred education award upon divorce or death?
- 2525.490 Is the recipient of a transferred education award eligible for the payment of accrued interest for their own student loans?

AUTHORITY: 42 U.S.C. 12601–12606

SOURCE: 88 FR 44727, July 13, 2023, unless otherwise noted.

## **Subpart A—Purpose and Definitions**

### **§ 2525.1 What is the National Service Trust?**

The National Service Trust is an account in the Treasury of the United States from which AmeriCorps makes payments of education awards, pays interest that accrues on qualified student loans for AmeriCorps participants during terms of service in approved national service positions, and makes other payments authorized by Congress.

### **§ 2525.2 Definitions.**

In addition to the definitions in § 2510.20 of this chapter, the following definitions apply to terms used this part:

*AmeriCorps* means the Corporation for National and Community Service.

*Cost of attendance* has the same meaning as in Title IV of the Higher Edu-

cation Act of 1965, as amended (20 U.S.C. 1070 et. seq.).

*Current educational expenses* means the cost of attendance, or other costs attributable to an educational course offered by an institution of higher education that has in effect a program participation agreement under Title IV of the Higher Education Act, for a period of enrollment that begins after an individual enrolls in an approved national service position.

*Designated Recipient* means the person to whom an earned education award is transferred.

*Economically disadvantaged youth* means a child who is eligible for a free lunch or breakfast under the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)).

*Education award* means the Segal AmeriCorps Education Award of financial assistance available under this part, including the Silver Scholar education awards, and Summer of Service education awards.

*Educational expenses* means—

(1) Cost of attendance as determined by the Title IV institution of higher education or G.I. Bill-approved program as provided in 20 U.S.C. 1087*ll*; or

(2) Tuition or associated costs as determined by a program offered by an educational institution or training establishment approved for educational benefits under 38 U.S.C. 3670 *et seq.* for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary for Veterans Affairs; and

(3) Expenses incurred participating in a school-to-work program approved by the Secretaries of Labor and Education.

*Eligible Individual* means an individual who has enrolled in and successfully completed a term of service in an approved national service position, as certified under § 2525.15.

*G.I. Bill-approved program* is an educational institution or training establishment approved for educational benefits under the Montgomery G.I. Bill (38 U.S.C. 3670 *et seq.*) for offering programs of education, apprenticeship, or on-job training for which educational assistance may be provided by the Secretary for Veterans Affairs.

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*Holder* means—

- (1) The original lender; or
- (2) Any other entity to which a loan is subsequently sold, transferred, or assigned if such entity acquires a legally enforceable right to receive payments from the borrower.

*Institution of higher education* has the same meaning given the term in section 102 of the Higher Education Act of 1965, as amended (20 U.S.C. 1002).

*Period of enrollment* means the period that the institution has established for which institutional charges are generally assessed (*e.g.*, length of the student's course, program, or academic year.)

*Qualified student loan* means:

- (1) Any loan made, insured, or guaranteed under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), other than a loan to a parent of a student under section 428B of that Act (20 U.S.C. 1078-2);
- (2) Any loan made under Title VII or VIII of the Public Service Health Act (42 U.S.C. 292a *et seq.*); or
- (3) Any other loan determined by an institution of higher education or an approved veterans' benefits program to be necessary to cover a student's educational expenses and made, insured, or guaranteed by:
  - (i) An eligible lender, as defined in section 435 of the Higher Education Act of 1965 (20 U.S.C. 1085);
  - (ii) The direct student loan program under part D of Title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a *et seq.*);
  - (iii) A State agency; or
  - (iv) A lender otherwise determined by AmeriCorps to be eligible to receive disbursements from the National Service Trust.

*Silver Scholar education award* means the financial assistance available under this part for which an individual in an approved Silver Scholar position may be eligible.

*Summer of Service education award* means the financial assistance available under this part for which an individual in an approved Summer of Service position may be eligible.

*Term of service* means—

- (1) For an individual serving in an approved AmeriCorps position, one of the

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terms of service specified in § 2522.220 of this chapter

- (2) For an individual serving in an approved Silver Scholar position, not less than 350 hours during a one-year period

- (3) For an individual serving in an approved Summer of Service position, not less than 100 hours during the summer months of a single year.

### Subpart B—Eligibility for an Education Award

#### § 2525.10 When can an Eligible Individual receive an education award from the National Service Trust?

(a) *General.* An Eligible Individual is entitled to receive an education award from the National Service Trust if that person:

- (1) Is a citizen or national of the United States or a lawful permanent resident alien of the United States; and,

- (2) Met the applicable eligibility requirements for the approved national service program as appropriate; and,

- (3) Either:

- (i) Is certified by their supervising entity to have successfully completed a term of service—whether a full-time 1,700-hour term corresponding to a full education award or a less than full-time term of service with a corresponding partial award amount described in § 2525.100(b)—as certified under § 2525.15; or

- (ii) For a pro-rated education award amount described in § 2525.100(c), is certified by their supervising entity to have completed at least 15 percent of the originally-approved term of service and performed satisfactorily prior to being granted a release for compelling personal circumstances, consistent with § 2522.230(a) of this chapter.

(b) *Prohibition on duplicate benefits.* An Eligible Individual who receives a post-service benefit in lieu of an education award may not receive an education award for the same term of service.

(c) *Penalties for false information.* Any individual who makes a materially false statement or representation in connection with the approval or disbursement of an education award or

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other payment from the National Service Trust may be liable for the recovery of funds and subject to civil and criminal sanctions.

### **§ 2525.15 Upon what basis may an entity responsible for the supervision of an Eligible Individual certify that the Eligible Individual successfully completed a term of service?**

(a) An Eligible Individual's supervising entity must certify that the individual has successfully completed a term of service. The individual successfully completed a term of service if the individual has:

- (1) Completed the number of service hours required;
- (2) Satisfactorily performed on assignments, tasks, or projects;
- (3) Met any performance criteria as determined by the program and communicated to the member; and
- (4) Fulfilled any other enrollment and program requirements to earn an education award.

(b) A certification by the supervising entity that an individual did or did not successfully complete a term of service will be deemed to incorporate an end-of-term evaluation.

### **§ 2525.20 Under what circumstances is an Eligible Individual who does not complete an approved term of service eligible to receive a pro-rated education award?**

(a) *Release for compelling personal circumstances.* An Eligible Individual who is released before they complete an approved term of service is eligible for a pro-rated education award if their supervising entity:

- (1) Released the Eligible Individual for compelling personal circumstances in accordance with the requirements of § 2522.230(a) of this chapter, including requirements for maintaining documentation of the basis for the entity's decision;
- (2) Certifies that the Eligible Individual:
  - (i) Performed satisfactorily before they were granted a release for compelling personal circumstances; and
  - (ii) Completed at least 15 percent of the originally approved term of service.
- (b) *Release for cause.* An individual who is released for cause before they

completed an originally approved term of service is not eligible for any portion of an education award.

### **§ 2525.25 If a participant in an approved Summer of Service or Silver Scholar position does not complete their term of service, are they eligible to receive a pro-rated education award?**

No. An individual released for any reason before they complete an approved term of service in a Silver Scholar or Summer of Service position is not eligible to receive a pro-rated award.

### **§ 2525.30 How do convictions for the possession or sale of controlled substances affect an Eligible Individual's ability to use their award?**

(a) Except as provided in paragraph (b) of this section, an Eligible Individual who is convicted under Federal or State law of the possession or sale of a controlled substance is not eligible to use his or her education award from the date of the conviction until the end of a specified time period, which is determined based on the type of conviction as follows:

(1) For conviction of the possession of a controlled substance, the individual is ineligible from the date of conviction for—

- (i) One year for a first conviction;
- (ii) Two years for a second conviction; and
- (iii) For a third or subsequent conviction, indefinitely, as determined by AmeriCorps according to the following factors:

- (A) Type and amount of controlled substance;
- (B) Whether firearms or other dangerous weapons were involved in the offense;
- (C) Employment history;
- (D) Service to the community;
- (E) Recommendations from community members and local officials, including experts in substance abuse and treatment; and
- (F) Any other relevant aggravating or ameliorating circumstances.

(2) For conviction of the sale of a controlled substance, the individual is ineligible from the date of conviction for—

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(i) Two years for a first conviction; and

(ii) Two years plus any additional time AmeriCorps determines is appropriate for second and subsequent convictions, based on the factors set forth in paragraphs (a)(1)(iii)(A) through (F) of this section.

(b) AmeriCorps will restore the Eligible Individual's access to use the education award if AmeriCorps determines that the individual has successfully completed a legitimate drug rehabilitation program, or in the case of a first conviction that the individual has enrolled in a legitimate drug rehabilitation program and:

(1) The drug rehabilitation program is recognized as legitimate by appropriate Federal, State, or local authorities; and

(2) The Eligible Individual's enrollment in or successful completion of the legitimate drug rehabilitation program has been certified by an appropriate official of that program.

#### **§ 2525.40 How long is an education award available for use?**

Unless AmeriCorps approves an extension under § 2525.42, the use period for an education award is as follows:

(a) An education award is available for an Eligible Individual to use until seven years from the date when they successfully completed the term of service for which the award was earned;

(b) An education award that is transferred to a Designated Recipient under subpart F of this part may be used until 10 years from the date when the Eligible Individual who transferred the award successfully completed their term of national service.

#### **§ 2525.41 When must an application for an extension be submitted?**

An application for an extension must be submitted to AmeriCorps before the award use period ends, or the individual must have been unavoidably prevented from timely submitting the extension application.

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#### **§ 2525.42 Under what circumstances will AmeriCorps grant an extension?**

(a) AmeriCorps will automatically grant an extension to the use period of an education award if the individual served and successfully completed a term of service in an approved national service position that fell within the use period for that education award and applies for an extension under § 2525.41.

(1) The use period will be extended by the length of the individual's additional approved and completed term of service at the time of the extension application.

(2) For purposes of this extension, AmeriCorps will treat all service in AmeriCorps and the Peace Corps as service in another AmeriCorps-approved national service position.

(3) If the additional of service is in the Peace Corps, the individual requesting an extension will need to provide a Description of Service, signed by the country's director or designee for the Peace Corps service.

(b) If AmeriCorps determines that an Eligible Individual or Designated Recipient was unavoidably prevented from using the education award during the original use period, AmeriCorps may grant an extension for a period of time that AmeriCorps deems appropriate, but generally not for more than one year from the end of the original use period. Also, AmeriCorps will grant only one extension of the use period except in very limited circumstances, such as, for example, when the event preventing the member from timely using their education award is likely to exist for more than 12 months, such as active military duty.

(1) Examples of situations that may warrant an extension if they hinder use of an education award may include, but are not limited to:

(i) The Eligible Individual's serious illness, injury, or disability;

(ii) The death, serious illness, injury, or disability of someone in the Eligible Individual's immediate family that occurs close to the end of the use period;

(iii) The destruction or inaccessibility of important service records maintained by the program;

(iv) Natural disasters;

(v) Military service that prevents the use of an education award, such as active duty overseas (but a person in the reserves or National Guard who has not been called up on active duty, or who is enlisted in the military, is not necessarily unavoidably prevented from timely using their education award because of their military service).

(2) When considering whether to grant an extension, AmeriCorps also will consider whether:

(i) The extension is a result of the individual's choices or actions or factors beyond the individual's control;

(ii) The need for the extension is in any part attributable to AmeriCorps' or an AmeriCorps-funded entity's actions;

(iii) The lending institution or institution entitled to the payment failed to take an action, or took an action, that resulted in the individual needing/wanting the extension.

(c) Examples of circumstances that do not meet the criteria for granting an extension may include but are not limited to:

(1) Employment or unemployment, even in a position with a non-profit organization involved in community service.

(2) Forgetting to use the education award, being unaware of the use-period restrictions, or not receiving his or her education award expiration notice.

(3) Being too young to use a transferred education award.

**§ 2525.43 What if the request for an extension is missing information or documentation?**

If the extension application lacks necessary information or documentation, AmeriCorps may request additional documentation. If the requested additional documentation is not provided to AmeriCorps within 30 days, AmeriCorps may close the request for an extension.

**§ 2525.44 How will AmeriCorps notify the Eligible Individual or Designated Recipient of its decision on the extension request?**

AmeriCorps will notify the Eligible Individual or Designated Recipient in writing if the request for an extension has been granted or denied. The notification will advise the requester of the

process for appealing the denial if the requester has a good-faith basis to believe their request was erroneously denied.

**§ 2525.45 Can an Eligible Individual or Designated Recipient appeal a denied request for an extension?**

(a) If an Eligible Individual or Designated Recipient submits a timely application for an extension and the application is denied, the individual may file an appeal. The appeal must:

(1) Be received within 30 days of the denial determination;

(2) Be made in writing—either online through the *My AmeriCorps* portal if the education award has not expired—or through a submission to the National Service Hotline at 1-800-942-2677;

(3) Explain why the initial determination was erroneous/should be reviewed; and,

(4) Include supporting documentation, if applicable.

(b) AmeriCorps may grant an appeal when, after review of all the information provided originally and on appeal, it appears that the extension should have been granted. AmeriCorps may ask for additional documentation to inform the appeal determination.

(c) Individuals who submit appeals will be notified in writing of the final determination.

**§ 2525.50 Is there a limit on the total amount of education awards an individual may receive?**

(a) *General limitation.* While there is no limit on the specific dollar amount, no individual may receive more than the amount equal to the aggregate value of two full-time education awards.

(b) *Calculation of aggregate value of awards received.* The aggregate value of education awards received is the sum of:

(1) The value of each education award received for successful completion of an approved national service position;

(2) The value of each partial education award received upon release from an approved national service position for compelling personal circumstances; and

(3) The value of any amount received from a transferred education award, except as provided in § 2525.460.

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(c) *Determination of receipt of award.* For purposes of determining the aggregate value of education awards, an award is considered to be received at the time it becomes available for use.

### § 2525.55 What is the impact of the aggregate value of education awards received on an individual's ability to serve in additional terms of service?

The aggregate value of education awards received does not limit an individual's ability to serve in additional terms of service, but does impact the amount of the education award the individual may receive pursuant to § 2525.100(d) upon successful completion of any additional term of service.

### § 2525.60 May an individual receive an education award and related interest benefits from the National Service Trust as well as other loan cancellation benefits for the same term of service?

An individual may not receive an education award and related interest benefits from the National Service Trust for a term of service and have that same service credited toward repayment, discharge, or cancellation of other student loans, except an individual may credit the service toward the Public Service Loan Forgiveness Program, as provided under 34 CFR 685.219.

### § 2525.70 What are the effects of an erroneous certification of successful completion of a term of service?

(a) If AmeriCorps determines that the certification made by a national service program under § 2525.10(a)(2) is erroneous, AmeriCorps shall assess against the national service program a

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charge for the amount of any associated payment or potential payment from the National Service Trust, taking into consideration the full facts and circumstances that led to the erroneous or incorrect certification.

(b) If AmeriCorps determines that the certification made is knowingly false or inaccurate, AmeriCorps will disallow the education award and/or initiate a debt collection process for any education award funds disbursed.

(c) Nothing in this section prohibits AmeriCorps from taking any action authorized by law based upon any certification that is knowingly made in a false, materially misleading, or fraudulent manner.

## Subpart C—Determining the Amount of an Education Award

### § 2525.100 What is the amount of an education award?

(a) *Full-time term of service.* Except as provided in paragraph (d) of this section, the education award for a full-time term of service in an approved national service position of at least 1,700 hours will be equal to the maximum amount of a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for that grant may receive in the aggregate for the award year in which the term of service is approved by AmeriCorps.

(b) *Less than full-time term of service.* Except as provided in paragraph (d) of this section, the amount of an education award for an approved national service position for less than full-time term of service (*i.e.*, partial award) is determined in accordance with the following table:

TABLE 1 TO PARAGRAPH (b)

For:	In an approved position of at least: (hours)	Is equal to the following percentage of the amount of an education award for a full-time term of service described in paragraph (a) of this section:
Three quarters time term of service (TQT) .....	1,200	70 percent.
Half-time term of service (HT) .....	900	50 percent.
Reduced half-time term of service (RHT) .....	675	Approximately 39 percent.
Quarter-time term of service (QT) .....	450	Approximately 26 percent.
Minimal time and summer associate (MT & SA) .....	300	Approximately 21 percent.
Abbreviated time (AT) .....	100	5.6 percent.

(c) *Calculating a pro-rated award following release for compelling personal circumstances.* The education award for an Eligible Individual who is released from completing an approved term of service for compelling personal circumstances is equal to the product of:

(1) The number of hours completed divided by the number of hours in the approved term of service; and

(2) The amount of the education award for the approved term of service.

(d) *Calculating a discounted education award amount.* To ensure that an Eligible Individual receives no more than the aggregate value of two awards, pursuant to § 2525.50, if the sum of the education award value offered for a term of service and the aggregate value of previously-received education awards exceeds the value of two awards, then the individual may receive only a portion of that offered education award, such that the aggregate value of the education awards is not greater than the value of two awards.

#### Subpart D—Using an Education Award

##### § 2525.210 For what purposes may an education award be used?

(a) An education award may be used to pay educational expenses and/or to repay qualified student loans, as defined in § 2525.2;

(b) An education award is divisible and may be applied to any combination of loans, costs, or expenses described in paragraph (a) of this section.

##### § 2525.220 What steps are necessary to use an education award to repay a qualified student loan?

(a) *Required information.* Before disbursing an amount from an education award to repay a qualified student loan, AmeriCorps must receive:

(1) An Eligible Individual's written authorization and request for a specific payment amount; and

(2) Any identifying and other information from the loan holder as requested by AmeriCorps.

(b) *Payment.* When AmeriCorps receives the information required under paragraph (a) of this section, it will pay the loan holder and notify the Eligible Individual of the payment.

(c) *Aggregate payments.* AmeriCorps may establish procedures to aggregate payments to holders of loans for more than a single individual.

##### § 2525.230 What steps are necessary to use an education award to pay all or part of the current educational expenses at an institution of higher education?

(a) *Required information.* Before disbursing funds from an education award to pay all or part of the current educational expenses at an institution of higher education, AmeriCorps must receive:

(1) An Eligible Individual's written authorization and request for a specific payment amount;

(2) Information from the institution of higher education as requested by AmeriCorps, including verification that—

(i) It has in effect a program participation agreement under section 487 of the Higher Education Act of 1965 (20 U.S.C. 1094);

(ii) Its eligibility to participate in any of the programs under Title IV of the Higher Education Act of 1965 has not been limited, suspended, or terminated;

(iii) If an Eligible Individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution of higher education will ensure an appropriate refund to AmeriCorps of the unused portion of the education award under its own published refund policy, or if it does not have one, provide a pro-rata refund to AmeriCorps of the unused portion of the education award;

(iv) Individuals using education awards to pay for current educational expenses at that institution do not comprise more than 15 percent of the institution's total student population;

(v) The requested amount will be used to pay all or part of the Eligible Individual's educational expenses attributable to a course offered by the institution;

(vi) The requested amount does not exceed the difference between:

(A) The Eligible Individual's cost of attendance and other educational expenses; and

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(B) The Eligible Individual's estimated student financial assistance for that period under Part A of Title IV of the Higher Education Act (20 U.S.C. 1070 *et seq.*).

(b) *Payment.* When AmeriCorps receives the information required under paragraph (a) of this section, it will pay the institution and notify the Eligible Individual of the payment.

(c) *Installment payments.* AmeriCorps will disburse the education award payment to the institution in at least two separate installments, none of which exceeds 50 percent of the total amount. The interval between installments may not be less than one-half of the period of enrollment, except as necessary to permit the second installment to be paid at the beginning of the second semester, quarter, or other division of a period of enrollment.

#### **§ 2525.240 Is there a limit on the amount of an Eligible Individual's education award that AmeriCorps will disburse to an institution for a given period of enrollment?**

Yes. AmeriCorps' disbursement from an Eligible Individual's education award for any period of enrollment may not exceed the difference between:

(a) The Eligible Individual's educational expenses, determined by the institution; and

(b) The Eligible Individual's estimated financial assistance for that period under part A of Title IV of the Higher Education Act.

#### **§ 2525.250 What happens if an individual withdraws or fails to complete the period of enrollment in an institution of higher education for which AmeriCorps has disbursed all or part of that individual's education award?**

(a) If an Eligible Individual for whom AmeriCorps has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, then an institution that receives a disbursement of education award funds from AmeriCorps must:

(1) Provide a refund to AmeriCorps in an amount determined under that institution's published refund requirements, unless the institution charged the Eligible Individual for the

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uncompleted period of study or training.

(2) Provide a pro-rata refund to AmeriCorps of the unused portion of the education award if the institution does not have a published refund policy.

(b) AmeriCorps will credit any refund received for an Eligible Individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

#### **§ 2525.260 Who may use the education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?**

To use the education award to pay expenses incurred in enrolling in a G.I. Bill-approved program, an Eligible Individual must have received an education award for successfully completing a term in an approved national service position, in which they enrolled on or after October 1, 2009.

#### **§ 2525.270 What steps are necessary to use an education award to pay expenses incurred in enrolling in a G.I. Bill-approved program?**

(a) *Required information.* Before disbursing funds from an education award for this purpose, AmeriCorps must receive:

(1) An individual's written authorization and request for a specific payment amount;

(2) Verification from the individual that they meet the criteria in § 2525.260; and

(3) Information from the educational institution or training establishment as requested by AmeriCorps, including verification that—

(i) The amount requested will be used to pay all or part of the individual's expenses attributable to a course, program of education, apprenticeship, or job training offered by the institution or establishment;

(ii) The course(s) or program(s) for which the individual is requesting to use the education award has been and is currently approved by the State approving agency for the State where the institution or establishment is located, or by the Secretary of Veterans Affairs; and



(iii) If an individual who has used an education award withdraws or otherwise fails to complete the period of enrollment for which the education award was provided, the institution or establishment will ensure a pro-rata refund to AmeriCorps of the unused portion of the education award.

(b) *Payment.* When AmeriCorps receives the information required under paragraph (a) of this section, it will pay the institution or establishment and notify the individual of the payment.

**§ 2525.280 What happens if an individual for whom AmeriCorps has disbursed education award funds withdraws or fails to complete the period of enrollment in a G.I. Bill approved program?**

(a) If an individual for whom AmeriCorps has disbursed education award funds withdraws or otherwise fails to complete a period of enrollment, the approved educational institution or training establishment that received a disbursement of education award funds from AmeriCorps must provide a pro-rata refund to AmeriCorps of the unused portion of the education award.

(b) AmeriCorps will credit any refund received for an individual under paragraph (a) of this section to the individual's education award allocation in the National Service Trust.

**§ 2525.290 What happens to an education award upon divorce or death?**

(a) *Prohibition on treatment of an education award as marital property.* An education award may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(b) *Death of Eligible Individual.* An educational award expires and is no longer available for any purpose upon the death of the Eligible Individual, except for:

(1) Any award or portion of the educational award the Eligible Individual transferred prior to death;

(2) Any amount for which the Eligible Individual submitted a request for disbursement prior to death that the National Service Trust had not yet ei-

ther received or acted upon as of the date of death.

**Subpart E—Payment of Accrued Interest**

**§ 2525.310 Under what circumstances will AmeriCorps pay interest that accrues on qualified student loans during an individual's term of service in an approved position?**

(a) *Eligibility.* AmeriCorps will pay interest that accrues on an Eligible Individual's qualified student loan, subject to the limitation on amount in paragraph (b) of this section, if:

(1) The Eligible Individual successfully completes a term of national service in an approved position; and

(2) The loan holder approves the Eligible Individual's request for forbearance for a time period specified by the loan holder during the term of service.

(b) *Amount.* The portion of accrued interest that AmeriCorps will pay is determined by the length of service. The percentage of accrued interest that AmeriCorps will pay is the lesser of—

(1) The product of—

(i) The number of completed service hours divided by the number of days for which forbearance was granted; and

(ii) 365 divided by 17; and

(2) One hundred (100).

(c) *Supplemental to education award.* A payment of accrued interest under this part is supplemental to an education award received by an Eligible Individual under this part.

(d) *Limitation.* AmeriCorps is not responsible for the payment of any accrued interest in excess of the amount determined in accordance with paragraph (b) of this section.

(e) *Suspended service.* AmeriCorps will not pay interest expenses that accrue on an Eligible Individual's qualified student loan during a period of suspended service.

**§ 2525.320 What steps are necessary to obtain forbearance in the repayment of a qualified student loan during an individual's term of service in an approved AmeriCorps position?**

(a) An Eligible Individual seeking forbearance must submit a request to the loan holder.

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(b) If, before approving a request for forbearance, the loan holder requires verification that the Eligible Individual is serving in an approved national service position, AmeriCorps will provide verification upon a request from the Eligible Individual or the loan holder.

#### § 2525.330 What steps are necessary for AmeriCorps to pay interest that has accrued on a qualified student loan in forbearance?

(a) If an Eligible Individual has obtained forbearance on a qualified student loan, AmeriCorps will make payments from the National Service Trust for interest that has accrued on that student loan during the individual's term of service, after:

(1) The program verifies that the Eligible Individual has successfully completed the term of service and the dates when the term of service began and ended;

(2) The holder of the loan verifies the amount of interest that has accrued during the term of service.

(b) When AmeriCorps receives all necessary information from the program and the loan holder, it will pay the loan holder and notify the individual of the payment.

### Subpart F—Transfer of Education Awards

#### § 2525.410 Under what circumstances may an Eligible Individual transfer an education award?

An Eligible Individual may transfer an education award if—

(a) The Eligible Individual was 55 or older on the day they began the term of service in an approved national service position;

(b) The Eligible Individual successfully completed a term of service in an approved national service position;

(c) The education award the Eligible Individual is requesting to transfer has not expired, consistent with the period of availability set forth in § 2525.40(a);

(d) The individual designated to receive the transferred education award (the Designated Recipient) is:

(1) The Eligible Individual's child, grandchild, stepchild, step-grandchild, or foster child; and

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(2) A citizen, national, or lawful permanent resident of the United States.

(e) The Designated Recipient is not entitled to the education award until their citizenship status has been verified. Once citizenship is confirmed, the Designated Recipient has all the benefits of an Eligible Individual.

#### § 2525.420 For what purposes may a transferred award be used?

A transferred award may be used by the Designated Recipient to repay qualified student loans or to pay current educational expenses at an institution of higher education, as described in § 2525.210.

#### § 2525.430 What steps are necessary to transfer an education award?

(a) *Request for transfer.* Before transferring an education award to a Designated Recipient, AmeriCorps must receive a request from the transferring Eligible Individual, including:

(1) The Eligible Individual's written authorization to transfer the education award, the year in which the education award was earned, and the specific amount of the education award to be transferred;

(2) Identifying information for the Designated Recipient who is to receive the transferred education award;

(3) A certification that the transferring Eligible Individual and the Designated Recipient have completed or satisfy the requirements of § 2525.410.

(b) *Notification to Designated Recipient.* Upon receipt of a request, including all required information listed in paragraph (a) of this section, AmeriCorps will contact the Designated Recipient to:

(1) Notify the Designated Recipient, or their legal guardian, of the proposed transfer;

(2) Confirm the Designated Recipient's identity;

(3) Confirm that the Designated Recipient is a citizen, national, or lawful permanent resident of the United States; and

(4) Give the Designated Recipient the opportunity to accept or reject the proposed transferred education award.

(c) *Acceptance by Designated Recipient.* To accept an education award, a Designated Recipient, or their legal guardian, must certify that the Designated Recipient is eligible under § 2525.410. Upon receipt of the Designated Recipient's acceptance and verification of the Designated Recipient's eligibility, AmeriCorps will create an account in the National Service Trust for the Designated Recipient, if an account does not already exist, and the accepted amount will be deducted from the transferring Eligible Individual's account and credited to the Designated Recipient's account.

(d) *Timing of transfer.* AmeriCorps must receive the request from the transferring Eligible Individual before the date the education award expires.

(e) *Refusal.* The Designated Recipient can refuse to accept the transferred education award under § 2525.470.

(f) *Revocation.* The Eligible Individual can revoke part or all of the remaining balance of the transfer that has not yet been requested for use under §§ 2525.480 and 2525.485.

**§ 2525.440 Is there a limit on the number of recipients an individual may designate to receive a transferred award?**

(a) An Eligible Individual may transfer all or part of a non-expired education award to no more than two recipients.

(b) If a Designated Recipient rejects, in whole or in part, a transferred education award, or a transfer was revoked in accordance with § 2525.480, the education award can be transferred to another Designated Recipient, so long as the education award has not yet expired.

**§ 2525.450 Is there a limit on the amount of transferred education awards a Designated Recipient may receive?**

(a) If the sum of the value of the requested transfer plus the aggregate value of education awards a Designated Recipient has previously earned or received, through the Designated Recipient's own service term or having previously been transferred an education award, would exceed the aggregate value of two full-time education awards, as determined pursuant to

§ 2525.50(b), the Designated Recipient will be deemed to have rejected that portion of the education award that would result in the excess.

(b) If a Designated Recipient has already received the aggregate value of two full-time education awards, they may not receive a transferred education award, and the Designated Recipient will be deemed to have rejected the education award in full.

**§ 2525.460 What is the impact of transferring or receiving a transferred education award on an Eligible Individual's eligibility to receive additional education awards?**

(a) *Impact on transferring individual.* Pursuant to § 2525.50, an education award is considered to be received at the time it becomes available for a Designated Recipient's use. Transferring all or part of an award does not reduce the aggregate value of education awards the transferring individual is considered to have received.

(b) *Impact on Designated Recipient.* For the purposes of determining the value of the transferred education award under § 2525.50, a Designated Recipient will be considered to have received a value equal to the amount received divided by the amount of a full-time education award in the year the transferring Eligible Individual's position for that education award was approved.

(c) *Result of revocation on education award value.* If the Eligible Individual revokes the transferred education award, in whole or in part, the value of the education award considered to have been received by the Designated Recipient for purposes of § 2525.50 will be reduced accordingly.

**§ 2525.470 Is a Designated Recipient required to accept a transferred education award?**

(a) *General rule.* No. A Designated Recipient is not required to accept a transferred education award and may reject an education award in whole or in part.

(b) *Result of rejection in full.* If the Designated Recipient rejects a transferred education award in whole, the amount is credited back to the transferring Eligible Individual's account in the National Service Trust, and may be

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transferred to another individual, or may be used by the transferring Eligible Individual, consistent with the original period of availability set forth in § 2525.40(a).

(c) *Result of rejection in part.* If the Designated Recipient rejects a transferred education award in part, the rejected portion is credited to the transferring Eligible Individual's account in the National Service Trust for their use, including re-transfer of the education award, consistent with the original period of availability set forth in § 2525.40(a).

(d) *Rescission.* A Designated Recipient who originally accepted a transferred education award may rescind their acceptance of any unused portion of the award at any time before the education award expires, and for any reason.

### § 2525.480 Under what circumstances is a transfer revocable?

(a) *Revocation.* An Eligible Individual who transferred an award may revoke the transfer at any time and for any reason before the education award's expiration and use by the Designated Recipient.

(b) *Use of award.* Upon revocation, the revoked amount will be deducted from the Designated Recipient's account and credited to the transferring Eligible Individual's account. The transferring Eligible Individual may use the revoked transferred education award for any of the purposes described in § 2525.210, consistent with the original time period of availability set forth in § 2525.40(a).

(c) *Re-transfer.* An Eligible Individual may re-transfer an education award to another qualifying individual after revoking the education award.

### § 2525.485 What steps are necessary to revoke a transfer?

(a) *Request for revocation.* Before revoking a transfer, the transferring Eligible Individual must submit a request to AmeriCorps that includes:

(1) The Eligible Individual's written authorization to revoke the education award;

(2) The year in which the education award was earned;

(3) The specific amount to be revoked; and

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(4) The identity of the Designated Recipient.

(b) *Used education awards.* A revocation may only apply to the portion of the transferred education award that has not been used by the Designated Recipient. If the Designated Recipient has used the entire transferred amount before AmeriCorps receives the revocation request, no amount will be returned to the transferring Eligible Individual. An amount is considered to be used when it is disbursed from the National Service Trust, not when a request is received for its use.

(c) *Notification to Designated Recipient.* AmeriCorps will notify the Designated Recipient of the amount being revoked as of the date of its receipt of the revocation request.

(d) *Timing of revocation.* AmeriCorps must receive the request to revoke the transfer from the transferring Eligible Individual before the education award's expiration as calculated pursuant to § 2525.40(a)(2), from the date the education award was originally earned.

### § 2525.487 What happens to a transferred education award upon divorce or death?

(a) *Prohibition on treatment of a transferred education award as marital property.* An education award transferred under this subsection may not be treated as marital property, or the asset of a marital estate, subject to division in a divorce or other civil proceeding.

(b) *Death of transferor.* The death of an Eligible Individual who has transferred, or initiated the transfer of, an education award under this subsection does not affect the use of the education award by the Designated Recipient.

### § 2525.490 Is a recipient of a transferred education award eligible for the payment of accrued interest for their own student loans?

No. The transfer of an education award does not convey eligibility for payment of accrued interest under subpart E of this part.

## PARTS 2526–2530 [RESERVED]

## PART 2531—PURPOSES AND AVAILABILITY OF GRANTS FOR INVESTMENT FOR QUALITY AND INNOVATION ACTIVITIES

Sec.

2531.10 What are the purposes of the Investment for Quality and Innovation activities?

2531.20 Funding priorities.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

### § 2531.10 What are the purposes of the Investment for Quality and Innovation activities?

Investment for Quality and Innovation activities are designed to develop service infrastructure and improve the overall quality of national and community service efforts. Specifically, the Corporation will support innovative and model programs that otherwise may not be eligible for funding; and support other activities, such as training and technical assistance, summer programs, leadership training, research, promotion and recruitment, and special fellowships and awards. The Corporation may conduct these activities either directly or through grants to or contracts with qualified organizations.

[59 FR 13806, Mar. 23, 1994. Redesignated at 75 FR 51413, Aug. 20, 2010.]

### § 2531.20 Funding priorities.

The Corporation may choose to set priorities (and to periodically revise such priorities) that limit the types of innovative and model programs and support activities it will undertake or fund in a given fiscal year. In setting these priorities, the Corporation will seek to concentrate funds on those activities that will be most effective and efficient in fulfilling the purposes of this part.

[59 FR 13806, Mar. 23, 1994]

## PART 2532—INNOVATIVE AND SPECIAL DEMONSTRATION PROGRAMS

Sec.

2532.10 Military Installation Conversion Demonstration programs.

2532.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.

2532.30 Other innovative and model programs.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 59 FR 13806, Mar. 23, 1994, unless otherwise noted. Redesignated at 75 FR 51413, Aug. 20, 2010

### § 2532.10 Military Installation Conversion Demonstration programs.

(a) *Purposes.* The purposes of this section are to: (1) Provide direct and demonstrable service opportunities for economically disadvantaged youth;

(2) Fully utilize military installations affected by closures or realignments;

(3) Encourage communities affected by such closures or realignments to convert the installations to community use; and

(4) Foster a sense of community pride in the youth in the community.

(b) *Definitions.* As used in this section: (1) *Affected military installation.* The term *affected military installation* means a military installation described in section 325(e)(1) of the Job Training Partnership Act (29 U.S.C. 1662d(e)(1)).

(2) *Community.* The term *community* includes a county.

(3) *Convert to community use.* The term *convert to community use*, used with respect to an affected military installation, includes—

(i) Conversion of the installation or a part of the installation to—

(A) A park;

(B) A community center;

(C) A recreational facility; or

(D) A facility for a Head Start program under the Head Start Act (42 U.S.C. 9831 *et seq.*); and

(ii) Carrying out, at the installation, a construction or economic development project that is of substantial benefit, as determined by the Chief Executive Officer, to—

(A) The community in which the installation is located; or

(B) A community located within 50 miles of the installation or such further distance as the Chief Executive Officer may deem appropriate on a case-by-case basis.

(4) *Demonstration program.* The term *demonstration program* means a program described in paragraph (c) of this section.

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(c) *Demonstration programs*—(1) *Grants*—The Corporation may make grants to communities and community-based agencies to pay for the Federal share of establishing and carrying out military installation conversion demonstration programs, to assist in converting to community use affected military installations located—

- (i) Within the community; or
- (ii) Within 50 miles of the community.

(2) *Duration*. In carrying out such a demonstration program, the community or community-based agency may carry out—

- (i) A program of not less than 6 months in duration; or
- (ii) A full-time summer program.

(d) *Use of Funds*—(1) *Stipend*. A community or community-based agency that receives a grant under paragraph (c) of this section to establish and carry out a project through a demonstration program may use the funds made available through such grant to pay for a portion of a stipend for the participants in the project.

(2) *Limitation on amount of stipend*. The amount of the stipend provided to a participant under paragraph (d)(1) of this section that may be paid using assistance provided under this section and using any other Federal funds may not exceed the lesser of—

- (i) 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955); and

- (ii) 85 percent of the stipend established by the demonstration program involved.

(e) *Participants*—(1) *Eligibility*. A person will be eligible to be selected as a participant in a project carried out through a demonstration program if the person is—

- (i) Economically disadvantaged and between the ages of 16 and 24, inclusive;
- (ii) In the case of a full-time summer program, economically disadvantaged and between the ages of 14 and 24; or
- (iii) An eligible youth as described in section 423 of the Job Training Partnership Act (29 U.S.C. 1693).

(2) *Participation*. Persons desiring to participate in such a project must

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enter into an agreement with the sponsor of the project to participate—

- (i) On a full-time or a part-time basis; and

- (ii) For the duration referred to in paragraph (f)(2)(iii) of this section.

(f) *Application*—(1) *In general*. To be eligible to receive a grant under paragraph (c) of this section, a community or community-based agency must submit an application to the Chief Executive Officer at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(2) *Contents*. At a minimum, such application must contain—

- (i) A description of the demonstration program proposed to be conducted by the applicant;

- (ii) A proposal for carrying out the program that describes the manner in which the applicant will—

(A) Provide preservice and inservice training, for supervisors and participants, that will be conducted by qualified individuals or qualified organizations;

(B) Conduct an appropriate evaluation of the program; and

(C) Provide for appropriate community involvement in the program;

- (iii) Information indicating the duration of the program; and

- (iv) An assurance that the applicant will comply with the nonduplication, nondisplacement and grievance procedure provisions of part 2540 of this chapter.

(g) *Limitation on Grant*. In making a grant under paragraph (c) of this section with respect to a demonstration program to assist in converting an affected military installation, the Corporation will not make a grant for more than 25 percent of the total cost of the conversion.

**§ 2532.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.**

(a) *Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska*. The President may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

(b) *Application*—(1) *General requirements*. To be eligible to receive a grant or enter into a contract under paragraph (a) of this section with respect to a program, an organization must submit an application to the President at such time, in such manner, and containing such information as required.

(2) *Contents*. The application submitted by the organization must, at a minimum—

(i) Include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local nonprofit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

(ii) Take into consideration—

(A) The primarily noncash economy of the region; and

(B) The needs and desires of residents of the local communities in the region; and

(iii) Include specific strategies, developed in cooperation with the Yupi'k speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

#### § 2532.30 Other innovative and model programs.

(a) The Corporation may support other innovative and model programs such as the following: (1) Programs, including programs for rural youth, described in parts 2515 through 2524 of this chapter;

(2) Employer-based retiree programs;

(3) Intergenerational programs;

(4) Programs involving individuals with disabilities providing service;

(5) Programs sponsored by Governors; and

(6) Summer programs carried out between May 1 and October 1 (which may also contain a year-round component).

(b) The Corporation will support innovative service-learning programs.

[59 FR 13806, Mar. 23, 1994, as amended at 69 FR 6181, Feb. 10, 2004]

## PART 2533—TECHNICAL ASSISTANCE, TRAINING, AND OTHER SERVICE INFRASTRUCTURE-BUILDING ACTIVITIES

AUTHORITY: 42 U.S.C. 12657.

### § 2533.10 Eligible activities.

The Corporation may support—either directly or through a grant, contract or agreement—any activity designed to meet the purposes described in part 2531 of this chapter. These activities include, but are not limited to, the following: (a) *Community-based agencies*. The Corporation may provide training and technical assistance and other assistance to project sponsors and other community-based agencies that provide volunteer placements in order to improve the ability of such agencies to use participants and other volunteers in a manner that results in high-quality service and a positive service experience for the participants and volunteers.

(b) *Improve ability to apply for assistance*. The Corporation will provide training and technical assistance, where necessary, to individuals, programs, local labor organizations, State educational agencies, State Commissions, local educational agencies, local governments, community-based agencies, and other entities to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes.

(c) *Conferences and materials*. The Corporation may organize and hold conferences, and prepare and publish materials, to disseminate information and promote the sharing of information among programs for the purpose of improving the quality of programs and projects.

(d) *Peace Corps and VISTA training*. The Corporation may provide training assistance to selected individuals who volunteer to serve in the Peace Corps or a program authorized under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 *et seq.*). The training will be provided as part of the course of study of the individual at an institution of higher education, involve service-learning, and cover appropriate

skills that the individual will use in the Peace Corps or VISTA.

(e) *Promotion and recruitment.* The Corporation may conduct a campaign to solicit funds for the National Service Trust and other programs and activities authorized under the national service laws and to promote and recruit participants for programs that receive assistance under the national service laws.

(f) *Training.* The Corporation may support national and regional participant and supervisor training, including leadership training and training in specific types of service and in building the ethic of civic responsibility.

(g) *Research.* The Corporation may support research on national service, including service-learning.

(h) *Intergenerational support.* The Corporation may assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

(i) *Planning coordination.* The Corporation may coordinate community-wide planning among programs and projects.

(j) *Youth leadership.* The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(k) *National program identity.* The Corporation may support the development and dissemination of materials, including training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs that receive assistance under the national service laws.

(l) *Service-learning.* The Corporation will support innovative programs and activities that promote service-learning.

(m) *National youth service day—(1) Designation.* April 19, 1994, and April 18, 1995 are each designated as “National Youth Service Day”. The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

(2) *Federal activities.* In order to observe National Youth Service Day at the Federal level, the Corporation may

organize and carry out appropriate ceremonies and activities.

(3) *Activities.* The Corporation may make grants to public or private non-profit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on National Youth Service Day.

(n) *Clearinghouses—(1) Authority.* The Corporation may establish clearinghouses, either directly or through a grant or contract. Any service-learning clearinghouse to be established pursuant to part 2518 of this chapter is eligible to apply for a grant under this section. In addition, public or private non-profit organizations are eligible to apply for clearinghouse grants.

(2) *Function.* A Clearinghouse may perform the following activities: (i) Assist entities carrying out State or local community service programs with needs assessments and planning;

(ii) Conduct research and evaluations concerning community service;

(iii) Provide leadership development and training to State and local community service program administrators, supervisors, and participants; and provide training to persons who can provide such leadership development and training;

(iv) Facilitate communication among entities carrying out community service programs and participants;

(v) Provide information, curriculum materials, and technical assistance relating to planning and operation of community service programs, to States and local entities eligible to receive funds under this chapter;

(vi) Gather and disseminate information on successful community service programs, components of such successful programs, innovative youth skills curriculum, and community service projects;

(vii) Coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(viii) Make recommendations to State and local entities on quality controls to improve the delivery of community service programs and on changes in the programs under this chapter; and

(ix) Carry out such other activities as the Chief Executive Officer determines to be appropriate.



(o) *Assistance for Head Start.* The Corporation may make grants to, and enter into contracts and cooperative agreements with, public or nonprofit private agencies and organizations that receive grants or contracts under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act of 1973 (29 U.S.C. 5011 *et seq.*)), for projects of the type described in section 211(a) of such Act (29 U.S.C. 5011) operating under memoranda of agreement with the ACTION Agency, for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs under the Head Start Act (42 U.S.C. 9831 *et seq.*).

(p) *Other assistance.* The Corporation may support other activities that are consistent with the purposes described in part 2531 of this chapter.

[59 FR 13807, Mar. 23, 1994. Redesignated and amended at 75 FR 51413 and 51415, Aug. 20, 2010]

## PART 2534—SPECIAL ACTIVITIES

Sec.

2534.10 National service fellowships.

2534.20 Presidential awards for service.

AUTHORITY: 42 U.S.C. 12501 *et seq.*

### § 2534.10 National service fellowships.

The Corporation may award national service fellowships on a competitive basis.

[69 FR 6181, Feb. 10, 2004. Redesignated at 75 FR 54789, Sept. 9, 2010]

### § 2534.20 Presidential awards for service.

The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding programs. Information about recipients of such awards will be widely disseminated. The President may provide such awards to any deserving individual or program, regardless of whether the individual is serving in a program authorized by this chapter or whether the program is itself authorized by this chapter. In no instance,

however, may the award be a cash award.

[59 FR 13808, Mar. 23, 1994. Redesignated at 75 FR 54789, Sept. 9, 2010]

## PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

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

Sec.

2540.100 What restrictions govern the use of Corporation assistance?

2540.110 Limitation on use of Corporation funds for administrative costs.

### 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?

2540.201 Which individuals require a National Service Criminal History Check?

2540.202 What eligibility criteria apply to an individual for whom a National Service Criminal History Check is required?

2540.203 May a grant recipient or sub-recipient or service site establish and apply suitability criteria for individuals to work or serve in a position specified in this subpart?

2540.204 What are the components of a National Service Criminal History Check?

2540.205 By when must the National Service Criminal History Check be completed?

2540.206 What procedural steps are required, in addition to conducting the National Service Criminal History Check described in this subpart?

2540.207 Waiver.

2540.208 Under what circumstances may participants be engaged?

2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?

2540.215 What should a program participant, staff members, or beneficiary do if the individual believes he or she has been subject to illegal discrimination?

2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted projects eligible for family and medical leave?

2540.230 What grievance procedures must recipients of Corporation assistance establish?

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### Subpart C—Other Requirements for Recipients of Corporation Assistance

- 2540.300 What must be included in annual State reports to the Corporation?
- 2540.310 Must programs that receive Corporation assistance establish standards of conduct?
- 2540.320 How are participant benefits treated?
- 2540.330 Parental involvement required

### Subpart D—Suspension and Termination of Corporation Assistance

- 2540.400 Under what circumstances will the Corporation suspend or terminate a grant or contract?

### Subpart E—Restrictions on Use of National Service Insignia

- 2540.500 What definition applies to this subpart?
- 2540.510 What are the restrictions on using national service insignia?
- 2540.520 What are the consequences for unauthorized use of the Corporation's national service insignia?
- 2540.530 Are there instances where an insignia may be used without getting the approval of the Corporation?
- 2540.540 Who has authority to approve use of national service insignia?
- 2540.550 Is there an expiration date on approvals for use of national service insignia?
- 2540.560 How do I renew authority to use a national service insignia?

### Subpart F—False or Misleading Statements

- 2540.600 What definitions apply to this subpart?
- 2540.610 What are the consequences of making a false or misleading statement?
- 2540.620 What are my rights if the Corporation determines that I have made a false or misleading statement?
- 2540.630 What information must I provide to contest a proposed action?
- 2540.640 When will the reviewing official make a decision on the proposed action?
- 2540.650 How may I contest a reviewing official's decision to uphold the proposed action?
- 2540.660 If the final decision determines that I received a financial benefit improperly, will I be required to repay that benefit?
- 2540.670 Will my qualification to participate or eligibility for benefits be suspended during the review process?

AUTHORITY: E.O. 13331, 69 FR 9911; 18 U.S.C. 506, 701, 1017; 42 U.S.C. 12653, 12631–12637, 12645g; 42 U.S.C. 5065.

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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;

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- (b) Foster Grandparent Program Grants;
- (c) Retired and Senior Volunteer Program Grants;
- (d) Senior Companion Program Grants;
- (e) Senior Demonstration Program Grants that receive funding from CNCS;
- (f) Martin Luther King, Jr. Day of Service Grants;
- (g) September 11th Day of Service Grants;
- (h) Social Innovation Fund Grants;
- (i) Volunteer Generation Fund Grants;
- (j) AmeriCorps VISTA Program Grants;
- (k) AmeriCorps VISTA Support Grants.

[86 FR 11146, Feb. 24, 2021]

### § 2540.201 Which individuals require a National Service Criminal History Check?

(a) A National Service Criminal History Check must be conducted for individuals in covered positions. Individuals in covered positions are individuals selected, under a CNCS grant specified in 2540.200, by the recipient, subrecipient, or service site to work or serve in a position under a CNCS grant specified in § 2540.200:

- (1) As an AmeriCorps State and National member, as described in 42 U.S.C. 12511(30)(A)(i);
  - (2) As a Foster Grandparent who receives a stipend;
  - (3) As a Senior Companion who receives a stipend; or
  - (4) In a position in which they will receive a salary, directly or reflected as match, under a cost reimbursement grant.
- (b) A National Service Criminal History Check is not required for those individuals listed in paragraph (a) of this section who are under the age of 18 on the first day of work or service in a covered position.
- (c) A National Service Criminal History Check is not required for individuals whose activity is entirely included in the grant recipient's indirect cost rate.

[86 FR 11147, Feb. 24, 2021]

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### § 2540.202 What eligibility criteria apply to an individual for whom a National Service Criminal History Check is required?

An individual shall be ineligible to work or serve in a position specified in § 2540.201(a) if the individual—

- (a) Refuses to consent to a criminal history check described in § 2540.204;
- (b) Makes a false statement in connection with a criminal history check described in § 2540.204;
- (c) Is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry; or
- (d) Has been convicted of murder, as defined in 18 U.S.C. 1111.

[86 FR 11147, Feb. 24, 2021]

### § 2540.203 May a grant recipient or subrecipient or service site establish and apply suitability criteria for individuals to work or serve in a position specified in this subpart?

Grant recipients and subrecipients, or service sites, may establish suitability criteria, consistent with state and Federal Civil Rights and non-discrimination laws, for individuals working or serving in a position specified in § 2540.201(a). While members may be eligible to work or serve in a position specified in § 2540.201(a) based on the eligibility requirements of § 2540.202, a grant recipient, subrecipient, or service site may determine that an individual is not suitable to work or serve in such a position based on criteria that the grant recipient or subrecipient or service site establishes.

[86 FR 11147, Feb. 24, 2021]

### § 2540.204 What are the components of a National Service Criminal History Check?

(a) Unless CNCS approves a waiver under § 2540.207, for each individual in a position specified in § 2540.201, grantees or subgrantees must, obtain:

- (1) A nationwide check of the National Sex Offender Public website through *NSOPW.gov*;
- (2) A check of the State criminal history record repository or agency-designated alternative for the individual's State of residence and State of service; and

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(3) A fingerprint-based check of the FBI criminal history record database through the State criminal history record repository or agency-approved vendor.

(b) One way for grant recipients or subrecipients to obtain and document the required components of the National Service Criminal History Check is through the use of agency-approved vendors.

[86 FR 11147, Feb. 24, 2021]

### **§ 2540.205 By when must the National Service Criminal History Check be completed?**

(a) The National Service Criminal History Check must be conducted, reviewed, and an eligibility determination made by the grant recipient or subrecipient based on the results of the National Service Criminal History Check *before* a person begins to work or serve in a position specified in § 2540.201(a).

(b) If a person serves consecutive terms of service or employment with the same organization in a position specified in § 2540.201(a) and does not have a break in service or employment longer than 180 days, then no additional National Service Criminal History Check is required, as long as the original check complied with the requirements of § 2540.204. If a National Service Criminal History Check was not conducted on a person because they were under the age of 18 at the time they began their prior term(s) of service or employment in a covered position, pursuant to § 2540.201(b), a National Service Criminal History check must be conducted prior to the individual beginning a subsequent term of work or service for which the person is 18 years of age or older at the start of work or service.

(c) Persons working or serving in positions specified in § 2540.201(a) prior to May 1, 2021, who continue working or serving in a position specified in § 2540.201(a) on or after November 1, 2021, must have a National Service Criminal History Check conducted, reviewed, and an eligibility determination made by the grant recipient or subrecipient based on the results of the National Service Criminal History Check completed in accordance with

this part. For these people, the National Service Criminal History Check must be completed no later than November 1, 2021.

[86 FR 11147, Feb. 24, 2021]

### **§ 2540.206 What procedural steps are required, in addition to conducting the National Service Criminal History Check described in this subpart?**

(a) In addition to conducting the National Service Criminal History Check described in § 2540.204, grant recipients or subrecipients must:

(1) Obtain a person's consent before conducting the state and FBI components of the National Service Criminal History Check;

(2) Provide notice that selection for work or service for a position specified in § 2540.201(a) is contingent upon the organization's review of the National Service Criminal History Check component results;

(3) Provide a reasonable opportunity for the person to review and challenge the factual accuracy of a result before action is taken to exclude the person from the position;

(4) Take reasonable steps to protect the confidentiality of any information relating to the criminal history check, consistent with authorization provided by the applicant;

(5) Maintain documentation of the National Service Criminal History Check as grant records; and

(6) Pay for the cost of the NSCHC. Unless specifically approved by CNCS under § 2540.207, the person who is serving or working in the covered position may not be charged for the cost of any component of a National Service Criminal History Check.

(b) CNCS-approved vendors may facilitate obtaining and documenting the requirements in paragraphs (a)(1) through (5) of this section.

[86 FR 11147, Feb. 24, 2021]

### **§ 2540.207 Waiver.**

CNCS may waive provisions of §§ 2540.200 through 2540.206 for good cause, or for any other lawful basis. To request a waiver, submit a written request to NSCHC Waiver Requests, 250 E Street SW, Washington DC 20525, or

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send your request to  
[NSCHCWaiverRequest@cns.gov](mailto:NSCHCWaiverRequest@cns.gov).

[86 FR 11148, Feb. 24, 2021]

### **§ 2540.208 Under what circumstances may participants be engaged?**

A State may not engage a participant to serve in any program that receives Corporation assistance unless and until amounts have been appropriated under section 501 of the Act (42 U.S.C. 12681) for the provision of AmeriCorps educational awards and for the payment of other necessary expenses and costs associated with such participant.

[59 FR 13808, Mar. 23, 1994. Redesignated at 72 FR 48582, Aug. 24, 2007]

### **§ 2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?**

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

(b) Any Corporation 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 Corporation 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 Corporation funds. This provision does not apply to the employment (with Corporation assistance) of any staff member of a Corporation-supported project who was em-

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ployed with the organization operating the project on the date the Corporation grant was awarded.

(d) Grantees 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 with the Corporation's Office of Civil Rights and Inclusiveness.

[59 FR 13808, Mar. 23, 1994, as amended at 73 FR 53760, Sept. 17, 2008]

### **§ 2540.215 What should a program participant, staff members, or beneficiary do if the individual believes he or she has been subject to illegal discrimination?**

A program participant, staff member, or beneficiary who believes that he or she has been subject to illegal discrimination should contact the Corporation's Office of Civil Rights and Inclusiveness, which offers an impartial discrimination complaint resolution process. Participation in a discrimination complaint resolution process is protected activity; a grantee is prohibited from retaliating against an individual for making a complaint or participating in any manner in an investigation, proceeding, or hearing.

[73 FR 53760, Sept. 17, 2008]

### **§ 2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted programs eligible for family and medical leave?**

(a) *Participants in State, local, or private nonprofits programs.* A participant in a State, local, or private nonprofit program receiving support from the Corporation is considered an eligible employee of the program's project sponsor under the Family and Medical Leave Act of 1993 (29 CFR part 825) if—

(1) The participant has served for at least 12 months and 1,250 hours during the year preceding the start of the leave; and

(2) The program's project sponsors engages in commerce or any industry or activity affecting commerce, and

employs at least 50 employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.

(b) *Participants in Federal programs.* Participants in Federal programs operated by the Corporation or by another Federal agency will be considered Federal employees for the purposes of the Family and Medical Leave Act if the participants have completed 12 months of service and the project sponsor is an employing agency as defined in 5 U.S.C. 6381 *et seq.*; such participants therefore will be eligible for the same family and medical leave benefits afforded to such Federal employees.

(c) *General terms and conditions.* Participants that qualify as eligible employees under paragraphs (a) or (b) of this section are entitled to take up to 12 weeks of unpaid leave during a 12 month period for any of the following reasons (in the cases of both paragraphs (c)(1) and (2) of this section the entitlement to leave expires 12 months after the birth or placement of such child): (1) The birth of a child to a participant;

(2) The placement of a child with a participant for adoption or foster care;

(3) The serious illness of a participant's spouse, child or parent; or

(4) A participant's serious health condition that makes that participant unable to perform his or her essential service duties (a serious health condition is an illness or condition that requires either inpatient care or continuing treatment by a health care provider).

(d) *Intermittent leave or reduced service.* The program, serving as the project sponsor, may allow a participant to take intermittent leave or reduce his or her service hours due to the birth of or placement of a child for adoption or foster care. The participant may also take leave to care for a seriously ill immediate family member or may take leave due to his or her own serious illness whenever it is medically necessary.

(e) *Alternate placement.* If a participant requests intermittent leave or a reduced service hours due to a serious illness or a family member's sickness, and the need for leave is foreseeable based on planned medical treatment,

the program, or project sponsor may temporarily transfer the participant to an alternative service position if the participant: (1) Is qualified for the position; and

(2) Receives the same benefits such as stipend or living allowance and the position better accommodates the participants recurring periods of leave.

(f) *Certification of cause.* A program, or project sponsor may require that the participant support a leave request with a certification from the health care provider of the participant or the participant's family member. If a program sponsor requests a certification, the participant must provide it in a timely manner.

(g) *Continuance of coverage.* (1) If a State, local or private program provides for health insurance for the full-time participant, the sponsor must continue to provide comparable health coverage at the same level and conditions that coverage would have been provided for the duration of the participant's leave.

(2) If the Federal program provides health insurance coverage for the full-time participant, the sponsor must also continue to provide the same health care coverage for the duration of the participant's leave.

(h) *Failure to return.* If the participant fails to return to the program at the end of leave for any reason other than continuation, recurrence or onset of a serious health condition or other circumstances beyond his or her control, the program may recover the premium that he or she paid during any period of unpaid leave.

(i) *Applicability to term of service.* Any absence, due to family and medical leave, will not be counted towards the participant's term of service.

#### **§ 2540.230 What grievance procedures must recipients of Corporation assistance establish?**

State and local applicants that receive assistance from the Corporation must establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance from the Corporation.

A grievance procedure may include dispute resolution programs such as mediation, facilitation, assisted negotiation and neutral evaluation. If the grievance alleges fraud or criminal activity, it must immediately be brought to the attention of the Corporation's inspector general.

(a) *Alternative dispute resolution.* (1) The aggrieved party may seek resolution through alternative means of dispute resolution such as mediation or facilitation. Dispute resolution proceedings must be initiated within 45 calendar days from the date of the alleged occurrence. At the initial session of the dispute resolution proceedings, the party must be advised in writing of his or her right to file a grievance and right to arbitration. If the matter is resolved, and a written agreement is reached, the party will agree to forego filing a grievance in the matter under consideration.

(2) If mediation, facilitation, or other dispute resolution processes are selected, the process must be aided by a neutral party who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the matter through a mutually achieved and acceptable written agreement. The neutral party may not compel a resolution. Proceedings before the neutral party must be informal, and the rules of evidence will not apply. With the exception of a written and agreed upon dispute resolution agreement, the proceeding must be confidential.

(b) *Grievance procedure for unresolved complaints.* If the matter is not resolved within 30 calendar days from the date the informal dispute resolution process began, the neutral party must again inform the aggrieving party of his or her right to file a formal grievance. In the event an aggrieving party files a grievance, the neutral may not participate in the formal complaint process. In addition, no communication or proceedings of the informal dispute resolution process may be referred to or introduced into evidence at the grievance and arbitration hearing. Any decision by the neutral party is advisory and is not binding unless both parties agree.

(c) *Time limitations.* Except for a grievance that alleges fraud or criminal activity, a grievance must be made

no later than one year after the date of the alleged occurrence. If a hearing is held on a grievance, it must be conducted no later than 30 calendar days after the filing of such grievance. A decision on any such grievance must be made no later than 60 calendar days after the filing of the grievance.

(d) *Arbitration—(1) Arbitrator—(i) Joint selection by parties.* If there is an adverse decision against the party who filed the grievance, or 60 calendar days after the filing of a grievance no decision has been reached, the filing party may submit the grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

(ii) *Appointment by Corporation.* If the parties cannot agree on an arbitrator within 15 calendar days after receiving a request from one of the grievance parties, the Corporations Chief Executive Officer will appoint an arbitrator from a list of qualified arbitrators.

(2) *Time Limits—(i) Proceedings.* An arbitration proceeding must be held no later than 45 calendar days after the request for arbitration, or, if the arbitrator is appointed by the Chief Executive Officer, the proceeding must occur no later than 30 calendar days after the arbitrator's appointment.

(ii) *Decision.* A decision must be made by the arbitrator no later than 30 calendar days after the date the arbitration proceeding begins.

(3) *The cost.* The cost of the arbitration proceeding must be divided evenly between the parties to the arbitration. If, however, a participant, labor organization, or other interested individual prevails under a binding arbitration proceeding, the State or local applicant that is a party to the grievance must pay the total cost of the proceeding and the attorney's fees of the prevailing party.

(e) *Suspension of placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this chapter, such placement must not be made unless the placement is consistent with the resolution of the grievance.

(f) *Remedies.* Remedies for a grievance filed under a procedure established by a



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recipient of Corporation assistance may include—

(1) Prohibition of a placement of a participant; and

(2) In grievance cases where there is a violation of nonduplication or non-displacement requirements and the employer of the displaced employee is the recipient of Corporation assistance—

(i) Reinstatement of the employee to the position he or she held prior to the displacement;

(ii) Payment of lost wages and benefits;

(iii) Re-establishment of other relevant terms, conditions and privileges of employment; and

(iv) Any other equitable relief that is necessary to correct any violation of the nonduplication or nondisplacement requirements or to make the displaced employee whole.

(g) *Suspension or termination of assistance.* The Corporation may suspend or terminate payments for assistance under this chapter.

(h) *Effect of noncompliance with arbitration.* A suit to enforce arbitration awards may be brought in any Federal district court having jurisdiction over the parties without regard to the amount in controversy or the parties' citizenship.

### Subpart C—Other Requirements for Recipients of Corporation Assistance

#### § 2540.300 What must be included in annual State reports to the Corporation?

(a) *In general.* Each State receiving assistance under this title must prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this chapter and the status of the national and community service programs in the State that receive assistance under this chapter. A State's annual report must include information that demonstrates the State's compliance with the requirements of this chapter.

(b) *Local grantees.* Each State may require local grantees that receive assistance under this chapter to supply such information to the State as is necessary to enable the State to complete

the report required under paragraph (a) of this section, including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(c) *Availability of report.* Reports submitted under paragraph (a) of this section must be made available to the public on request.

#### § 2540.310 Must programs that receive Corporation assistance establish standards of conduct?

Yes. Programs that receive assistance under this title must establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

#### § 2540.320 How are participant benefits treated?

Section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)) shall apply to the programs conducted under this chapter as if such programs were conducted under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

#### § 2540.330 Parental involvement required

(a) *Consultation Requirement.* Programs that receive assistance under the national service laws shall consult with the parents or legal guardians of children in developing and operating programs that include and serve children.

(b) *Parental Permission.* Programs that receive assistance under the national service laws must, before transporting minor children, provide the children's parents or legal guardians with the reason for the transportation and obtain the parent's or legal guardian's permission for such transportation, consistent with State law.

[74 FR 46507, Sept. 10, 2009]

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### Subpart D—Suspension and Termination of Corporation Assistance

#### § 2540.400 Under what circumstances will the Corporation suspend or terminate a grant or contract?

(a) *Suspension of a grant or contract.* In emergency situations, the Corporation may suspend a grant or contract for not more than calendar 30 days. Examples of such situations may include, but are not limited to: (1) Serious risk to persons or property;

(2) Violations of Federal, State or local criminal statutes; and

(3) Material violation(s) of the grant or contract that are sufficiently serious that they outweigh the general policy in favor of advance notice and opportunity to show cause.

(b) *Termination of a grant or contract.* The Corporation may terminate or revoke assistance for failure to comply with applicable terms and conditions of this chapter. However, the Corporation must provide the recipient reasonable notice and opportunity for a full and fair hearing, subject to the following conditions: (1) The Corporation will notify a recipient of assistance by letter or telegram that the Corporation intends to terminate or revoke assistance, either in whole or in part, unless the recipient shows good cause why such assistance should not be terminated or revoked. In this communication, the grounds and the effective date for the proposed termination or revocation will be described. The recipient will be given at least 7 calendar days to submit written material in opposition to the proposed action.

(2) The recipient may request a hearing on a proposed termination or revocation. Providing five days notice to the recipient, the Corporation may authorize the conduct of a hearing or other meetings at a location convenient to the recipient to consider the proposed suspension or termination. A transcript or recording must be made of a hearing conducted under this section and be available for inspection by any individual.

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### Subpart E—Restrictions on Use of National Service Insignia

SOURCE: 73 FR 53761, Sept. 17, 2008, unless otherwise noted.

#### § 2540.500 What definition applies to this subpart?

*National Service Insignia.* For this subpart, *national service insignia* means the former and current seal, logos, names, or symbols of the Corporation's programs, products, or services, including those for AmeriCorps, VISTA, Learn and Serve America, Senior Corps, Foster Grandparents, the Senior Companion Program, the Retired and Senior Volunteer Program, the National Civilian Community Corps, and any other program or project that the Corporation administers.

#### § 2540.510 What are the restrictions on using national service insignia?

The national service insignia are owned by the Corporation and only may be used as authorized. The national service insignia may not be used by non-federal entities for fundraising purposes or in a manner that suggests Corporation endorsement.

#### § 2540.520 What are the consequences for unauthorized use of the Corporation's national service insignia?

Any person who uses the national service insignia without authorization may be subject to legal action for trademark infringement, enjoined from continued use, and, for certain types of unauthorized uses, other civil or criminal penalties may apply.

#### § 2540.530 Are there instances where an insignia may be used without getting the approval of the Corporation?

All uses of the national service insignia require the written approval of the Corporation.

#### § 2540.540 Who has authority to approve use of national service insignia?

Approval for limited uses may be provided through the terms of a written grant or other agreement. All other uses must be approved in writing by the director of the Corporation's Office

of Public Affairs, or his or her designee.

**§ 2540.550 Is there an expiration date on approvals for use of national service insignia?**

The approval to use a national service insignia will expire as determined in writing by the director of the Office of Public Affairs, or his or her designee. However, the authority to use an insignia may be revoked at any time if the Corporation determines that the use involved is injurious to the image of the Corporation or if there is a failure to comply with the terms and conditions of the authorization.

**§ 2540.560 How do I renew authority to use a national service insignia?**

Requests for renewed authority to use an insignia must follow the procedures for initial approval as set out in § 2540.540.

**Subpart F—False or Misleading Statements**

SOURCE: 73 FR 53761, Sept. 17, 2008, unless otherwise noted.

**§ 2540.600 What definitions apply to this subpart?**

*You.* For this subpart, *you* refers to a participant in a national service program.

**§ 2540.610 What are the consequences of making a false or misleading statement?**

If it is determined that you made a false or misleading statement in connection with your eligibility for a benefit from, or qualification to participate in, a Corporation-funded program, it may result in the revocation of the qualification or forfeiture of the benefit. Revocation and forfeiture under this part are in addition to any other remedy available to the Federal Government under the law against persons who make false or misleading statements in connection with a Federally-funded program.

**§ 2540.620 What are my rights if the Corporation determines that I have made a false or misleading statement?**

If the Corporation determines that you have made a false or misleading statement in connection with your eligibility for a benefit from, or qualification to participate in, a Corporation-funded program, you will be hand delivered a written notice, or sent a written notice to your last known street address or e-mail address or that of your identified counsel at least 15 days before any proposed action is taken. The notice will include the facts surrounding the determination and the action the Corporation proposes to take. The notice will also identify the reviewing official in your case and provide other pertinent information. You will be allowed to show good cause as to why forfeiture, revocation, the denial of a benefit, or other action should not be implemented. You will be given 10 calendar days to submit written materials in opposition to the proposed action.

**§ 2540.630 What information must I provide to contest a proposed action?**

Your written response must include specific facts that contradict the statements made in the notice of proposed action. A general statement of denial is insufficient to raise a dispute over the facts material to the proposed action. Your response should also include copies of any documents that support your argument.

**§ 2540.640 When will the reviewing official make a decision on the proposed action?**

The reviewing official will issue a decision within 45 days of receipt of your response.

**§ 2540.650 How may I contest a reviewing official's decision to uphold the proposed action?**

If the Corporation's reviewing official concludes that the proposed action, in full or in part, should still be implemented, you will have an opportunity to request an additional proceeding. A Corporation program director or designee will conduct a review of

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the complete record, including such additional relevant documents you submit. If deemed appropriate, such as where there are material facts in genuine dispute, the program director or designee may conduct a telephonic or in person meeting. If a meeting is conducted, it will be recorded and you will be provided a copy of the recording. The program director or designee will issue a decision within 30 days of the conclusion of the review of the record or meeting. The decision of the program director or designee is final and cannot be appealed further within the agency.

### **§ 2540.660 If the final decision determines that I received a financial benefit improperly, will I be required to repay that benefit?**

If it is determined that you received a financial benefit improperly, you may be required to reimburse the program for that benefit.

### **§ 2540.670 Will my qualification to participate or eligibility for benefits be suspended during the review process?**

If the reviewing official determines that, based on the information available, there is a reasonable likelihood that you will be determined disqualified or ineligible, your qualification or eligibility may be suspended, pending issuance of a final decision, to protect the public interest.

## **PARTS 2541–2543 [RESERVED]**

## **PART 2544—SOLICITATION AND ACCEPTANCE OF DONATIONS**

Sec.

2544.100 What is the purpose of this part?

2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?

2544.110 What definitions apply to terms used in this part?

2544.115 Who may offer a donation?

2544.120 What personal services from a volunteer may be solicited and accepted?

2544.125 Who has the authority to solicit and accept or reject a donation?

2544.130 How will the Corporation determine whether to solicit or accept a donation?

2544.135 How should an offer of a donation be made?

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2544.140 How will the Corporation accept or reject an offer?

2544.145 What will be done with property that is not accepted?

2544.150 How will accepted donations be recorded and used?

AUTHORITY: 42 U.S.C. 12501 *et seq.*

SOURCE: 60 FR 28355, May 31, 1995, unless otherwise noted.

### **§ 2544.100 What is the purpose of this part?**

This part establishes rules to ensure that the solicitation, acceptance, holding, administration, and use of property and services donated to the Corporation:

(a) Will not reflect unfavorably upon the ability of the Corporation or its officers and employees, to carry out their official duties and responsibilities in a fair and objective manner; and

(b) Will not compromise the integrity of the Corporation's programs or its officers and employees involved in such programs.

### **§ 2544.105 What is the legal authority for soliciting and accepting donations to the Corporation?**

Section 196(a) of the National and Community Service Act of 1990, as amended (42 U.S.C. 12651g(a)).

### **§ 2544.110 What definitions apply to terms used in this part?**

(a) *Donation* means a transfer of money, property, or services to or for the use of the Corporation by gift, devise, bequest, or other means.

(b) *Solicitation* means a request for a donation.

(c) *Volunteer* means an individual who donates his/her personal service to the Corporation to assist the Corporation in carrying out its duties under the national service laws, but who is not a participant in a program funded or sponsored by the Corporation under the National and Community Service Act of 1990, as amended. Such individual is not subject to provisions of law related to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and Federal employee benefits, except that—

(1) Volunteers will be considered Federal employees for the purpose of the

tort claims provisions of 28 U.S.C. chapter 171;

(2) Volunteers will be considered Federal employees for the purposes of 5 U.S.C. chapter 81, subchapter I, relating to compensation to Federal employees for work injuries; and

(3) Volunteers will be considered special Government employees for the purpose of ethics and public integrity under the provisions of 18 U.S.C. chapter 11, part I, and 5 CFR chapter XVI, subchapter B.

(d) *Inherently governmental function* means any activity that is so intimately related to the public interest as to mandate performance by an officer or employee of the Federal Government, including an activity that requires either the exercise of discretion in applying the authority of the Government or the use of value judgment in making a decision for the Government.

#### **§ 2544.115 Who may offer a donation?**

Anyone, including an individual, group of individuals, organization, corporation, or association may offer a donation to the Corporation.

#### **§ 2544.120 What personal services from a volunteer may be solicited and accepted?**

A donation in the form of personal services from a volunteer may be solicited and accepted to assist the Corporation in carrying out its duties. However, volunteers may not perform an inherently governmental function.

#### **§ 2544.125 Who has the authority to solicit and accept or reject a donation?**

The Chief Executive Officer (CEO) of the Corporation has the authority to solicit, accept, or reject a donation offered to the Corporation and to make the determinations described in § 2544.130 (c) and (d). The CEO may delegate this authority in writing to other officials of the Corporation.

#### **§ 2544.130 How will the Corporation determine whether to solicit or accept a donation?**

(a) The Corporation will solicit and accept a donation only for the purpose

of furthering the mission and goals of the Corporation.

(b) In order to be accepted, the donation must be economically advantageous to the Corporation, considering foreseeable expenditures for matters such as storage, transportation, maintenance, and distribution.

(c) An official or employee of the Corporation will not solicit or accept a donation if the solicitation or acceptance would present a real or apparent conflict of interest. An apparent conflict of interest is presented if the solicitation or acceptance would raise a question in the mind of a reasonable person, with knowledge of the relevant facts, about the integrity of the Corporation's programs or operations.

(d) The Corporation will determine whether a conflict of interest exists by considering any business relationship, financial interest, litigation, or other factors that may indicate such a conflict. Donations of property or voluntary services may not be solicited or accepted from a source which:

(1) Is a party to a grant or contract with the Corporation or is seeking to do business with the Corporation;

(2) Has pecuniary interests that may be substantially affected by performance or nonperformance of the Corporation; or

(3) Is an organization a majority of whose members are described in paragraphs (d)(1) and (2) of this section.

(e) Any solicitation or offer of a donation that raises a question or concern of a potential, real, or apparent conflict of interest will be forwarded to the Corporation's Designated Ethics Official for an opinion.

#### **§ 2544.135 How should an offer of a donation be made?**

(a) In general, an offer of donation should be made by providing a letter of tender that offers a donation. The letter should be directed to an official authorized to accept donations, describe the property or service offered, and specify any purpose for, or condition on, the use of the donation.

(b) If an offer is made orally, the Corporation will send a letter of acknowledgment to the offeror. If the donor is

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anonymous, the Corporation will prepare a memorandum to the file acknowledging receipt of a tendered donation and describing the donation including any special terms or conditions.

(c) Only those employees or officials with expressed notice of authority may accept donations on behalf of the Corporation. If an offer is directed to an unauthorized employee or official of the Corporation, that person must immediately forward the offer to an appropriate official for disposition.

#### § 2544.140 How will the Corporation accept or reject an offer?

(a) In general, the Corporation will respond to an offer of a donation in writing and include in the response:

(1) An acknowledgment of receipt of the offer;

(2) A brief description of the offer and any purpose or condition that the offeror specified for the use of the donation;

(3) A statement either accepting or rejecting the donation; and

(4) A statement informing the donor that any acceptance of services or property can not be used in any manner, directly or indirectly, that endorses the donor's products or services or appears to benefit the financial interests or business goals of the donor.

(b) If a purpose or condition for the use of the donation specified by the offeror can not be accommodated, the Corporation may request the offeror to modify the terms of the donation.

#### § 2544.145 What will be done with property that is not accepted?

In general, property offered to the Corporation but not accepted will be returned to the offeror. If the offeror is unknown or the donation would spoil if returned, the property will either be disposed of in accordance with Federal Property Management regulations (41 CFR chapter 101) or given to local charities determined by the Corporation.

#### § 2544.150 How will accepted donations be recorded and used?

(a) All accepted donations of money and other property will be reported to the Chief Financial Officer (CFO) of the

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Corporation for recording and appropriate disposition.

(b) All donations of personal services of a volunteer will be reported to the CFO and to the Personnel Division of the Corporation for processing and documentation.

(c) Donations not designated for a particular purpose will be used for an authorized purpose described in § 2544.125.

(d) Property will be used as nearly as possible in accordance with the terms of the donation. If no terms are specified, or the property can no longer be used for its original purpose, the property will be converted to another authorized use or sold in accordance with Federal regulations. The proceeds of the sale will be used for an authorized purpose described in § 2544.125.

### PART 2550—REQUIREMENTS AND GENERAL PROVISIONS FOR STATE COMMISSIONS AND ALTERNATIVE ADMINISTRATIVE ENTITIES

Sec.

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AUTHORITY: 42 U.S.C. 12638.

## Corporation for National and Community Service

## § 2550.20

SOURCE: 58 FR 60981, Nov. 18, 1993, unless otherwise noted.

### § 2550.10 What is the purpose of this part?

(a) The Corporation for National and Community Service (the Corporation) seeks to meet the Nation's pressing human, educational, environmental and public safety needs through service and to reinvigorate the ethic of civic responsibility across the Nation. If the Corporation is to meet these goals, it is critical for each of the States to be actively involved.

(b) To be eligible to apply for program funding, or approved national service positions, each State must establish a State commission on national and community service to administer the State program grant making process and to develop a State plan. The Corporation may, in some instances, approve an alternative administrative entity (AAE).

(c) The Corporation will distribute grants of between \$125,000 and \$750,000 to States to cover the Federal share of operating the State commissions or AAEs.

(d) The purpose of this part is to provide States with the basic information essential to participate in the subtitle C programs. Of equal importance, this part gives an explanation of the preliminary steps States must take in order to receive money from the Corporation. This part also offers guidance on which of the two State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information for State commissions and AAEs.

[58 FR 60981, Nov. 18, 1993, as amended at 67 FR 45362, July 9, 2002; 70 FR 39607, July 8, 2005]

### § 2550.20 Definitions.

(a) *AAE*. Alternative Administrative Entity.

(b) *Administrative costs*. As used in this part, those costs incurred by a State in the establishing and operating a State entity; the specific administrative costs for which a Corporation administrative grant may be used as defined in the Uniform Administrative Requirements for Grants and Agree-

ments to State and Local Governments.

(c) *Alternative Administrative Entity (AAE)*. A State entity approved by the Corporation to perform the duties of a State Commission, including developing a three-year comprehensive national service plan, preparing applications to the Corporation for funding and approved national service positions, and administering service program grants; in general, an AAE must meet the same composition and other requirements as a State Commission, but may receive waivers from the Corporation to accommodate State laws that prohibit inquiring as to the political affiliation of members, to have more than 25 voting members (the maximum for a State Commission), and/or to select members in a manner other than selection by the chief executive officer of the State.

(d) *Approved National Service Position*. A national service program position for which the Corporation has approved the provision of a national service educational award as one of the benefits to be provided for successful completion of a term of service.

(e) *Corporation*. As used in this part, the Corporation for National and Community Service established pursuant to the National and Community Service Trust Act of 1993 (42 U.S.C. 12651).

(f) *Corporation representative*. Each of the individuals employed by the Corporation for National and Community Service to assist the States in carrying out national and community service activities; the Corporation representative must be included as a member of the State Commission or AAE.

(g) *Indian tribe*. (1) An Indian tribe, band, nation, or other organized group or community, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act"; 48 Stat. 984, chapter 576; 25 U.S.C. 461 *et seq.*); and

(ii) Any Regional Corporation or Village Corporation as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)), that is recognized as eligible for the special programs and

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services provided by the United States under Federal law to Indians because of their status as Indians; and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (g)(1) of this section.

(h) *Older adult*. An individual 55 years of age or older.

(i) *Service-learning*. A method under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community and that is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; service-learning is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled, and it provides time for the students or participants to reflect on the service experience.

(j) *Service learning programs*. The totality of the service learning programs receiving assistance from the Corporation under subtitle B of the Act, either directly or through a grant-making entity; this includes school-based, community-based, and higher education-based service-learning programs.

(k) *State*. As used in this part, the term State refers to each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(l) *State Commission*. A bipartisan or nonpartisan State entity, approved by the Corporation, consisting of 15–25 members (appointed by the chief executive officer of the State), that is responsible for developing a comprehensive national service plan, assembling applications for funding and approved national service positions, and administering national and community service programs in the State.

(m) *State Educational Agency*. The same meaning given to such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

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(n) *State entity*. A State Commission, AAE, or Transitional Entity that has been authorized by the Corporation to perform the duties of a State Commission.

[58 FR 60981, Nov. 18, 1993, as amended at 67 FR 45362, July 9, 2002; 70 FR 39607, July 8, 2005]

### § 2550.30 How does a State decide whether to establish a State commission or an alternative administrative entity?

(a) Although each State's chief executive officer has the authority to select an administrative option, the Corporation strongly encourages States to establish State Commissions which meet the requirements in this part as quickly as possible. The requirements for State Commissions were established to try to create informed and effective entities.

(b) The Corporation recognizes that some States, for legal or other legitimate reasons, may not be able to meet all of the requirements of the State Commissions. The AAE is essentially the same as a State Commission; however, it may be exempt from some of the State Commission requirements. A State that cannot meet one of the waivable requirements of the State Commission (as explained in § 2550.60), and which can demonstrate this to the Corporation, should seek to establish an AAE.

(c) Regardless of which entity a State employs, each State is required to solicit broad-based, local input in an open, inclusive, non-political planning process.

[58 FR 60981, Nov. 18, 1993, as amended at 70 FR 39607, July 8, 2005]

### § 2550.40 How does a State obtain Corporation authorization and approval for the entity it has chosen?

(a) To receive approval of a State Commission or AAE, a State must formally establish an entity that meets the corresponding composition, membership, authority, and duty requirements of this part. (For the AAE, a State must demonstrate why it is impossible or unreasonable to establish a State Commission; an approved AAE, however, has the same rights and responsibilities as a State Commission.)



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## § 2550.50

Once the entity is established, the State must provide written notice—in a format to be prescribed by the Corporation—to the chief executive officer of the Corporation of the composition, membership, and authorities of the State Commission or AAE and explain how the entity will perform its duties and functions. Further, the State must agree to, first, request approval from the Corporation for any subsequent changes in the composition or duties of a State Commission or AAE the State may wish to make, and, second, to comply with any future changes in Corporation requirements with regard to the composition or duties of a State Commission or AAE. If a State meets the applicable requirements, the Corporation will approve the State Commission or AAE.

(b) If the Corporation rejects a State application for approval of a State Commission or AAE because that application does not meet one or more of the requirements of §§ 2250.50 or 2550.60, it will notify the State of the reasons for rejection and offer assistance to make any necessary changes. The Corporation will reconsider revised applications within 14 working days of re-submission.

[58 FR 60981, Nov. 18, 1993, as amended at 70 FR 39607, July 8, 2005]

### **§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?**

The following provisions apply to both State Commissions and AAEs, except that AAEs may obtain waivers from certain provisions as explained in § 2550.60.

(a) *Size of the State Commission and terms of State Commission members.* The chief executive officer of a State must appoint 15–25 voting members to the State Commission (in addition to any non-voting members he or she may appoint). Voting members of a State Commission must be appointed to renewable three-year terms, except that initially a chief executive officer must appoint a third of the members to one-year terms and another third of the members to two-year terms.

(b) *Required voting members on a State Commission.* A member may represent

none, one, or more than one category, but each of the following categories must be represented:

(1) A representative of a community-based agency or organization in the State;

(2) The head of the State education agency or his or her designee;

(3) A representative of local government in the State;

(4) A representative of local labor organizations in the State;

(5) A representative of business;

(6) An individual between the ages of 16 and 25, inclusive, who is a participant or supervisor of a service program for school-age youth, or of a campus-based or national service program;

(7) A representative of a national service program;

(8) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth;

(9) An individual with experience in promoting the involvement of older adults (age 55 and older) in service and volunteerism; and

(10) A representative of the volunteer sector.

(c) *Appointment of other voting members of a State Commission.* Any remaining voting members of a State Commission are appointed at the discretion of the chief executive officer of the State; however, although this list should not be construed as exhaustive, the Corporation suggests the following types of individuals:

(1) Educators, including representatives from institutions of higher education and local education agencies;

(2) Experts in the delivery of human, educational, environmental, or public safety services to communities and persons;

(3) Representatives of Indian tribes;

(4) Out-of-school or at-risk youth; and

(5) Representatives of programs that are administered or receive assistance under the Domestic Volunteer Service Act of 1973, as amended (DVSA) (42 U.S.C. 4950 *et seq.*).

(d) *Appointment of ex officio, non-voting members of a State Commission.* The chief executive officer of a State may appoint as ex officio, non-voting members of the State Commission officers

## § 2550.60

or employees of State agencies operating community service, youth service, education, social service, senior service, or job training programs.

(e) *Other composition requirements.* To the extent practicable, the chief executive officer of a State shall ensure that the membership for the State commission is diverse with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50 percent plus one of the voting members of a State commission may be from the same political party. In addition, the number of voting members of a State commission who are officers or employees of the State may not exceed 25% of the total membership of that State commission.

(f) *Selection of Chairperson.* The chairperson is elected by the voting members of a State Commission. To be eligible to serve as chairperson, an individual must be an appointed, voting member of a State Commission.

(g) *Vacancies.* If a vacancy occurs on a State Commission, a new member must be appointed by the chief executive officer of the State to serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy will not affect the power of the remaining members to execute the duties of the Commission.

(h) *Compensation of State Commission members.* A member of a State Commission may not receive compensation for his or her services, but may be reimbursed (at the discretion of the State) for travel and daily expenses in the same manner as employees intermittently serving the State.

(i) *The role of the Corporation representative.* The Corporation will designate one of its employees to serve as a representative to each State or group of States. This individual must be included as an ex officio non-voting member on the State Commission. In general, the Corporation representative will be responsible for assisting States in carrying out national service activities.

[58 FR 60981, Nov. 18, 1993, as amended at 73 FR 53762, Sept. 17, 2008; 74 FR 46507, Sept. 10, 2009; 74 FR 48866, Sept. 25, 2009]

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### § 2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?

(a) An AAE is not automatically exempt from any of the requirements that govern State Commissions. However, there are three specific State Commission requirements which the Corporation may waive if a State can demonstrate that one or more of them is impossible or unreasonable to meet. If the Corporation waives a State Commission requirement for a State entity, that State entity is, de facto, an AAE. The three criteria which may be waived for an AAE are as follows:

(1) *The requirement that a State's chief executive officer appoint the members of a State Commission.* If a State can offer a compelling reason why some or all of the State Commission members should be appointed by the State legislature or by some other appropriate means, the Corporation may grant a waiver.

(2) *The requirement that a State Commission have 15–25 members.* If a State compellingly demonstrates why its commission should have a larger number of members, the Corporation may grant a waiver.

(3) *The requirement that not more than 50% plus one of the State Commission's voting members be from the same political party.* This requirement was established to prevent State Commissions from being politically motivated or controlled; however, in some States it is illegal to require prospective members to provide information about political party affiliation. For this or another compelling reason, the Corporation may grant a waiver.

(b) Again, any time the Corporation grants one or more of these waivers for a State entity, that entity becomes an AAE; in all other respects an AAE is the same as a State Commission, having the same requirements, rights, duties and responsibilities.

### § 2550.70 [Reserved]

### § 2550.80 What are the duties of the State entities?

Both State commissions and AAEs have the same duties. This section lists the duties that apply to both State commissions and AAEs—collectively

referred to as State entities. Functions described in paragraphs (e) through (j) of this section are non-policymaking and may be delegated to another State agency or nonprofit organization. The duties are as follows:

(a) *Development of a three-year, comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service covering a three-year period, the beginning of which may be set by the State, that is consistent with the Corporation's broad goals of meeting human, educational, environmental, and public safety needs and meets the following minimum requirements:

(1) The plan must be developed through an open and public process (such as through regional forums or hearings) that provides for the maximum participation and input from a broad cross-section of individuals and organizations, including national service programs within the State, community-based agencies, organizations with a demonstrated record of providing educational, public safety, human, or environmental services, residents of the State, including youth and other prospective participants, State Educational Agencies, traditional service organizations, labor unions, and other interested members of the public.

(2) The plan must ensure outreach to diverse, broad-based community organizations that serve underrepresented populations by creating State networks and registries or by utilizing existing ones.

(3) The plan must set forth the State's goals, priorities, and strategies for promoting national and community service and strengthening its service infrastructure, including how Corporation-funded programs fit into the plan.

(4) The plan may contain such other information as the State commission considers appropriate and must contain such other information as the Corporation may require.

(5) The plan must ensure outreach to, and coordination with, municipalities and county governments regarding the national service laws.

(6) The plan must provide for effective coordination of funding applica-

tions submitted by the State and other organizations within the State under the national service laws.

(7) The plan must include measurable goals and outcomes for national service programs funded through the State consistent with the performance levels for national service programs.

(8) The plan is subject to approval by the chief executive officer of the State.

(9) The plan must be submitted, in its entirety, in summary, or in part, to the Corporation upon request.

(b) *Selection of subtitle C programs and preparation of application to the Corporation.* Each State must:

(1) Prepare an application to the Corporation to receive funding or education awards for national service programs operating in and selected by the State.

(2) Administer a competitive process to select national service programs for funding. The State is not required to select programs for funding prior to submission of the application described in paragraph (b)(1) of this section.

(c) *Preparation of Service Learning applications.* (1) The State entity is required to assist the State education agency in preparing the application for subtitle B school-based service learning programs.

(2) The State entity may apply to the Corporation to receive funding for community-based subtitle programs after coordination with the State Educational Agency.

(d) *Administration of the grants program.* After subtitle C and community-based subtitle B funds are awarded, States entities will be responsible for administering the grants and overseeing and monitoring the performance and progress of funded programs.

(e) *Evaluation and monitoring.* State entities, in concert with the Corporation, shall be responsible for implementing comprehensive, non-duplicative evaluation and monitoring systems.

(f) *Technical assistance.* The State entity will be responsible for providing technical assistance to local nonprofit organizations and other entities in planning programs, applying for funds, and in implementing and operating high quality programs. States should

encourage proposals from underserved communities.

(g) *Program development assistance and training.* The State entity must assist in the development of subtitle C programs; such development might include staff training, curriculum materials, and other relevant materials and activities. A description of such proposed assistance must be included in the State comprehensive plan referred to in paragraph (a) of this section. A State may apply for additional subtitle C programs training and technical assistance funds to perform these functions. The Corporation will issue notices of availability of funds with respect to training and technical assistance.

(h) *Recruitment and placement.* The State entity, as well as the Corporation, will develop mechanisms for recruitment and placement of people interested in participating in national service programs.

(i) *Benefits.* The State entity shall assist in the provision of health and child care benefits to subtitle C program participants, as will be specified in the regulations implementing the subtitle C programs.

(j) *Activity ineligible for assistance.* A State commission or AAE may not directly carry out any national service program that receives financial assistance under section 121 of the NCSA or title II of the DVSA.

(k) *Make recommendations to the Corporation* with respect to priorities within the State for programs receiving assistance under DVSA.

(l) *Coordination—(1) Coordination with other State agencies.* A State entity must coordinate its activities with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*) or other appropriate Federal financial assistance programs.

(2) *Coordination with volunteer service programs.* In general, the State entity shall coordinate its functions (including recruitment, public awareness, and training activities) with such functions of any division of ACTION, or the Corporation, that carries out volunteer service programs in the State. Specifically, the State entity may enter into

an agreement with a division of ACTION or the Corporation to carry out its functions jointly, to perform its functions itself, or to assign responsibility for its functions to ACTION or the Corporation.

(3) In carrying out the activities under paragraphs (1)(1) and (2) of this section, the parties involved must exchange information about the programs carried out in the State by the State entity, a division of ACTION or the Corporation, as well as information about opportunities to coordinate activities.

(m) *Supplemental State Service Plan for Adults Age 55 or Older.* To be eligible to receive a grant or allotment under subtitles B or C of title I of the National and Community Service Act (42 U.S.C. 12501 *et seq.*), or to receive a distribution of approved national service positions under subtitle C of title I of that Act, a State must work with appropriate State agencies and private entities to develop a comprehensive State service plan for service by adults age 55 or older. This plan must:

(1) Include the following elements:

(i) Recommendations for policies to increase service for adults age 55 or older, including how to best use such adults as sources of social capital, and how to utilize their skills and experience to address community needs;

(ii) Recommendations to the State agency on aging (as defined in section 102 of the Older Americans Act of 1965, 42 U.S.C. 3002) on a marketing outreach plan to businesses and outreach to non-profit organizations, the State educational agency, institutions of higher education, and other State agencies;

(iii) Recommendations for civic engagement and multigenerational activities, including early childhood education and care, family literacy, and other after school programs, respite services for adults age 55 or older and caregivers, and transitions for older adults age 55 or older to purposeful work in their post-career lives;

(2) Incorporate the current knowledge base regarding—

(i) The economic impact of the roles of workers age 55 or older in the economy;

(ii) The social impact of the roles of such workers in the community;

(iii) The health and social benefits of active engagement for adults age 55 or older; and

(3) Be made available to the public and transmitted to the Corporation.

[58 FR 60981, Nov. 18, 1993, as amended at 70 FR 39607, July 8, 2005; 73 FR 53762, Sept. 17, 2008; 74 FR 46507, Sept. 10, 2009; 74 FR 48866, Sept. 25, 2009; 75 FR 51415, Aug. 20, 2010]

**§ 2550.85 How will the State Plan be assessed?**

The Corporation will assess the quality of your State Plan as evidenced by:

(a) The development and quality of realistic goals and objectives for moving service ahead in the State;

(b) The extent to which proposed strategies can reasonably be expected to accomplish stated goals; and

(c) The extent of input in the development of the State plan from a broad cross-section of individuals and organizations as required by § 2550.80(a)(1).

[73 FR 53762, Sept. 17, 2008]

**§ 2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?**

To avoid a conflict of interest (or the appearance of a conflict of interest) regarding the provision of assistance or approved national service positions, members of a State Commission or AAE must adhere to the following provisions:

(a) *General restriction.* Members of State Commissions and AAEs are restricted in several ways from the grant approval and administration process for any grant application submitted by an organization for which they are currently, or were within one year of the submission of the application, officers, directors, trustees, full-time volunteers or employees. The restrictions for such individuals are as follows:

(1) They cannot assist the applying organization in preparing the grant application;

(2) They must recuse themselves from the discussions or decisions regarding the grant application and any other grant applications submitted to the Commission or AAE under the same program (e.g., subtitle B programs or subtitle C programs); and

(3) They cannot participate in the oversight, evaluation, continuation, suspension or termination of the grant award.

(b) *Exception to achieve a quorum.* If this general restriction creates a situation in which a Commission or AAE does not have enough eligible voting members to achieve a quorum, the Commission or AAE may involve some normally-excluded members subject to the following conditions:

(1) A Commission or AAE may randomly and in a non-discretionary manner select the number of refused members necessary to achieve a quorum;

(2) Notwithstanding paragraph (b)(1) of this section, no Commission or AAE member may, under any circumstances, participate in any discussions or decisions regarding a grant application submitted by an organization with which he or she is or was affiliated according to the definitions in paragraph (a) of this section; and

(3) If recused members are included so as to achieve quorum, the State Commission or AAE must document the event and report to the Corporation within 30 days of the vote.

(c) *Rule of construction.* Paragraph (a) of this section shall not be construed to limit the authority of any voting member of the State Commission or AAE to participate in—

(1) Discussion of, and hearings and forums on, the general duties, policies and operations of the Commission or AAE, or general program administration; or

(2) Similar general matters relating to the Commission or AAE.

**§ 2550.100 Do State entities or their members incur any risk of liability?**

(a) *State liability.* Except as provided in paragraph (b) of this section, a State must agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or AAE, within the scope of the service of that member.

(b) *Individual liability.* A member of the State Commission or AAE shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by that member, within the scope of the service of

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that member. This does not, however, limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of that member. Similarly, this part does not limit or alter in any way any other immunities that are available under applicable law for State officials and employees not described in this section; nor does this part affect any other right or remedy against the State or any person other than a member of a State Commission or AAE.

### § 2550.110 What grants will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

(a) *Administrative Grants.* The Corporation may make administrative grants to States in an amount no less than \$250,000 and up to \$1 million for

the purpose of establishing or operating a State Commission or AAE; these grants will be available to States which have Corporation-approved Transitional Entities only if those States commit to establishing a Corporation-approved State Commission or AAE prior to the expiration of the transitional period.

(b) *Limitation on Federal share.* Except as provided in paragraph (c) of this section, the amount of a grant that may be provided to a State under this subsection, together with other Federal funds available to establish or operate the State Commission or AAE, may not exceed 50 percent of the total cost to establish or operate the State Commission or AAE.

(c) *Alternative Match Schedule.* The Corporation may permit a State that demonstrates hardship or a new State Commission to meet alternative matching requirements for such a grant as follows:

Grant amount	Match requirement
(1) First \$100,000 .....	No match requirement.
(2) Amounts above \$100,000 but less than \$250,000 .....	\$1 of non-Federal funds for every \$2 provided by the Corporation in excess of \$100,000.
(3) Amounts greater than \$250,000 .....	\$1 of non-Federal funds for every \$1 provided by the Corporation in excess of \$250,000.

[74 FR 46508, Sept. 10, 2009]

## PART 2551—SENIOR COMPANION PROGRAM

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### Subpart L—Restrictions and Legal Representation

2551.121 What legal limitations apply to the operation of the Senior Companion Program and to the expenditure of grant funds?

2551.122 What legal coverage does CNCS make available to Senior Companions?

AUTHORITY: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

SOURCE: 64 FR 14115, Mar. 24, 1999, unless otherwise noted.

## Subpart A—General

### § 2551.11 What is the Senior Companion Program?

The Senior Companion Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Senior Companions in providing supportive, individualized services to help older adults with special needs maintain their dignity and independence.

[74 FR 46508, Sept. 10, 2009]

### § 2551.12 Definitions.

*Act.* The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq.*

*Adequate staffing level.* The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such

factors as: Number of budgeted Volunteer Service Years (VSYs), number of volunteer stations, and the size of the service area.

*Adult with special needs.* Any individual over 21 years of age who has one or more physical, emotional, or mental health limitations and is in need of assistance to achieve and maintain their highest level of independent living.

*Annual income.* Total cash and in-kind receipts from all sources over the preceding 12 months including: the applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. The value of shelter, food, and clothing, shall be counted if provided at no cost by persons related to the applicant/enrollee, or spouse.

*Chief Executive Officer.* The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

*CNCS.* The Corporation for National and Community Service established under the NCSA, as amended, 42 U.S.C. 12501 *et seq.*

*Cost reimbursements.* Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supplemental accident, personal liability and excess automobile liability insurance and other expenses as negotiated in the Memorandum of Understanding.

*In-home.* The non-institutional assignment of a Senior Companion in a private residence.

*Letter of Agreement.* A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an SCP volunteer in the home of a client, defines SCP volunteer activities, and specifies supervision arrangements.

*Memorandum of Understanding.* A written statement prepared and signed by the Senior Companion project sponsor and the volunteer station that identifies project requirements, working relationships and mutual responsibilities.

*National Senior Service Corps (NSSC).* The collective name for the Senior Companion Program (SCP), the Foster

Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the "Senior Corps".

*Non-CNCS support (excess).* The amount of non-CNCS cash and in-kind contributions generated by a sponsor in excess of the required percentage.

*Non-CNCS support (match).* The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

*Performance measures.* Indicators that help determine the impact of an SCP project on the community and clients served, including the volunteers.

*Project.* The locally planned SCP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

*Proprietary Health Care Organizations.* Private, for-profit health care organization that serves one or more vulnerable populations.

*Service area.* The geographically defined area(s) in which Senior Companions are enrolled and placed on assignments.

*Service schedule.* A written delineation of the days and times a Senior Companion serves each week.

*Sponsor.* A public agency, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Senior Companion project.

*Stipend.* A payment to Senior Companions to enable them to serve without cost to themselves. The amount of the stipend is set by CNCS in accordance with federal law.

*United States and Territories.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.



*Volunteer assignment plan.* A written description of a Senior Companion's assignment with a client. The plan identifies specific outcomes for the client served and the activities of the Senior Companion.

*Volunteer station.* A public agency; a private, non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of Senior Companions in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

[64 FR 14115, Mar. 24, 1999, as amended at 69 FR 60094, Oct. 7, 2004; 83 FR 64644, Dec. 17, 2018]

### **Subpart B—Eligibility and Responsibilities of a Sponsor**

#### **§ 2551.21 Who is eligible to serve as a sponsor?**

CNCS awards grants to public agencies, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Senior Companion project.

[83 FR 64644, Dec. 17, 2018]

#### **§ 2551.22 What are the responsibilities of a sponsor?**

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Senior Companion Program as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

[83 FR 64645, Dec. 17, 2018]

#### **§ 2551.23 What are a sponsor's project responsibilities?**

A sponsor shall:

(a) Focus Senior Companion resources within the project's service area, on critical problems affecting the frail elderly and other adults with special needs.

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the community or service area, and develop strategies to respond to identified needs using Senior Companions.

(c) Develop and manage one or more volunteer stations by:

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of Senior Companions;

(2) Ensuring that the placement of Senior Companions is governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years;

(iv) That states the station will not discriminate against SCP volunteers, service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

(3) Reviewing volunteer placements regularly to ensure that clients are eligible to be served.

(d) Develop service opportunities that consider the skills and experiences of the Senior Companion.

(e) Consider the demographic makeup of the project service area in the enrollment of Senior Companions, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities, and under-represented groups.

(f) Provide Senior Companions with assignments that show direct and demonstrable benefits to the adults and the community served, the Senior Companions, and the volunteer station; with required cost reimbursements

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specified in § 2551.46; with 20 hours of pre-service orientation and at least 24 hours annually of in-service training.

(g) Encourage the most efficient and effective use of Senior Companions by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

(h) Conduct an annual appraisal of volunteers' performance and annual review of their income eligibility.

(i) Establish written service policies for Senior Companions that include but are not limited to:

- (1) Annual and sick leave.
- (2) Holidays.
- (3) Service schedules.
- (4) Termination and appeal procedures.
- (5) Meal and transportation reimbursements.

(j) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

(k) Provide Senior Companion volunteers with cost reimbursements specified in this section.

(l) Make every effort to meet such performance measures as established in the approved grant application.

[64 FR 14115, Mar. 24, 1999, as amended at 67 FR 60998, Sept. 27, 2002; 69 FR 60095, Oct. 7, 2004; 74 FR 46508, Sept. 10, 2009; 77 FR 60933, Oct. 5, 2012; 83 FR 64645, Dec. 17, 2018]

## § 2551.24 What are a sponsor's responsibilities for securing community participation?

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

- (1) Knowledgeable of human and social needs of the community;
- (2) With an interest in the field of community service and volunteerism;
- (3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity, and meeting or exceeding performance measures;
- (4) With an interest in, and knowledge of, the range of abilities of older adults; and

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(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how such participation shall be secured, consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

[64 FR 14115, Mar. 24, 1999, as amended at 83 FR 64645, Dec. 17, 2018]

## § 2551.25 What are a sponsor's administrative responsibilities?

A sponsor shall:

(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish project objectives and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope, or quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable to similar staff positions in the sponsor organization and/or project service area, as is practicable.

(f) Establish risk management policies and procedures covering Senior Companion project activities. This includes provision of appropriate insurance coverage for Senior Companions, which includes; accident insurance, personal liability insurance, and excess automobile liability insurance.

(g) Establish record keeping and reporting systems in compliance with

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CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(h) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

[64 FR 14115, Mar. 24, 1999, as amended at 83 FR 64645, Dec. 17, 2018]

### § 2551.26–2551.33 [Reserved]

## Subpart C—Suspension and Termination of Corporation Assistance

### § 2551.34 What are the rules on suspension, termination, and denial of refunding of grants?

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he/she determines there is a material failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to insure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded

reasonable notice and opportunity for a full and fair hearing.

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the recipient agency.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the Senior Companion Program are specified in 45 CFR Part 1206.

[64 FR 14115, Mar. 24, 1999. Redesignated at 72 FR 48583, Aug. 24, 2007; 83 FR 64645, Dec. 17, 2018]

## Subpart D—Senior Companion Eligibility, Status, and Cost Reimbursements

### § 2551.41 Who is eligible to be a Senior Companion?

(a) To be a Senior Companion, an individual must:

(1) Be 55 years of age or older; and

(2) In order to receive a stipend, have an income that is within the income eligibility guidelines specified in this subpart D.

(b) Eligibility to serve as a Senior Companion shall not be restricted on the basis of formal education, experience, race, color, national origin including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

[64 FR 14115, Mar. 24, 1999, as amended at 74 FR 46508, Sept. 10, 2009; 83 FR 64645, Dec. 17, 2018]

### § 2551.42 What types of criminal convictions or other adjudications disqualify an individual from serving as a Senior Companion or as a Senior Companion grant-funded employee?

Any individual who is registered, or who is required to be registered, on a State sex offender registry, or who has been convicted of murder, as defined under Federal law in section 1111 of title 18, United States Code, is deemed unsuitable for, and may not serve in, a position as a Senior Companion or as a

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Senior Companion grant-funded employee.

[74 FR 46508, Sept. 10, 2009]

#### **§ 2551.43 What income guidelines govern eligibility to serve as a stipended Senior Companion?**

(a) To receive a stipend, a Senior Companion may not have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligibility guideline for the State in which he or she resides. The income eligibility guideline for each State is 200 percent of the poverty line, as set forth in 42 U.S.C. 9902 (2).

(b) For applicants to become stipended Senior Companions, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Senior Companions, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence.

(c) Allowable medical expenses are annual out-of-pocket medical expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse which were not and will not be paid by Medicare, Medicaid, other insurance, or other third party payor, and which do not exceed 50 percent of the applicable income guideline.

(d) Applicants whose income is not more than 100 percent of the poverty line shall be given special consideration for enrollment.

(e) Once enrolled, a Senior Companion shall remain eligible to serve and to receive a stipend so long as his or her income, does not exceed the applicable income eligibility guideline by 20 percent.

[64 FR 14115, Mar. 24, 1999, as amended at 67 FR 60998, Sept. 27, 2002; 69 FR 20830, Apr. 19, 2004; Redesignated at 72 FR 48584, Aug. 24, 2007; 74 FR 46508, Sept. 10, 2009; 83 FR 64646, Dec. 17, 2018]

#### **§ 2551.44 What is considered income for determining volunteer eligibility?**

(a) For determining eligibility, "income" refers to total cash or in-kind

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receipts before taxes from all sources including:

(1) Money, wages, and salaries before any deduction;

(2) Receipts from self-employment or from a farm or business after deductions for business or farm expenses;

(3) Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, and military family allotments, or other regular support from an absent family member or someone not living in the household;

(4) Government employee pensions, private pensions, regular insurance or annuity payments, and 401(k) or other retirement savings plans;

(5) Income from dividends, interest, net rents, royalties, or income from estates and trusts.

(b) For eligibility purposes, income does not refer to the following money receipts:

(1) Any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation from injury;

(2) Non-cash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing;

(3) Regular payments for public assistance, including Supplemental Nutrition Assistance Program (SNAP);

(4) Social Security Disability or any type of disability payment; and

(5) Food or rent received in lieu of wages.

[64 FR 14115, Mar. 24, 1999. Redesignated at 72 FR 48584, Aug. 24, 2007; 83 FR 64646, Dec. 17, 2018]

#### **§ 2551.45 Is a Senior Companion a federal employee, an employee of the sponsor or of the volunteer station?**

Senior Companions are volunteers, and are not employees of the sponsor, the volunteer station, CNCS, or the Federal Government.

[83 FR 64646, Dec. 17, 2018]

#### **§ 2551.46 What cost reimbursements are provided to Senior Companions?**

Cost reimbursements and benefits provided by sponsors include:

(a) *Stipend.* The stipend is paid for the time Senior Companions spend with their assigned clients, for earned leave, and for attendance at official project events.

(b) *Insurance.* Insurance is made available to Senior Companions with the CNCS specified minimum levels of insurance as follows:

(1) *Accident insurance.* Accident insurance covers Senior Companions for personal injury during travel between their homes and places of assignment, during their service, during meal periods while serving as a Senior Companion, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the Senior Companion from other sources.

(2) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. Such protection does not include professional liability coverage.

(3) *Excess automobile liability insurance.* (i) For Senior Companions who drive in connection with their service, protection is provided against claims in excess of the greater of either:

(A) Liability insurance Senior Companions carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection that CNCS determines, and that the sponsor must provide, for each person, and each accident, and for property damage.

(ii) Senior Companions who drive their personal vehicles to, or on, assignments or project-related activities, shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

(c) *Transportation.* Senior Companions shall receive assistance with the cost of transportation to and from, assignments and official project activities, including orientation, training, and recognition events.

(d) *Meals.* Senior Companions may be provided assistance with the cost of meals taken while on assignment, within limits of the project's available resources.

(e) *Recognition.* Senior Companion volunteers shall be provided recognition for their service.

(f) *Physical examination.* Senior Companions may be provided a physical examination or assistance with the cost of a physical examination prior to assignment and annually thereafter.

(g) *Other volunteer expenses.* Senior Companions may also be reimbursed for allowable out-of-pocket expenses incurred while performing their assignments.

[64 FR 14115, Mar. 24, 1999, as amended at 67 FR 60998, Sept. 27, 2002; 69 FR 20830, Apr. 19, 2004. Redesignated at 72 FR 48584, Aug. 24, 2007; 83 FR 64646, Dec. 17, 2018]

**§ 2551.47 May the cost reimbursements and benefits of a Senior Companion be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?**

No. Senior Companion's cost reimbursements and benefits are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements and benefits are not subject to garnishment and do not reduce or eliminate the level of, or eligibility for, assistance or services a Senior Companion may be receiving under any governmental program.

[83 FR 64646, Dec. 17, 2018]

**Subpart E—Senior Companion Terms of Service**

**§ 2551.51 What are the terms of service of a Senior Companion?**

A Senior Companion shall serve a minimum of 260 hours annually, or a minimum of 5 hours per week. A Senior Companion may serve a maximum of 2080 hours annually, or a maximum of 40 hours per week. Within these limitations, a sponsor may set service policies consistent with local needs.

[83 FR 64646, Dec. 17, 2018]

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### **§ 2551.52 What factors are considered in determining a Senior Companion's service schedule?**

(a) Travel time between the Senior Companion's home and place of assignment is not part of the service schedule and is not stipended.

(b) Travel time between individual assignments is a part of the service schedule and is stipended.

(c) Meal time may be part of the service schedule and is stipended.

[64 FR 14115, Mar. 24, 1999, as amended at 83 FR 64646, Dec. 17, 2018]

### **§ 2551.53 Under what circumstances may a Senior Companion be removed from service?**

(a) A sponsor may remove a Senior Companion from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments or failure to accept supervision. A Senior Companion may also be removed from stipended service for having income in excess of the eligibility level. A Senior Companion shall be removed immediately if ineligible to serve based on criminal history check results.

(b) The sponsor shall establish appropriate policies on removal from service, as well as procedures for appeal.

[83 FR 64647, Dec. 17, 2018]

## **Subpart F—Responsibilities of a Volunteer Station**

### **§ 2551.61 May a sponsor serve as a volunteer station?**

Yes. A sponsor may serve as a volunteer station, if the activities are part of a work plan in the approved project application.

[83 FR 64647, Dec. 17, 2018]

### **§ 2551.62 What are the responsibilities of a volunteer station?**

A volunteer station shall undertake the following responsibilities in support of Senior Companion volunteers:

(a) Develop volunteer assignments that meet the requirements specified in §§2551.71 through 2551.72, and regularly assess those assignments for continued appropriateness.

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(b) Select eligible clients for assigned volunteers.

(c) Develop a written volunteer assignment plan for each Senior Companion that identifies their roles and activities, each client served, and expected outcomes.

(d) Keep a Letter of Agreement for each client who receives in-home service.

(e) Provide Senior Companions serving the station with:

(1) Orientation to the station and any in-service training necessary to enhance performance of assignments; and

(2) Resources required for performance of assignments, including reasonable accommodation, as needed, to enable Senior Companions with disabilities to perform the essential functions of their service.

(f) Designate a staff member to oversee fulfillment of station responsibilities and supervision of Senior Companions while on assignment.

(g) Keep records and prepare reports required by the sponsor.

(h) Provide for the safety of Senior Companions assigned to it.

(i) Comply with all applicable civil rights laws and regulations, including providing Senior Companions with disabilities reasonable accommodation, to perform the essential functions of their service.

(j) Undertake such other responsibilities as may be necessary for the successful performance of Senior Companions in their assignments or as agreed to in the Memorandum of Understanding.

[64 FR 14115, Mar. 24, 1999, as amended at 83 FR 64647, Dec. 17, 2018]

## **Subpart G—Senior Companion Placements and Assignments**

### **§ 2551.71 What requirements govern the assignment of Senior Companions?**

(a) Senior Companion assignments shall provide for Senior Companions to give direct services to one or more eligible adults that:

(1) Result in person-to-person supportive relationships with each client served.

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(2) Support the achievement and maintenance of the highest level of independent living for their clients.

(3) Are meaningful to the Senior Companion.

(4) Are supported by appropriate orientation, training, and supervision.

(b) Senior Companions shall not provide services such as those performed by medical personnel, services to large numbers of clients, custodial services, administrative support services, or other services that would detract from their assignment.

[67 FR 60999, Sept. 27, 2002, as amended at 83 FR 64647, Dec. 17, 2018]

### **§ 2551.72 Is a written volunteer assignment plan required for each Senior Companion?**

(a) All Senior Companions performing direct services to individual clients in home settings and individual clients in community-based settings, shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the client(s) to be served;

(3) Identifies the role and activities of the Senior Companion and expected outcomes for the client(s);

(4) Addresses the period of time each client is expected to receive such services; and

(5) Is used to review the impact of the assignment on the client(s).

(b) [Reserved]

[67 FR 60999, Sept. 27, 2002, as amended at 83 FR 64647, Dec. 17, 2018]

### **§ 2551.73 May a Senior Companion serve as a volunteer leader?**

Yes. Senior Companions—who on the basis of experience as volunteers, special skills, and demonstrated leadership abilities—may spend time, in addition to their regular assignment, to assist newer Senior Companion volunteers in performing their assignments and in coordinating activities of such volunteers.

(a) All Senior Companions serving as volunteer leaders shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Senior Companion;

(2) Identifies the role and activities of the Senior Companion and expected outcomes;

(3) Addresses the period of time of service; and

(4) Is used to review the status of the Senior Companion's services identified in the assignment plan, as well as the impact of those services.

(b) While serving in the capacity of a volunteer leader, a Senior Companion may be paid a stipend (at the same rate as the established Senior Companion stipend) for his or her additional hours served as a volunteer leader.

(c) Senior Companion leaders, through recognition, may receive an additional monetary incentive.

[83 FR 64647, Dec. 17, 2018]

## **Subpart H—Clients Served**

### **§ 2551.81 What type of clients are eligible to be served?**

Senior Companions serve only adults, primarily older adults, who have one or more physical, emotional, or mental health limitations and are in need of assistance to achieve and maintain their highest level of independent living.

## **Subpart I—Application and Fiscal Requirements**

### **§ 2551.91 What is the process for application and award of a grant?**

(a) *How and when may an eligible organization apply for a grant?* (1) An eligible organization may file an application in response to CNCS' published request, such as a Notice of Funding Opportunity or a Notice of Funding Availability. Applicants are not assured of selection or approval and may have to compete with other applicants.

(2) The applicant shall comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs," (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233 and any other applicable requirements.

(b) *Who reviews the merits of an application and how is a grant awarded?* (1) CNCS reviews and determines the

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merit of an application by its responsiveness to published guidelines and to the overall purposes and objectives of the program. When funds are available, CNCS awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program.

(2) The award will be documented by the Notice of Grant Award (NGA). CNCS and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of CNCS' obligation to provide financial support to the sponsor.

(c) *What happens if CNCS rejects an application?* CNCS will notify the applicant if the applicant is not approved for funding, along with an explanation of CNCS' decision.

(d) *For what period of time does CNCS award a grant?* CNCS awards a Senior Companion grant for a specified period that is usually three years in duration.

[83 FR 64647, Dec. 17, 2018]

## § 2551.92 What are project funding requirements?

(a) *Is non-CNCS support required?* A CNCS grant may be awarded to fund up to 90 percent of the cost of development and operation of a Senior Companion project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does CNCS allow less than the 10 percent non-CNCS support?* CNCS may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May CNCS restrict how a sponsor uses locally generated contributions in ex-*

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*cess of the 10 percent non-CNCS support required?* Whenever locally generated contributions to Senior Companion projects are in excess of the minimum 10 percent non-CNCS support required, CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and non-Federal funds, including expenditures from excess locally generated contributions in support of the grant, are subject to audit by CNCS, its Inspector General, or their authorized agents.

(e) *May a sponsor pay stipends at rates different than those established by CNCS?* No, a sponsor shall pay stipends at rates established by CNCS.

[64 FR 14115, Mar. 24, 1999, as amended at 75 FR 51415, Aug. 20, 2010; 83 FR 64647, Dec. 17, 2018]

## § 2551.93 What are a sponsor's legal requirements in managing grants?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205;

(4) All applicable CNCS policies; and

(5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.



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(f) Written CNCS approval is required for the following changes in the approved grant:

- (1) Reduction in budgeted volunteer service years.
- (2) Change in the service area.

[79 FR 76077, Dec. 19, 2014, as amended at 83 FR 64648, Dec. 17, 2018]

### Subpart J—Non-Stipended Senior Companions

#### **§2551.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Senior Companions?**

Over-income persons as described in §2551.43, age 55 or over, may be enrolled in SCP project as non-stipended volunteers.

[83 FR 64648, Dec. 17, 2018]

#### **§2551.102 What are the conditions of service of non-stipended Senior Companions?**

Non-stipended Senior Companions serve under the following conditions:

(a) They must not displace or prevent eligible low-income individuals from becoming Senior Companions.

(b) No special privilege or status is granted or created among Senior Companions, whether stipended or non-stipended, and equal treatment is required.

(c) Training, supervision, and other support services and cost reimbursements, other than the stipend, are available equally to all Senior Companions.

(d) All regulations and requirements applicable to the program apply to Senior Companions.

(e) Non-stipended Senior Companions may contribute the costs they incur in connection with their participation in the program. An SCP project may not count such contributions as part of the required non-CNCS support (match) for the grant.

[64 FR 14115, Mar. 24, 1999, as amended at 83 FR 64648, Dec. 17, 2018]

#### **§2551.103 Must a sponsor be required to enroll non-stipended Senior Companions?**

No. Enrollment of non-stipended Senior Companions is not a condition for a sponsor to receive a new or continuation grant.

[83 FR 64648, Dec. 17, 2018]

#### **§2551.104 [Reserved]**

### Subpart K—Non-CNCS Funded Senior Companion Projects

#### **§2551.111 Under what conditions may an agency or organization sponsor a Senior Companion project without CNCS funding?**

An eligible agency or organization who wishes to sponsor a Senior Companion project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented through the Notice of Grant Agreement (NGA).

[83 FR 64648, Dec. 17, 2018]

#### **§2551.112 What are the resources and benefits to which a non-CNCS funded project is entitled?**

The Notice of Grant Award entitles the sponsor of a Non-CNCS funded project to:

(a) All technical assistance and materials provided to CNCS funded Senior Companion projects; and

(b) The application of the provisions of 42 U.S.C. 5044 and 5058.

[64 FR 14115, Mar. 24, 1999, as amended at 83 FR 64648, Dec. 17, 2018]

#### **§2551.113 What financial obligation does CNCS incur for non-CNCS funded projects?**

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

[83 FR 64648, Dec. 17, 2018]

#### **§2551.114 What happens if a non-CNCS funded sponsor does not comply with the NGA?**

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination

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CNCS' agreement and all benefits specified in § 2551.112.

[83 FR 64648, Dec. 17, 2018]

### Subpart L—Restrictions and Legal Representation

#### § 2551.121 What legal limitations apply to the operation of the Senior Companion Program and to the expenditure of grant funds?

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly

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affecting the operation of the Senior Companion Program.

(b) *Non-displacement of employed workers.* A Senior Companion shall not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned or which operates or supervises any NSSC program shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

(3) A Senior Companion volunteer station may contribute to the financial support of the Senior Companion Program. However, this support shall not be a required precondition for a potential station to obtain Senior Companion service.

(4) If a volunteer station agrees to provide funds to support additional Senior Companions or pay for other Senior Companion support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a Senior Companion receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall 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.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a Senior Companion on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the Senior Companion with a disability is qualified to serve.

(g) *Religious activities.* (1) A Senior Companion or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station 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 CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to CNCS.

[64 FR 14115, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004; 83 FR 64648, Dec. 17, 2018]

#### **§2551.122 What legal coverage does CNCS make available to Senior Companions?**

It is within CNCS's discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a SCP volunteer are paid in a criminal,

civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which CNCS may pay such expenses are specified in 45 CFR part 1220.

[83 FR 64649, Dec. 17, 2018]

## **PART 2552—FOSTER GRANDPARENT PROGRAM**

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2552.122 What legal coverage does CNCS make available to Foster Grandparents?

AUTHORITY: 42 U.S.C. 4950 *et seq.*; 42 U.S.C. 12651b–12651d; E.O. 13331, 69 FR 9911.

SOURCE: 64 FR 14126, Mar. 24, 1999, unless otherwise noted.

### Subpart A—General

#### § 2552.11 What is the Foster Grandparent Program?

The Foster Grandparent Program provides grants to qualified agencies and organizations for the dual purpose of engaging persons 55 and older, particularly those with limited incomes, in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of the volunteers. Program funds are used to support Foster Grandparents in providing supportive, person to person service to children with special and or exceptional needs, or in circumstances that limit their academic, social or emotional development.

[83 FR 64649, Dec. 17, 2018]

#### § 2552.12 Definitions.

*Act.* The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq.*

*Adequate staffing level.* The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such factors as: Number of budgeted Volunteer Service Years (VSYs), number of

volunteer stations, and the size of the service area.

*Annual income.* Total cash and in-kind receipts from all sources over the preceding 12 months including: the applicant or enrollee's income and, the applicant or enrollee's spouse's income, if the spouse lives in the same residence. The value of shelter, food, and clothing, shall be counted if provided at no cost by persons related to the applicant/enrollee, or spouse.

*Chief Executive Officer.* The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

*Child.* Any individual who is less than 21 years of age.

*Children having exceptional needs.* Children who have a developmental disability, such as those who have autism, intellectual disability, cerebral palsy or epilepsy, a visual impairment, speech impairment, hearing impairment, or orthopedic impairment, an emotional or behavioral disorder, a language disorder, a specific learning disability, multiple disabilities, other significant health impairments, or have literacy, math or other educational assistance needs. Before a Foster Grandparent is assigned to the child, existence of a child's exceptional need shall be verified by an appropriate professional, such as a physician, psychiatrist, psychologist, including school psychologists, registered nurse or licensed practical nurse, speech therapist, licensed clinical social worker, or educator.

*Children with special needs.* Children who are abused or neglected; in need of foster care; adjudicated youth; homeless youths; teen-age parents; and children in need of protective intervention in their homes. Existence of a child's special need shall be verified by an appropriate professional before a Foster Grandparent is assigned to the child.

*CNCS.* The Corporation for National and Community Service established under the NCSA, as amended, 42 U.S.C. 12501 *et seq.*

*Cost reimbursements.* Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supple-

mental accident, personal liability and excess automobile liability insurance, and other expenses as negotiated in the Memorandum of Understanding.

*In-home.* The non-institutional assignment of a Foster Grandparent in a private residence or a foster home.

*Letter of Agreement.* A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an FGP volunteer in the home of a client, defines FGP volunteer activities, and specifies supervision arrangements.

*Memorandum of Understanding.* A written statement prepared and signed by the Foster Grandparent project sponsor and the volunteer station that identifies project requirements, working relationships and mutual responsibilities.

*National Senior Service Corps (NSSC).* The collective name for the Senior Companion Program (SCP), the Foster Grandparent Program (FGP), the Retired and Senior Volunteer Program (RSVP), and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the "Senior Corps".

*Non-CNCS support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

*Non-CNCS support (match).* The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

*Non-Corporation support (excess).* The amount of non-Federal cash and in-kind contributions generated by a sponsor in excess of the required percentage.

*Parent.* A natural parent or a person acting in place of a natural parent, such as a guardian, a child's natural grandparent, or a step-parent with whom the child lives. The term also includes otherwise unrelated individuals who are legally responsible for a child's welfare.

*Performance measures.* Indicators that help determine the impact of an FGP project on the community and clients served, including the volunteers.

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*Project.* The locally planned FGP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

*Proprietary Health Care Organizations.* Private, for-profit health care organization that serves one or more vulnerable populations.

*Service area.* The geographically defined area(s) in which Foster Grandparents are enrolled and placed on assignments.

*Service schedule.* A written delineation of the days and times a Foster Grandparent serves each week.

*Sponsor.* A public agency, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Foster Grandparent project.

*Stipend.* A payment to Foster Grandparents to enable them to serve without cost to themselves. The amount of the stipend is set by CNCS in accordance with federal law.

*United States and Territories.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

*Volunteer assignment plan.* A written description of a Foster Grandparent's assignment with a child. The plan identifies specific outcomes for the child served and the activities of the Foster Grandparent.

*Volunteer station.* A public agency; a private, non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of Foster Grandparents in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or

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local government. Private homes are not volunteer stations.

[64 FR 14126, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004; 83 FR 64649, Dec. 17, 2018]

### Subpart B—Eligibility and Responsibilities of a Sponsor

#### § 2552.21 Who is eligible to serve as a sponsor?

CNCS awards grants to public agencies, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer a Foster Grandparent project.

[83 FR 64650, Dec. 17, 2018]

#### § 2552.22 What are the responsibilities of a sponsor?

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the Foster Grandparent Program as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

[83 FR 64650, Dec. 17, 2018]

#### § 2552.23 What are a sponsor's project responsibilities?

A sponsor shall:

(a) Focus Foster Grandparent resources, within the project's service area, on providing supportive services and companionship to children with special and exceptional needs, or in circumstances that limit their academic, social or emotional development.

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the community or service area, and develop strategies to respond to identified needs using Foster Grandparents.

(c) Develop and manage one or more volunteer stations by:

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care

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agency, capable of serving as a volunteer station for the placement of Foster Grandparents;

(2) Ensuring that the placement of Foster Grandparents will be governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years;

(iv) That states the station will not discriminate against FGP volunteers, service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

(3) Reviewing volunteer placements regularly to ensure that clients are eligible to be served.

(d) Develop Foster Grandparent service opportunities to support locally-identified needs of eligible children in a way that considers the skills and experiences of Foster Grandparents.

(e) Consider the demographic make-up of the project service area in the enrollment of Foster Grandparents, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities, and under-represented groups.

(f) Provide Foster Grandparents with assignments that show direct and demonstrable benefits to the children and the community served, the Foster Grandparents, and the volunteer station; with required cost reimbursements specified in §2552.46; with 20 hours of pre-service orientation and at least 24 hours annually of in-service training.

(g) Encourage the most efficient and effective use of Foster Grandparents by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

(h) Conduct an annual appraisal of volunteers' performance and annual review of their income eligibility.

(i) Establish written service policies for Foster Grandparents that include but are not limited to:

(1) Annual and sick leave.

(2) Holidays.

(3) Service schedules.

(4) Termination and appeal procedures.

(5) Meal and transportation reimbursements.

(j) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

(k) Provide Foster Grandparent volunteers with cost reimbursements specified in this section.

(l) Make every effort to meet such performance measures as established in the approved grant application.

[64 FR 14126, Mar. 24, 1999, as amended at 67 FR 61000, Sept. 27, 2002; 69 FR 60095, Oct. 7, 2004; 74 FR 46508, Sept. 10, 2009; 77 FR 60934, Oct. 5, 2012; 83 FR 64650, Dec. 17, 2018]

### § 2552.24 What are a sponsor's responsibilities for securing community participation?

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

(1) Knowledgeable of human and social needs of the community;

(2) With an interest in the field of community service and volunteerism;

(3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity and meeting or exceeding performance measures;

(4) With an interest in, and knowledge of, the range of abilities of older adults; and

(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how such participation shall be secured consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

[64 FR 14126, Mar. 24, 1999, as amended at 83 FR 64650, Dec. 17, 2018]

### § 2552.25 What are a sponsor's administrative responsibilities?

A sponsor shall:

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(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish project objectives and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope or quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable to similar staff positions in the sponsor organization and/or project service area, as is practicable.

(f) Establish risk management policies and procedures covering Foster Grandparent project activities. This includes provision of appropriate insurance coverage for Foster Grandparents, which includes; accident insurance, personal liability insurance, and excess automobile liability insurance.

(g) Establish record keeping and reporting systems in compliance with CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(h) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

[64 FR 14126, Mar. 24, 1999, as amended at 83 FR 64650, Dec. 17, 2018]

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**§ 2552.26–2552.33 [Reserved]**

**Subpart C—Suspension and Termination of Corporation Assistance**

**§ 2552.34 What are the rules on suspension, termination, and denial of refunding of grants?**

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he/she determines there is a material failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to ensure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the grant recipient.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the Foster Grandparent



Program are specified in 45 CFR part 1206.

[64 FR 14126, Mar. 24, 1999. Redesignated at 72 FR 48584, Aug. 24, 2007; 83 FR 64650, Dec. 17, 2018]

### **Subpart D—Foster Grandparent Eligibility, Status, Cost Reimbursements and Benefits**

#### **§ 2552.41 Who is eligible to be a Foster Grandparent?**

(a) To be a Foster Grandparent an individual must:

- (1) Be 55 years of age or older; and
- (2) In order to receive a stipend, have an income that is within the income eligibility guidelines specified in this subpart.

(b) Eligibility to serve as a Foster Grandparent shall not be restricted on the basis of formal education, experience, race, color, national origin including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

[64 FR 14126, Mar. 24, 1999, as amended at 74 FR 46509, Sept. 10, 2009; 83 FR 64651, Dec. 17, 2018]

#### **§ 2552.42 What types of criminal convictions or other adjudications disqualify an individual from serving as a Foster Grandparent or as a Foster Grandparent grant-funded employee?**

Any individual who is registered, or who is required to be registered, on a State sex offender registry, or who has been convicted of murder, as defined under Federal law in section 1111 of title 18, United States Code, is deemed unsuitable for, and may not serve in, a position as a Foster Grandparent or as a Foster Grandparent grant-funded employee.

[74 FR 46509, Sept. 10, 2009]

#### **§ 2552.43 What income guidelines govern eligibility to serve as a stipended Foster Grandparent?**

(a) To receive a stipend, a Foster Grandparent may not have an annual income from all sources, after deducting allowable medical expenses, which exceeds the program's income eligi-

bility guideline for the State in which he or she resides. The income eligibility guideline for each State is 200 percent of the poverty line, as set forth in 42 U.S.C. 9902 (2).

(b) For applicants to become stipended Foster Grandparents, annual income is projected for the following 12 months, based on income at the time of application. For serving stipended Foster Grandparents, annual income is counted for the past 12 months. Annual income includes the applicant or enrollee's income and that of his/her spouse, if the spouse lives in the same residence.

(c) Allowable medical expenses are annual out-of-pocket medical expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse which were not and will not be paid by Medicare, Medicaid, other insurance, or other third party pay or, and which do not exceed 50 percent of the applicable income guideline.

(d) Applicants whose income is not more than 100 percent of the poverty line shall be given special consideration for enrollment.

(e) Once enrolled, a Foster Grandparent shall remain eligible to serve and to receive a stipend so long as his or her income, does not exceed the applicable income eligibility guideline by 20 percent.

[64 FR 14126, Mar. 24, 1999, as amended at 67 FR 61000, Sept. 27, 2002; 69 FR 19775, Apr. 14, 2004. Redesignated at 72 FR 48585, Aug. 24, 2007; 74 FR 46509, Sept. 10, 2009; 83 FR 64651, Dec. 17, 2018]

#### **§ 2552.44 What is considered income for determining volunteer eligibility?**

(a) For determining eligibility, "income" refers to total cash and in-kind receipts before taxes from all sources including:

- (1) Money, wages, and salaries before any deduction;
- (2) Receipts from self-employment or from a farm or business after deductions for business or farm expenses;
- (3) Social Security, Unemployment or Workers Compensation, strike benefits, training stipends, alimony, and military family allotments, or other regular support from an absent family

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member or someone not living in the household;

(4) Government employee pensions, private pensions, regular insurance or annuity payments, and 401(k) or other retirement savings plans;

(5) Income from dividends, interest, net rents, royalties, or income from estates and trusts.

(b) For eligibility purposes, income does not refer to the following money receipts:

(1) Any assets drawn down as withdrawals from a bank, sale of property, house or car, tax refunds, gifts, one-time insurance payments or compensation from injury.

(2) Non-cash income, such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner-occupied farm or non-farm housing.

(3) Regular payments for public assistance including the Supplemental Nutrition Assistance Program (SNAP).

(4) Social Security Disability or any type of disability payment.

(5) Food or rent received in lieu of wages.

[64 FR 14126, Mar. 24, 1999. Redesignated at 72 FR 48585, Aug. 24, 2007; 83 FR 64651, Dec. 17, 2018]

### **§ 2552.45 Is a Foster Grandparent a federal employee, an employee of the sponsor or of the volunteer station?**

Foster Grandparents are volunteers, and are not employees of the sponsor, the volunteer station, CNCS or the Federal Government.

[83 FR 64651, Dec. 17, 2018]

### **§ 2552.46 What cost reimbursements and benefits do sponsors provide to Foster Grandparents?**

Cost reimbursements and benefits include:

(a) *Stipend*. The stipend is paid for the time Foster Grandparents spend with their assigned children, for earned leave, and for attendance at official project events.

(b) *Insurance*. A Foster Grandparent is provided with the CNCS specified minimum levels of insurance as follows:

(1) *Accident insurance*. Accident insurance covers Foster Grandparents for

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personal injury during travel between their homes and places of assignment, during their service, during meal periods while serving as a Foster Grandparent, and while attending project-sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the Foster Grandparent from other sources.

(2) *Personal liability insurance*. Protection is provided against claims in excess of protection provided by other insurance. Such protection does not include professional liability coverage.

(3) *Excess automobile liability insurance*. (i) For Foster Grandparents who drive in connection with their service, protection is provided against claims in excess of the greater of either:

(A) Liability insurance Foster Grandparents carry on their own automobiles; or

(B) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by CNCS for each person, each accident, and for property damage.

(ii) Foster Grandparents who drive their personal vehicles to, or on, assignments or project-related activities, shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

(c) *Transportation*. Foster Grandparents shall receive assistance with the cost of transportation to and from, assignments and official project activities, including orientation, training, and recognition events.

(d) *Meals*. Foster Grandparents may be provided assistance with the cost of meals taken while on assignment, within limits of the project's available resources.

(e) *Recognition*. Foster Grandparent volunteers shall be provided recognition for their service.

(f) *Physical examination*. Foster Grandparents may be provided a physical examination or assistance with the cost of a physical examination prior to assignment and annually thereafter.

(g) *Other volunteer expenses*. Foster Grandparents may also be reimbursed for allowable out-of-pocket expenses

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incurred while performing their assignments.

[64 FR 14126, Mar. 24, 1999, as amended at 69 FR 19775, Apr. 14, 2004; 69 FR 56718, Sept. 22, 2004. Redesignated at 72 FR 48585, Aug. 24, 2007; 83 FR 64651, Dec. 17, 2018]

### **§ 2552.47 May the cost reimbursements and benefits received by a Foster Grandparent be subject to any tax or charge, be treated as wages or compensation, or affect eligibility to receive assistance from other programs?**

No. Foster Grandparent's cost reimbursements and benefits are not subject to any tax or charge or treated as wages or compensation for the purposes of unemployment insurance, worker's compensation, temporary disability, retirement, public assistance, or similar benefit payments or minimum wage laws. Cost reimbursements and benefits are not subject to garnishment and do not reduce or eliminate the level of, or eligibility for, assistance or services a Foster Grandparent may be receiving under any governmental program.

[83 FR 64651, Dec. 17, 2018]

## **Subpart E—Foster Grandparent Terms of Service**

### **§ 2552.51 What are the terms of service of a Foster Grandparent?**

A Foster Grandparent shall serve a minimum of 260 hours annually, or a minimum of 5 hours per week. A Foster Grandparent may serve a maximum of 2080 hours annually, or a maximum of 40 hours per week. Within these limitations, a sponsor may set service policies consistent with local needs.

[83 FR 64652, Dec. 17, 2018]

### **§ 2552.52 What factors are considered in determining a Foster Grandparent's service schedule?**

(a) Travel time between the Foster Grandparent's home and place of assignment is not part of the service schedule and is not stipended.

(b) Travel time between individual assignments is a part of the service schedule and is stipended.

(c) Meal time may be part of the service schedule and is stipended.

[64 FR 14126, Mar. 24, 1999, as amended at 83 FR 64652, Dec. 17, 2018]

### **§ 2552.53 Under what circumstances may a Foster Grandparent be removed from service?**

(a) A sponsor may remove a Foster Grandparent from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments or failure to accept supervision. A Foster Grandparent may also be removed from stipended service for having income in excess of the eligibility level. A Foster Grandparent shall be removed immediately if ineligible to serve based on criminal history check results.

(b) The sponsor shall establish appropriate policies on removal from service, as well as procedures for appeal.

[83 FR 64652, Dec. 17, 2018]

## **Subpart F—Responsibilities of a Volunteer Station**

### **§ 2552.61 May a sponsor serve as a volunteer station?**

Yes. A sponsor may serve as a volunteer station, if the activities are part of a work plan in the approved project application.

[83 FR 64652, Dec. 17, 2018]

### **§ 2552.62 What are the responsibilities of a volunteer station?**

A volunteer station shall undertake the following responsibilities in support of Foster Grandparent volunteers:

(a) Develop volunteer assignments that meet the requirements specified in §§ 2552.71 through 2552.72 and regularly assess those assignments for continued appropriateness.

(b) Select eligible children for assigned volunteers.

(c) Develop a written volunteer assignment plan for each Foster Grandparent that identifies their roles and activities, each child served, and expected outcomes.

(d) Keep a Letter of Agreement for each child who receives in-home service.

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(e) Provide Foster Grandparents serving the station with:

(1) Orientation to the station and any in-service training necessary to enhance performance of assignments; and

(2) Resources required for performance of assignments, including reasonable accommodation, as needed, to enable Foster Grandparents with disabilities to perform the essential functions of their service; and

(f) Designate a staff member to oversee fulfillment of station responsibilities and supervision of Foster Grandparents while on assignment.

(g) Keep records and prepare reports required by the sponsor.

(h) Provide for the safety of Foster Grandparents assigned to it.

(i) Comply with all applicable civil rights laws and regulations, including providing Foster Grandparents with disabilities reasonable accommodation, to perform the essential functions of their service.

(j) Undertake such other responsibilities as may be necessary for the successful performance of Foster Grandparents in their assignments or as agreed to in the Memorandum of Understanding.

[64 FR 14126, Mar. 24, 1999, as amended at 83 FR 64652, Dec. 17, 2018]

### Subpart G—Foster Grandparent Placements and Assignments

#### § 2552.71 What requirements govern the assignment of Foster Grandparents?

Foster Grandparent assignments shall:

(a) Provide for Foster Grandparents to give direct services to one or more eligible children.

(b) Result in person-to-person supportive relationships with each child served. Foster Grandparent volunteers cannot be assigned to roles such as teacher's aides, group leaders or other similar positions that would detract from the person-to-person relationship.

(c) Support the development and growth of each child served.

(d) Be meaningful to the Foster Grandparent.

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(e) Be supported by appropriate orientation, training and supervision.

[64 FR 14126, Mar. 24, 1999, as amended at 83 FR 64652, Dec. 17, 2018]

#### § 2552.72 Is a written volunteer assignment plan required for each Foster Grandparent?

(a) All Foster Grandparents shall receive a written volunteer assignment plan developed by the volunteer station that:

(1) Is approved by the sponsor and accepted by the Foster Grandparent;

(2) Identifies the individual child(ren) to be served;

(3) Identifies the role and activities of the Foster Grandparent and expected outcomes for the child;

(4) Addresses the period of time each child should receive such services; and

(5) Is used to review the impact of the assignment on the child(ren).

(b) [Reserved]

[64 FR 14126, Mar. 24, 1999, as amended at 83 FR 64652, Dec. 17, 2018]

### Subpart H—Children and Youth Served

#### § 2552.81 Who is eligible to be served?

Foster Grandparents serve only children and youth with special and exceptional needs, or in circumstances that limit their academic, social, or emotional development, who are less than 21 years of age.

[74 FR 46509, Sept. 10, 2009, as amended at 83 FR 64652, Dec. 17, 2018]

#### § 2552.82 Under what circumstances may a Foster Grandparent continue to serve an individual beyond his or her 21st birthday?

(a) Only when a Foster Grandparent has been assigned to, and has developed a relationship with an individual with a disability, may that assignment continue beyond the individual's 21st birthday, provided that:

(1) Such individual was receiving such services prior to attaining the chronological age of 21, and the continuation of service is in the best interest of the individual; and

(2) The sponsor determines that it is in the best interest of both the Foster Grandparent and the individual for the

assignment to continue. Such a determination will be made through mutual agreement by all parties involved in the provision of services to the individual served.

(b) In cases where the assigned Foster Grandparent becomes unavailable to serve a particular individual, the replacement of that Foster Grandparent shall be made through mutual agreement by all parties involved.

(c) The sponsor may terminate service to a child with a disability over age 21, if it determines that such service is no longer in the best interest of either the Foster Grandparent or the individual served.

[64 FR 14126, Mar. 24, 1999, as amended at 74 FR 46509, Sept. 10, 2009; 74 FR 48866, Sept. 25, 2009; 83 FR 64652, Dec. 17, 2018]

### Subpart I—Application and Fiscal Requirements

#### § 2552.91 What is the process for application and award of a grant?

(a) *How and when may an eligible organization apply for a grant?* (1) An eligible organization may file an application in response to CNCS' published request, such as a Notice of Funding Opportunity or a Notice of Funding Availability. Applicants are not assured of selection or approval and may have to compete with other applicants.

(2) The applicant shall comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs," (3 CFR, 1982 Comp., p. 197) in 45 CFR part 1233 and any other applicable requirements.

(b) *Who reviews the merits of an application and how is a grant awarded?* (1) CNCS reviews and determines the merit of an application by its responsiveness to published guidelines and to the overall purposes and objectives of the program. When funds are available, CNCS awards a grant in writing to each applicant whose grant proposal provides the best potential for serving the purpose of the program.

(2) The award will be documented by the Notice of Grant Award (NGA). CNCS and the sponsoring organization are the parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It

will document the extent of CNCS' obligation to provide financial support to the sponsor.

(c) *What happens if CNCS rejects an application?* CNCS will return an application that is not approved for funding to the applicant with an explanation of CNCS' decision.

(d) *For what period of time does CNCS award a grant?* CNCS awards a Foster Grandparent grant for a specified period that is usually three years in duration.

[83 FR 64652, Dec. 17, 2018]

#### § 2552.92 What are project funding requirements?

(a) *Is non-CNCS support required?* A CNCS grant may be awarded to fund up to 90 percent of the cost of development and operation of a Foster Grandparent project. The sponsor is required to contribute at least 10 percent of the total project cost from non-Federal sources or authorized Federal sources.

(b) *Under what circumstances does CNCS allow less than the 10 percent non-CNCS support?* CNCS may allow exceptions to the 10 percent local support requirement in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May CNCS restrict how a sponsor uses locally generated contributions in excess of the 10 percent non-CNCS support required?* Whenever locally generated contributions to Foster Grandparent projects are in excess of the minimum 10 percent non-CNCS support required, CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee

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of Federal and non-Federal funds, including expenditures from excess locally generated contributions in support of the grant are subject to audit by CNCS, its Inspector General, or their authorized agents.

(e) *May a sponsor pay stipends at rates different than those established by CNCS?* No, a sponsor shall pay stipends at rates established by CNCS.

[64 FR 14126, Mar. 24, 1999, as amended at 75 FR 51415, Aug. 20, 2010; 83 FR 64652, Dec. 17, 2018]

### § 2552.93 What are a sponsor's legal requirements in managing grants?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

- (1) The Act;
- (2) Regulations in this part;
- (3) 2 CFR part 200 and 2 CFR part 2205;
- (4) All applicable CNCS policies; and
- (5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.

(f) Written CNCS approval is required for the following changes in the approved grant:

- (1) Reduction in budgeted volunteer service years.
- (2) Change in the service area.

[79 FR 76077, Dec. 19, 2014, as amended at 83 FR 64653, Dec. 17, 2018]

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### Subpart J—Non-Stipended Foster Grandparents

#### § 2552.101 What rule governs the recruitment and enrollment of persons who do not meet the income eligibility guidelines to serve as Foster Grandparents?

Over-income persons as described in § 2552.43, age 55 or over, may be enrolled in FGP project as non-stipended volunteers.

[83 FR 64653, Dec. 17, 2018]

#### § 2552.102 What are the conditions of service of non-stipended Foster Grandparents?

Non-stipended Foster Grandparents serve under the following conditions:

(a) They must not displace or prevent eligible low-income individuals from becoming Foster Grandparents.

(b) No special privilege or status is granted or created among Foster Grandparents, whether stipended or non-stipended, and equal treatment is required.

(c) Training, supervision, and other support services and cost reimbursements, other than the stipend, are available equally to all Foster Grandparents.

(d) All regulations and requirements applicable to the program apply to all Foster Grandparents.

(e) Non-stipended Foster Grandparents may contribute the costs they incur in connection with their participation in the program. An FGP project may not count such contributions as part of the required non-CNCS support (match) for the grant.

[64 FR 14126, Mar. 24, 1999, as amended at 83 FR 64653, Dec. 17, 2018]

#### § 2552.103 Must a sponsor be required to enroll non-stipended Foster Grandparents?

No. Enrollment of non-stipended Foster Grandparents is not a condition for a sponsor to receive a new or continuation grant.

[83 FR 64653, Dec. 17, 2018]

## § 2552.104 [Reserved]

**Subpart K—Non-CNCS Funded Foster Grandparent Projects****§ 2552.111 Under what conditions may an agency or organization sponsor a Foster Grandparent project without CNCS funding?**

An eligible agency or organization who wishes to sponsor a Foster Grandparent project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented through the Notice of Grant Agreement (NGA).

[83 FR 64653, Dec. 17, 2018]

**§ 2552.112 What are the resources and benefits to which a non-CNCS funded project is entitled?**

The Notice of Grant Award entitles the sponsor of a Non-CNCS funded project to:

- (a) All technical assistance and materials provided to CNCS funded Foster Grandparent projects; and
- (b) The application of the provisions of 42 U.S.C. 5044 and 5058.

[64 FR 14126, Mar. 24, 1999, as amended at 83 FR 64653, Dec. 17, 2018]

**§ 2552.113 What financial obligation does CNCS incur for non-CNCS funded projects?**

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

[83 FR 64653, Dec. 17, 2018]

**§ 2552.114 What happens if a non-CNCS funded sponsor does not comply with the NGA?**

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination CNCS' agreement and all benefits specified in § 2552.112.

[83 FR 64653, Dec. 17, 2018]

**Subpart L—Restrictions and Legal Representation****§ 2552.121 What legal limitations apply to the operation of the Foster Grandparent Program and to the expenditure of grant funds?**

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the FGP.

(b) *Non-displacement of employed workers.* A Foster Grandparent shall not perform any service or duty or engage

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in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned, or which operates or supervises any NSSC program shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

(3) A Foster Grandparent volunteer station may contribute to the financial support of the FGP. However, this support shall not be a required precondition for a potential station to obtain Foster Grandparent service.

(4) If a volunteer station agrees to provide funds to support additional Foster Grandparents or pay for other Foster Grandparent support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a Foster Grandparent receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall pay wages at prevailing rates as determined by the Secretary of Labor in accordance with the

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Davis-Bacon Act, as amended, 40 U.S.C. 276a.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a Foster Grandparent on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the Foster Grandparent with a disability is qualified to serve.

(g) *Religious activities.* (1) A Foster Grandparent or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship services or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station 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 CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to CNCS.

[64 FR 14126, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004; 83 FR 64653, Dec. 17, 2018]

### § 2552.122 What legal coverage does CNCS make available to Foster Grandparents?

It is within CNCS' discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of a FGP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under



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which CNCS may pay such expenses are specified in 45 CFR part 1220.

[83 FR 64654, Dec. 17, 2018]

### PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

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AUTHORITY: 42 U.S.C. 4950 *et seq.*

SOURCE: 64 FR 14135, Mar. 24, 1999, unless otherwise noted.

### Subpart A—General

#### § 2553.11 What is the Retired and Senior Volunteer Program?

The Retired and Senior Volunteer Program (RSVP) provides grants to qualified agencies and organizations for the dual purpose of: engaging persons 55 and older in volunteer service to meet critical community needs; and to provide a high quality experience that will enrich the lives of volunteers.

#### § 2553.12 Definitions.

*Act.* The Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 396, 42 U.S.C. 4950 *et seq.*

*Adequate staffing level.* The number of project staff or full time equivalent needed by a sponsor to manage the National Senior Service Corps (NSSC) project operations considering such factors as: Number of budgeted volunteers, number of volunteer stations, and the size of the service area.

*Assignment.* The activities, functions or responsibilities to be performed by volunteers identified in a written outline or description.

*Assignment description.* The written description of the activities, functions or responsibilities to be performed by RSVP volunteers.

*Chief Executive Officer.* The Chief Executive Officer of CNCS appointed under the National and Community Service Act of 1990, as amended, (NCSA), 42 U.S.C. 12501 *et seq.*

*CNCS.* The Corporation for National and Community Service established under the NCSA.

*Cost reimbursements.* Reimbursements budgeted as Volunteer Expenses and provided to volunteers, including stipends to cover incidental costs, transportation, meals, recognition, supplemental accident, personal liability and excess automobile liability insurance, and other expenses as negotiated in the Memorandum of Understanding.

*Letter of Agreement.* A written agreement between a volunteer station or sponsor, and person(s) served or the person legally responsible for that person. It authorizes the assignment of an RSVP volunteer in the home of a client, defines RSVP volunteer activities,

and specifies supervision arrangements.

*Memorandum of Understanding.* A written statement prepared and signed by the RSVP project sponsor and the volunteer station that identifies project requirements, working relationships and mutual responsibilities.

*National Senior Service Corps (NSSC).* The collective name for the Senior Companion Program (SCP), Foster Grandparent Program (FGP), and the Retired and Senior Volunteer Program (RSVP), and Demonstration Programs, all of which are established under Parts A, B, C, and E, Title II of the Act. NSSC is also referred to as the “Senior Corps.”

*Non-CNCS support (excess).* The amount of non-CNCS cash and in-kind contributions generated by a sponsor in excess of the required percentage.

*Non-CNCS support (match).* The percentage share of non-CNCS cash and in-kind contributions required to be raised by the sponsor in support of the grant.

*Performance measures.* Indicators intended to that help determine the impact of an RSVP project on the community, including the volunteers.

*Project.* The locally planned RSVP activity or set of activities in a service area as approved by CNCS and implemented by the sponsor.

*Proprietary Health Care Organizations.* Private, for-profit health care organization that serves one or more vulnerable populations.

*Service area.* The geographically defined area(s) approved in the grant application, in which RSVP volunteers are enrolled and placed on assignments.

*Sponsor.* A public agency, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer an RSVP project.

*United States and Territories.* Each of the several States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands.

*Volunteer station.* A public agency; a private, non-profit organization, secular or faith-based; or a proprietary health care organization. A volunteer station must accept responsibility for the assignment and supervision of RSVP volunteers in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

[64 FR 14135, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004; 76 FR 20246, Apr. 12, 2011; 83 FR 64654, Dec. 17, 2018]

### **Subpart B—Eligibility and Responsibilities of a Sponsor**

#### **§ 2553.21 Who is eligible to serve as a sponsor?**

CNCS awards grants to public agencies, including Indian tribes as defined in section 421(5) of the Act, and private, non-profit organizations, both secular and faith-based, in the United States that have authority to accept and the capability to administer an RSVP project.

[83 FR 64654, Dec. 17, 2018]

#### **§ 2553.22 What are the responsibilities of a sponsor?**

A sponsor is responsible for fulfilling all project management requirements necessary to accomplish the purposes of the RSVP project as specified in the Act. A sponsor shall not delegate or contract these overall management responsibilities to another entity. CNCS retains the right to determine what types of management responsibilities may or may not be contracted.

[83 FR 64655, Dec. 17, 2018]

#### **§ 2553.23 What are a sponsor's project responsibilities?**

A sponsor shall:

(a) Focus RSVP resources to have a positive impact on critical human and social needs within the project service area.

(b) In collaboration with other community organizations or by using existing assessments, assess the needs of the

community or service area, and develop strategies to respond to identified needs using RSVP volunteers.

(c) Develop and manage one or more volunteer stations to provide a wide range of placement opportunities that appeal to persons age 55 and over by:

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of RSVP volunteers to meet locally identified needs;

(2) Ensuring the placement of RSVP volunteers is governed by a Memorandum of Understanding:

(i) That is negotiated prior to placement;

(ii) That specifies the mutual responsibilities of the station and sponsor;

(iii) That is renegotiated at least every three years;

(iv) That states the station will not discriminate against RSVP volunteers, service beneficiaries, or in the operation of its program on the basis of race, color, national origin including individuals with limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service; and

(v) That states the station will provide for the safety of the RSVP volunteers assigned to the station.

(d) Consider the demographic makeup of the project service area in the enrollment of RSVP volunteers, taking special efforts to recruit eligible individuals from minority groups, persons with disabilities and under represented groups.

(e) Encourage the most efficient and effective use of RSVP volunteers by coordinating project services and activities with related national, state and local programs, including other CNCS programs.

(f) Provide RSVP volunteers with cost reimbursements specified in § 2553.43.

## § 2553.24

(g) Make every effort to meet such performance measures as established in the approved grant application.

[64 FR 14135, Mar. 24, 1999, as amended at 67 FR 6875, Feb. 14, 2002; 69 FR 60095, Oct. 7, 2004; 76 FR 20246, Apr. 12, 2011; 83 FR 64655, Dec. 17, 2018]

### **§ 2553.24 What are a sponsor's responsibilities for securing community participation?**

(a) A sponsor shall secure community participation in local project operation by establishing an Advisory Council or a similar organizational structure with a membership that includes people:

(1) Knowledgeable about human and social needs of the community;

(2) With an interest in the field of community service and volunteerism;

(3) Capable of helping the sponsor satisfy its administrative and program responsibilities including fund-raising, publicity and meeting or exceeding performance measures;

(4) With an interest in, and knowledge of, the range of abilities of older adults; and

(5) Of a diverse composition that reflects the demographics of the service area.

(b) The sponsor determines how this participation shall be secured, consistent with the provisions of paragraphs (a)(1) through (a)(5) of this section.

[64 FR 14135, Mar. 24, 1999, as amended at 83 FR 64655, Dec. 17, 2018]

### **§ 2553.25 What are a sponsor's administrative responsibilities?**

A sponsor shall:

(a) Assume full responsibility for securing maximum and continuing community financial and in-kind support to operate the project successfully.

(b) Provide levels of staffing and resources appropriate to accomplish the purposes of the project and carry out its project management responsibilities.

(c) Employ a full-time project director to accomplish project objectives

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and manage the functions and activities delegate to project staff for Senior Corps project(s) within its control. The project director may participate in activities to coordinate project resources with those of related local agencies, boards or organizations. A full-time project director shall not serve concurrently in another capacity, paid or unpaid, during established working hours. A sponsor may negotiate the employment of a part-time project director with CNCS when the sponsor can demonstrate that such an arrangement will not adversely affect the size, scope or quality of project operations.

(d) Consider all project staff as sponsor employees subject to its personnel policies and procedures.

(e) Compensate project staff at a level that is comparable to similar staff positions in the sponsor organization and/or project service area, as is practicable.

(f) Establish risk management policies and procedures covering RSVP project activities. This includes provision of appropriate insurance coverage for RSVP volunteers, which includes; accident insurance, personal liability insurance, and excess automobile liability insurance.

(g) Establish record keeping and reporting systems in compliance with CNCS requirements that ensure quality of program and fiscal operations, facilitate timely and accurate submission of required reports and cooperate with CNCS evaluation and data collection efforts.

(h) Comply with, and ensure that all volunteer stations comply with, all applicable civil rights laws and regulations, including non-discrimination based on disability.

(i) Conduct National Service Criminal History Checks in accordance with the requirements in 45 CFR 2540.200 through 2540.207.

[64 FR 14135, Mar. 24, 1999, as amended at 74 FR 46509, Sept. 10, 2009; 83 FR 64655, Dec. 17, 2018]

## § 2553.26 [Reserved]

**Subpart C—Suspension, Termination and Denial of Refunding****§ 2553.31 What are the rules on suspension, termination and denial of refunding of grants?**

(a) The Chief Executive Officer or designee is authorized to suspend further payments or to terminate payments under any grant providing assistance under the Act whenever he or she determines there is a material failure to comply with applicable terms and conditions of the grant. The Chief Executive Officer shall prescribe procedures to insure that:

(1) Assistance under the Act shall not be suspended for failure to comply with applicable terms and conditions, except in emergency situations for thirty days;

(2) An application for refunding under the Act may not be denied unless the recipient has been given:

(i) Notice at least 75 days before the denial of such application of the possibility of such denial and the grounds for any such denial; and

(ii) Opportunity to show cause why such action should not be taken;

(3) In any case where an application for refunding is denied for failure to comply with the terms and conditions of the grant, the recipient shall be afforded an opportunity for an informal hearing before an impartial hearing officer, who has been agreed to by the recipient and CNCS; and

(4) Assistance under the Act shall not be terminated for failure to comply with applicable terms and conditions unless the recipient has been afforded reasonable notice and opportunity for a full and fair hearing.

(b) Hearings or other meetings as may be necessary to fulfill the requirements of this section should, to the extent practicable, be held in locations convenient to the grant recipient.

(c) The procedures for suspension, termination, and denial of refunding, that apply to the RSVP program are specified in 45 CFR part 1206.

[64 FR 14135, Mar. 24, 1999, as amended at 76 FR 20246, Apr. 12, 2011; 83 FR 64655, Dec. 17, 2018]

**Subpart D—Eligibility, Cost Reimbursements and Volunteer Assignments****§ 2553.41 Who is eligible to be an RSVP volunteer?**

(a) To be an RSVP volunteer, an individual must:

(1) Be 55 years of age or older;

(2) Agree to serve without compensation; and

(3) Reside in or nearby the community served by RSVP.

(b) Eligibility to serve as an RSVP volunteer shall not be restricted on the basis of formal education, experience, race, color, national origin including limited English proficiency, gender, age, religion, sexual orientation, disability, gender identity or expression, political affiliation, marital or parental status, or military service.

[64 FR 14135, Mar. 24, 1999, as amended at 83 FR 64655, Dec. 17, 2018]

**§ 2553.42 Is an RSVP volunteer a federal employee, an employee of the sponsor or of the volunteer station?**

RSVP volunteers are not employees of the sponsor, the volunteer station, CNCS or the Federal Government.

[83 FR 64655, Dec. 17, 2018]

**§ 2553.43 What cost reimbursements and benefits may sponsors provide to RSVP volunteers?**

(a) RSVP volunteers may be provided the following cost reimbursements within the limits of the project's available resources:

(1) *Transportation.* RSVP volunteers may receive assistance with the cost of transportation to and from volunteer assignments and official project activities, including orientation, training, and recognition events.

(2) *Meals.* RSVP volunteers may receive assistance with the cost of meals taken while on assignment.

(3) *Other volunteer expenses.* RSVP volunteers may also be reimbursed for allowable out-of-pocket expenses incurred while performing their assignments.

(b) RSVP volunteers must be provided the following cost reimbursements:

#### § 2553.44

(1) *Recognition.* RSVP volunteers shall be provided recognition for their service.

(2) *Insurance.* An RSVP volunteer is provided with the CNCS-specified minimum levels of insurance as follows:

(i) *Accident insurance.* Accident insurance covers RSVP volunteers for personal injury during travel between their homes and places of assignment, during volunteer service, during meal periods while serving as a volunteer, and while attending project sponsored activities. Protection shall be provided against claims in excess of any benefits or services for medical care or treatment available to the volunteer from other sources.

(ii) *Personal liability insurance.* Protection is provided against claims in excess of protection provided by other insurance. It does not include professional liability coverage.

(iii) *Excess automobile insurance.* (A) RSVP drivers who drive in connection with their service shall be provided protection against claims in excess of the greater of either:

(1) Liability insurance the volunteers carry on their own automobiles; or

(2) The limits of applicable state financial responsibility law, or in its absence, levels of protection to be determined by CNCS for each person, each accident, and for property damage.

(B) RSVP volunteers who drive their personal vehicles to or on assignments or project-related activities shall maintain personal automobile liability insurance equal to or exceeding the levels established by CNCS.

[83 FR 64655, Dec. 17, 2018]

#### **§ 2553.44 May cost reimbursements received by RSVP volunteers be subject to any tax or charge, treated as wages or compensation, or affect eligibility to receive assistance from other programs?**

No. An RSVP volunteer's cost reimbursements are not subject to any tax or charge, and are not treated as wages or compensation for the purposes of unemployment insurance, workers' compensation, temporary disability, retirement, public assistance or similar benefit payments or minimum wage laws. Cost reimbursements are not subject to garnishment, and do not reduce or

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eliminate the level of, or eligibility for, assistance or services that a volunteer may be receiving under any governmental program.

[83 FR 64656, Dec. 17, 2018]

### **Subpart E—Volunteer Terms of Service**

#### **§ 2553.51 What are the terms of service of an RSVP volunteer?**

An RSVP volunteer shall serve on a regular basis, or intensively on short-term assignments, consistent with the assignment description.

[83 FR 64656, Dec. 17, 2018]

#### **§ 2553.52 Under what circumstances may a sponsor remove an RSVP volunteer from service?**

(a) A sponsor may remove an RSVP volunteer from service for cause. Grounds for removal include, but are not limited to: Extensive and unauthorized absences; misconduct; failure to perform assignments and or failure to accept supervision.

(b) The sponsor shall establish appropriate policies on removal from service as well as procedures for appeal.

[83 FR 64656, Dec. 17, 2018]

### **Subpart F—Responsibilities of a Volunteer Station**

#### **§ 2553.61 When may a sponsor serve as a volunteer station?**

The sponsor and RSVP project itself may function as a volunteer station or may initiate special volunteer activities provided that CNCS agrees these activities are in accord with program objectives and will not hinder overall project operations.

[83 FR 64656, Dec. 17, 2018]

#### **§ 2553.62 What are the responsibilities of a volunteer station?**

A volunteer station shall undertake the following responsibilities in support of RSVP volunteers:

(a) Develop volunteer assignments that impact critical human and social needs, and regularly assess those assignments for continued appropriateness;

(b) Assign staff member responsible for day to day oversight of RSVP volunteers within the volunteer station and for assessing the impact of volunteers in addressing community needs;

(c) Keep a Letter of Agreement for each client who receives in-home service;

(d) Keep records and prepare reports as required;

(e) Comply with all applicable civil rights requirements including providing RSVP volunteers with disabilities reasonable accommodation to perform the essential functions of their service;

(f) Provide assigned RSVP volunteers the following support:

(1) Orientation to station and appropriate in-service training to enhance performance of assignments;

(2) Resources required for performance of assignments including reasonable accommodation to RSVP volunteers with disabilities to perform the essential functions of their service; and

(3) Supervision.

(g) Undertake such other responsibilities as may be necessary to the successful performance of RSVP volunteers in their assignments or as agreed to in the Memorandum of Understanding.

[64 FR 14135, Mar. 24, 1999, as amended at 83 FR 64656, Dec. 17, 2018]

## Subpart G—Application and Fiscal Requirements

### § 2553.71 What is the process for application and award of a grant?

As funds become available, CNCS solicits application for RSVP grants from eligible organizations through a competitive process.

(a) *What are the application requirements for an RSVP grant?* An applicant must:

(1) Submit required information determined by CNCS.

(2) Demonstrate compliance with any applicable requirements specified in the Notice of Funding Availability or Notice of Funding Opportunity.

(b) *What process does the Corporation use to select new RSVP grantees?* (1) CNCS reviews and determines the merits of an application by its responsiveness to published guidelines and to the

overall purpose and objectives of the program. In conducting its review during the competitive process, CNCS considers the input and opinions of those serving on a peer review panel, including members with expertise in senior service and aging, and may conduct site inspections, as appropriate.

(2) The selection process includes:

(i) Determining whether an application complies with the application requirements, such as deadlines, eligibility, and programmatic requirements, including performance measurement requirements;

(ii) Applying published selection criteria, as stated in the applicable Notice of Funding Availability or Notice of Funding Opportunity, to assess the quality of the application;

(iii) Applying any applicable priorities or preferences, as stated in the applicable Notice of Funding Availability or Notice of Funding Opportunity;

(iv) Ensuring innovation and geographic, demographic, and programmatic diversity across CNCS RSVP grantee portfolio; and

(v) Identifying the applications that most completely respond to the published guidelines and offer the highest probability of successfully carrying out the overall purpose and objectives of the program.

(c) *How is a grant awarded?* (1) Subject to the availability of funds, the award will be documented by a Notice of Grant Award (NGA).

(2) CNCS and the sponsoring organization are parties to the NGA. The NGA will document the sponsor's commitment to fulfill specific programmatic objectives and financial obligations. It will document the extent of CNCS' obligation to provide assistance to the sponsor.

(d) *What happens if CNCS rejects an application?* CNCS will inform an applicant when an application is not approved for funding.

(e) *For what period of time does CNCS award a grant?* CNCS awards an RSVP grant for a specified period that is usually three years in duration with an option for a grant renewal of three years, if the grantee's performance and compliance with grant terms and conditions are satisfactory. CNCS will terminate funding to a grantee when

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CNCS determines that the grant should not be renewed for an additional three year period.

[76 FR 20246, Apr. 12, 2011, as amended at 83 FR 64656, Dec. 17, 2018]

### § 2553.72 What are project funding requirements?

(a) *Is non-CNCS support required?* (1) A CNCS grant may be awarded to fund up to 90 percent of the total project cost in the first year, 80 percent in the second year, and 70 percent in the third and succeeding years.

(2) A sponsor is responsible for identifying non-CNCS funds which may include in-kind contributions.

(b) *Under what circumstances does CNCS allow less than the percentage identified in paragraph (a) of this section?* CNCS may allow exceptions to the local support requirement identified in paragraph (a) of this section in cases of demonstrated need such as:

(1) Initial difficulties in the development of local funding sources during the first three years of operations; or

(2) An economic downturn, the occurrence of a natural disaster, or similar events in the service area that severely restrict or reduce sources of local funding support; or

(3) The unexpected discontinuation of local support from one or more sources that a project has relied on for a period of years.

(c) *May CNCS restrict how a sponsor uses locally generated contributions in excess of the non-CNCS support required?* Whenever locally generated contributions to RSVP projects are in excess of the non-CNCS funds required (10 percent of the total cost in the first year, 20 percent in the second year and 30 percent in the third and succeeding years), CNCS may not restrict the manner in which such contributions are expended provided such expenditures are consistent with the provisions of the Act.

(d) *Are program expenditures subject to audit?* All expenditures by the grantee of Federal and Non-Federal funds, including expenditures from excess locally generated contributions, are sub-

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ject to audit by CNCS, its Inspector General or their authorized agents.

[64 FR 14135, Mar. 24, 1999, as amended at 67 FR 6875, Feb. 14, 2002; 83 FR 64657, Dec. 17, 2018]

### § 2553.73 What are a sponsor's legal requirements in managing grants?

What rules govern a sponsor's management of grants?

(a) A sponsor shall manage a grant in accordance with:

(1) The Act;

(2) Regulations in this part;

(3) 2 CFR part 200 and 2 CFR part 2205;

(4) All applicable CNCS policies; and

(5) All other applicable CNCS requirements.

(b) Project support provided under a CNCS grant shall be furnished at the lowest possible cost consistent with the effective operation of the project.

(c) Volunteer expense items, including transportation, meals, recognition activities and items purchased at the volunteers' own expense and which are not reimbursed, are not allowable as contributions to the non-Federal share of the budget.

(d) Costs to bring a sponsor into basic compliance with accessibility requirements for individuals with disabilities are not allowable costs.

(e) Payments to settle discrimination complaints, either through a settlement agreement or formal adjudication, are not allowable costs.

(f) Written CNCS approval/concurrence is required for a change in the approved service area.

[79 FR 76078, Dec. 19, 2014, as amended at 83 FR 64657, Dec. 17, 2018]

## Subpart H—Non-CNCS Funded Projects

### § 2553.81 Under what conditions may an agency or organization sponsor an RSVP project without CNCS funding?

An eligible agency or organization who wishes to sponsor an RSVP project without CNCS funding must make an application through the designated grants management system which is approved by CNCS and documented



through the Notice of Grant Agreement (NGA).

[83 FR 64657, Dec. 17, 2018]

**§ 2553.82 What are the resources and benefits to which a non-CNCS funded project is entitled?**

(a) All technical assistance and materials provided to CNCS funded RSVP volunteer projects; and

(b) The application of the provisions of 42 U.S.C. 5044 and 5058.

[64 FR 14135, Mar. 24, 1999, as amended at 83 FR 64657, Dec. 17, 2018]

**§ 2553.83 What financial obligation does CNCS incur for non-CNCS funded projects?**

Issuance of an NGA to a sponsor of a non-CNCS funded project does not create a financial obligation on the part of CNCS for any costs associated with the project.

[83 FR 64657, Dec. 17, 2018]

**§ 2553.84 What happens if a non-CNCS funded sponsor does not comply with the NGA?**

A non-CNCS funded project sponsor's noncompliance with the NGA may result in suspension or termination CNCS' agreement and all benefits specified in § 2553.82.

[83 FR 64657, Dec. 17, 2018]

**Subpart I—Restrictions and Legal Representation**

**§ 2553.91 What legal limitations apply to the operation of the RSVP volunteer Program and to the expenditure of grant funds?**

(a) *Political activities.* (1) No part of any grant shall be used to finance, directly or indirectly, any activity to influence the outcome of any election to public office, or any voter registration activity.

(2) No project shall be conducted in a manner involving the use of funds, the provision of services, or the employment or assignment of personnel in a matter supporting or resulting in the identification of such project with:

(i) Any partisan or nonpartisan political activity associated with a candidate, or contending faction or group, in an election; or

(ii) Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or

(iii) Any voter registration activity, except that voter registration applications and nonpartisan voter registration information may be made available to the public at the premises of the sponsor. But in making registration applications and nonpartisan voter registration information available, employees of the sponsor shall not express preferences or seek to influence decisions concerning any candidate, political party, election issue, or voting decision.

(3) The sponsor shall not use grant funds in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except:

(i) In any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of such a program to draft, review or testify regarding measures or to make representation to such legislative body, committee or member; or

(ii) In connection with an authorization or appropriations measure directly affecting the operation of the RSVP Program.

(b) *Nondisplacement of employed workers.* A RSVP volunteer shall not perform any service or duty or engage in any activity which would otherwise be performed by an employed worker or which would supplant the hiring of or result in the displacement of employed workers, or impair existing contracts for service.

(c) *Compensation for service.* (1) An agency or organization to which NSSC volunteers are assigned, or which operates or supervises any NSSC program, shall not request or receive any compensation from NSSC volunteers or from beneficiaries for services of NSSC volunteers.

(2) This section does not prohibit a sponsor from soliciting and accepting voluntary contributions from the community at large to meet its local support obligations under the grant or from entering into agreements with

## § 2553.92

parties other than beneficiaries to support additional volunteers beyond those supported by CNCS.

(3) A RSVP volunteer station may contribute to the financial support of the RSVP Program. However, this support shall not be a required precondition for a potential station to obtain RSVP volunteers.

(4) If a volunteer station agrees to provide funds to support additional volunteers or pay for other volunteer support costs, the agreement shall be stated in a written Memorandum of Understanding. The sponsor shall withdraw services if the station's inability to provide monetary or in-kind support to the project under the Memorandum of Understanding diminishes or jeopardizes the project's financial capabilities to fulfill its obligations.

(5) Under no circumstances shall a RSVP volunteer receive a fee for service from service recipients, their legal guardian, members of their family, or friends.

(d) *Labor and anti-labor activity.* The sponsor shall not use grant funds directly or indirectly to finance labor or anti-labor organization or related activity.

(e) *Fair labor standards.* A sponsor that employs laborers and mechanics for construction, alteration, or repair of facilities shall 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.

(f) *Nondiscrimination.* A sponsor or sponsor employee shall not discriminate against a RSVP volunteer on the basis of race, color, national origin, sex, age, religion, or political affiliation, or on the basis of disability, if the volunteer with a disability is qualified to serve.

(g) *Religious activities.* (1) An RSVP volunteer or a member of the project staff funded by CNCS shall not give religious instruction, conduct worship services, or engage in any form of proselytization as part of his/her duties.

(2) A sponsor or volunteer station 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

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CNCS funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

(h) *Nepotism.* Persons selected for project staff positions shall not be related by blood or marriage to other project staff, sponsor staff or officers, or members of the sponsor Board of Directors, unless there is written concurrence from the Advisory Council or community group established by the sponsor under subpart B of this part, and with notification to CNCS.

[64 FR 14135, Mar. 24, 1999, as amended at 69 FR 60095, Oct. 7, 2004; 83 FR 64657, Dec. 17, 2018]

### § 2553.92 What legal coverage does CNCS make available to RSVP volunteers?

It is within CNCS' discretion to determine if Counsel is employed and counsel fees, court costs, bail and other expenses incidental to the defense of an RSVP volunteer are paid in a criminal, civil or administrative proceeding, when such a proceeding arises directly out of performance of the volunteer's activities. The circumstances under which CNCS may pay such expenses are specified in 45 CFR part 1220.

[83 FR 64657, Dec. 17, 2018]

## Subpart J—Performance Measurement

SOURCE: 76 FR 20247, Apr. 12, 2011, unless otherwise noted.

### § 2553.101 What is the purpose of performance measurement?

The purpose of performance measurement is to strengthen the RSVP project and foster continuous improvement. Performance measures are used to assess how an applicant for a grant approaches the design of volunteer activities and how those activities impact community needs.

[83 FR 64657, Dec. 17, 2018]

**§ 2553.102 What performance measurement information must be part of an application for funding under RSVP?**

An application to CNCS for funding under RSVP must contain:

- (a) In a year one renewal application:
  - (1) Performance measures.
  - (2) Estimated performance data for the project years covered by the application.
- (b) In a year two or three continuation application:
  - (1) Performance measures.
  - (2) Estimated performance data for the project years covered by the application.
  - (3) Actual performance data, where available, for the preceding completed project year.

[83 FR 64658, Dec. 17, 2018]

**§ 2553.103 Who develops the performance measures?**

(a) CNCS may establish performance measures that will apply to RSVP projects, which sponsors will be responsible for meeting.

(b) An applicant is responsible for choosing its own project specific performance measures.

[83 FR 64658, Dec. 17, 2018]

**§ 2553.104 What performance measures must be submitted to CNCS and how are these submitted?**

(a) An applicant for CNCS funds is required to submit any uniform performance measure CNCS may establish for all applicants. Requirements, including types of performance measures, will be communicated in the notice of funding and other related materials.

(b) CNCS may specify additional requirements related to performance measures on an annual basis in program guidance and related materials.

(c) Applicants for CNCS funds will submit performance measures through the grant application. CNCS will provide standard forms.

[83 FR 64658, Dec. 17, 2018]

**§ 2553.105 How are performance measures approved and documented?**

(a) CNCS reviews and approves performance measures for all applicants that apply for funding.

(b) An applicant must follow CNCS provided guidance and formats when submitting performance measures.

(c) Final performance measures, as negotiated between the applicant and CNCS, will be documented in the approved grant application.

[83 FR 64658, Dec. 17, 2018]

**§ 2553.106 How does a sponsor report performance measures to CNCS?**

CNCS will set specific reporting requirements, including frequency and deadlines, concerning performance measures established in the grant award. A sponsor is required to report on the actual results that occurred when implementing the grant and to regularly measure the project's performance.

[83 FR 64658, Dec. 17, 2018]

**§ 2553.107 What must a sponsor do if it cannot meet its performance measures?**

When a sponsor finds it is not on track to meet its performance measures, the sponsor must develop a plan to get back on track or submit a request to CNCS to amend its performance measures. CNCS may limit when amendments to performance measure can be submitted, as well as limit the types of changes a sponsor can make to performance measures. The request must include all of the following:

- (a) Why the project is not on track to meet its performance requirements;
- (b) How the project has been tracking performance measures;
- (c) Evidence of corrective steps taken;
- (d) Any new proposed performance measures; and
- (e) A plan to ensure that the project will meet the new proposed measure(s).

[76 FR 20247, Apr. 12, 2011, as amended at 83 FR 64658, Dec. 17, 2018]

**§ 2553.108 What happens if a sponsor fails to meet the target performance measures included in the approved grant application?**

If a sponsor fails to meet a target performance measure established in the approved grant application, CNCS may take one or more of the following actions:

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(a) Reduce the amount, suspend, or deny refunding of the grant, in accordance with the provisions of § 2553.31;

(b) Terminate the grant, in accordance with 45 CFR part 1206.

[83 FR 64658, Dec. 17, 2018]

**PART 2554—PROGRAM FRAUD  
CIVIL REMEDIES ACT REGULATIONS**

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**AUTHORITY:** Pub. L. 99–509, Secs. 6101–6104, 100 Stat. 1874 (31 U.S.C. 3801–3812); 42 U.S.C. 12651c–12651d.

**SOURCE:** 72 FR 61912, Oct. 20, 2006, unless otherwise noted.

**OVERVIEW AND DEFINITIONS**

**§ 2554.1 Overview of regulations.**

(a) *Statutory basis.* This part implements the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801–3812 (“the Act”). The Act provides the Corporation and other federal agencies with an administrative remedy to impose civil penalties and assessments against persons making false claims and statements. The Act also provides due process protections to all persons who are subject to administrative proceedings under this part.

(b) *Possible remedies for program fraud.* In addition to any other penalties that may be prescribed by law, a person who submits, or causes to be submitted, a false claim or a false statement to the Corporation is subject to a civil penalty of not more than \$13,508 for each statement or claim, regardless of whether property, services, or money is actually delivered or paid by the Corporation. If the Corporation has made any payment, transferred property, or provided services in reliance on a false claim, the person submitting it also is subject to an assessment of not more than twice the amount of the false claim. This assessment is in lieu of damages sustained by the Corporation because of the false claim.

[72 FR 61912, Oct. 20, 2006, as amended at 81 FR 40820, June 23, 2016; 82 FR 1607, Jan. 6, 2017; 83 FR 2075, Jan. 16, 2018; 83 FR 67097, Dec. 28, 2018; 84 FR 70903, Dec. 26, 2019; 86 FR 13823, Mar. 11, 2021; 87 FR 2729, Jan. 19, 2022; 88 FR 3930, Jan. 23, 2023]

#### **§ 2554.2 What kind of conduct will result in program fraud enforcement?**

(a) Any person who makes, or causes to be made, a false, fictitious, or fraudulent claim or written statement to the Corporation is subject to program fraud enforcement. A “person” means any individual, partnership, corporation, association, or other legal entity.

(b) If more than one person makes a false claim or statement, each person is liable for a civil penalty. If more than one person makes a false claim which has induced the Corporation to make payment, an assessment is imposed against each person. The liability of each such person to pay the assessment is joint and several, that is, each is responsible for the entire amount.

(c) No proof of specific intent to defraud is required to establish liability under this part.

#### **§ 2554.3 What is a claim?**

(a) Claim means any request, demand, or submission:

(1) Made to the Corporation for property, services, or money;

(2) Made to a recipient of property, services, or money from the Corporation or to a party to a contract with the Corporation for property or serv-

ices, or for the payment of money. This provision applies only when the claim is related to property, services or money from the Corporation or to a contract with the Corporation; or

(3) Made to the Corporation which decreases an obligation to pay or account for property, services, or money.

(b) A claim can relate to grants, loans, insurance, or other benefits, and includes the Corporation guaranteed loans made by participating lenders. A claim is made when it is received by the Corporation, an agent, fiscal intermediary, or other entity acting for the Corporation, or when it is received by the recipient of property, services, or money, or the party to a contract.

(c) Each voucher, invoice, claim form, or individual request or demand for property, services, or money constitutes a separate claim.

#### **§ 2554.4 What is a statement?**

A “statement” means any written representation, certification, affirmation, document, record, or accounting or bookkeeping entry made with respect to a claim or with respect to a contract, bid or proposal for a contract, grant, loan or other benefit from the Corporation. “From the Corporation” means that the Corporation provides some portion of the money or property in connection with the contract, bid, grant, loan, or benefit, or is potentially liable to another party for some portion of the money or property under such contract, bid, grant, loan, or benefit. A statement is made, presented, or submitted to the Corporation when it is received by the Corporation or an agent, fiscal intermediary, or other entity acting for the Corporation.

#### **§ 2554.5 What is a false claim or statement?**

(a) A claim submitted to the Corporation is a “false” claim if the person making the claim, or causing the claim to be made, knows or has reason to know that the claim:

(1) Is false, fictitious or fraudulent;

(2) Includes or is supported by a written statement which asserts or contains a material fact which is false, fictitious, or fraudulent;

## **§ 2554.6**

(3) Includes or is supported by a written statement which is false, fictitious or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement; or

(4) Is for payment for the provision of property or services which the person has not provided as claimed.

(b) A statement submitted to the Corporation is a false statement if the person making the statement, or causing the statement to be made, knows or has reason to know that the statement:

(1) Asserts a material fact which is false, fictitious, or fraudulent; or

(2) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in the statement. In addition, the statement must contain or be accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

### **§ 2554.6 What does the phrase “know or have reason to know” mean?**

A person knows or has reason to know (that a claim or statement is false) if the person:

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent; or

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

#### **PROCEDURES LEADING TO ISSUANCE OF A COMPLAINT**

### **§ 2554.7 Who investigates program fraud?**

The Inspector General, or his designee, is the investigating official responsible for investigating allegations that a false claim or statement has been made. In this regard, the Inspector General has authority under the Program Fraud Civil Remedies Act and the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended, to issue administrative subpoenas for the production of records and documents.

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### **§ 2554.8 What happens if program fraud is suspected?**

(a) If the investigating official concludes that an action under this Part is warranted, the investigating official submits a report containing the findings and conclusions of the investigation to a reviewing official. The reviewing official is the General Counsel or his or her designee. If the reviewing official determines that the report provides adequate evidence that a person submitted a false claim or statement, the reviewing official transmits to the Attorney General written notice of an intention to refer the matter for adjudication, with a request for approval of such referral. This notice will include the reviewing official’s statements concerning:

(1) The reasons for the referral;

(2) The claims or statements upon which liability would be based;

(3) The evidence that supports liability;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in the false claim or statement;

(5) Any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

(b) If at any time, the Attorney General or his or her designee requests in writing that this administrative process be stayed, the authority head, as identified in § 2554.9 of this Part, must stay the process immediately. The authority head may order the process resumed only upon receipt of the written authorization of the Attorney General.

### **§ 2554.9 Who is the Corporation’s authority head?**

The Corporation’s “authority head” is the Chief Executive Officer or his or her designee. For purposes of this Part, the Corporation’s Chief Financial Officer is designated to act on behalf of the Chief Executive Officer.

**§ 2554.10 When will the Corporation issue a complaint?**

The Corporation will issue a complaint:

(a) If the Attorney General (or designee) approves the referral of the allegations for adjudication; and

(b) In a case of submission of false claims, if the amount of money or the value of property or services demanded or requested in a false claim, or a group of related claims submitted at the same time, does not exceed \$150,000. "A group of related claims submitted at the same time" includes only those claims arising from the same transaction (such as a grant, loan, application, or contract) which are submitted together as part of a single request, demand, or submission.

**§ 2554.11 What is contained in a complaint?**

(a) A complaint is a written statement giving notice to the person alleged to be liable under 31 U.S.C. 3802 of the specific allegations being referred for adjudication and of the person's right to request a hearing with respect to those allegations. The person alleged to have made false statements or to have submitted false claims to the Corporation is referred to as the "defendant."

(b) The reviewing official may join in a single complaint, false claims or statements that are unrelated, or that were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

(c) The complaint will state that the Corporation seeks to impose civil penalties, assessments, or both, against each defendant and will include:

(1) The allegations of liability against each defendant, including the statutory basis for liability, identification of the claims or statements involved, and the reasons liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which each defendant may be held liable;

(3) A statement that each defendant may request a hearing by filing an an-

swer and may be represented by a representative;

(4) Instructions for filing such an answer;

(5) A warning that failure to file an answer within 30 days of service of the complaint will result in imposition of the maximum amount of penalties and assessments.

(d) The reviewing official must serve any complaint on the defendant and, if a hearing is requested by the defendant, provide a copy to the Administrative Law Judge (ALJ) assigned to the case.

**§ 2554.12 How will the complaint be served?**

(a) The complaint must be served on individual defendants directly, a partnership through a general partner, and on corporations or on unincorporated associations through an executive officer or a director, except that service also may be made on any person authorized by appointment or by law to receive process for the defendant.

(b) The complaint may be served either by:

(1) Registered or certified mail (return receipt requested) addressed to the defendant at his or her residence, usual dwelling place, principal office or place of business; or by

(2) Personal delivery by anyone 18 years of age or older.

(c) The date of service is the date of personal delivery or, in the case of service by registered or certified mail, the date of postmark.

(d) Proof of service—

(1) When service is made by registered or certified mail, the return postal receipt will serve as proof of service.

(2) When service is made by personal delivery, an affidavit of the individual serving the complaint, or written acknowledgment of receipt by the defendant or a representative, will serve as proof of service.

(e) When served with the complaint, the defendant also should be served with a copy of this Part 2554 and 31 U.S.C. 3801-3812.

## § 2554.13

### PROCEDURES FOLLOWING SERVICE OF A COMPLAINT

#### § 2554.13 How does a defendant respond to the complaint?

(a) A defendant may file an answer with the reviewing official within 30 days of service of the complaint. An answer will be considered a request for an oral hearing.

(b) In the answer, a defendant—

(1) Must admit or deny each of the allegations of liability contained in the complaint (a failure to deny an allegation is considered an admission);

(2) Must state any defense on which the defendant intends to rely;

(3) May state any reasons why he or she believes the penalties, assessments, or both should be less than the statutory maximum; and

(4) Must state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer which meets the requirements set forth in paragraph (b) of this section, the defendant may file with the reviewing official a general answer denying liability, requesting a hearing, and requesting an extension of time in which to file a complete answer. A general answer must be filed within 30 days of service of the complaint.

(d) If the defendant initially files a general answer requesting an extension of time, the reviewing official must promptly file with the ALJ the complaint, the general answer, and the request for an extension of time.

(e) For good cause shown, the ALJ may grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section. Such answer must be filed with the ALJ and a copy must be served on the reviewing official.

#### § 2554.14 What happens if a defendant fails to file an answer?

(a) If a defendant does not file any answer within 30 days after service of the complaint, the reviewing official will refer the complaint to the ALJ.

(b) Once the complaint is referred, the ALJ will promptly serve on the de-

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fendant a notice that an initial decision will be issued.

(c) The ALJ will assume the facts alleged in the complaint to be true and, if such facts establish liability under the statute, the ALJ will issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, when a defendant fails to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed in the initial decision.

(e) The initial decision becomes final 30 days after it is issued.

(f) If, at any time before an initial decision becomes final, a defendant files a motion with the ALJ asking that the case be reopened and describing the extraordinary circumstances that prevented the defendant from filing an answer, the initial decision will be stayed until the ALJ makes a decision on the motion. The reviewing official may respond to the motion.

(g) If, in his motion to reopen, a defendant demonstrates extraordinary circumstances excusing his failure to file a timely answer, the ALJ will withdraw the initial decision, and grant the defendant an opportunity to answer the complaint.

(h) A decision by the ALJ to deny a defendant's motion to reopen a case is not subject to review or reconsideration.

(i) The defendant may appeal to the authority head the decision denying a motion to reopen by filing a notice of appeal with the authority head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the authority head decides the issue.

(j) If the defendant files a timely notice of appeal with the authority head, the ALJ shall forward the record of the proceeding to the authority head.

(k) The authority head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(l) If the authority head decides that extraordinary circumstances excused the defendant's failure to file a timely



answer, the authority head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(m) If the authority head decides that the defendant's failure to file a timely answer is not excused, the authority head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the authority head issues such decision.

**§ 2554.15 What happens once an answer is filed?**

(a) When the reviewing official receives an answer, he must file concurrently, the complaint and the answer with the ALJ, along with a designation of a Corporation representative.

(b) When the ALJ receives the complaint and the answer, the ALJ will promptly serve a notice of oral hearing upon the defendant and the representative for the Corporation, in the same manner as the complaint, service of which is described in § 2554.12. The notice of oral hearing must be served within six years of the date on which the claim or statement is made.

(c) The notice must include:

- (1) The tentative time, place and nature of the hearing;
- (2) The legal authority and jurisdiction under which the hearing is to be held;
- (3) The matters of fact and law to be asserted;
- (4) A description of the procedures for the conduct of the hearing;
- (5) The name, address, and telephone number of the defendant's representative and the representative for the Corporation; and
- (6) Such other matters as the ALJ deems appropriate.

(d) The six-year statute of limitation may be extended by agreement of the parties.

**HEARING PROVISIONS**

**§ 2554.16 What kind of hearing is contemplated?**

The hearing is a formal proceeding conducted by the ALJ during which a defendant will have the opportunity to cross-examine witnesses, present testimony, and dispute liability.

**§ 2554.17 At the hearing, what rights do the parties have?**

(a) The parties to the hearing shall be the defendant and the Corporation. Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff in an action under the False Claims Act may participate in the hearing to the extent authorized by the provisions of that Act.

(b) Each party has the right to:

- (1) Be represented by a representative;
- (2) Request a pre-hearing conference and participate in any conference held by the ALJ;
- (3) Conduct discovery;
- (4) Agree to stipulations of fact or law which will be made a part of the record;
- (5) Present evidence relevant to the issues at the hearing;
- (6) Present and cross-examine witnesses;
- (7) Present arguments at the hearing as permitted by the ALJ; and
- (8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing, as permitted by the ALJ.

**§ 2554.18 What is the role of the ALJ?**

An ALJ retained by the Corporation serves as the presiding officer at all hearings.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

- (1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;
- (2) Continue or recess the hearing in whole or in part for a reasonable period of time;
- (3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- (4) Administer oaths and affirmations;
- (5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;
- (6) Rule on motions and other procedural matters;
- (7) Regulate the scope and timing of discovery;

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(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this part.

(c) The ALJ does not have the authority to find Federal statutes or regulations invalid.

### **§ 2554.19 Can the reviewing official or ALJ be disqualified?**

(a) A reviewing official or an ALJ may disqualify himself or herself at any time.

(b) Upon motion of any party, the reviewing official or ALJ may be disqualified as follows:

(1) The motion must be supported by an affidavit containing specific facts establishing that personal bias or other reason for disqualification exists, including the time and circumstances of the discovery of such facts;

(2) The motion must be filed promptly after discovery of the grounds for disqualification, or the objection will be deemed waived; and

(3) The party, or representative of record, must certify in writing that the motion is made in good faith.

(c) Once a motion has been filed to disqualify the reviewing official, the ALJ will halt the proceedings until resolving the matter of disqualification. If the ALJ determines that the reviewing official is disqualified, the ALJ will dismiss the complaint without prejudice. If the ALJ disqualifies himself or herself, the case will be promptly reassigned to another ALJ.

### **§ 2554.20 How are issues brought to the attention of the ALJ?**

(a) All applications to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the

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authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

### **§ 2554.21 How are papers served?**

(a) *Form.* (1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than those required to be served as prescribed in § 2554.12 shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such

representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

#### **§ 2554.22 How is time computed?**

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

#### **§ 2554.23 What happens during a prehearing conference?**

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

- (1) Simplification of the issues;
- (2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
- (3) Stipulations and admissions of fact or as to the contents and authenticity of documents;
- (4) Whether the parties can agree to submission of the case on a stipulated record;
- (5) Whether a party chooses to waive appearances at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;
- (6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

#### **§ 2554.24 What rights are there to review documents?**

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 2554.8 are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 2554.8 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 2554.13.

#### **§ 2554.25 What type of discovery is authorized and how is it conducted?**

(a) The following types of discovery are authorized:

- (1) Requests for production of documents for inspection and copying;

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(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 2554.27 and 2554.28, the term “documents” includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 2554.30.

(3) The ALJ may grant a motion for discovery only if he or she finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The ALJ may grant discovery subject to a protective order under § 2554.30.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 2554.12.

(3) The deponent may file with the ALJ a motion to quash the subpoena or

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a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

#### § 2554.26 Are there limits on disclosure of documents or discovery?

(a) Upon written request to the reviewing official, the defendant may review all non-privileged, relevant and material documents, records and other material related to the allegations contained in the complaint. After paying the Corporation a reasonable fee for duplication, the defendant may obtain a copy of the records described.

(b) Upon written request to the reviewing official, the defendant may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint. If the document would otherwise be privileged, only the portion of the document containing exculpatory information must be disclosed. As used in this section, the term “information” does not include legal materials such as statutes or case law obtained through legal research.

(c) The notice sent to the Attorney General from the reviewing official is not discoverable under any circumstances.

(d) Other discovery is available only as ordered by the ALJ and includes only those methods of discovery allowed by § 2554.25.

#### § 2554.27 Are witness lists exchanged before the hearing?

(a) At least 15 days before the hearing or at such other time as ordered by the ALJ, the parties must exchange witness lists and copies of proposed hearing exhibits, including copies of any written statements or transcripts of deposition testimony that the party intends to offer in lieu of live testimony.

(b) If a party objects, the ALJ will not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit

not provided to an opposing party unless the ALJ finds good cause for the omission or concludes that there is no prejudice to the objecting party.

(c) Unless a party objects within the time set by the ALJ, documents exchanged in accordance with this section are deemed to be authentic for the purpose of admissibility at the hearing.

**§ 2554.28 Can witnesses be subpoenaed?**

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefore not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 2554.12. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

**§ 2554.29 Who pays the costs for a subpoena?**

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that

when a subpoena is issued on behalf of the authority, a check for witness fees and mileage need not accompany the subpoena.

**§ 2554.30 Are protective orders available?**

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

**§ 2554.31 Where is the hearing held?**

The ALJ will hold the hearing in any judicial district of the United States:

(a) In which the defendant resides or transacts business; or

(b) In which the claim or statement on which liability is based was made,

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presented or submitted to the Corporation; or

(c) As agreed upon by the defendant and the ALJ.

#### **§ 2554.32 How will the hearing be conducted and who has the burden of proof?**

(a) The ALJ conducts a hearing in order to determine whether a defendant is liable for a civil penalty, assessment, or both and, if so, the appropriate amount of the civil penalty and/or assessment. The hearing will be recorded and transcribed, and the transcript of testimony, exhibits admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for a decision by the ALJ.

(b) The Corporation must prove a defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) A defendant must prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing will be open to the public unless otherwise ordered by the ALJ for good cause shown.

#### **§ 2554.33 How is evidence presented at the hearing?**

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

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(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

#### **§ 2554.34 How is witness testimony presented?**

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 2554.27(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrogation and presentation effective for the ascertainment of the truth;

(2) Avoid needless consumption of time; and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the ALJ, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party appearing for the entity prose or designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

**§ 2554.35 Will the hearing proceedings be recorded?**

The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication. The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the authority head. The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 2554.30.

**§ 2554.36 Can a party informally discuss the case with the ALJ?**

No. Such discussions are forbidden as "ex parte communications" with the ALJ. No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate.

This does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 2554.37 Are there sanctions for misconduct?**

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

**§ 2554.38 Are post-hearing briefs required?**

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

DECISIONS AND APPEALS

**§ 2554.39 How is the case decided?**

(a) The ALJ will issue an initial decision based only on the record. It will contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

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(b) The ALJ will serve the initial decision on all parties within 90 days after close of the hearing or expiration of any allowed time for submission of post-hearing briefs. If the ALJ fails to meet this deadline, he or she shall promptly notify the parties of the reason for the delay and set a new deadline.

(c) The findings of fact must include a finding on each of the following issues:

(1) Whether any one or more of the claims or statements identified in the complaint violate this part; and

(2) If the defendant is liable for penalties or assessments, the appropriate amount of any such penalties or assessments, considering any mitigating or aggravating factors.

(d) The initial decision will include a description of the right of a defendant found liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the authority head.

**§ 2554.40 How are penalty and assessment amounts determined?**

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the authority head, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence that ALJ and the authority head in determining the amount of penalties and assessments to impose with respect to the misconduct (i.e., the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

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(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the authority head from considering any other factors that in any given case



may mitigate or aggravate the offense for which penalties and assessments are imposed.

**§ 2554.41 Can a party request reconsideration of the initial decision?**

(a) Any party may file a motion for reconsideration of the initial decision with the ALJ within 20 days of receipt of the initial decision. If the initial decision was served by mail, there is a rebuttable presumption that the initial decision was received by the party 5 days from the date of mailing.

(b) A motion for reconsideration must be accompanied by a supporting brief and must describe specifically each allegedly erroneous decision.

(c) Any response to a motion for reconsideration will only be allowed if it is requested by the ALJ.

(d) The ALJ will dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(e) If the ALJ issues a revised initial decision upon motion of a party, that party may not file another motion for reconsideration.

**§ 2554.42 When does the initial decision of the ALJ become final?**

(a) The initial decision of the ALJ becomes the final decision of the Corporation, and shall be binding on all parties 30 days after it is issued, unless any party timely files a motion for reconsideration or any defendant adjudged to have submitted a false claim or statement timely appeals to the Corporation's authority head, as set forth in § 2554.43.

(b) If the ALJ disposes of a motion for reconsideration by denying it or by issuing a revised initial decision, the ALJ's order on the motion for reconsideration becomes the final decision of the Corporation 30 days after the order is issued, unless a defendant adjudged to have submitted a false claim or statement timely appeals to the authority head, within 30 days of the ALJ's order, as set forth in § 2554.43.

**§ 2554.43 What are the procedures for appealing the ALJ decision?**

(a) Any defendant who submits a timely answer and is found liable for a civil penalty or assessment in an initial decision may appeal the decision.

(b) The defendant may file a notice of appeal with the authority head within 30 days following issuance of the initial decision, serving a copy of the notice of appeal on all parties and the ALJ. The authority head may extend this deadline for up to an additional 30 days if an extension request is filed within the initial 30-day period and shows good cause.

(c) The defendant's appeal will not be considered until all timely motions for reconsideration have been resolved.

(d) If a timely motion for reconsideration is denied, a notice of appeal may be filed within 30 days following such denial or issuance of a revised initial decision, whichever applies.

(e) A notice of appeal must be supported by a written brief specifying why the initial decision should be reversed or modified.

(f) The Corporation's representative may file a brief in opposition to the notice of appeal within 30 days of receiving the defendant's notice of appeal and supporting brief.

(g) If a defendant timely files a notice of appeal, and the time for filing motions for reconsideration has expired, the ALJ will forward the record of the proceeding to the authority head.

**§ 2554.44 What happens if an initial decision is appealed?**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the authority head.

(b) No administrative stay is available following a final decision of the authority head.

**§ 2554.45 Are there any limitations on the right to appeal to the authority head?**

(a) A defendant has no right to appear personally, or through a representative, before the authority head.

(b) There is no right to appeal any interlocutory ruling.

(c) The authority head will not consider any objection or evidence that was not raised before the ALJ unless the defendant demonstrates that the failure to object was caused by extraordinary circumstances. If the appealing

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defendant demonstrates to the satisfaction of the authority head that extraordinary circumstances prevented the presentation of evidence at the hearing, and that the additional evidence is material, the authority head may remand the matter to the ALJ for consideration of the additional evidence.

#### **§ 2554.46 How does the authority head dispose of an appeal?**

(a) The authority head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment imposed by the ALJ in the initial decision or reconsideration decision.

(b) The authority head will promptly serve each party to the appeal and the ALJ with a copy of his or her decision. This decision must contain a statement describing the right of any person, against whom a penalty or assessment has been made, to seek judicial review.

#### **§ 2554.47 What judicial review is available?**

31 U.S.C. 3805 authorizes judicial review by the appropriate United States District Court of any final Corporation decision imposing penalties or assessments, and specifies the procedures for such review. To obtain judicial review, a defendant must file a petition with the appropriate court in a timely manner.

#### **§ 2554.48 Can the administrative complaint be settled voluntarily?**

(a) Parties may make offers of compromise or settlement at any time. Any compromise or settlement must be in writing.

(b) The reviewing official has the exclusive authority to compromise or settle the case from the date on which the reviewing official is permitted to issue a complaint until the ALJ issues an initial decision.

(c) The authority head has exclusive authority to compromise or settle the case from the date of the ALJ's initial decision until initiation of any judicial review or any action to collect the penalties and assessments.

(d) The Attorney General has exclusive authority to compromise or settle the case while any judicial review or

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any action to recover penalties and assessments is pending.

(e) The investigating official may recommend settlement terms to the reviewing official, the authority head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the authority head or the Attorney General, as appropriate.

#### **§ 2554.49 How are civil penalties and assessments collected?**

Section 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this Part and specify the procedures for such actions.

#### **§ 2554.50 What happens to collections?**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

#### **§ 2554.51 What if the investigation indicates criminal misconduct?**

(a) Any investigating official may:

(1) Refer allegations of criminal misconduct directly to the Department of Justice for prosecution or for suit under the False Claims Act or other civil proceeding;

(2) Defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution; or

(3) Issue subpoenas under other statutory authority.

(b) Nothing in this part limits the requirement that the Corporation employees report suspected violations of criminal law to the Corporation's Office of Inspector General or to the Attorney General.

#### **§ 2554.52 How does the Corporation protect the rights of defendants?**

These procedures separate the functions of the investigating official, reviewing official, and the ALJ, each of whom report to a separate organizational authority in accordance with 31 U.S.C. 3801. Except for purposes of settlement, or as a witness or a representative in public proceedings, no investigating official, reviewing official, or Corporation employee or agent who

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helps investigate, prepare, or present a case may (in such case, or a factually related case) participate in the initial decision or the review of the initial decision by the authority head. This separation of functions and organization is designed to assure the independence and impartiality of each government official during every stage of the proceeding. The representative for the Corporation may be employed in the offices of either the investigating official or the reviewing official.

### **PART 2555—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

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- 2555.500 Employment.
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- 2555.550 Sex as a bona fide occupational qualification.

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- 2555.600 Notice of covered programs.
- 2555.605 Enforcement procedures.

AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688.

SOURCE: 65 FR 52865, 52893, Aug. 30, 2000, unless otherwise noted.

#### **Subpart A—Introduction**

##### **§ 2555.100 Purpose and effective date.**

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or

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activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

### § 2555.105 Definitions.

As used in these Title IX regulations, the term:

*Administratively separate unit* means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

*Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

*Applicant* means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

*Designated agency official* means “Director, Equal Opportunity”.

*Educational institution* means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

*Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

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(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

*Institution of graduate higher education* means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

*Institution of professional education* means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

*Institution of undergraduate higher education* means:

(1) An institution offering at least two but less than four years of college-level study beyond the high school

level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

*Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

*Recipient* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

*Student* means a person who has gained admission.

*Title IX* means Title IX of the Education Amendments of 1972, Public Law 92-318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681-1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93-568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94-482, 90 Stat. 2234, and by Section 3 of Public Law 100-259, 102 Stat. 28, 28-29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

*Title IX regulations* means the provisions set forth at §§ 2555.100 through 2555.605.

*Transition plan* means a plan subject to the approval of the Secretary of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only

students of one sex to being one that admits students of both sexes without discrimination.

[65 FR 52865, 52893, Aug. 30, 2000, as amended at 65 FR 52894, Aug. 30, 2000]

#### **§ 2555.110 Remedial and affirmative action and self-evaluation.**

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964-1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966-1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966-1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of September 29, 2000:

(1) Evaluate, in terms of the requirements of these Title IX regulations, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of these Title IX regulations; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

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(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

### § 2555.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 2555.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

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(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

### § 2555.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 2555.205 through 2555.235(a).

### § 2555.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by these Title IX regulations are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b-2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with these Title IX regulations is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

**§ 2555.130 Effect of employment opportunities.**

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

**§ 2555.135 Designation of responsible employee and adoption of grievance procedures.**

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any ac-

tion that would be prohibited by these Title IX regulations.

**§ 2555.140 Dissemination of policy.**

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 2555.300 through 2555.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 2555.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of September 29, 2000 or of the date these Title IX regulations first apply to such recipient, whichever comes later, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement,

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bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by these Title IX regulations.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of non-discrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

### Subpart B—Coverage

#### § 2555.200 Application.

Except as provided in §§ 2555.205 through 2555.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

#### § 2555.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* These Title IX regulations do not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of these Title IX regulations would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of these Title IX regulations that conflict with a specific tenet of the religious organization.

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#### § 2555.210 Military and merchant marine educational institutions.

These Title IX regulations do not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

#### § 2555.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* These Title IX regulations do not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* These Title IX regulations do not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* These Title IX regulations do not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

#### § 2555.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by these Title IX regulations.

(b) *Administratively separate units.* For the purposes only of this section, §§ 2555.225 and 2555.230, and §§ 2555.300 through 2555.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ 2555.300 through 2555.310.* Except as provided in paragraphs (d) and (e) of this section, §§ 2555.300 through 2555.310 apply to each recipient. A recipient to which §§ 2555.300 through 2555.310 apply shall not discriminate on the basis of sex in



admission or recruitment in violation of §§ 2555.300 through 2555.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 2555.300 through 2555.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* §§ 2555.300 through 2555.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

**§ 2555.225 Educational institutions eligible to submit transition plans.**

(a) *Application.* This section applies to each educational institution to which §§ 2555.300 through 2555.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 2555.300 through 2555.310.

**§ 2555.230 Transition plans.**

(a) *Submission of plans.* An institution to which § 2555.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the per-

son to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 2555.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§ 2555.300 through 2555.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 2555.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

**§ 2555.235 Statutory amendments.**

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

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(b) These Title IX regulations shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other non-discrimination provisions of Federal law.

(c) *Program or activity or program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

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(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(1) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(2) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a “program or activity” subject to these Title IX regulations if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in these Title IX regulations shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

### Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

#### § 2555.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 2555.300 through 2555.310 apply, except as provided in §§ 2555.225 and 2555.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 2555.300 through 2555.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 2555.300 through 2555.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to § 2555.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is “Miss” or “Mrs.” A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

#### § 2555.305 Preference in admission.

A recipient to which §§ 2555.300 through 2555.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§ 2555.300 through 2555.310.

#### § 2555.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§ 2555.300 through 2555.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 2555.110(a), and

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may choose to undertake such efforts as affirmative action pursuant to § 2555.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§ 2555.300 through 2555.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§ 2555.300 through 2555.310.

### Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

#### § 2555.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in these Title IX regulations, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 2555.400 through 2555.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§ 2555.300 through 2555.310 do not apply, or an entity, not a recipient, to which §§ 2555.300 through 2555.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§ 2555.400 through 2555.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or

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applicant, including eligibility for in-state fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that

these Title IX regulations would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

#### § 2555.405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

#### § 2555.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall

be comparable to such facilities provided for students of the other sex.

#### § 2555.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

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**§ 2555.420 Access to schools operated by LEAs.**

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

**§ 2555.425 Counseling and use of appraisal and counseling materials.**

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of

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sex in counseling or appraisal materials or by counselors.

**§ 2555.430 Financial assistance.**

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; *Provided*, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in inter-scholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 2555.450.

**§ 2555.435 Employment assistance to students.**

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 2555.500 through 2555.550.

**§ 2555.440 Health and insurance benefits and services.**

Subject to § 2555.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 2555.500 through 2555.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that

provides full coverage health service shall provide gynecological care.

**§ 2555.445 Marital or parental status.**

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.*

(1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extra-curricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to § 2555.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification

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for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

### § 2555.450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of these Title IX regulations, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

- (i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (ii) The provision of equipment and supplies;
- (iii) Scheduling of games and practice time;
- (iv) Travel and per diem allowance;

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(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from September 29, 2000. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from September 29, 2000.

### § 2555.455 Textbooks and curricular material.

Nothing in these Title IX regulations shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

## Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

### § 2555.500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether



full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 2555.500 through 2555.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of these Title IX regulations.

(b) *Application.* The provisions of §§ 2555.500 through 2555.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

#### § 2555.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

#### § 2555.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 2555.500 through 2555.550.

#### § 2555.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

## § 2555.520

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

## § 2555.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 2555.550.

## § 2555.525 Fringe benefits.

(a) “*Fringe benefits*” defined. For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 2555.515.

(b) *Prohibitions*. A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee’s sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

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## § 2555.530 Marital or parental status.

(a) *General*. A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee’s or applicant’s family unit.

(b) *Pregnancy*. A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability*. Subject to § 2555.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave*. In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

## § 2555.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements*. The obligation to comply with §§ 2555.500

through 2555.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

#### **§ 2555.540 Advertising.**

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

#### **§ 2555.545 Pre-employment inquiries.**

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss” or “Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

#### **§ 2555.550 Sex as a bona fide occupational qualification.**

A recipient may take action otherwise prohibited by §§2555.500 through 2555.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet

facility used only by members of one sex.

### **Subpart F—Procedures**

#### **§ 2555.600 Notice of covered programs.**

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

#### **§ 2555.605 Enforcement procedures.**

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 45 CFR 1203.6 through 1203.12.

[65 FR 52894, Aug. 30, 2000]

## **PART 2556—VOLUNTEERS IN SERVICE TO AMERICA**

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SOURCE: 88 FR 31180, May 16, 2023, unless otherwise noted.

### Subpart A—General Information

#### § 2556.1 What is the purpose of the VISTA program?

(a) The purpose of the VISTA program is to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems throughout the United States and certain U.S. territories. To effect this purpose, the VISTA program encourages and enables individuals from all walks of life to join VISTA to perform, on a full-time basis, meaningful and constructive service to assist in the solution of poverty and poverty-related problems and secure opportunities for

self-advancement of persons afflicted by such problems.

(b) The VISTA program objectives are to:

- (1) Generate private sector resources;
- (2) Encourage volunteer service at the local level;
- (3) Support efforts by local agencies and community organizations to achieve long-term sustainability of projects; and
- (4) Strengthen local agencies and community organizations to carry out the purpose of the VISTA program.

#### § 2556.3 Who should read this part?

This part may be of interest to:

(a) Private nonprofit organizations, public nonprofit organizations, State government agencies, local government agencies, Federal agencies, and Tribal government agencies who are participating in the VISTA program as sponsors, or who are interested in participating in the VISTA program as sponsors.

(b) Individuals 18 and older who are serving as a VISTA, or who are interested in serving as a VISTA.

#### § 2556.5 What definitions apply in this part?

*Act* or *DVSA* means the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113 (42 U.S.C. 4951 *et seq.*).

*Alternative oath* or *affirmation* means a pledge of VISTA service taken by an individual who legally resides within a State, but who is not a citizen or national of the United States, upon that individual's enrollment into the VISTA program.

*AmeriCorps* means the Corporation for National and Community Service, established pursuant to section 191 of the National and Community Service Act of 1990, as amended, 42 U.S.C. 12651, which operates as AmeriCorps.

*Applicant for VISTA service* means an individual who is in the process of completing, or has completed, an application for VISTA service as prescribed by AmeriCorps, but who has been not been approved by AmeriCorps to be a candidate.

*Application for VISTA service* means the materials prescribed by

AmeriCorps to determine an individual's eligibility and suitability for VISTA service.

*Assistance* means VISTAs, leaders, or summer associates. "Assistance" also means technical assistance or training of VISTAs, leaders, summer associates, candidates, sponsors, or supervisors that are provided from funds appropriated by Congress for the purpose of supporting activities under the DVSA. "Assistance" also means grant funds.

*Candidate*, when used in the context of an individual who has applied for VISTA service, means an individual whose application for VISTA service has been approved by AmeriCorps, but who has not taken an oath, alternative oath, or affirmation to serve in the VISTA program. Candidates may include those who were enrolled in the VISTA program at a prior time.

*Cost share* means when an entity, such as a VISTA sponsor, reimburses AmeriCorps part or all of the expenses associated with the operation of a VISTA project, such as the costs for one or more VISTAs, leaders, or summer associates placed in a VISTA project.

*Deputy Regional Administrator* means an AmeriCorps official who reports directly to the Regional Administrator and oversees the day-to-day regional operations to ensure the quality of program design and delivery.

*Education award* or *Segal AmeriCorps Education Award* means an end-of-service monetary benefit from AmeriCorps' National Service Trust that is directed to designated educational institutions and is awarded to certain qualifying VISTAs who successfully complete an established term of VISTA service.

*Enroll, enrolled, or enrollment*, when used in the context of VISTA service, refers to the status of an individual admitted to serve in the VISTA program. The enrollment period commences when the candidate takes the Oath to serve in the VISTA program and ends upon their termination from a term of service in the VISTA program. The enrollment period may begin on a date earlier than the first day of a service assignment of an enrolled VISTA member.

*Full-time*, when used in the context of VISTA service, means service in which

a VISTA, leader, or summer associate remains available for service without regard to regular working hours.

*Leader, a leader, or a VISTA leader* means a VISTA member who is enrolled for full-time VISTA service and who is also subject to the terms of subpart G of this part.

*Living allowance* or *living allowance payment* means a monetary benefit paid for subsistence purposes to a VISTA member during VISTA service.

*Memorandum of Agreement* means a written agreement between AmeriCorps and a sponsor regarding the terms of the sponsor's involvement and responsibilities in the VISTA program.

*Nonpartisan election* means:

(1) An election in which none of the candidates for nomination or election represents a political party for which candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

*Oath* means an avowal to VISTA service, taken in accordance with 5 U.S.C. 3331, by an individual who is a U.S. citizen or national. The taking of the Oath effects an individual's enrollment into the VISTA program.

*On-duty* or *during service time* means when a VISTA is either performing VISTA service or scheduled to do so.

*Portfolio Manager* means an AmeriCorps official who reports to a Senior Portfolio Manager and serves as a technical advisor to current and prospective grantees and sponsors for effective, timely, and compliant administration of grant awards.

*Project* or *VISTA project* means a set of VISTA activities operated and overseen by, and the responsibility of, a sponsor, and assisted under this part to realize the goals of title I of the DVSA.

*Project applicant* or *VISTA project applicant* means an entity that submits an application to AmeriCorps to operate, oversee, and be responsible for a VISTA project.

*Project application* or *VISTA project application* means the application materials prescribed by AmeriCorps to determine an applying entity's eligibility and suitability to operate, oversee, and be responsible for, a VISTA project.

*Project director* or *VISTA project director* means a staff person, of legal age, of the sponsor, who has been assigned by the sponsor the overall responsibility for management of the VISTA project.

*Regional Administrator* means an AmeriCorps official who is the head of a designated region for AmeriCorps and responsible for driving, managing, and overseeing the strategic direction and operations of the Region Office.

*Senior Portfolio Manager* means an AmeriCorps official who reports to a Deputy Regional Administrator and supervises a team of portfolio managers and manages an advanced portfolio of grants and program development.

*Sponsor*, *VISTA sponsor*, or *VISTA project sponsor* means a public agency or private non-profit organization that receives assistance under title I of the DVSA and is responsible for operating and overseeing a VISTA project. A public agency may be a Federal, State, local or Tribal Government.

*State*, when used as a noun, means one of the several States in the United States of America, District of Columbia, Virgin Islands, Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Stipend* or *end-of-service stipend* means an end-of-service lump-sum monetary benefit from AmeriCorps that is awarded to certain qualifying VISTAs who successfully complete an established term of VISTA service.

*Subrecipient* means a public agency or private non-profit organization that enters into an agreement with a VISTA sponsor to receive one or more VISTAs, and to carry out a set of activities, assisted under this part, to realize the goals of title I of the DVSA. A public agency may be a Federal, State, local or Tribal Government.

*Summer associate* means a VISTA member who is enrolled for VISTA service, during a period between May 1 and September 15, and who is also subject to the terms of subpart H of this part. A summer associate must be

available to provide continuous full-time service for a period of at least eight weeks and a maximum of ten weeks.

*Supervisor* or *VISTA Supervisor* means a staff member, of legal age, of the sponsor or a subrecipient, who has been assigned by the sponsor or the subrecipient the responsibility for day-to-day oversight of one or more VISTAs.

*Tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized by the United States or the State in which it resides as eligible for special programs and services provided to Indians because of their status as Indians.

*VISTA Case Manager* means an AmeriCorps official who reports to the VMSU Director and manages service status changes of VISTA members (e.g., removals, terminations, and transfers).

*VISTA member*, a *VISTA*, or *the VISTA* means an individual enrolled full-time in the VISTA program, as authorized under title I of the DVSA.

*VISTA program* means the Federal Government program named Volunteers in Service to America and authorized under title I of the Domestic Volunteer Service Act of 1973, as amended, 42 U.S.C. 4950 *et seq.*

*VISTA service* means VISTA service activities performed by a VISTA member while enrolled in the VISTA program.

*VMSU Director* means the AmeriCorps official who is Director of the VISTA Member Support Unit and manages daily operations of the VMSU to provide services to potential, current, and former VISTA members.

#### **§ 2556.7 Are waivers of the regulations in this part allowed?**

Upon a determination of good cause, the Chief Executive Officer of AmeriCorps may, subject to statutory limitations, waive any provisions of this part.

**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.

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(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-

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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

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the sponsor or subrecipient to which they are assigned to serve. No VISTA is in an employment relationship with the sponsor or subrecipient to which they are assigned. The sponsor is not authorized to make contributions to any State unemployment compensation fund on a VISTA's behalf.

### **§ 2556.305 What is the duration and scope of service for a VISTA?**

(a) To serve as a VISTA, an individual makes a full-time commitment for a minimum of one year, without regard to regular working hours.

(b) A VISTA carries out activities in accordance with the purpose of the VISTA program, as described in § 2556.1.

(c) To the maximum extent practicable, the VISTA must live among and at the economic level of the low-income community served by the project.

(d) A VISTA carries out service activities in conformance with the sponsor's approved project application, including any description of a VISTA assignment as contained in the project application; and in conformance with the purpose of title I of the DVSA. In any case where there is a conflict between the project application and the DVSA, the DVSA takes precedence.

(e) Under no circumstances may an individual be enrolled to serve as a VISTA beyond five years.

### **§ 2556.310 What are a VISTA sponsor's and AmeriCorps' supervisory responsibilities during a VISTA's term of service?**

(a) The VISTA sponsor is responsible for the day-to-day supervision and oversight of the VISTA.

(b) AmeriCorps is responsible for ongoing monitoring and oversight of the VISTA sponsor's project where the VISTA is assigned. AmeriCorps is responsible for selecting the VISTA, assigning the VISTA to a project, removal of a VISTA from a project, and VISTA separation actions such as termination from the VISTA program.

### **§ 2556.315 What are terms and conditions for official travel for a VISTA?**

(a) AmeriCorps may provide official travel for a VISTA candidate or a VISTA, as appropriate, to attend

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AmeriCorps-directed activities such as pre-service training, placement at the project site, in-service training events, and return from the project site to the VISTA's or VISTA candidate's home of record.

(b) AmeriCorps must approve all official travel of a VISTA candidate or a VISTA, including the mode of travel.

(c) AmeriCorps may provide for official emergency travel for a VISTA in case of a natural disaster or the critical illness or death of an immediate family member.

### **§ 2556.320 What benefits may a VISTA receive during VISTA service?**

(a) A VISTA receives a living allowance computed on a daily rate. Living allowances vary according to the local cost of living in the project area where the VISTA is assigned.

(b) Subject to a maximum amount, and at the discretion and upon approval of AmeriCorps, a VISTA may receive payment for settling-in expenses, as determined by AmeriCorps.

(c) Subject to a maximum amount, and at the discretion of AmeriCorps, in the event of an emergency (such as theft, fire loss, or special clothing necessitated by severe climate), a VISTA may receive an emergency expense payment in order to resume VISTA service activities, as determined and approved by AmeriCorps.

(d) Subject to a maximum amount, and at the discretion of AmeriCorps, a VISTA may receive a relocation travel allowance to offset the cost of relocating from the home of record to the project site, as determined by AmeriCorps.

(e) To the extent eligible, a VISTA may receive health care through a health benefits program provided by AmeriCorps.

(f) To the extent eligible, a VISTA may receive childcare support through a childcare program provided by AmeriCorps.

(g) To the extent eligible, a VISTA may elect to receive a Segal AmeriCorps Education Award, and upon successful completion of service, receive that award in an amount prescribed by AmeriCorps, in accordance with the applicable provisions of 45 CFR parts 2526, 2527, and 25285.

(1) A VISTA is eligible to elect to receive an education award if they are a citizen, national, or lawful permanent resident alien of the United States.

(2) A VISTA who elects an education award is eligible to request forbearance of a student loan from their loan-holder. A VISTA who elects an education award may, upon successful completion of service, be eligible to receive up to 100 percent of the interest accrued on a qualified student loan, consistent with the applicable provisions of 45 CFR part 2529.

(3) A VISTA is not eligible to receive more than an amount equal to the aggregate value of two full-time education awards in their lifetime.

(4) Other than for a summer associate, the amount of an education award for the successful completion of a VISTA term of service is equal to the maximum amount of a Federal Pell Grant under Section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) that a student eligible for such grant may receive in the aggregate for the fiscal year in which the VISTA has enrolled in the VISTA program.

(h) A VISTA who does not elect to receive a Segal AmeriCorps Education Award upon successful completion of service receives an end-of-service stipend in an amount prescribed by AmeriCorps.

(i) In the event that a VISTA does not successfully complete a full term of service, they may not receive a pro-rated Segal AmeriCorps Education Award or a pro-rated end-of-service stipend, except in cases where the appropriate VISTA Case Manager determines the VISTA did not successfully complete a full term of service because of a compelling personal circumstance. Examples of a compelling personal circumstance are: Serious medical condition or disability of a VISTA during VISTA service; critical illness or disability of a VISTA's immediate family member (spouse, domestic partner, parent, sibling, child, or guardian) if this event makes completing a term of service unreasonably difficult; or unusual conditions not attributable to the VISTA, such as natural disaster, strike, or premature closing of a project, that make completing a term

of service unreasonably difficult or infeasible.

(j) In the event of a VISTA's death during service, their family or others that they named as beneficiary in accordance with section 5582 of title 5, United States Code will be paid a pro-rated end-of-service stipend for the period during which the VISTA served. If the VISTA had elected to receive the Segal AmeriCorps Education Award for successful completion of a full term of VISTA service, AmeriCorps will, prior to payment to the named beneficiary, convert that election to an end-of-service stipend and pay the VISTA's family, or others that they named as beneficiary, a pro-rated end-of-service stipend accordingly.

**§2556.325 May a VISTA be provided coverage for legal defense expenses related to VISTA service?**

Under certain circumstances, as set forth in §§2556.330 through 2556.335, AmeriCorps may pay reasonable legal defense expenses incurred in judicial or administrative proceedings for the defense of a VISTA serving in the VISTA program. Such covered legal expenses consist of counsel fees, court costs, bail, and other expenses incidental to a VISTA's legal defense.

**§2556.330 When may a VISTA be provided coverage for legal defense expenses related to criminal proceedings?**

(a) For the legal defense of a VISTA member who is charged with a criminal offense related to the VISTA member's service, up to and including arraignment in Federal, State, and local criminal proceedings, AmeriCorps may pay actual and reasonable legal expenses. AmeriCorps is not required to pay any expenses for the legal defense of a VISTA member where they are charged with a criminal offense arising from alleged activity or action that is unrelated to that VISTA's service.

(b) A VISTA member's service is clearly unrelated to a charged offense when:

(1) The activity or action is alleged to have occurred prior to the VISTA member's VISTA service.

(2) The VISTA member is not at their assigned project location, such as during periods of approved leave, medical

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leave, emergency leave, or in administrative hold status in the VISTA program.

(3) The activity or action is alleged to have occurred at or near their assigned project, but is clearly not part of, or required by, the VISTA member's service assignment.

(c) For the legal defense, beyond arraignment in Federal, State, and local criminal proceedings, of a VISTA member who is charged with a criminal offense, AmeriCorps may also pay actual and reasonable legal expenses when:

(1) The charged offense against the VISTA member relates exclusively to their VISTA assignment or status as a VISTA member;

(2) The charged offense against the VISTA member arises from an alleged activity or action that is a part of, or required by, the VISTA member's VISTA assignment;

(3) The VISTA member has not admitted a willful or knowing violation of law; or

(4) The charged offense against the VISTA member is not a minor offense or misdemeanor, such as a minor vehicle violation.

(d) Notwithstanding paragraphs (a) through (c) of this section, there may be situations in which the criminal proceedings at issue arise from a matter that also gives rise to a civil claim under the Federal Tort Claims Act. In such a situation, the U.S. Department of Justice may, on behalf of the United States, agree to defend the VISTA. If the U.S. Department of Justice agrees to defend the VISTA member, unless there is a conflict between the VISTA member's interest and that of the United States, AmeriCorps will not pay for expenses associated with any additional legal representation (such as counsel fees for private counsel) for the VISTA member.

#### **§ 2556.335 When may a VISTA be provided coverage for legal defense expenses related to civil or administrative proceedings?**

For the legal defense in Federal, State, and local civil judicial and administrative proceedings of a VISTA member, AmeriCorps may also pay actual and reasonable legal expenses when:

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(a) The complaint or charge is against the VISTA, and is directly related to their VISTA service and not to their personal activities or obligations;

(b) The VISTA has not admitted to willfully or knowingly pursuing a course of conduct that would result in the plaintiff or complainant initiating such a proceeding; and

(c) The judgment sought involves a monetary award that exceeds \$1,000.

#### **§ 2556.340 What is non-competitive eligibility and who is eligible for it?**

(a) Non-competitive eligibility is a status that means a person is eligible for appointment, by a Federal agency in the Executive branch, into a civil service position in the Federal competitive service, in accordance with 5 CFR 315.605.

(b) An individual who successfully completes at least a year-long term of service as a VISTA, and who has not been terminated for cause from the VISTA program at any time, has non-competitive eligibility status for one year following the end of the term of service as a VISTA.

(c) In addition to the year of non-competitive eligibility status as provided in paragraph (b) of this section, an individual's non-competitive eligibility status may extend for two more years, to a total of three years, if the individual is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in the view of the Federal agency referenced in paragraph (a) of this section, warrants extension.

#### **§ 2556.345 Who may present a grievance?**

(a) Under the VISTA program grievance procedure, a grievance may be presented by any individual who is currently enrolled in the VISTA program or who was enrolled in the VISTA program within the past 30 calendar days.

(b) A VISTA's grievance may not be construed as reflecting on the VISTA's standing, performance, or desirability as a VISTA.

(c) A VISTA who presents a grievance may not be subjected to restraint, interference, coercion, discrimination,



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or reprisal because of presentation of views.

### **§2556.350 What matters are considered grievances?**

(a) Under the VISTA program grievance procedure, grievances are matters of concern, brought by a VISTA, that arise out of, and directly affect, the VISTA's service situation or that arise out of a violation of a policy, practice, or regulation governing the terms or conditions of the VISTA's service, that result in the denial or infringement of a right or benefit to the VISTA member.

(b) Matters not within the definition of a grievance as defined in paragraph (a) of this section are not grievable, and therefore, are excluded from the VISTA program grievance procedure. Though not exhaustive, examples of matters excluded from the VISTA program grievance procedure are:

(1) Matters related to a sponsor's or project's continuance or discontinuance; the number of VISTAs assigned to a VISTA project; the increases or decreases in the level of support provided to a VISTA project; the suspension or termination of a VISTA project; or the selection or retention of VISTA project staff;

(2) Matters for which a separate administrative procedure or complaint process is provided, such as early termination for cause, claims of discrimination during service, and Federal worker's compensation claims filed for illness or injury sustained in the course of carrying out VISTA activities;

(3) Matters related to the content of any law, published rule, regulation, policy, or procedure;

(4) Matters related to housing during a VISTA member's service;

(5) Matters which are, by law, subject to final administrative review outside AmeriCorps;

(6) Matters related to actions taken, or not taken, by a VISTA sponsor or subrecipient, or AmeriCorps, in compliance with or in order to fulfill the terms of a contract, grant, or other agreement related to the VISTA program; or

(7) Matters related to the internal management of AmeriCorps, unless

such matters are shown to specifically and directly affect the VISTA's service situation or terms or conditions of their VISTA service.

### **§2556.355 May a VISTA have access to records as part of the VISTA grievance procedure?**

(a) A VISTA is entitled to review any material in their official VISTA file and any relevant AmeriCorps records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of materials that may be withheld include references obtained under pledge of confidentiality, official VISTA files of other VISTAs, and privileged intra-agency documents.

(b) A VISTA may review relevant materials in the possession of a sponsor to the extent such materials are disclosable by the sponsor under applicable Freedom of Information Act and privacy laws.

### **§2556.360 How may a VISTA bring a grievance?**

(a) *Bringing a grievance—Step 1.* (1) If a VISTA is currently enrolled in the VISTA program or was enrolled in the VISTA program within the past 30 calendar days, they may, within 15 calendar days of an event giving rise to a grievance or within 15 calendar days after becoming aware of such an event, bring a grievance to the sponsor or subrecipient where they are assigned to serve. If the grievance arises out of a continuing condition or practice that individually affects a VISTA, the VISTA may bring it at any time during their enrollment that they are affected by the continuing condition or practice.

(2) A VISTA brings a grievance by presenting it in writing to the executive director, or comparable individual, of the sponsoring organization where the VISTA is assigned or to the sponsor's representative who is designated to receive grievances from a VISTA.

(3) The sponsor must review and respond in writing to the VISTA's grievance within 10 calendar days of receipt of the written grievance. The sponsor may not fail to respond to a complaint raised by a VISTA on the basis that it is not an actual grievance, or that it is

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excluded from coverage as a grievance, but may, in the written response, dismiss the complaint and refuse on either of those grounds to grant the requested relief.

(4) If the grievance brought by a VISTA involves a matter over which the sponsor has no substantial control or if the sponsor's representative is the supervisor of the VISTA, the VISTA may pass over the procedure set forth in paragraphs (a)(1) through (3) of this section and present the grievance in writing directly to the Deputy Regional Administrator, as described in paragraph (b) of this section.

(b) *Bringing a grievance—Step 2.* (1) If, after a VISTA brings a grievance as set forth in paragraphs (a)(1) and (2) of this section, the matter is not resolved, they may submit the grievance in writing to the appropriate Deputy Regional Administrator. The VISTA must submit the grievance to the Deputy Regional Administrator either:

(i) Within seven calendar days of receipt of the sponsor's response; or,

(ii) In the event the sponsor does not issue a response to the VISTA within 10 calendar days of its receipt of the written grievance, within 17 calendar days of the sponsor's receipt of the written grievance.

(2) If the grievance involves a matter over which either the sponsor or sub-recipient has no substantial control, or if the sponsor's representative is the supervisor of the VISTA, as described in paragraph (a)(4) of this section, the VISTA may pass over the procedure set forth in paragraphs (a)(1) through (3) of this section, and submit the grievance in writing directly to the Deputy Regional Administrator. In such a case, the VISTA must submit the grievance to the Deputy Regional Administrator within 15 calendar days of the event giving rise to the grievance occurs, or within 15 calendar days after becoming aware of the event.

(3) Within ten working days of receipt of the grievance, the Deputy Regional Administrator will respond in writing, regardless of whether or not the matter constitutes a grievance as defined under this grievance procedure and/or is timely submitted. In the response, the Deputy Regional Administrator may determine that the matter

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submitted as a grievance is not grievable, is not considered a grievance, or fails to meet the time limit for response. If the Deputy Regional Administrator makes any such determination, they may dismiss the complaint, setting forth the reason(s) for the dismissal. In such a case, the Deputy Regional Administrator need not address the complaint on the merits, nor make a determination of the complaint on the merits.

### § 2556.365 May a VISTA appeal a grievance?

(a) A VISTA may appeal the Deputy Regional Administrator's response to the grievance under § 2556.360(b)(3) by submitting a written appeal to the appropriate Regional Administrator. To be eligible to appeal a grievance response to the Regional Administrator, the VISTA must first have exhausted all appropriate actions as set forth in § 2556.360.

(b) A VISTA's grievance appeal must be in writing, contain sufficient detail to identify the subject matter of the grievance, specify the relief requested, and be signed by the VISTA.

(c) A VISTA must submit a grievance appeal to the appropriate Regional Administrator no later than 10 calendar days after the Deputy Regional Administrator issues their response to the grievance.

(d) Certain matters contained in a grievance appeal may be rejected, rather than denied on the merits, by the Regional Administrator. A grievance appeal may be rejected, in whole or in part, for any of the following reasons:

(1) The grievance appeal was not submitted to the appropriate Regional Administrator within the time limit specified in paragraph (c) of this section;

(2) The grievance appeal consists of matters not contained within the definition of a grievance, as specified in section § 2556.350(a);

(3) The grievance appeal consists of matters excluded from the VISTA program grievance procedure, as specified in § 2556.350(b); or

(4) The grievance appeal contains matters that are moot, or for which relief has otherwise been granted.

(e) Within 14 calendar days of receipt of the grievance, the appropriate Regional Administrator will decide the grievance appeal on the merits, or reject the grievance appeal in whole or in part, or both, as appropriate. The Regional Administrator shall notify the VISTA in writing of the decision and specify the grounds for the appeal decision. The appeal decision will include a statement of the basis for the decision and is a final decision of AmeriCorps.

### **Subpart E—Termination for Cause Procedures**

#### **§ 2556.400 What is termination for cause and what are the criteria for termination for cause?**

(a) Termination for cause is discharge of a VISTA from the VISTA program due to a deficiency, or deficiencies, in conduct or performance.

(b) AmeriCorps may terminate a VISTA for cause for any of the following reasons:

(1) Conviction of any criminal offense under Federal, State, or local statute or ordinance;

(2) Violation of any provision of the Domestic Service Volunteer Act of 1973, as amended, or any AmeriCorps or VISTA program policy, regulation, or instruction;

(3) Failure, refusal, or inability to perform prescribed project duties as outlined in the project plan, assignment description, or as directed by the sponsor to which the VISTA is assigned;

(4) Involvement in activities which substantially interfere with the VISTA's performance of project duties;

(5) Intentional false statement, misrepresentation, omission, fraud, or deception in seeking to obtain selection as a VISTA in the VISTA program;

(6) Any conduct on the part of the VISTA which substantially diminishes their effectiveness as a VISTA; or

(7) Unsatisfactory performance of an assignment.

#### **§ 2556.405 Who has sole authority to remove a VISTA from a VISTA project and who has sole authority to terminate a VISTA from a VISTA project or the VISTA program?**

(a) AmeriCorps has the sole authority to remove a VISTA from a project where they have been assigned.

(b) AmeriCorps has the sole authority to terminate for cause or otherwise terminate a VISTA from the VISTA program.

(c) Neither the sponsoring organization nor any of its subrecipients has the authority to remove a VISTA from a project or to terminate a VISTA for cause, or for any other basis, from the VISTA program.

#### **§ 2556.410 May a sponsor request that a VISTA be removed from its project?**

(a) The head of a sponsoring organization, or their designee, may request that AmeriCorps remove a VISTA assigned to its project. Any such request must be submitted in writing to the appropriate Portfolio Manager and should state the reasons for the request.

(b) The Portfolio Manager may, at their discretion, attempt to resolve the situation with the sponsor so that a solution other than removal of the VISTA from the project assignment is reached.

(c) When an alternative solution, as referenced in paragraph (b) of this section, is not sought, or is not reached within a reasonable time period, the VISTA Case Manager will remove the VISTA from the project.

#### **§ 2556.415 May AmeriCorps remove a VISTA from a project without the sponsor's request for removal?**

Of its own accord, AmeriCorps may remove a VISTA from a project assignment without the sponsor's request for removal.

#### **§ 2556.420 What are termination for cause proceedings?**

(a) Termination for cause proceedings remove a VISTA from a project assignment due to an alleged deficiency, or alleged deficiencies, in conduct or performance, and are initiated by AmeriCorps.

**§ 2556.425**

(b) AmeriCorps, to the extent practicable, communicates the matter, and the administrative procedures as set forth in paragraphs (c) through (e) of this section, with the VISTA who is removed from a VISTA project.

(c) The VISTA Case Manager will notify the VISTA in writing of AmeriCorps' proposal to terminate for cause. The written proposal to terminate the VISTA for cause must give them the reason(s) for the proposed termination, and notify them that they have 10 calendar days within which to submit a written answer to the proposal to terminate them cause and to furnish any accompanying statements or written material. The VISTA must submit their answer to the VISTA Case Manager by the deadline identified in the written proposal to terminate for cause.

(d) Within 10 calendar days of the expiration of the VISTA's deadline to answer the proposal to terminate for cause, AmeriCorps will issue a written decision regarding the proposal to terminate for cause.

(1) If AmeriCorps decides to terminate the VISTA for cause, its written decision will set forth the reasons for the determination and the effective date of termination (which may be on or after the date of the decision).

(2) If AmeriCorps decides not to terminate the VISTA for cause, the written decision will indicate that the proposal to terminate for cause is rescinded.

(e) A VISTA who does not submit a timely answer to the appropriate VISTA Case Manager, as set forth in paragraph (c) of this section, is not entitled to appeal the decision regarding the proposal to terminate for cause. In such cases, AmeriCorps may terminate the VISTA for cause, on the date identified in the decision, and the termination action is final.

**§ 2556.425 May a VISTA appeal their termination for cause?**

(a) Within 10 calendar days of AmeriCorps' issuance of the decision to terminate the VISTA for cause, as set forth in § 2556.420(d), the VISTA may appeal the decision to the VMSU Director. The appeal must be in writing and

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specify the reasons for the VISTA's disagreement with the decision.

(b) AmeriCorps will not incur any expenses or travel allowances for the VISTA in connection with the preparation or presentation of the appeal.

(c) The VISTA may have access to records as follows:

(1) The VISTA may review any material in the VISTA's official AmeriCorps file and any relevant AmeriCorps records to the extent permitted by the Freedom of Information Act and the Privacy Act, 5 U.S.C. 552, 552a. Examples of documents that may be withheld include references obtained under pledge of confidentiality, official files of other program participants, and privileged intra-agency documents.

(2) The VISTA may review relevant records in the possession of a sponsor to the extent such documents are disclosable by the sponsor under applicable freedom of information act and privacy laws.

(d) Within 14 calendar days of receipt of any appeal by the VISTA, the VMSU Director or equivalent AmeriCorps official will issue a written appeal determination indicating the reasons for the appeal determination. The appeal determination will be final.

**§ 2556.430 Is a VISTA who is terminated early from the VISTA program for other than cause entitled to appeal under these procedures?**

(a) Only a VISTA whose early termination from the VISTA program is for cause, and who has answered the proposal to terminate them for cause in a timely manner, as set forth in § 2556.420(c), is entitled to appeal the early termination action, as referenced in § 2556.425. A termination for cause is based on a deficiency, or deficiencies, in the performance or conduct of a VISTA.

(b) The following types of early terminations from the VISTA program are not terminations for cause, and are not entitled to appeal under the early termination appeal procedure set forth in §§ 2556.420 and 2556.425:

(1) Resignation from the VISTA program prior to the issuance of a decision to terminate for cause, as set forth in § 2556.420(d);

(2) Early termination from the VISTA program because a VISTA did not secure a suitable reassignment to another project; and

(3) Medical termination from the VISTA program.

### Subpart F—Summer Associates

#### § 2556.500 How is a position for a summer associate established in a project?

Subject to VISTA assistance availability, AmeriCorps approves the establishment of summer associate positions based on the following factors:

(a) The need in the community, as demonstrated by the sponsor, for the performance of project activities by a summer associate(s);

(b) The content and quality of summer associate project plans;

(c) The capacity of the sponsor to implement the summer associate project activities; and

(d) The sponsor's compliance with all applicable parts of the DVSA, VISTA program policy, and the sponsor's Memorandum of Agreement, which incorporates their project application.

#### § 2556.505 How do summer associates differ from other VISTAs?

Summer associates differ from other VISTAs in the following ways:

(a) Summer associates are not eligible to receive:

(1) Health care through a health benefits program provided by AmeriCorps;

(2) Childcare support through a childcare program provided by AmeriCorps;

(3) Payment for settling-in expenses; or

(4) Non-competitive eligibility in accordance with 5 CFR 315.605.

(b) Absent extraordinary circumstances, summer associates are not eligible to receive:

(1) Payment for travel expenses incurred for travel to or from the project site to which the summer associate is assigned; or

(2) A relocation travel allowance to offset the cost of relocating from the summer associate's home of record to the project site to which they are assigned to serve.

(c) AmeriCorps may discharge a summer associate due to a deficiency, or deficiencies, in conduct or performance. Summer associates are not subject to subpart E of this part, or to the grievance procedures provided to VISTAs set forth in §§ 2556.345 through 2556.365.

### Subpart G—VISTA Leaders

#### § 2556.600 How is a position for a leader established in a project, or in multiple projects within a contiguous geographic region?

(a) At its discretion, AmeriCorps may approve the establishment of a leader position based on the following factors:

(1) The need for a leader in a project of a substantial size and with multiple VISTAs assigned to serve at that project, or the need for leader for multiple projects located within a contiguous geographic region.

(2) The need for a leader to assist with the communication of VISTA policies and administrative procedures to VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(3) The need for a leader to assist with the professional development of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(4) The need for a leader to assist with the recruitment and preparation for the arrival of VISTAs within a project, or throughout the multiple projects within a contiguous geographic region, as applicable.

(5) The capacity of the VISTA supervisor to support and guide the leader.

(b) A sponsor may request, in its project application, that AmeriCorps establish a leader position in its project.

#### § 2556.605 Who is eligible to apply to serve as a leader?

An individual is eligible to apply to serve as a leader if they have successfully completed any of the following:

(a) At least one year of service as a VISTA;

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(b) At least one full term of service as a full-time AmeriCorps State and National member;

(c) At least one full term of service as a member of the AmeriCorps National Civilian Community Corps (NCCC); or

(d) At least one traditional term of service as a Peace Corps Volunteer.

### § 2556.610 What is the application process to apply to become a leader?

(a) *Application package.* An eligible individual must apply in writing to AmeriCorps to become a leader. The sponsor's recommendation must be included with the individual's application to become a leader.

(b) *Sponsor recommendation.* A sponsor with which an individual is seeking to serve as a leader must recommend the individual to become a leader, in writing, to AmeriCorps.

(c) *Selection.* AmeriCorps has sole authority to select a leader. The criteria considered for selection include the individual's experience, special skills, and leadership, as demonstrated in the application and the sponsor's recommendation.

### § 2556.615 Who reviews a leader application and who approves or disapproves a leader application?

AmeriCorps reviews the application package for the leader position, considers the recommendation of the sponsor, and approves or disapproves the individual to serve as a leader.

### § 2556.620 How does a leader differ from other VISTAs?

(a) The application process to become a leader, as described in § 2556.610, is separate and distinct from the application process to enroll as a VISTA in the VISTA program.

(b) A leader may receive a living allowance computed at a higher daily rate than other VISTAs, as authorized under section 105(a)(1)(B) of the DVSA.

(c) A leader is subject to all the terms and conditions of service described in § 2556.625.

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### § 2556.625 What are terms and conditions of service for a leader?

Though not exhaustive, terms and conditions of service as a leader include:

(a) A leader makes a full-time commitment to serve as a leader, without regard to regular working hours, for a minimum of one year.

(b) To the maximum extent practicable, a leader must live among and at the economic level of the low-income community served by the project.

(c) A leader aids the communication of VISTA policies and administrative procedures to VISTAs.

(d) A leader assists with the leadership development of VISTAs.

(e) A leader is a resource in the development and delivery of training for VISTAs.

(f) A leader may assist the sponsor with recruitment and preparation for the arrival of VISTAs.

(g) A leader may advise a supervisor on potential problem areas and needs of VISTAs.

(h) A leader aids VISTAs in the development of effective working relationships and understanding of VISTA program concepts.

(i) A leader may aid the supervisor and sponsor in directing or focusing the VISTA project to best address the community's needs.

(j) A leader may serve as a collector of data for performance measures of the project and the VISTAs.

(k) A leader is prohibited from supervising VISTAs. A leader is also prohibited from handling or managing, on behalf of the project, personnel-related matters affecting VISTAs. Personnel-related matters affecting VISTAs must be managed and handled by the project and in coordination with the appropriate AmeriCorps Region Office.

## Subpart H—Restrictions and Prohibitions on Political Activities and Lobbying

### § 2556.700 Who is covered by this subpart?

(a) All VISTAs, including leaders and summer associates, are subject to this subpart.

(b) All employees of VISTA sponsors and subrecipients whose salaries or

other compensation are paid, in whole or in part, with VISTA grant assistance are subject to this subpart.

(c) All VISTA sponsors and subrecipients are subject to this subpart.

**§ 2556.705 What is prohibited political activity?**

For purposes of the regulations in this subpart, “prohibited political activity” means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

**§ 2556.710 What political activities are VISTAs prohibited from engaging in?**

(a) A VISTA may not use their official authority or influence to interfere with or affect the result of an election.

(b) A VISTA may not use their official authority or influence to coerce any individual to participate in political activity.

(c) A VISTA may not use their official VISTA program title while participating in prohibited political activity.

(d) A VISTA may not participate in prohibited political activities in the following circumstances:

(1) While they are on duty;

(2) While they are wearing an article of clothing, logo, insignia, or other similar item that identifies AmeriCorps, the VISTA program, or one of AmeriCorps’ other national service programs;

(3) While they are in any room or building occupied in the discharge of VISTA duties by an individual employed by the sponsor; and

(4) While using a vehicle owned or leased by a sponsor or subrecipient, or while using a privately-owned vehicle in the discharge of VISTA duties.

**§ 2556.715 What political activities may a VISTA participate in?**

(a) Provided that paragraph (b) of this section is fully adhered to, a VISTA may:

(1) Express their opinion privately and publicly on political subjects;

(2) Be politically active in connection with a question that is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordi-

nance, or any other question or issue of similar character;

(3) Participate in the nonpartisan activities of a civic, community, social, labor, professional, or similar organization; and

(4) Participate fully in public affairs, except as prohibited by other Federal law, in a manner that does not compromise their efficiency or integrity as a VISTA, or compromise the neutrality, efficiency, or integrity of AmeriCorps or the VISTA program.

(b) A VISTA may participate in political activities set forth in paragraph (a) of this section as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, their assigned VISTA project duties;

(2) Does not interfere with their provision of service in the VISTA program;

(3) Does not involve any use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

**§ 2556.720 May VISTAs participate in political organizations?**

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Be a member of a political party or other political group and participate in its activities;

(2) Serve as an officer of a political party or other political group, a member of a national, State, or local committee of a political party, an officer or member of a committee of a political group, or be a candidate for any of these positions;

(3) Attend and participate fully in the business of nominating caucuses of political parties;

(4) Organize or reorganize a political party organization or political group;

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(5) Participate in a political convention, rally, or other political gathering; and

(6) Serve as a delegate, alternate, or proxy to a political party convention.

(b) A VISTA may participate in a political organization as long as such participation complies with the restrictions set out in paragraphs (b)(1) through (6) of § 2556.715.

(1) Does not interfere with the performance of, or availability to perform, their assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Does not involve any use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

### **§ 2556.725 May VISTAs participate in political campaigns?**

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Display pictures, signs, stickers, badges, or buttons associated with political parties, candidates for partisan political office, or partisan political groups, as long as these items are displayed in accordance with the prohibitions set forth in § 2556.710;

(2) Initiate or circulate a nominating petition for a candidate for partisan political office;

(3) Canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office;

(4) Endorse or oppose a partisan political candidate or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material; and

(5) Address a convention caucus, rally, or similar gathering of a political party or political group in support of or in opposition to a partisan polit-

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ical candidate or a candidate for political party office.

(b) A VISTA may participate in a political campaign as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, their assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Does not involve any use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

### **§ 2556.730 May VISTAs participate in elections?**

(a) Provided that paragraph (b) of this section is fully adhered to, and in accordance with the prohibitions set forth in § 2556.710, a VISTA may:

(1) Register and vote in any election;

(2) Act as recorder, watcher, challenger, or similar officer at polling places;

(3) Serve as an election judge or clerk, or in a similar position; and

(4) Drive voters to polling places for a partisan political candidate, partisan political group, or political party.

(5) Participate in voter registration activities.

(b) A VISTA may participate in elections as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, their assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Does not involve any use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available



for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

**§ 2556.735 May a VISTA be a candidate for public office?**

(a) Except as provided in paragraph (c) of this section, no VISTA may run for the nomination to, or as a candidate for election to, partisan political office.

(b) In accordance with the prohibitions set forth in §2556.710, a VISTA may participate in elections as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, their assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Does not involve any use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) Provided that paragraphs (a) and (b) of this section are adhered to, and in accordance with the prohibitions set forth in §2556.710, a VISTA may:

(1) Run as an independent candidate in a partisan election in designated U.S. municipalities and political subdivisions as set forth at 5 CFR part 733; and

(2) Run as a candidate in a non-partisan election.

**§ 2556.740 May VISTAs participate in political fundraising activities?**

(a) Provided that paragraphs (b) through (d) of this section are fully adhered to, and in accordance with the prohibitions set forth in §2556.710, a VISTA may:

(1) Make a political contribution to a political party, political group, campaign committee of a candidate for public office in a partisan election;

(2) Attend a political fundraiser; and  
(3) Solicit, accept, or receive uncompensated volunteer services for a political campaign from any individual.

(b) A VISTA may participate in fundraising activities as long as such participation:

(1) Does not interfere with the performance of, or availability to perform, their assigned VISTA project duties;

(2) Does not interfere with the provision of service in the VISTA program;

(3) Does not involve any use of VISTA assistance, resources or funds;

(4) Would not result in the identification of the VISTA as being a participant in or otherwise associated with the VISTA program;

(5) Is not conducted during scheduled VISTA service hours; and

(6) Does not interfere with the full-time commitment to remain available for VISTA service without regard to regular working hours, at all times during periods of service, except for authorized periods of leave.

(c) A VISTA may not knowingly:

(1) Personally solicit, accept, or receive a political contribution from another individual;

(2) Personally solicit political contributions in a speech or keynote address given at a fundraiser;

(3) Allow their perceived or actual affiliation with the VISTA program, or their official title as a VISTA, to be used in connection with fundraising activities; or

(4) Solicit, accept, or receive uncompensated individual volunteer services from a subordinate (*e.g.*, a leader may not solicit, accept or receive a political contribution from a VISTA).

(d) Except for VISTAs who reside in municipalities or political subdivisions designated under 5 CFR part 733, no VISTA may accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

**§ 2556.745 Are VISTAs prohibited from soliciting or discouraging the political participation of certain individuals?**

(a) A VISTA may not knowingly solicit or discourage the participation in any political activity of any individual

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who has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before AmeriCorps or the VISTA program.

(b) A VISTA may not knowingly solicit or discourage the participation in any political activity of any individual who is the subject of, or a participant in, an ongoing audit, investigation, or enforcement action being carried out by or through AmeriCorps or the VISTA program.

#### **§ 2556.750 What restrictions and prohibitions are VISTAs who campaign for a spouse or family member subject to?**

A VISTA who is the spouse or family member of a candidate for partisan political office, candidate for political party office, or candidate for public office in a nonpartisan election is subject to the same restrictions and prohibitions as other VISTAs, as set forth in § 2556.725.

#### **§ 2556.755 May VISTAs participate in lawful demonstrations?**

In accordance with the prohibitions set forth in § 2556.710, VISTAs may participate in lawful demonstrations, political rallies, and other political meetings, so long as such participation is in conformance with all of the following:

- (a) Occurs only while on authorized leave or while otherwise off duty;
- (b) Does not include attempting to represent, or representing, the views of VISTAs or the VISTA program on any public issue;
- (c) Could not be reasonably understood by the community as being identified with the VISTA program, the project, or other elements of VISTA service; and
- (d) Does not interfere with the discharge of VISTA duties.

#### **§ 2556.760 May a sponsor or subrecipient approve the participation of a VISTA in a demonstration or other political meeting?**

(a) No VISTA sponsor or subrecipient may approve a VISTA to be involved in planning, initiating, participating in, or otherwise aiding or assisting in any demonstration or other political meeting.

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(b) If a VISTA sponsor or subrecipient, subsequent to the receipt of any AmeriCorps financial assistance, including the assignment of VISTAs, approves the participation of a VISTA in a demonstration or other political meeting, that VISTA sponsor or subrecipient is subject to procedures related to the suspension or termination of such assistance, as provided in subpart B of this part, §§ 2556.135 through 2556.140.

#### **§ 2556.765 What disciplinary actions are VISTAs subject to for violating restrictions or prohibitions on political activities?**

Violations by a VISTA of any of the prohibitions or restrictions set forth in this subpart may warrant termination for cause, in accordance with proceedings set forth at §§ 2556.420, 2556.425, and 2556.430.

#### **§ 2556.770 What are the requirements of VISTA sponsors and subrecipients regarding political activities?**

(a) All sponsors and subrecipients are required to:

- (1) Understand the restrictions and prohibitions on the political activities of VISTAs, as set forth in this subpart;
- (2) Provide training to VISTAs on all applicable restrictions and prohibitions on political activities, as set forth in this subpart, and use training materials that are consistent with these restrictions and prohibitions;
- (3) Monitor on a continuing basis the activity of VISTAs for compliance with this subpart; and
- (4) Report all violations or questionable situations immediately to the appropriate AmeriCorps Region Office.

(b) Failure of a sponsor to comply with the requirements of this subpart, or a violation of the requirements contained in this subpart by the sponsor or subrecipient, sponsor or subrecipient's covered employees, agents, or VISTAs, may be deemed a material failure to comply with terms or conditions of the VISTA program. In such a case, the sponsor is subject to procedures related to the denial or reduction, or suspension or termination, of such assistance, as provided in §§ 2556.125, 2556.130, and 2556.140.

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**§ 2556.775 What prohibitions and restrictions on political activity apply to employees of VISTA sponsors and subrecipients?**

All employees of VISTA sponsors and subrecipients, whose salaries or other compensation are paid, in whole or in part, with VISTA funds are subject to all applicable prohibitions and restrictions described in this subpart in the following circumstances:

(a) Whenever they are engaged in an activity that is supported by AmeriCorps or VISTA funds or assistance; and

(b) Whenever they identify themselves as acting in their capacity as an official of a VISTA project that receives AmeriCorps or VISTA funds or assistance, or could reasonably be per-

ceived by others as acting in such a capacity.

**§ 2556.780 What prohibitions on lobbying activities apply to VISTA sponsors and subrecipients?**

(a) No VISTA sponsor or subrecipient may assign a VISTA to perform service or engage in activities related to influencing the passage or defeat of legislation or proposals by initiative petition.

(b) No VISTA sponsor or subrecipient may use any AmeriCorps financial assistance, such as VISTA funds or the services of a VISTA, for any activity related to influencing the passage or defeat of legislation or proposals by initiative petition.

**PARTS 2557–2599 [RESERVED]**