



G A O

Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

B-300480

April 9, 2003

The Honorable Christopher Bond
Chairman
The Honorable Barbara Mikulski
Ranking Minority Member
Subcommittee on VA, HUD, and Independent Agencies
Committee on Appropriations
United States Senate

Subject: Obligational Practices of the Corporation for National and Community Service

This responds to your letter dated February 25, 2003. You requested that we determine whether the Corporation for National and Community Service (Corporation) incurs a legal liability for the award of national service educational benefits of AmeriCorps participants at the time it enters into a grant agreement authorizing a grantee to enroll a certain number of AmeriCorps participants, or at the time a participant enrolls in the AmeriCorps program. Subsequent to your letter, your staff explained to us that your question arises in the context of your efforts to ensure that the Corporation is properly recording obligations of the Corporation for National and Community Service National Service Trust (Trust).

As we explain in further detail below, the Corporation incurs an obligation for education benefits when it enters into a grant agreement. At the time of grant award, the Corporation approves the grantee's enrollment of a specified number of new participants in the AmeriCorps program. By this action, the Corporation incurs a legal duty that once fully matured, by action of the grantee and participants outside the Corporation's control, will require the Corporation to pay education benefits to qualified participants from the National Service Trust. As the Corporation incurs an obligation for the education benefits, it must record the obligation against the budget authority available in the Trust.

You also requested that we review the Corporation's request for a deficiency appropriation for the Trust. We will provide a subsequent response addressing this request.

BACKGROUND

The Corporation for National and Community Service was created to help community needs in education, the environment, and public safety, to expand educational opportunity by rewarding individuals who participate in national service, and to encourage citizens to engage in national service. National and Community Service Trust Act of 1993, Pub. L. No. 103-82, 107 Stat. 785, 42 U.S.C. § 12501. One of the three national service programs the Corporation oversees is AmeriCorps.

Participants in the AmeriCorps program who successfully complete a required term of service earn a national service educational award of up to \$4,725 that can be used to pay for college, graduate school, an approved school-to-work program, or qualified student loans. 42 U.S.C. § 12604(a); 45 C.F.R. § 2527.10. Participants who earn the award have up to 7 years in which to use it. 42 U.S.C. § 12602(d)(1). While the Corporation pays the education benefits directly from the Trust, 42 U.S.C. § 12601(c), the Corporation also is authorized to make grants for the purpose of assisting grant recipients in carrying out national service programs. 42 U.S.C. § 12571(a). The Corporation provides grant funds for program costs, including a stipend, and health and child care coverage. In its grants, the Corporation also approves enrollment of a specified number of new participants. See, e.g., AmeriCorps Grant Award to City Year, Inc., Aug. 3, 2000.¹ Most of the grant funding from the Corporation for AmeriCorps programs goes to governor-appointed state service commissions, which award subgrants to nonprofit groups, who then enroll the AmeriCorps participants. Corporation for National and Community Service website, <http://www.national-service.org>.

The AmeriCorps program is funded through the Departments of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act (VA-HUD Appropriations Act). Congress appropriates amounts in the VA-HUD Appropriations Act on a no-year basis to the National Service Trust. See, e.g., VA-HUD Appropriations Act, 2001, Pub. L. No. 106-377, 114 Stat. 1441 (“not more than \$70,000,000, to remain available without fiscal year limitation, shall be transferred to the National Service Trust account for educational awards authorized under subtitle D of title I of the Act”). The National Service Trust is a dedicated fund within the Corporation used to pay national service educational awards to eligible participants. 42 U.S.C. § 12601(c) (“[a]mounts in the Trust shall be available, to the extent provided for in advance by appropriation, for payments of national service educational awards in accordance with section 12604 of this title”). The amount deposited into the Trust is to be equal to the product of the value of a national service educational award and the total number of approved national service positions. 41 U.S.C. § 12571(c). Of significance is a provision that prohibits the Corporation from approving positions for a fiscal year unless sufficient funds are available in the National Service Trust. It states that “[t]he Corporation may not approve positions as approved national service

¹ The Corporation provided us with a copy of this grant agreement.

positions ... for a fiscal year in excess of the number of positions for which the Corporation has sufficient available funds in the National Service Trust for that fiscal year” 42 U.S.C. § 12581(f).

Your question arises in the context of the Corporation’s decision to suspend participant enrollment in the fall of 2002 because the Corporation feared that the Trust would not have sufficient funds to cover education awards for all approved enrollees. For fiscal year 2002, the President did not request and the Congress did not appropriate funds for the Trust, based apparently on the Administration’s determination that sufficient funds were available to support fiscal year 2002 education benefit outlays. Letter from Phillip J. Perry, General Counsel, Office of Management and Budget, to Susan A. Poling, Associate General Counsel, General Accounting Office (GAO), Mar. 31, 2003. According to the Corporation’s General Counsel, in the fall of 2002, internal controls alerted the Corporation to the fact that grantees were enrolling members at an unexpectedly high rate, and the Corporation determined that “in all likelihood the obligations associated with those approved positions would exceed budgetary resources in the National Service Trust.” Letter from Frank R. Trinity, General Counsel, Corporation for National and Community Service, to Susan A. Poling, Associate General Counsel, GAO, Mar. 21, 2003. In response, the Corporation amended all AmeriCorps grants to suspend enrollments as of November 15, 2002, and did not permit any additional enrollments until Congress appropriated additional funds to the Trust. *Id.* Notwithstanding these actions, according to the audit of the Corporation’s fiscal year 2002 financial statements, in fiscal year 2002, the Corporation had approved AmeriCorps national service positions in excess of the number of positions that the Trust could support and thus violated 42 U.S.C. § 12581(f). Audit of the Corporation for National and Community Service’s Fiscal Year 2002 Financial Statements, Audit Report 03-01 at 24, KPMG, Feb. 4, 2003.

ANALYSIS

The issues presented are (1) when does the Corporation incur an obligation for education benefits, and (2) in what amount does the Corporation incur an obligation for these benefits. Understanding the concept of an obligation and properly recording obligations are important because an obligation serves as the basis for the scheme of funds control that Congress envisioned when it enacted such fiscal laws as the Antideficiency Act. 31 U.S.C. § 1341(a); B-237135, Dec. 21, 1989. Under that act, an agency may not incur an obligation in excess of the amount available to it in an appropriation, 31 U.S.C. § 1341(a); accordingly, proper recording of obligations permits compliance with the Antideficiency Act by ensuring that government agencies have adequate budget authority to cover all of their obligations. 42 Comp. Gen. 272, 275 (1962).

Determining the Obligational Event

A general definition of an obligation is “a definite commitment that creates a legal liability of the government for the payment of goods and services ordered or

received.” B-116795, June 18, 1954. A legal liability is defined, generally, as any duty, obligation or responsibility established by a statute, regulation, or court decision, or where the agency has agreed to assume responsibility in an interagency agreement, settlement agreement, or similar legally binding document. See Black’s Law Dictionary 925 (7th ed. 1999). While we ordinarily consider obligations as “legal liabilities,” for the concept to be meaningful for funds control purposes, we have not limited the definition solely to agency actions that create legal liabilities, but also have extended the definition to include “[a] legal duty on the part of the United States which constitutes a legal liability or which could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States . . .” 42 Comp. Gen. 733, 734 (1963); see also McDonnell Douglas Corp. v. United States, 37 Fed. Cl. 295, 301 (1997).

When the Corporation awards a grant, it enters into a binding agreement authorizing the grantee to enroll a specified number of new participants in the AmeriCorps program. In addition, when the Corporation enters into grant agreements with state service commissions, it specifies the budget and project period of the award, the total number of positions approved, the total amount awarded for related program costs for the approved positions, and the terms of acceptance. See, e.g., AmeriCorps Grant Award to City Year, Inc., Aug. 3, 2000. The amounts awarded for related program costs are used by the grantee to pay participants’ stipends and health and child care coverage. The Corporation incurs an obligation for these program costs at the time of grant award.² See, e.g., B-289801, Dec. 30, 2002; B-167790, Jan. 15, 1973. The costs of education benefits for the new participants are not specified in the grants.

Nevertheless, at the time of grant agreement, the Corporation commits to fund education benefits for all of the positions approved in the grant if all of the positions are enrolled before the Corporation modifies the terms or conditions of the grant. Letter from Frank R. Trinity, General Counsel, Corporation for National and Community Service, to Susan A. Poling, Associate General Counsel, GAO, Mar. 21, 2003. At the time of grant award, when the Corporation approves enrollment of a specified number of new participants, the Corporation has taken an action that can mature into a legal liability for the education benefits of the new participants by virtue of actions taken by the grantee and participants, not the Corporation. In other words, upon award of the grant, the Corporation, at a minimum, has accepted “[a] legal duty . . . which could mature into a legal liability by virtue of actions on the part of the grantee beyond the control of the United States.” 42 Comp. Gen. 733, 734 (1963). In our view, therefore, the Corporation incurs a recordable obligation at grant award for the education benefits of the approved number of new participants.

² We have not examined and accordingly express no opinion on whether the Corporation is appropriately obligating these costs in the applicable appropriation account.

We think our view of when the obligational event occurs is entirely consistent with applicable provisions of the National and Community Service Trust Act. As noted above, the Act requires the Trust to have adequate funds to cover the total number of approved positions. 42 U.S.C. § 12581(f). The language of section 12581(f) focuses on the Corporation's approval of positions as the obligational event for fund control purposes: "[t]he Corporation may not approve positions as approved national service positions . . . for a fiscal year in excess of the number of such positions for which the Corporation has sufficient available funds in the National Service Trust for that fiscal year"

The General Counsel of the Corporation has concluded, however, that the obligational event with respect to the education award occurs no earlier than the enrollment of an individual in the Trust. Letter from Frank R. Trinity, General Counsel, Corporation for National and Community Service, to Susan A. Poling, Associate General Counsel, GAO, Mar. 21, 2003. In the past, the Corporation recorded education award obligations on an outlay basis, *i.e.*, it recorded an obligation at the time of the quarterly drawdown of education awards from the Trust. *Id.* The General Counsel explained, however, that the Corporation is in the process of modifying its procedures for recording obligations and now will record obligations at the time of enrollment based on estimates of what these enrolled members will draw down in the future. *Id.*

The General Counsel stated that the Corporation does not incur an obligation for an education award until the time of enrollment because the Corporation may modify the terms and conditions of a grant, including suspension of enrollment into the Trust, prior to the enrollment of all positions initially approved in a grant. According to the General Counsel, this permits the Corporation, if necessary, to prevent a shortfall in the Trust. The General Counsel also stated that "a binding agreement between the Government and an AmeriCorps member exists only upon the member's authorized enrollment in the Trust." *Id.* While it may well be true that the Corporation has no binding agreement with a participant until the participant enrolls, we do not view this as the controlling consideration for funds control purposes. In our opinion, this view overlooks the legal duty the Corporation incurs at time of grant award when it commits to funding a specified number of participants and ignores the constraint imposed on the Corporation by section 12581(f).

The Corporation, by its own admission, may modify the number of approved participants only if it amends the grant agreement to reduce the number of enrolled positions prior to enrollment. While the Corporation may unilaterally reduce the number of authorized positions awarded to a grantee prior to participant enrollment, from the time of grant award until the Corporation acts to reduce the approved number of positions, the grantee and its subgrantee, not the Corporation, controls the number of participants who may enroll, up to the maximum number of participants the Corporation has approved in the grant agreement. The fact that the government may have the power to amend unilaterally a contract or agreement does not change the nature or scope of the obligation incurred at time of award. Were it otherwise,

every government contract that permits the government to terminate the contract for the convenience of the government (48 C.F.R. § 49.502), or to modify the terms of the contract at will (48 C.F.R. §§ 52.243-1, 243-2, 243-3), would not be an obligation of the government at time of award. Long-standing practice and logic both of the Congress (31 U.S.C. § 1501, 41 U.S.C. § 5) and the accounting officers of the government (B-234957, July 10, 1989, B-112131, Feb. 1, 1956) have rejected such a view. As we explained earlier, at the time of grant award, the Corporation's approval of a specified number of new participants establishes a legal duty that can mature into a legal liability for education benefits by virtue of actions of the grantee that are beyond the control of the Corporation unless the Corporation takes affirmative action to modify the grant.

Amount of the Obligation

For purposes of identifying the amount of the Corporation's obligation at grant award, it is also significant that the grantee and subgrantee, by their actions in enrolling participants, ultimately control the amount of the Corporation's liability. If the amount of liability of the government is under the control of the grantee, not the Corporation, the government should obligate funds to cover the maximum amount of the liability. See, e.g., B-238581, Oct. 31, 1990; B-197274, Sept. 23, 1983. As more information is known, the Corporation may adjust the obligation, i.e., deobligate funds or increase the obligational level, as needed.

The General Counsel stated that at the time a member enrolls and the Corporation records an obligation for the member's education benefits, the Corporation will record its "best estimate of the Government's ultimate liability for education awards provided to members enrolled in the National Service Trust." Letter from Frank R. Trinity, General Counsel, Corporation for National and Community Service, to Susan A. Poling, Associate General Counsel, GAO, Mar. 21, 2003. According to the General Counsel, the model the Corporation will use to make estimates of what enrolled members will draw down in the future, i.e., the amount the Corporation will obligate, uses historical information, such as attrition rate and actual usage by members who complete a term of service and earn an education award.

It appears to us that the Corporation is confusing its accounting liability, projections booked in its proprietary accounting systems for financial statement purposes, with its legal liability, amounts to be recorded in its obligational accounting systems and tracked in order to ensure compliance with fiscal laws. For proprietary accounting purposes a liability is a probable and measurable future outflow or other sacrifice of resources as a result of past transactions or events. FASAB Statement of Federal Financial Accounting Standards Number 1. Some types of projections of accounting liability consider the same factors, such as historical trends, that are considered in the Corporation's model. For purposes of tracking its obligations, the Corporation should be recording its unmatured legal liability for the education benefits, which is the value of an educational award multiplied by all approved positions. At the time of grant award, the Corporation should record an obligation incurred for the education

benefits against the National Service Trust and the obligation incurred for the related program costs awarded for each of the approved positions against the appropriate account in the VA-HUD Appropriations Act. As the grantees' authority under the grant agreement to enroll participants in the AmeriCorps program expires or if the Corporation modifies the grantees' authority, under the grant agreement the Corporation should deobligate previously obligated amounts to reflect the change in the Corporation and the Trust's legal exposure.

We trust this is responsive to your request. If you have any questions, please contact Susan A. Poling, Associate General Counsel, at 202-512-5644.

Anthony H. Gamboa
General Counsel

DIGEST

The Corporation for National and Community Service incurs an obligation for education benefits when it enters into a grant agreement. At the time of grant award, in approving enrollment of a specified number of new participants, the Corporation incurs a legal duty that once fully matured, by action of the grantee and participants outside the Corporation's control, will require the Corporation to pay education benefits to qualified participants. As the Corporation incurs an obligation for the education benefits, it must record the obligation against the budget authority available in the National Service Trust. The Corporation's liability at time of grant award is equal to the number of approved positions in a grant award multiplied by the total value of a national service educational award plus the program costs awarded in the grant for each of the approved positions.